

413-17

EW021929

25 FEB 2004 13 47

EW021927

LAND TITLE ACT
FORM C - Fee: \$
(Section 233)

Province of British Columbia
GENERAL INSTRUMENT - PART 1

Page 1 of 13

1. APPLICATION:
#10270 Patterson Adams, Barristers and Solicitors (360-2991) 402 - 707 Fort Street, Box 1231, Victoria, BC,
V8W 2T6
LBJ/sk 20602.008
Per: King
Submitted by Karen Hughes, Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:
(PID) (LEGAL DESCRIPTION)
005-030-226 Lot 10, Block 1, District Lot 40, Wellington District, Plan 11705

3. NATURE OF INTEREST:	DESCRIPTION	DOCUMENT REFERENCE	PERSON ENTITLED TO INTEREST
	Statutory Right-of-Way	Pages 5 to 6 (page and paragraph)	City of Nanaimo and Her Majesty the Queen in Right of the Province of British Columbia City of Nanaimo City of Nanaimo
3C	Statutory Right of Way	Pages 6 to 7	
	Restrictive Covenant	Pages 7 to 10	

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms	<u> </u>	D.F. No.	CHARGE	547565
(b) Express Charge Terms	<u> X </u>	Annexed as Part 2		\$180.00
(c) Release	<u> </u>	There is no Part 2 of this instrument		

A selection of (a) includes any additional or modified terms referred to in item 7 of 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):
MARY BARBARA PASS, Teacher, 4008 West 18th Avenue, Vancouver, B.C.

6. TRANSFEREE(S):
CITY OF NANAIMO, 455 Wallace Street, Nanaimo, British Columbia, V9R 5J6, as to Statutory Right-of-Way and Restrictive Covenant, and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Transportation, Parliament Buildings, Victoria, B.C., V8V 1X4, as to Statutory Right-of-Way

7. ADDITIONAL OR MODIFIED TERMS:
n/a

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.

Officer's Signature(s)

Execution Date

Party(ies) Signature(s)

Y M D
04 02 16

Mary Barbara Pass

PETER C.P. BEHIE
Barrister & Solicitor
111 WALLACE ST
NANAIMO, B.C. V9R 5J6
PH: (250) 754-1148 FAX: (250) 754-1148

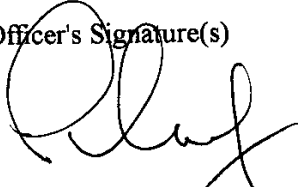
My signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996 c. 124 to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this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

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

Officer's Signature(s)

Execution Date

Party(ies) Signature(s)

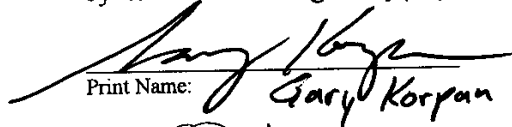
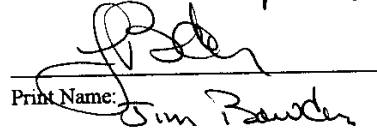


Y M D
04 02 19

City of Nanaimo,
by its Authorized Signatory(ies):

PATRICK NEIL MURPHY
Commissioner for taking Affidavits for
British Columbia
455 Wallace Street
Nanaimo, B.C. V9R 5J6

(as to both signatures)


Print Name: Gary Korpan
Print Name: Jim Bowden

Officer's Signature(s)

Execution Date
Y M D

Party(ies) Signature(s)

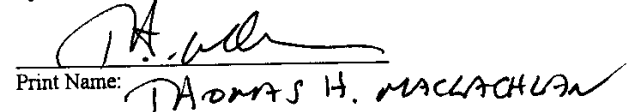


04 02 20

**Her Majesty the Queen in Right of
the Province of British Columbia,**
by its Authorized Signatory(ies):

CHRISTINE OWEN
Barrister and Solicitor

(as to both signatures)


Print Name: THOMAS H. MACLACHLAN

Print Name:

MINISTRY OF ATTORNEY GENERAL
P. O. BOX 9280, STN. PROV. GOV'T
VICTORIA, B.C.
V8W 9J7

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 C
(Section 219)
PROVINCE OF BRITISH COLUMBIA
GENERAL INSTRUMENT - PART 2**

TERMS OF INSTRUMENT - PART 2

**STATUTORY RIGHTS OF WAY: LAND TITLE ACT S.218
RESTRICTIVE COVENANT: LAND TITLE ACT S.219**

BETWEEN: Mary Barbara Pass, Teacher
4008 West 18th Avenue
Vancouver, British Columbia

(the "Owner")

OF THE FIRST PART

AND: City of Nanaimo
455 Wallace Street
Nanaimo, British Columbia
V9R 5J6

(the "City")

OF THE SECOND PART

AND:

**Her Majesty the Queen in Right of
the Province of British Columbia**
as represented by the Minister of Transportation
Parliament Buildings
Victoria British Columbia
V8V 1X4

(the "Province")

OF THE THIRD PART

WHEREAS:

- A. The Owner is the registered owner of those lands and premises in the City of Nanaimo, in the Province of British Columbia, more particularly known and described as:

Parcel Identifier: **005-030-226**

Lot 10
Block 1
District Lot 40
Wellington District
Plan 11705

(the "Lands");

- B. The Lands are located adjacent to an area known as Sealand Park (the "**Park**") and the lands comprising the Park (the "**Parkland**") and the Lands are unstable due to the existence of the Conditions (as hereinafter defined) and such Conditions may constitute a nuisance.
- C. The Park is an undertaking of the City and Province.
- D. The maintenance of the undertaking may necessitate that the City and Province allow the Conditions to continue and remain unabated.
- E. The City and Province have requested that the Owner grant a statutory right of way over the Lands to permit the City and Province to maintain the Park.
- F. The statutory right of way granted in section A.2 hereof is necessary to the maintenance of the Park.
- G. In addition, in order to permit the City to undertake certain Works (as hereinafter defined) to replace sanitary sewer pipes located on the Parkland which service the Lands and to thereby eliminate a potential risk of breakage of the sewer pipe located on the Parklands which exists due to the Conditions and Risks, it is desirable that a right-of-way be established on the terms and conditions set out in section A.3 hereof.
- H. By the provisions of section 218 of the *Land Title Act*, RSBC 1996, chapter 250 as amended (the "*Land Title Act*"), there may be registered as annexed to any land, an easement without dominant tenement to be known as a Statutory Right of Way for the maintenance of the undertaking, and such section permits the statutory rights of way referred to in sections A.2 and A.3 hereof.
- I. Due to the Conditions and Risks (as hereinafter defined), loss and damage to the Lands as well as buildings and structures and improvements (the "**Existing Improvements**") located on the Lands, or both of them, may occur.

- J. Accordingly, in keeping with the current policy of the City, a Covenant is required to restrict the right of the Owner: (i) to make any changes to or replacements of the Existing Improvements on the Lands; (ii) to construct any new improvements on the Lands; and (iii) to further develop or re-develop the Lands ((i), (ii) and (iii) are collectively referred to herein as "**Further Improvements**").
- K. The Owner for herself, her heirs, executors, administrators, successors and assigns has agreed to suffer the potential nuisance and to release the City and Province from any claims relating to such Conditions and Risks including the loss of value and the potential of future damage to the Lands, the Existing Improvements and Further Improvements on the terms and conditions set out herein.
- L. By the provisions of section 219 of the *Land Title Act*, R.S.B.C.1996, chapter 250 as amended (the "*Land Title Act*"), there may be registered as annexed to any land, conditions or covenants in favour of the City that the Lands, or any specified portion thereof, is to be built upon or not to be built upon or is to be used or not to be used in a particular manner;
- M. The City has required an indemnity as permitted pursuant to section 219 of the *Land Title Act* on the terms provided herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that:

Section A - Statutory Rights of Way - Land Title Act s. 218

Pursuant to section 218 of the *Land Title Act*, and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, paid by the City and Province to the Owner (the receipt and adequacy of which is hereby acknowledged by the Owner) the Owner covenants and agrees with the City and Province as follows:

- A.1 The Owner (i) acknowledges for herself, her heirs, executors, administrators, successors and assigns that the City and Province maintain the Park as an undertaking; and (ii) that due to the existence of the Conditions and Risks to the Lands, agrees to suffer the potential nuisance caused thereby and the potential resultant damage, change or alteration to the Lands and Improvements caused by such Conditions and Risks.
- A.2 The Owner for herself, her heirs, executors, administrators, successors and assigns hereby grants to the City and Province, their agents, servants, workmen, contractors and all other persons on its (their) behalf to preserve the Park, a statutory right of way over the Lands for the purpose of continuing the Conditions on the Lands and the Parkland and permitting the potential resultant damage, change or alteration to the Lands and Improvements caused by such Conditions and Risks and not taking steps or actions to abate the same, whether or not such Conditions constitute a nuisance for or on the Lands or cause damage to the Lands or any person or any property of the

Owner, her heirs, executors, administrators, successors and assigns located thereon or that of the Owner's agents, servants, licensees or any other person acting on her behalf, or any Improvements located on the Lands.

- A.3 The Owner for herself, her heirs, executors, administrators, successors and assigns hereby grants to the City, its agents, servants, workmen, contractors and all other persons on its (their) behalf the right to enter onto the Lands or any part thereof and to pass and repass over the same, with or without vehicles and equipment, for the purposes of constructing thereon and installing thereon or thereunder such works as the City may require in order to disconnect existing septic systems located on the Lands and to connect the Lands to the municipal sanitary sewer systems including pipes, pumps, conduits, electrical connections and facilities (collectively the "Works").
- A.4 The City may upon completion of the Works transfer the Works to the Owner and cause title thereto to vest in the Owner who shall thereafter have the responsibility to repair, replace and maintain the Works. In such case, the right of way granted under section A.3 hereof shall be cancelled and of no further force or effect and the City, at the request of the Owner, will execute and deliver in registrable form a release of the statutory right of way referred to in section A.3 hereof.
- A.5 If the City does not transfer the Works, the City, its agents, servants, workmen, contractors and all other persons on its (their) behalf, shall retain the right to enter onto the Lands or such part thereof as may be required and to pass and repass over the same, with or without vehicles and equipment, in order to maintain, repair and replace the Works.
- A.6 With respect to the right of way granted by section A.3, if section A.5 applies, the Owner covenants with the City as follows:
- (i) that she will not, nor shall she permit any other person to, make, place, erect, install or maintain after the date of this Agreement any building, structure, concrete driveway or patio, pipe, wire or other conduit on, over or under any portion of the Lands containing the Works so that it in any way interferes with or damages or prevents access, or is likely to cause harm to, the Works authorized hereby to be installed;
 - (ii) that she will not do or knowingly permit to be done any act or thing which will interfere with or injure the Works and in particular will not carry out any blasting on the Lands without the prior written consent of the City, provided that such consent shall not be unreasonably withheld;
 - (iii) that she will not substantially add to or diminish the soil cover over any of the Works, and in particular, without limiting the generality of the foregoing, will not construct open drains or ditches along or across the

Works without the prior written consent of the City, provided that such consent shall not be unreasonably withheld; and

- (iv) that she will from time to time and at all times upon every reasonable request and at the cost of the City do and execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the City of the rights hereby granted.

A.7 With respect to the right of way granted by section A.3, if section A.5 applies, the City covenants with the Owner as follows:

- (i) that it will not bury any debris or rubbish of any kind in excavations or backfill, and will not remove shoring and like temporary structures as backfilling proceeds;
- (ii) that it will thoroughly clean all lands to which it has access hereunder of all rubbish and construction debris created or placed thereon by the City and will leave such lands in a neat and clean condition;
- (iii) that it will as soon as weather and soil conditions permit, and so often as it may exercise its right of entry hereunder to any part of the Lands, replace the surface soil as nearly as may be possible to the same condition as it was prior to such entry, in order to restore the condition of the Lands to that which existed prior to such entry. Provided however, that nothing herein shall require the City to restore conditions prohibited by this right of way; and
- (iv) that it will, as far as reasonably possible, carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands as possible.

A.8 The permissions and rights of way set forth in section A.2 and A.3 hereof shall charge the Lands pursuant to section 218 of the *Land Title Act* and shall charge, burden and run with the Lands and shall be binding on the Owner and her heirs, executors, administrators, successors and assigns.

Part B - Covenant Land Title Act s. 219

Pursuant to section 219 of the *Land Title Act*, and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, paid by the City to the Owner (the receipt and adequacy of which is hereby acknowledged by the Owner), the Owner covenants and agrees with the City as follows:

B.1 The Owner acknowledges for herself, her heirs, executors, administrators, successors and assigns, that she is aware of the Conditions and the Risks and that damage to or destruction of the Lands and the Existing Improvements thereon and any Further

Improvements, that may hereafter be constructed on the Lands or part thereof, is a risk and the Recitals are specifically incorporated into and constitute part of this Agreement and the Owner further specifically acknowledges that:

- (i) she is aware of the Conditions and Risks;
- (ii) she has been represented by legal counsel concerning the Conditions and Risks; and
- (iii) she understands and appreciates the Conditions and the Risks and the potential for damage of and destruction to improvements (including but not limited to the Existing Improvements) and the risk of injury to persons and of loss and damage to property.

B.2 The Owner, for herself, her heirs, executors, administrators, successors and assigns hereby covenants and agrees with the City, as a covenant under section 219 of the *Land Title Act*, it being the intention and agreement of the Owner that the provisions hereof be annexed hereto and run with and be a charge on the Lands, that from and after the date hereof, except on satisfaction of the requirements of section B.3 hereof:

- (i) no Further Improvements shall be constructed on the Lands; (ii) except for maintenance consisting of cosmetic improvements including repainting, re-roofing or re-siding and similar work to maintain or refurbish the appearance of the Existing Improvements, no changes or alterations (including additions) shall be made to Existing Improvements which increase the size, height or footprint thereof;
- (ii) no Existing Improvements may be replaced or restored in the event of Substantial Damage or Destruction; and
- (iii) no work will be undertaken or carried out on the Lands which might reasonably be expected to affect the stability of the soils, unless before undertaking such work the City has received from the Owner a report from a qualified geotechnical engineer and has approved the Work

For greater certainty, without limiting the generality of the foregoing, the parties agree that the matters referred to in clause (ii) of this section B.2 shall include any alteration which increases the load, height or footprint of an Existing Improvement. The requirements of this section B.2 shall be in addition to and not in substitution for the provisions of the *Local Government Act* RSBC, 1996, c. 23 including section 911(8) thereof and the provisions of the City of Nanaimo Building Bylaw 2003 No. 5693, including section 3(9) thereof, in each case as such enactment or by-law may be amended from time to time.

B.3 The City shall have no obligation to issue a building permit in relation to the Lands whether for alterations, additions or renovations to Existing Improvements or any

Further Improvements to be constructed on the Lands until the City has received from the Owner a report from a qualified geotechnical engineer, at the Owner's cost and expense, certifying that, and the City is otherwise satisfied that, provided proper construction methods are used:

- (i) the proposed structure, or building or the proposed alteration, addition or renovation can be built on the Lands in accordance with the applicable building by-laws of the City; and
- (ii) that the proposed alterations, additions or renovations to Existing Improvements or the proposed Further Improvements, as applicable, and the proposed location, size or other attributes thereof and the method of construction thereof will not cause or contribute to or create any additional instability or pose any additional risk of subsidence of (a) the Lands, (b) the Existing Improvements, (c) the Further Improvements, (d) the Parklands; or (e) any property adjacent or proximate to the Lands.

B.4 The Owner, for herself, her heirs, executors, administrators, successors and assigns, hereby agrees to indemnify and save harmless the City and Province and each of them from and against all loss, damage, costs, claims and demands which the City and Province and each of them may suffer or incur or be put to arising out of or in connection with any breach of any covenant or agreement on the part of the Owner or her heirs, executors, administrators, successors and assigns contained in this Part B of this Agreement or arising out of or in connection with any personal injury or loss or damage to property including damage to the Lands and the Existing Improvements or Further Improvements and any and all chattels located on the Lands caused by any subsidence, collapse, erosion or similar occurrence connected with the Conditions or the Risks or otherwise, and caused by such breach. Provided, however, nothing in this section shall apply to any claim (a) by any third party arising as a result of loss, damage or injury caused or contributed to by the Conditions and Risks and not by reason of the breach by the Owner of the covenants and agreements contained in section B.2 hereof; or (b) any claim by the Owner or her heirs, executors, administrators, successors and assigns against the City or Province arising out of the actions or omissions of the City and Province (or either of them) in relation to the proposed installation of Works referred to in section A.4 or any other work undertaken by the City or Province which causes any damage to the Lands and Improvements thereon.

B.5 In connection with the indemnity referred to in section B.4 hereof, the Owner acknowledges for herself, her heirs, executors, administrators, successors and assigns, that:

- (i) she has received independent legal advice relating to the settlement of the Action and the waivers contained herein;

(ii) her counsel has fully explained to her the effect of this document;
and

(iii) she has read this settlement and fully understands all its terms and her obligations hereunder and the effect that the execution and delivery of this document has with regard to her legal rights.

- B.6 Nothing contained or implied herein shall prejudice or affect the rights and powers of the City in the exercise of its functions under any public or private statutes, by-laws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered to the Owner.
- B.7. The covenants set forth in this part B shall charge the Lands pursuant to section 219 of the *Land Title Act* and shall be covenants, the burden of which shall run with the Lands. It is further expressly agreed that the covenants contained in this Part B may only be modified or discharged by agreement of the City pursuant to the provisions of Section 219(9) of the *Land Title Act*.
- B.8 Notwithstanding anything contained herein, the Owner shall not be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Owner ceases to have any further interest in the Lands.

Part C - Release

- C.1 The Owner in consideration of the sum of **ONE DOLLAR (\$1.00)** and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, for herself, her heirs, executors, administrators, successors and assigns does hereby remise, release and forever discharge the City and Province (and each of them) of and from all manner of actions, causes of action, debts, accounts, covenants and contracts, and waives all claims and demands whatsoever which against the said City and Province and each of them which the Owner ever had, now has, or which the Owner or her heirs, administrators, executors, successors or assigns, or any of them, hereafter can, shall or may have for or by reason of any cause, matter or thing whatsoever existing up to the present time for any matters in relation to or arising out of the matters referred to herein and in any matter claimed in action S35589 issued in the Supreme Court of British Columbia, Nanaimo Registry (the "**Action**") and any and all claims arising in the future connected with or relating to the Conditions and Risks including but not limited to damage to or loss of the Lands or any part thereto, damage to or loss of any of the Existing Improvements or Further Improvements or to any property located thereon and any and all economic loss resulting from the foregoing Conditions and Risks including reduction or diminution in the market value of the Lands and Improvements.

Part D - Interpretation

- D.1 Wherever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic, where the contents or parties so require. The expressions "Owner" and "City" or where applicable "City and Province" used herein shall be interchangeable with and shall refer respectively to same persons as the expressions "Transferor" and "Transferee" used in Part 1 of this document.
- D.2 The Owner hereby covenants and agrees with the City and Province that neither the City nor the Province is required or is under any obligation in law or equity to prosecute or enforce this Agreement in any way whatsoever.
- D.3 The parties shall do and cause to be done all such things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.
- D.4 The Owner covenants and agrees to obtain from any prospective purchaser, leaseholder, tenant and other transferee of the Lands referred to herein, to whom the Owner proposes to Dispose of the Lands, and from any occupant or licensee of the Lands or any part thereof or any Existing Improvement or Further Improvements now or hereafter located thereon, an acknowledgement of the terms contained herein and confirmation that he or she is bound by the terms hereof.
- D.5 For the purposes hereof, unless expressly otherwise provided or the context so requires:

"Action" has the meaning ascribed thereto in section B.5 hereof;

"City" means the City of Nanaimo and its elected and appointed officials, employees, servants, contractors and agents;

"Conditions" means certain known and potentially unknown geological conditions and the natural action of tides, waves and winds, and effects of drainage and other runoff due to the location of existing storm and sewage drainage works which makes the Lands and the Parkland susceptible to Risks and inherently unstable, but does not include conditions hereafter created by an Owner or the City or Province;

"Dispose" shall have the meaning ascribed thereto in the *Interpretation Act*, RSBC 1996 c. 238, s.29, as amended;

"Existing Improvements" has the meaning ascribed thereto in Recital I hereto;

"Further Improvements" has the meaning ascribed thereto in Recital J hereto;

“Improvement” includes but is not limited to landscaping, excavating or other disturbance of the soils of the Lands or adjacent property, but does not include ordinary landscaping maintenance and replacement of existing trees, shrubs and plants and such meaning shall be incorporated into the definitions of Existing Improvements and Further Improvements;

“Lands” has the meaning ascribed thereto in Recital A hereof;

“Owner” means Mary Barbara Pass and her heirs, executors, administrators, successors and assigns;

“Park” has the meaning ascribed hereto in Recital B hereto;

“Parklands” has the meaning ascribed hereto in Recital B hereto;

“Province” means the Province of British Columbia;

“Risks” includes risk of erosion, settling, subsidence, collapse or similar occurrence of the Lands attributable to the natural geological conditions of the Lands and Parklands and inherent instability thereof, or the natural action of waves on the Parkland which abuts the Strait of Georgia, or from the effects of drainage and other runoff due to the location of storm and sewage drainage works existing at the date hereof which service the Lands as well as adjacent properties which may cause damage to the Lands, the Parkland, personal property located thereon and injury to persons;

“Substantial Damage or Destruction” means damage or destruction to the extent of 74% or more of the value above its foundations of any Improvement as determined by the City’s building inspector; and

“Works” has the meaning ascribed thereto in section A.3 hereof.

- D.6 If any section or any part of this Agreement is found to be illegal or unenforceable, then such sections or parts shall be considered to be separate and severable from this Agreement and the remaining sections or parts, as the case may be, shall remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable parts or sections had never been included in this Agreement.
- D.7 This Agreement shall be interpreted in accordance with the laws of the Province and any proceeding in connection with this Agreement shall be commenced and be heard in the Nanaimo Registry of the Supreme Court of British Columbia.
- D.8 Any reference to an enactment of the Province in this Agreement shall include a reference to any subsequent enactment of the Province of like effect and unless the context otherwise requires all statutes referred to herein are enactments of the Province and any reference to any by law of the City shall include a reference to any

subsequent by-law of the City of like effect and unless the context otherwise requires all by-laws referred to herein are by-laws of the City.

- D.9 The Owner shall do or cause to be done all things and shall execute all documents and give such further assurances as may be reasonably required to give proper effect to the intent of this Agreement.
- D.10 This Agreement shall be binding upon and enure to the benefit of the respective parties hereto, their heirs, successors, executors, administrators and assigns.

END OF DOCUMENT