TOWN OF
TABER

A - 4900 50 ST TABER, ALBERTA, CANADA T1G 1T1

TELEPHONE: (403) 223-5500 FAX: (403) 223-5530

ADDENDUM "A"
TO COUNCIL AGENDA OF FEBRUARY 23, 2015

REGULAR MEETING OF COUNCIL OF THE TOWN OF TABER TO BE HELD IN THE COUNCIL CHAMBERS, ADMINISTRATION BUILDING, ON MONDAY FEBRUARY 23, 2015 AT 5:00 PM., IMMEDIATELY FOLLOWING THE PUBLIC HEARING AT 5:00 PM.

MOTION

ADDITION TO ACTION ITEM 7.):

7.F) ENCROACHMENT AGREEMENT: 5754 46 AVE. **X**

Council Request for Decision

Meeting Date: February 23, 2015	
Subject: Encroachment Agreement - 5754 46 Ave.	
Recommendation:	That Council authorize the Mayor and CAO to endorse the Encroachment Agreement for 1089990 AB Ltd, regarding 5754 46 Ave., Plan 0612121, Block 2, Lot 7.
Background:	The subject property has recently been purchased by 1089990 AB Ltd. Upon review of the Real Property Report during a request for a compliance letter, an encroachment of the air pump into the Barton Ave roadway and the canopy for the fuel pump into a URW were found. These encroachments have not been the subject of any complaints. However, given the air pump is an item that will need to be replaced at some point in time, one possible alternative clause Council may want to consider adding to the Encroachment Agreement is the air pump be relocated to a compliant location on the property within 5yrs. Administration sees no issue in allowing the encroachments to remain at present, subject to the terms of the attached encroachment agreement. As the Town of Taber is currently reviewing and updating policies in regard to signing authority for agreements, cheques and other legal instruments, this document has been brought to Council for endorsement.
Legislation / Authority:	MGA 18, Traffic Safety Act 13(1)(o)
Strategic Plan Alignment:	No close alignment
Financial Implication:	The endorsement agreements have been prepared by the landowner's lawyer. The Town charges $100 for these requests.
Service Level / Staff Resource Implication:	Council and staff time.
Justification:	There have not been any complaints in regard to the existing encroachments and there does not appear to be a need to have the encroachments removed.

Alternative(s):	1) Council could amend the terms of the encroachment agreement. 2) Council could not endorse the encroachment agreement.

Attachment(s):	Encroachment Agreement for 5754 46 Ave. Real Property Report 5754 46 Ave.

APPROVALS:	
Originated By:	Lorraine Belanger
Chief Administrative Officer (CAO) or Designate:	

ENCROACHMENT AGREEMENT

THIS AGREEMENT made the_____day of February, A.D., 2015.

BETWEEN:

THE TOWN OF TABER
A Municipal Corporation in the Province of Alberta
(hereinafter called the "Town")

OF THE FIRST PART

- and -

1089990 ALBERTA LTD.
Of Box 4, Cranford, Alberta T0K 0R0
(hereinafter called the "Grantee")

OF THE SECOND PART

PLAN 0612121
BLOCK 2
LOT 7
EXCEPTING THEREOUT ALL MINES AND MINERALS
(hereinafter referred to as "the premises")

WHEREAS Section 533 of the Municipal Government Act, Chapter M-26, provides in part as follows:

A Municipality is not liable for damage caused

(b) by or on account of any construction, obstruction or erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or on a road that is not on the travelled portion of the road.

NOW THIS AGREEMENT WITNESSETH:

1. The Town hereby grants to the Grantee the following encroachments:

   a) The airpump pad which is located into Barton Drive; and

   b) The eaves of the fuel pump canopy encroaching 0.15m into Utility Right of Way Plan 01612123;

as set out on the Real Property Report prepared by Brown Okamaura & Associates Ltd. on October 31, 2014, a copy of which is attached to this Agreement as Schedule 'A'.

2. The privilege granted herein may be terminated at any time by the Town upon thirty (30) days notice in writing delivered to the Grantee or posted upon the lands or mailed prepaid addressed to the Grantee at 5754 46 Avenue, Taber, Alberta , T1G 2B1.

3. THE GRANTEE COVENANTS AND AGREES WITH THE TOWN:

a) It is agreed by the parties hereto that they may respectively file a Caveat against the Title to protect their interest under this Agreement.

b) The Town shall not be liable nor responsible in any way, for any loss of, or damage or injury to, any property belonging to the Grantee, or to any agent, or employee of the Grantee, or to any person, nor shall the Town by liable nor responsible in any way, for any personal injury or death that may be suffered or sustained by the Grantee, or any agent or employee of the Grantee, or any other person who may be or come upon the said premises. The Grantee shall indemnify and save harmless the Town of and from all liabilities, fines, suites, claims, demands and actions of any kind or nature which may be brought against the Town, its agents or employees, arising from this agreement, whether arising by reason of any breach, violation or non-performance by the Grantee of any of the covenants, terms or provisions hereof, or arising by reason of the act or neglect of either the Grantee, its agents or employees. The Grantee's indemnification of the Town shall survive any termination of this Agreement, notwithstanding anything herein contained to the contrary.

c) If the encroaching structure is damaged or destroyed to the extent of more than 75% of the value of same above its foundation, it may not be repaired except in accordance with the Land Use Bylaw.

4. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, administrators, successors and assigns.

IN WITNESS WHEREOF the parties hereto have affixed their signatures and seals this day, month and year first above written.

TOWN OF TABER

c/s

CHIEF ELECTED OFFICER

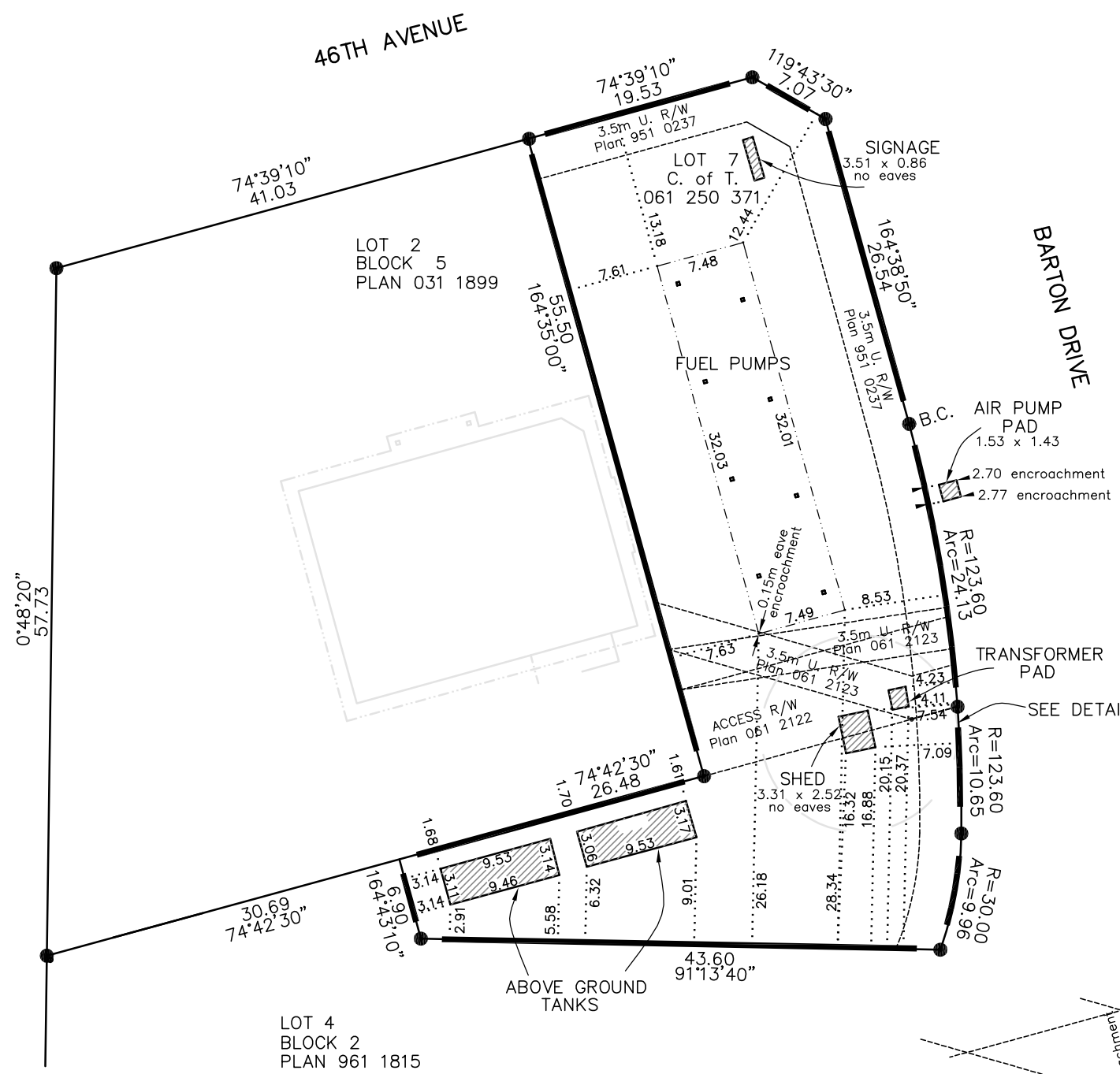
CHIEF ADMINISTRATIVE OFFICER

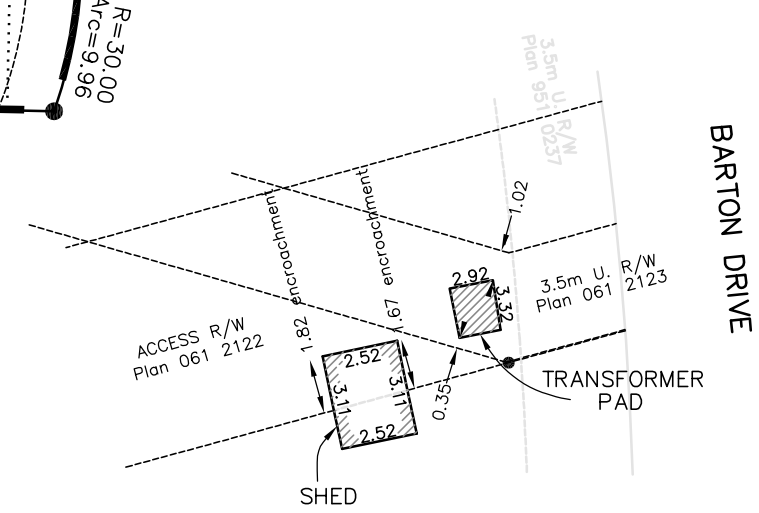
1089990 ALBERTA LTD.

c/s

Per: Klaas Woudwijk - President

MUNICIPAL ADDRESS: 5754–46TH AVENUE, TABER





DETAIL SCALE 1:1000

NOTE: Fd. No Mk's except where survey evidence is shown

N

Alberta Land Surveyor's Real Property Report

NOTE:
This plan is Page 2 of a Real Property Report and is ineffective if it is detached from Page 1.

PROPERTY DESCRIPTION

PLAN	061 2121
BLOCK	2
LOT	7

– Property is subject to :
3.5m Utility Right–of–Way; Instrument No. 951 020 464
Utility Right–of–Way; Instrument No. 951 058 907
Postponement; Instrument No. 951 063 310
Restrictive Covenant; Instrument No. 971 139 039
Utility Right–of–Way; Instrument No. 031 222 280
Mortgage; Instrument No. 041 077 937
Caveat Re: Assignment of Rents and Leases;
Instrument No. 041 085 939
Amending Agreement; Instrument No. 051 377 529
Easement; Instrument No. 061 250 373
Easement; Instrument No. 061 250 374
Utility Right–of–Way; Instrument No. 061 250 376
Caveat Re: Lease; Instrument No. 061 347 419
Mortgage; Instrument No. 061 347 420
Caveat Re: Non–Disturbance Agreement;
Instrument No. 061 372 806
Caveat Re: Non–Disturbance Agreement;
Instrument No. 071 155 957
Amending Agreement; Instrument No. 101 289 116

LEGEND

Property boundaries shown thus

Distances from property boundaries are shown to ..... stucco

Eaves dimensioned to the line of the fascia.

Statutory Iron Posts shown thus.... ● found

D. J. Amantea , Alberta Land Surveyor, 2014

brown okamura & associates ltd.
P.O. BOX 655 – 514 Stafford Drive N., Lethbridge, Alberta T1J 3Z4

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Scale:	1:500 (metric)		
File:	356–87	Ref. file:	
Drawn:	cs		
Date:	October 31, 2014		