

ENCROACHMENT AGREEMENT

THIS AGREEMENT made this day of , 2019

BETWEEN:

EDWARD JEVCAK

(the "Licensee")

– and –

**THE CORPORATION OF THE
MUNICIPALITY OF KINCARDINE**

(the "Municipality")

1. The Licensee owns Lots 22 and 23 RP No. 26, known municipally as 511 Bervie Sideroad situated in the Municipality, and more particularly described in Schedule "A" attached.
2. The Municipality owns the road allowance known as Edwin Street.
3. A frame shed is owned or controlled by the Licensee, encroaches upon the municipal property approximately 1.3 metres and is more or less as shown on the sketch attached as Schedule 'B', and referred to as the encroachment.
4. The Municipality agrees to permit the Encroachment to continue upon the municipal property on certain terms and conditions as set out.

IN CONSIDERATION of other good and valuable consideration and the sum of \$2.00 of lawful money of Canada now paid by the Licensee to the Municipality (the receipt whereof is hereby acknowledged) the Municipality grants, subject to the provisions set forth, to the Licensee, a Licence to permit the Encroachment upon the lands of the Municipality, subject to the following provisions:

1. The term of this Licence shall expire on the earlier of:
 - (i) Five (5) years from the date of passage of this agreement, provided that, at the expiry of the term and at the Licensee's request, Council of the Municipality may, at its discretion, extend the term for such period of time and on such terms and conditions as it deems advisable;
 - (ii) The date of removal of the Encroachment; or
 - (iii) The date of the sale or transfer of the lands described in Schedule "A" unless the Municipality at the request of the purchaser or transferee of the lands, approved an extension and assignment of this agreement and the purchaser or transferee has executed the extension and assignment agreement prepared by the Municipality.
2. In the event of the Municipality at any time enacting a by-law levying a tax upon all encroachments of buildings or other structures over, under or upon any highway, street, lane, road allowance or easement in the Municipality, the Licensee shall pay forthwith on demand whatever tax may be levied in respect of the Encroachment upon the municipal property.

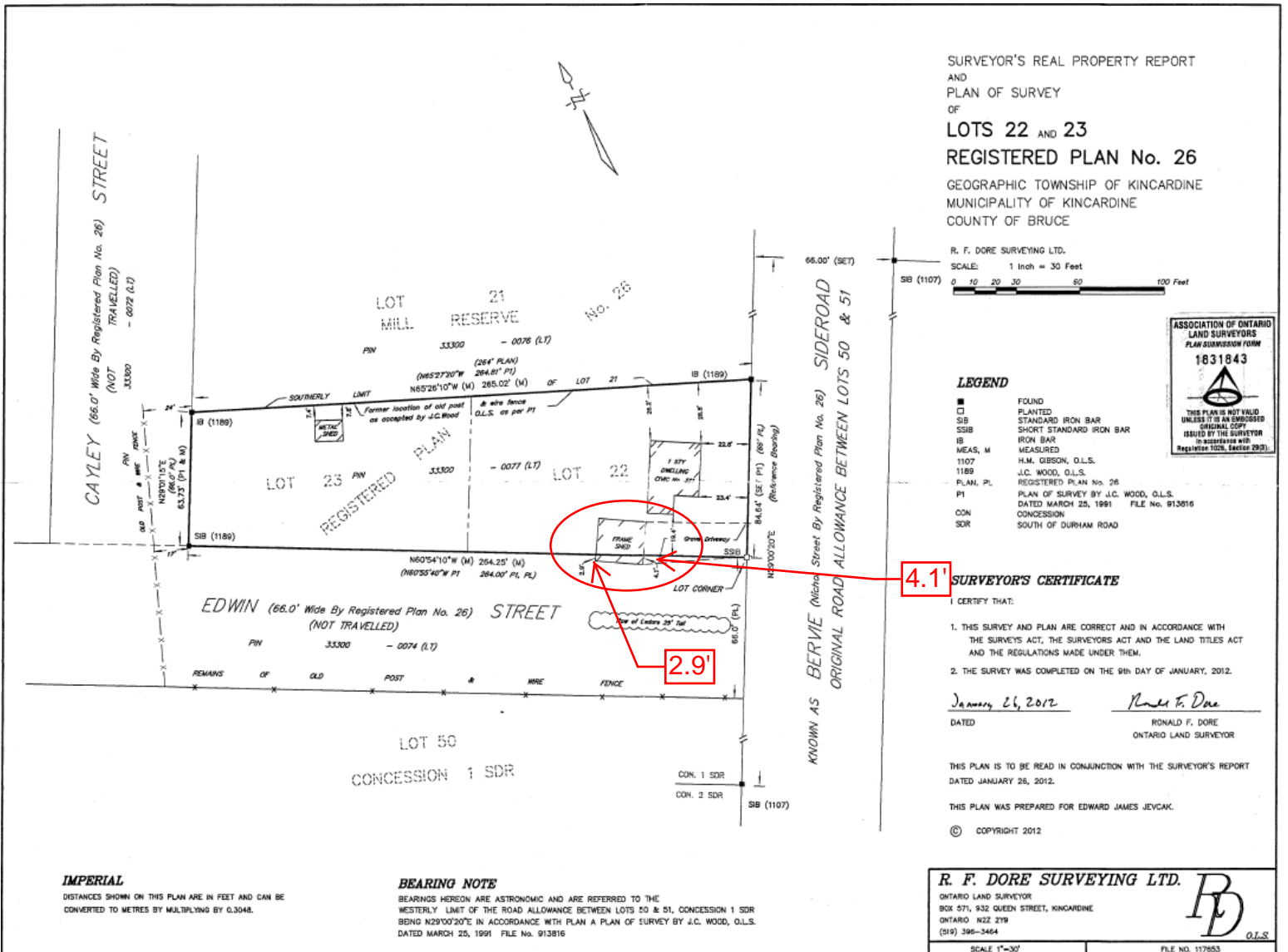
3. The Licensee shall at its own cost, charge and expense and to the satisfaction of the Municipality:
 - (i) Keep and maintain the Encroachment in a good and proper state of repair and safety;
 - (ii) Make no additions or modifications to the Encroachment which are not authorized or contemplated by this agreement; and
 - (iii) Comply with such further and additional requirements, as may be required by the Municipality, acting reasonably.
4. The Licensee agrees to indemnify and hold harmless the Municipality from and against all suits, judgments, claims, demands, expenses actions, causes of action and losses and for any and all liability for damages to property and injury to persons (including death) which the Municipality may incur, otherwise than by reason of their own negligence or willful misconduct, as a result of or arising out of or in relation to any breach of the terms of this Agreement, or the Municipality's own negligence or willful misconduct.
5. The Licensee shall put in effect and maintain in its name, at its expense, all the necessary insurance that would be considered appropriate for a prudent tenant undertaking this type of operation for the period during which the Agreement is in effect with insurers acceptable to the Municipality, including:
 1. General Liability Insurance, for third party bodily injury, personal injury and property damage to an inclusive limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence. The policy shall include:
 - a) The Corporation of the Municipality of Kincardine as an additional insured;
 - b) A thirty (30) day written notice of cancellation
 2. The Licensee shall provide the Municipality with a valid Certificate of Insurance as evidence of the above coverages upon signing the Agreement. The Licensee shall provide the Municipality with any renewal replacement certificates as may be necessary during the term of the Agreement.
6. Where, in the opinion of the Municipality, it is necessary to remove or alter the Encroachment or part thereof, the Licensee shall, at its own cost, charge and expense, and to the satisfaction of the Municipality, alter or remove the Encroachment or any part thereof from the municipal property, and restore the affected area upon receiving notice in writing from the Municipality to do, without being entitled to any compensation whatsoever for such alteration or removal and restoration. If the Licensee neglects, refuses or fails so to do within 90 days of receiving the aforesaid notice to alter or remove, then the Municipality may alter the Encroachment or parts thereof from the municipal property, as determined by the Municipality at the cost, charge and expense of the Licensee and the certificate of the Municipality as to the cost of such alteration or removal and restoration shall be final and binding upon the Licensee and the Municipality may recover such costs from the Licensee in like manner as taxes.
7. Nothing contained herein shall be construed as giving to the Licensee anything more than permission to erect and maintain the Encroachment until such time as this agreement expires or is terminated or the removal of such Encroachment may be required as provided.
8. The parties acknowledge and agree that no length of time of, or enjoyment by the Licensee of the permission granted herein shall ensure to, or give any right,

title or interest to the Licensee or its successors in title, of the municipal property or any right to maintain the proposed Encroachment upon the municipal property, or shall deprive the Municipality by the operation of any limitation period or otherwise of any right to require the removal of the Encroachment or any restoration of the municipal property to the satisfaction of the Municipality at the Licensee's expense.

9. The Licensee hereby covenants and agrees that at the time that the Encroachment is removed in whole or in part, or is in need of replacement, and in any event, upon the expiry or termination of this agreement, that the works formerly comprising such Encroachment shall be removed, at the Licensee's sole expense, so that they are located entirely off the municipal property and at such time, this agreement shall become null and void and be of no further effect.
10. The Licensee covenants and agrees that the Municipality, and its respective officers, servants, workers, employees, agents and contractors under its control or supervision or any of them shall have the right from time to time and at all reasonable times during the currency of this agreement, to enter in and upon the lands described in Schedule "A" or any part thereof, with all necessary workers, plant, equipment and material for the purpose of inspecting, altering or removing the Encroachment from the municipal property in accordance with this agreement. Such inspection shall not free or relieve the Licensee in any way whatsoever from the liability under the covenant set out to keep and maintain the Encroachment in good and proper repair and condition.
11. The parties acknowledge and agree that this License does not in any way whatsoever diminish the rights of the Municipality, or any gas, telephone, telegraph, electric light or other public utility company, their respective officers, servants, workers, employees, agents and contractors, to enter at all times upon the municipal property for the purpose of constructing, repairing, maintaining, replacing or removing any sewers, mains, culverts, drains, water pipes, poles, wires or otherwise underground services and installations and appurtenances thereto. The Licensee shall not be entitled to any damages or compensation by reason of the exercise of the Municipality or utility company's rights contained in this clause and the Licensee at its own expense shall carry out such alteration or removal of the Encroachment as the Municipality may direct pursuant to the exercise of the Municipality's or utility company's rights.
12. The Licensee agrees that any and all costs, sums and expenses paid, incurred or sustained by the Municipality as herein provided shall form and constitute a charge or lien on the lands set out in Schedule "A" attached hereto, until fully paid.
13. The Licensee covenants and agrees not to assign or to transfer this agreement to any successor or assignee of the premises described in Schedule "A" without the consent of the Municipality and if such assignment is agreed the Licensee will obtain from such successor or assignee a covenant in favour of the Municipality that the successor or assignee will be bound by all of the terms and conditions of this agreement from and after the date of its assignment as aforesaid, it being the intention that the owner from time to time of the lands and premises described in Schedule "A" shall have the benefit of and be liable for performance of the obligations contained in this agreement.
14. The Licensee agrees that for the purpose of this agreement, notice may be given to the Licensee by mailing the same, by prepaid registered mail, addressed to the Licensee at its address as last known to the Municipality pursuant to the most recent revised assessment rolls. Such notice shall be deemed to have been received by the Licensee 7 days following the date when it was handed to the post office.

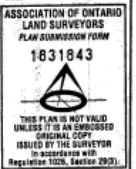
Schedule 'A'
To
Encroachment Agreement for Jevcak

Lots 22 and 23 Registered Plan No. 26, Municipality of Kincardine (geographic Township of Kincardine)



SURVEYOR'S REAL PROPERTY REPORT
AND
PLAN OF SURVEY
OF
LOTS 22 AND 23
REGISTERED PLAN No. 26
GEOGRAPHIC TOWNSHIP OF KINCARDINE
MUNICIPALITY OF KINCARDINE
COUNTY OF BRUCE

R. F. DORE SURVEYING LTD.
SCALE: 1 Inch = 30 Feet
0 10 20 30 40 50 60 70 80 90 100 Feet



LEGEND

- FOUND
- PLANTED
- SB STANDARD IRON BAR
- SBIB SHORT STANDARD IRON BAR
- IB IRON BAR
- MEAS, M MEASURED
- 1107 H.M. GIBSON, O.L.S.
- 1189 J.C. WOOD, O.L.S.
- PL, M, PL REGISTERED PLAN No. 26
- PI PLAN OF SURVEY BY J.C. WOOD, O.L.S. DATED MARCH 25, 1991 FILE No. 913816
- CON CONCESSION
- SDR SOUTH OF DURHAM ROAD

SURVEYOR'S CERTIFICATE

I CERTIFY THAT:

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON THE 9th DAY OF JANUARY, 2012.

January 26, 2012 *Ronald F. Dore*
DATED RONALD F. DORE
ONTARIO LAND SURVEYOR

THIS PLAN IS TO BE READ IN CONJUNCTION WITH THE SURVEYOR'S REPORT DATED JANUARY 26, 2012.

THIS PLAN WAS PREPARED FOR EDWARD JAMES JEVCAK.

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R. F. DORE SURVEYING LTD.

ONTARIO LAND SURVEYOR
BOX 571, 932 QUEEN STREET, KINCARDINE
ONTARIO N2Z 2Y9
(519) 396-3464



SCALE 1"=30'

FILE NO. 117953

IMPERIAL

DISTANCES SHOWN ON THIS PLAN ARE IN FEET AND CAN BE CONVERTED TO METRES BY MULTIPLYING BY 0.3048.

BEARING NOTE

BEARINGS HEREON ARE ASTRONOMIC AND ARE REFERRED TO THE WESTERLY LIMIT OF THE ROAD ALLOWANCE BETWEEN LOTS 50 & 51, CONCESSION 1 SDR BEING N29°00'30"E IN ACCORDANCE WITH PLAN OF SURVEY BY J.C. WOOD, O.L.S. DATED MARCH 25, 1991 FILE No. 913816