

**LAND TITLE ACT
FORM C**

(Section 233)

Province of
British Columbia**GENERAL INSTRUMENT - PART 1**

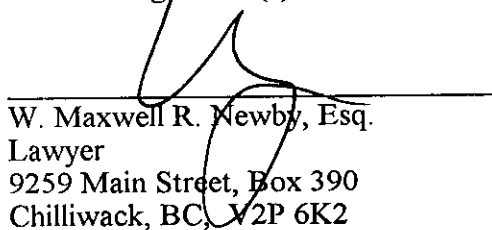
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(This area for Land Title Office Use)

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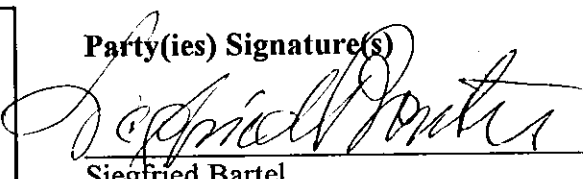
1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
Baker Newby, 9259 Main Street, PO Box 390
Chilliwack, BC, V2P 6K2 (604-792-1376)
Client #11249 (File #17,027)
signature of applicant's solicitor, W.M.R. Newby, Esq.
2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:
(PID) (Legal Description)
SEE SCHEDULE
88 03/06/26 15:01:21 03 LM 468660
CHARGE \$55.00
3. NATURE OF INTEREST:
Description Document Reference Person Entitled to Interest
(page and paragraph)
SEE SCHEDULE
4. TERMS: Part 2 of this Instrument consists of (select one only)
(a) Filed Standard Charge Terms D.F. No.
(b) Express Charge Terms X Annexed as Part 2
(c) Release There is no Part 2 of this Instrument
A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.
5. TRANSFEROR(S): **SIEGFRIED BARTEL and ERNA BARTEL ("the Owners")**
6. TRANSFEREE(S): (including occupation(s), postal address(es) and postal code(s))
SEE SCHEDULE
7. ADDITIONAL OR MODIFIED TERMS:
NOT APPLICABLE
8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.


Officers Signature(s)

 W. Maxwell R. Newby, Esq.
 Lawyer
 9259 Main Street, Box 390
 Chilliwack, BC, V2P 6K2

(as to both signatures)

Execution Date

Y	M	D
03	6	25
03	6	25

Party(ies) Signature(s)

 Siegfried Bartel


 Erna Bartel
OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

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Officers Signature(s)

Linda P. Pearson, Deputy Director
Corporate Administrative Services
Commissioner for Taking Affidavits
Box 70, 7170 Cheam Avenue
Agassiz, B.C. V0M 1A0

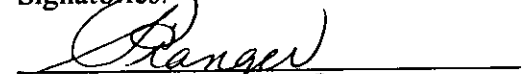
(as to both signatures)

Execution Date

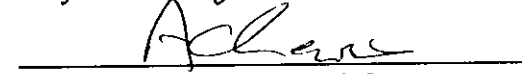
Y	M	D
03	06	24
03	06	24

Party(ies) Signature(s)

DISTRICT OF KENT by its Authorized Signatories:



Mayor - SYLVIA FRASER



Clerk - ANTHONY C. LEWIS

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take Affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

- * If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
- ** If space insufficient, continue executions on additional page(s) in Form D.

**LAND TITLE ACT
FORM E****SCHEDULE**

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ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:
- | | |
|-------------|---|
| (PID) | (Legal Description) |
| 008-709-793 | Lot 1 Sections 14 and 23 Township 3 Range 29 W6M NWD Plan 25120 |
3. NATURE OF INTEREST:
- | | | |
|----------------------|--------------------|---|
| Description | Document Reference | Person Entitled to Interest
(page and paragraph) |
| Section 219 Covenant | Entire Document | Transferee |
6. TRANSFEREE(S): (including occupation(s), postal address(es) and postal code(s))
DISTRICT OF KENT, a District Municipality under the laws of British Columbia having its Municipal Office at 7170 Cheam Avenue, Box 70, Agassiz, BC, V0M 1A0 ("the District")

TERMS OF INSTRUMENT - PART 2**WHEREAS:**

A. The Owners are the registered owners in fee simple of the lands situate in the Municipality of Kent, British Columbia and legally described as:

Parcel Identifier: 008-709-793

Lot 1 Sections 14 and 23 Township 3 Range 29 W6M NWD Plan 25120
("the Lands")

B. Section 219 of the *Land Title Act* (British Columbia) permits the registration of a covenant of a negative or positive nature, in favour of the District in respect of, among other things, the use of land, or the use of a building on or to be erected on land or that land is or is not to be built on;

C. The Owners wish to grant a covenant to the District to limit the extent of building and development on the Lands.

THEREFORE in consideration of the sum of \$1 now paid by the District to the Owners, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Definitions

1. In this Covenant:

"Dwelling Unit" means one or more habitable rooms constituting one self-contained unit with a separate entrance, used or intended to be used for residential purposes and containing only one kitchen equipped with a sink and cooking facilities and having one electrical service.

Restriction

2. The Owners covenant, promise and agree pursuant to Section 219 of the *Land Title Act* (British Columbia) that notwithstanding any bylaw that may be passed that would permit greater density, the Lands shall be used only for the purpose of housing one Dwelling Unit and one mobile home, provided that the mobile home is otherwise permitted by law.

Justification

3. The Owners acknowledge that this restriction on the use and development of the Lands is justified on the basis that the Lands are not capable of supporting a septic field and that sewage from the Lands is disposed of through a sewer line which crosses the District's Cutler Road and which terminates on land described as PID: 009-311-076, Lot "A" Sections 23 and 24 Township 3 Range 29 W6M NWD Plan 24165.

Encroachment Agreement

4. Unless the Owners have entered into an Encroachment Agreement with the District in substantially the form of Encroachment Agreement attached as Schedule "A" (without schedules) and unless the Owners are in material compliance with the Encroachment Agreement, the Owners shall not use the Land for any residential or non-agricultural use, notwithstanding that such use may be permitted by zoning and other bylaws. Without limiting Section 6, the term "Owners" means the owners of the Lands from time to time.

Powers Preserved

5. Nothing contained or implied herein shall prejudice or affect the District's rights and powers in the exercise of its functions pursuant to the *Local Government Act* (British Columbia) or its rights and powers under all of its public and private statutes, bylaws, orders and regulations to the extent the same are applicable to the Lands, all of which may be fully and effectively exercised in relation to the Lands as if this covenant had not been executed and delivered by the Owners.

Runs with Lands

6. The covenants set forth herein shall charge the Lands pursuant to Section 219 of the *Land Title Act* (British Columbia) and shall be covenants the burden of which shall run with the Land and bind the Lands and every part or part thereof, and shall attach to and run with the Lands and each and every part to which the Lands may be divided or subdivided, whether by subdivision plan, strata plan or otherwise howsoever.

Priority

7. The Owners will, after execution hereof by it, at the expense of the Owners, do or cause to be done all acts reasonably necessary to grant priority to this Covenant over all financial charges and encumbrances which may have been registered against the title to the Lands in the Land Title Office save and except those that have been specifically approved in writing by the District or have been granted in favour of the District.

Interpretation

8. Whenever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.

Further Assurances

9. The parties hereto shall do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Covenant.

Waiver

10. Waiver by the District of any default by the Owners shall not be deemed to be a waiver of any subsequent default.

Reference

11. Every reference to a party is deemed to include the heirs, executors, administrators, successors, assigns, servants, employees, agents, contractors, officers, licensees and invitees of such party wherever the context so requires or allows.

Severance

12. If any portion, subsection, sentence, clause or phrase in this Covenant is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Covenant.

Governing Law

13. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

Enurement

14. This Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors and permitted assigns.

No Public Law Duty

15. Wherever this Covenant creates a power or obligation of the District to make a decision or to exercise any contractual right or remedy, the District may do so in accordance with the

provisions of the covenant and no public law duty, whether arising from the principles of fairness or the rules of natural justice, shall have any application.

Indemnity

16. The Owners hereby release, indemnify and save the District harmless from and against any and all manner of actions, causes of action, claims, costs, expenses, debts, demands and promises of whatsoever kind or however arising out of or in any way due to the relating to the granting or existence of this Covenant.

AS EVIDENCE of their agreement to be bound by the above terms, the parties hereto each have executed and delivered this Agreement by executing Part 1 of the Land Title Act Forms C and D to which this Agreement is attached and which forms part of this Agreement.

SCHEDULE "A"

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HIGHWAY ENCROACHMENT AGREEMENT

THIS AGREEMENT dated for reference June 9, 2003.

BETWEEN:

SIEGFRIED BARTEL, Retired, and
ERNA BARTEL, Homemaker, both of
900 Tuyttens Road
Agassiz, BC V0M 1A0

(collectively "the Owners")

AND:

DISTRICT OF KENT
7170 Cheam Avenue
PO Box 70
Agassiz, BC V0M 1A0

("the District")

WHEREAS:

A. The Owners are the registered owners in fee simple of land and premises located at 900 Tuyttens Road, Agassiz, British Columbia, which is legally described as:

Municipality of Kent
Parcel Identifier: 008-709-793
Lot 1 Sections 14 and 23 Township 3 Range 29 W6M NWD Plan 25120

("the Land")

B. The Owners are not able to obtain a sewage disposal permit for the Land and instead, they will use a septic disposal field on property owned by **MARTIN WILHELM BARTEL** and **WANDA ELSIE BARTEL** known as 5937 Cutler Road and legally described as:

Municipality of Kent
Parcel Identifier: 009-311-076
Lot "A" Sections 23 and 24 Township 3 Range 29 W6M NWD Plan 24165

("Lot A")

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C. The Owners have requested permission from the District to excavate a portion of Cutler Road and install a sewer disposal line within the excavation;

D. Section 532 of the *Local Government Act*, RSBC 1996, c. 323 authorizes the District to permit a person to excavate in, encumber, obstruct or damage a portion of a highway; and

E. The District has enacted Cutler Road Encroachment Bylaw No. 1259,2003 to authorize this use of the highway, on the terms and conditions set out in this Encroachment Agreement.

THEREFORE the parties hereto agree as follows:

Permission to Encroach

1. The District hereby grants to the Owners permission to encroach upon that portion ("the Encroachment Area") of Cutler Road which is shown outlined in heavy black on the drawing attached as Appendix "A", for the sole purpose of installing a sewer disposal line ("the Sewer Line").

Survey Plan

2. Upon completion of the installation of the Sewer Line, the Owners shall, at their own cost, obtain a survey of the Encroachment Area and the boundaries of the Encroachment Area will afterwards be defined by the survey plan.

Costs

3. The Owners are responsible for all taxes, fees, engineering, survey, legal, Land Title registration, construction, maintenance and repair costs associated with the Sewer Line and this Agreement.

Construction Deposit

4. At the time of execution of this Agreement, the Owners shall deliver to the District a certified cheque payable to the District of Kent in the amount of \$1,000 ("the Construction Deposit"), which shall be refunded, without interest, to the Owners upon satisfactory completion of the Sewer Line and submission to the District of the "as constructed" drawing described below.

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Expiry

5. This Encroachment Agreement shall expire when a sewer disposal system is able to be located on the Land or when an alternate sewage disposal system is available which does not require a private sewer line to cross Cutler Road.

Acknowledgment of Highway

6. The Owners acknowledge and agree that the Encroachment Area is a highway and that the District has limited power to authorize the private use of a highway. The Owners further acknowledge and agree that any rights granted by the District to the Owners herein are subject to the public's right to pass over Cutler Road and that the District has the authority to improve, widen, raise or lower Cutler Road and install, improve or alter any utilities under it, notwithstanding their effect on the Sewer Line.

Construction Standards

7. The Owners shall install the Sewer Line within the Encroachment Area in a good and workmanlike manner and in strict accordance with the following technical standards:

- (a) The Sewer Line shall be located transverse to the alignment of Cutler Road so that the highway crossing is as short as possible;
- (b) The sewer force main shall be constructed in a steel carrier pipe for the full width of the highway crossing and the carrier pipe shall be heavy duty steel with a wall thickness of 0.237 inches and internal diameter of 4.026 inches;
- (c) The gap between the sewer force main and the carrier pipe shall be sealed to prevent the passage of water from one side of the dyke to the other during high water levels;
- (d) Before construction begins, a plan shall be drawn of the section of Cutler Road from the dyke to the septic field on Lot A, which plan shall indicate property boundaries and the highway crossing and the location of the Sewer Line, with dimensions on both private property and the highway crossing;
- (e) Before construction begins, private property boundaries shall be indicated onsite and where the sewer force main runs parallel to Cutler Road, it shall be laid not less than one metre from the outside of the Cutler Road road allowance;
- (f) The depth of the Sewer Line shall be not less than 750 mm either alongside or beneath Cutler Road;

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- (g) Construction across the dyke shall be in accordance with the requirements of the Deputy Inspector of Dikes outlined in his letter dated March 27 2003, a copy of which is attached as Appendix "B" except where specifically varied in this section of this Agreement;
- (h) The Sewer Line shall be constructed in such a manner as not to interfere with any existing municipal utilities located within Cutler Road;
- (i) The Owners shall complete construction of the Sewer Line within the Encroachment area in no more than 2 consecutive days of construction; and
- (j) On completion of constructions, an "as constructed" drawing signed and sealed by a professional engineer registered in the Province of British Columbia, certifying that the Sewer Line has been constructed as required by this Agreement, shall be provided to the District.

Disruption of Public Travel

8. The Owners shall give the District at least 3 days prior notice of their intention to commence construction of, carry out maintenance or remove the Sewer Line and due to the disruption of the public caused by the construction of the Sewer Line, the Owners shall undertake construction at only those times and dates authorized by the Municipal Engineer.

9. The Owners shall use all reasonable efforts to cause a minimum of disruption and inconvenience to the public during the construction, maintenance or removal of the Sewer Line and the Owners shall place and maintain warning signs, barricades, lights and flares at or near the construction site as will give clear warning and protection to the public.

Maintenance

10. The Owners shall at all times keep and maintain the Sewer Line in good and sufficient repair and shall additionally conduct any repairs or maintenance directed by the District. No structural alternations shall be made to the Sewer Line except as permitted by the Municipal Engineer. In the event of an emergency, the Owners shall contact the District immediately by telephone and the Owners will follow all instructions given to them by the District.

Relocation

11. If at any time the Municipal Engineer should determine that the Sewer Line must be relocated in order to allow installation of municipal utilities or for other highway purposes, the

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Owners shall, at their own expense, relocate the Sewer Line to a location approved by the Municipal Engineer.

Termination

12. In the event that the Owners breach ANY term, condition, covenant or provision of this Encroachment Agreement, the Owners shall remedy the breach within 5 days of receipt of a notice from the District (or such shorter or longer period of time specified by the District) and if the breach is not remedied within that time period, all rights accruing to the Owners under this Encroachment Agreement shall cease, without further notice to the Owners, unless the District decides otherwise.

Removal

13. If the easement referred to in Section 17 is cancelled or terminated or if the Owners should abandon the Sewer Line, as evidenced by the Land being unoccupied for more than 2 years without the consent of the District, the District may terminate this Encroachment Agreement by giving notice of immediate termination to the Owners. Upon the expiry or earlier termination of this Agreement, the Owners shall immediately, at their own cost, remove the Sewer Line and restore the Encroachment Area, all to the satisfaction of the Municipal Engineer.

Action by District

14. If the Owners fail to do any matter required of them under this Agreement, the District is entitled to take all such actions on the Owners' behalf and at the Owners' cost, including removal of the Sewer Line, but the District is in no circumstance liable for its failure to do so or its manner of doing so.

Restriction on Transfer

15. Prior to entering into any agreement to sell, transfer, assign or in any way dispose of the Land, the Owners shall first advise the prospective transferee of the existence of this Encroachment Agreement and the Owners shall not actually dispose of the Land in any manner until such time as the transferee enters into an Encroachment Agreement in the same form with the District.

Covenant

16. At the time of execution of this Agreement, the Owners shall grant the District a covenant under Section 219 of the *Land Title Act* in the form attached as Appendix "C", and the Owners shall register that covenant against the title to the Land at their own cost and expense.

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Other Approvals

17. The granting of this Encroachment Agreement does not relieve the Owners from obtaining any permit, approval or consent otherwise required and in particular, the Owners may not commence construction of the Sewer Line until they have registered in the New Westminster Land Title Office all easements in their favour, including the one over Lot A, the form of which is attached as Appendix "D".

Responsibility

18. The Owners acknowledge and agree that, by granting this Encroachment Agreement, the District is not accepting any responsibility for the Sewer Line and the District will not be responsible for any failure of the sewer disposal system, whether caused by design defects, construction errors, actions of third parties, breach of private agreements or otherwise.

Release and Indemnity

19. The Owners hereby release the District, its elected officials, officers, employees and agents from all claims, demands, losses and costs which the Owners or either of them may at any time incur due to the existence or use of the Sewer Line or the granting of this Encroachment Agreement and further, the Owners hereby indemnify and save harmless the District, its elected officials, officers, employees and agents from all actions, proceedings, claims, demands, debts, costs (including clean up costs) and other harm of whatever kind which may at any time be suffered or incurred by the District, its elected officials, officers, employees and agents by reason of, arising from or in any way relating to the existence or use of the Sewer Line, sewage spills, the granting of this Agreement, or the acts, omissions, negligence or default of the Owners, their contractors, agents and others for whom they are responsible in law. For the purpose of allocating remediation costs under the *Waste Management Act*, as between the District and the Owners, the Owners shall be solely responsible for the costs of any remediation of Cutler Road from contamination originating from the Sewer Line or the Land and the indemnity of the Owners in favour of the District includes these costs.

20. The obligation of the Owners to release and indemnify the District survives any expiry or termination of this Encroachment Agreement.

Insurance

21. The Owners shall take out and maintain at all times a policy of comprehensive general liability insurance providing coverage for all potential losses under this Encroachment Agreement, in an amount of not less than \$3,000,000 per occurrence, which policy names the District as an additional insured, a term of which policy must be that it cannot be cancelled or altered without prior

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notice to the District, a copy of which policy must be delivered to the District at the time of execution of this Encroachment Agreement and at other times required by the District.

General Clauses

22. This Encroachment Agreement grants no interest in land to the Owners.
23. Waiver by the District of any default by the Owners shall not be deemed to be a waiver of any subsequent default.

Notice

24. Any notice, document or communication required or permitted to be given hereunder shall be in writing and shall be deemed to be satisfactory if and deemed to have occurred when:
- (a) When personally delivered, on the date of service; or
 - (b) Mailed by prepaid registered mail, on the date received or on the sixth day after receipt of mailing by any Canada post office, whichever is the earlier, so long as the notice is mailed to the party at the address provided herein or to whatever address the parties from time to time in writing agree to.

Interpretation

25. Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties thereto so require.

References

26. Every reference to each party is deemed to include the heirs, executors, administrators, successors, assigns, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires.
27. Any opinion which the District is entitled to form under this Encroachment Agreement may be formed on behalf of the District by the Municipal Engineer.

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Severance

28. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

Enurement

29. This Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors and permitted assigns.

Entire Agreement

30. The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof.

Time of the Essence

31. Time is of the essence of this Agreement.

Further Assurance

32. The parties hereto shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Agreement.

Governing Law

33. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

Joint and Several Liability

34. In the case of more than one Owner, the said grants, covenants, conditions, provisos, agreements, rights, powers, privileges and liabilities of the Owner shall be construed and held to be several as well as joint.

35. The Sewer Line shall be and remain the chattels and property of the Owners, notwithstanding any rule of law or equity to the contrary.

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EXECUTED by the parties hereto as of the dates written below.

SIGNED, SEALED AND DELIVERED by)
the Owners on June , 2003 in)
the presence of:)

W. Maxwell R. Newby, Esq.
Lawyer
9259 Main Street, PO Box 390
Chilliwack, BC, V2P 6K2

Siegfried Bartel

Erna Bartel

(as to both signatures))

The Corporate Seal of the **DISTRICT OF**)
KENT was hereunto affixed on June ,)
2003 in the presence of its duly Authorized)
Signatories:)

(SEAL)

Mayor

Clerk

END OF DOCUMENT