

-7 DEC 2005 09 46

BX029354

Page 1 of 26

GENERAL INSTRUMENT PART 1

(This area for Land Title Office Use)

1. **APPLICATION:** **TERESA CROWDER** DYE & DURHAM CLIENT No. 11061
 Legal Assistant
 CITY OF PORT MOODY #211-1015 Austin Avenue
 100 Newport Drive Coquitlam, B.C. V3K 3N9
 Port Moody, B.C. V3H 5G3 Telephone: 604-939-8321

2. **PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:***

PID 002-050-081
 Parcel "A" (Reference Plan 1829) of Lot 53 Block 1, District Lot 202, Group 1, New Westminster District, Plan 55

3. **NATURE OF INTEREST:**

DESCRIPTION *DOCUMENT REFERENCE PERSON ENTITLED TO
 INTEREST (page and paragraph)

219 Covenant Entire Instrument City of Port Moody

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):***

Sheila Elizabeth Campbell Francis
 2779 Sylvan Place, Coquitlam, B.C. V3C 5A6

6. **TRANSFeree(S):** (including postal address(es) and postal code(s))*

CITY OF PORT MOODY
 100 Newport Drive, Port Moody, B.C. V3H 5C3

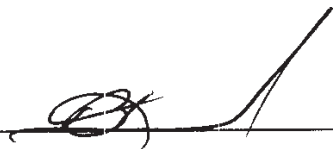
15 05/12/07 09:46:35 05 LM 670628
 CHARGE 464.75


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)


BRIAN P. KAMINSKI
 Barrister & Solicitor
 #211 - 1015 Austin Avenue
 Coquitlam, B.C. V3K 3N9
 Telephone: 604-939-8321
 (As to Sheila Francis)


 (As to both Signatures)
 Kelly Head- Kelly Kenney
 100 Newport Drive
 Port Moody, BC V3H 5C3
 Commissioner for Taking
 Affidavits in British Columbia

EXECUTION DATE

| Y | M | D |
|----|----|----|
| 05 | 9 | 13 |
| 05 | 09 | 23 |

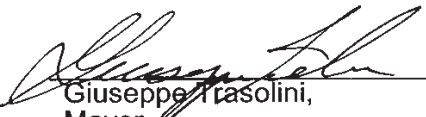
Transferor(s) Signatures


Sheila Francis or by her
 authorized signatories


 Sheila Francis

Transferee(s) Signatures

CITY OF PORT MOODY by its
 authorized signatories


 Giuseppe Trasolini,
 Mayor


 Colleen Rohde
 City Clerk

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. 1979, c.116, 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.

PART 2 - TERMS OF INSTRUMENT**HERITAGE CONSERVATION RESTRICTIVE COVENANT**

(Section 219 of the *Land Title Act*, R.S.B.C 1996, c.250)

This Heritage Conservation Restrictive Covenant made the 23rd day of September, 2005

BETWEEN:

SHEILA ELIZABETH CAMPBELL FRANCIS
2779 Sylvan Place
Coquitlam, B.C. V3C 5A6

(the "Grantor")

OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY OF PORT MOODY
100 Newport Drive
Port Moody, B.C.
V3H 3E1

(the "City")

OF THE SECOND PART

WHEREAS:

A. The Grantor is the registered owner in fee simple of the following lands and premises situated in the City of Port Moody, Province of British Columbia and described as:

PARCEL "A" (REFERENCE PLAN 1829), OF LOT 53, BLOCK 1, DISTRICT LOT 202, GROUP 1, NEW WESTMINSTER DISTRICT, PLAN 55

(the "Lands");

B. The City considers that the Lands have heritage value and both the Grantor and the City desire to conserve and maintain those improvements on and features of the Lands which collectively constitute such heritage value;

C. The Grantor wishes to voluntarily grant this Covenant pursuant to Section 219 of the *Land Title Act* to restrict the use of the Lands as set out herein and the City has agreed to accept such Covenant;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of Ten Dollars (\$10.00) of lawful money of Canada now paid by the City to the Grantor (the receipt and sufficiency whereof is hereby by the Grantor acknowledged) the Grantor covenants and agrees as follows:

Grantor's Obligation to Protect, Conserve and Maintain

1. Notwithstanding any use of the Lands or of any building, structure or improvement on or of the Lands (collectively, the "improvements") or any subdivision of the Lands approved or permitted by law, the following improvements and features having heritage value shall be conserved and maintained all in accordance with the requirements, restrictions, terms and conditions of this Restrictive Covenant:

- (a) all those portions and each feature and detail of each exterior facade of the principal building, on the Lands identified as Building A in the sketches contained in Schedule "A" to this Restrictive Covenant and having the civic address of 2346 Clarke Street, including without limitation all windows, doors, stairs, entrances and masonry all as shown and identified and illustrated on the sketches, plans, and text of Schedule "A" to this Restrictive Covenant;

(the "Protected Heritage Property")

Protection of Heritage Value

2. The Grantor covenants and agrees that:

- (a) no exterior part of the Protected Heritage Property shall be altered except with the approval of the City and then only in accordance with a heritage alteration permit issued by the City;
- (b) the Protected Heritage Property shall be maintained to the minimum standards and in accordance with the guidelines and requirements set out in Schedule "B" to this Restrictive Covenant provided that no alteration, restoration, or rehabilitation work of any kind shall be undertaken except with the approval

of the City and then only in accordance with a heritage alteration permit issued by the City;

- (c) any further improvements to the Lands permitted under the City's Zoning Bylaw, including additional buildings and other structures, shall be of a form and character, including materials, finishes and design, that, in the opinion of the Director of Planning and Development Services (the "Director"), is compatible with the Protected Heritage Property and shall be subject to issuance of a Development Permit, as required in the City's bylaws, prior to issuance of a Building Permit;
- (d) the rear twenty (20) feet of the Lands, as shown and identified on the sketch contained in Schedule "A", shall be reserved for parking use, with access from Queens Street;
- (e) a minimum of one parking stall per tenant will plus one parking stall for each 54 sq. m. (581 s.f.) of gross floor area, or portion thereof, used for general commercial purposes on the Lands, except in the case of uses identified in the City's Zoning Bylaw for which a different commercial parking standard applies, including tourist accommodation, funeral parlours, restaurants, food or beverage rooms, banks, medical and dental clinics and offices, and professional, business and administrative offices;
- (f) the provision of an off-street commercial loading area and parking for physically disabled persons on the Lands will be at the discretion of the Grantor and will not be requirements imposed by the City;
- (g) the Grantor shall do or cause to be done all such things, and shall take or cause to be taken all such actions as are necessary to ensure that the restrictions and requirements provided in Section 1 and in Subsections (a), (b), (c), (d), (e), (f), (g) of this Section 2 are fully observed, and the Grantor shall not do, cause or allow to be done anything, undertake, cause or allow to be undertaken any work, alteration or construction, or place, improve, or cause or allow to be constructed, altered, placed or improved any building, structure or thing that would be in breach of the aforesaid restrictions.

Discretion

3. Wherever in this Restrictive Covenant a heritage alteration permit is required, the discretion to approve, refuse or issue such permit is delegated by the City to the Director, and:

- (a) such exercise of discretion relating to the issuance of the heritage alteration permit shall be made by the Director acting reasonably in accordance with

sound municipal heritage and conservation practice and the terms and conditions of, and Schedules to, this Restrictive Covenant;

- (b) such exercise of discretion, including any terms and conditions imposed shall be consistent with the *Local Government Act*, and with the intent, terms, conditions and guidelines set forth in this Restrictive Covenant and the Schedules hereto;
- (c) the Director may refer any exercise of discretion to the City's Heritage Commission for advice; and
- (d) where the Grantor is dissatisfied with a decision of the Director to approve, refuse or issue a heritage alteration permit, the Grantor may apply to the Council for reconsideration of the matter within 30 days of the decision being communicated to the Grantor in accordance with Section 16.

Construction and Maintenance of Works

4. Wherever in this Restrictive Covenant the Grantor is issued a heritage alteration permit to restore, rehabilitate, replicate, repair, replace, maintain or in any way alter the Protected Heritage Property, or to construct or maintain other works to protect or conserve the Protected Heritage Property, all such work shall be done at the Grantor's sole expense strictly in accordance with any issued heritage alteration permit and all plans and specifications forming part thereof, and shall be diligently and continuously maintained in good repair and efficient operating condition by the Grantor at the Grantor's sole expense in accordance with good engineering, design, heritage and conservation practice.

No Liability to City

5. 1) In no case shall the City be liable or responsible in any way for:

- (a) any personal injury, death or consequential damage of any nature whatsoever, howsoever caused, that be suffered or sustained by the Grantor or by any other person who may be on the Lands; or
- (b) any loss or damage of any nature whatsoever, howsoever caused to the Lands or any improvements or personal property thereon belonging to the Grantor or to any other person;

arising directly or indirectly from the Grantor's compliance with the restrictions and requirements herein, or the wrongful or negligent failure or omission of the Grantor to comply with the restrictions and requirements herein, or the City's enforcement of the restrictions and requirements herein or the refusal, omission or failure of the City to enforce or require

compliance by the Grantor with the restrictions or requirements herein or with any other term, condition or provision of this Restrictive Covenant.

2) Without any way limiting Section 5(1), the Grantor releases and forever discharges the voluntary grant of this Covenant to conserve and maintain the Protected Heritage Property.

Reasonable Care and Risk

6. The Grantor shall at all times, in complying with the restrictions or requirements herein and its obligations in respect thereof, take reasonable care not to injure any person or cause or allow damage to any property, and shall take reasonable care not to cause, suffer, permit or allow any condition to exist that might reasonably lead to, cause or result in injury to any person or property including persons and property on adjacent lands. It shall be the sole responsibility of the Grantor to comply and maintain compliance with the restrictions and requirements herein in a safe manner, and without reasonably foreseeable risk to person or property as aforesaid. Subject to Section 7 hereof, compliance with the restrictions and requirements in this Restrictive Covenant shall be at the sole and exclusive risk of the Grantor.

Modification

7. If, in fulfilling its responsibilities and obligations pursuant to this Restrictive Covenant, the Grantor perceives or becomes aware of any unreasonable risk of injury to persons or damage to property or other potential loss that cannot be reasonably avoided, alleviated, reduced or eliminated except by measures that would be a breach of the restrictions, requirements or its obligations herein, the Grantor shall notify the City in writing of the nature and extent of the risk and of the measures proposed by the Grantor to be undertaken at its sole cost to reduce, alleviate, avoid or eliminate the risk.

Indemnity

8. The Grantor shall at all times indemnify and save harmless the City, and its officers, employees, agents and elected officials, of and from all loss and damage, and all actions, claims, costs, demands, expenses, fines, liabilities and suits of any nature whatsoever by whomsoever brought for which the City shall or may become liable, incur or suffer by reason of existence and effect whether direct or indirect of the restrictions or requirements herein, or breach or non-performance by the Grantor of any covenant, term or provision hereof, or by reason of any work or action of the Grantor in performance of its obligations hereunder, or by reason of any wrongful act or omission, default or negligence of the Grantor.

Alternative Remedies

9. Any performance by the City pursuant to a statutory right to perform the obligations of the Grantor arising out of this Restrictive Covenant, including out of any heritage alteration permit issued out of this Restrictive Covenant, may be exercised fully in accordance with the *Local Government Act*, and shall be without prejudice to any and all other remedies at law and equity available to the City, and no reference herein to, or exercise of any specific right or remedy by the City, shall preclude the City from exercising any other right or remedy.

Non-compliance

10. If the Grantor fails to comply with any of the restrictions or requirements of this Restrictive Covenant, or does or causes anything to be done in violation of, or contrary to any of the restrictions or requirements of this Restrictive Covenant, and fails to remedy such violation or non-compliance within 30 days of written notice from the City, the City shall have the right and authority, but not the obligation, to enter onto the Lands and remedy such violation or non-compliance and charge the costs of doing so to the Grantor, and if the charges remain unpaid on December 31 in any year, they shall be added to and form part of the taxes payable on the Lands as taxes in arrear and may be collected in the like manner as taxes in arrear.

Damages

11. 1) The Grantor covenants and agrees that the measure of damages for any breach of the restrictions or requirements of this Restrictive Covenant shall include, but shall not be limited to, the actual cost and expense of all administration, labour, materials, equipment, services and work required for all remedial acts necessary to fully restore, rehabilitate, replace or maintain the building, structure, improvement on or feature of the Lands having heritage value to be protected, conserved, preserved or kept in its natural state. The nature and extent of any breach of the said restrictions and requirements, and the nature and extent of any restoration, rehabilitation, replacement, maintenance or remedial work or action of any nature required to remedy such breach shall be determined by the City by reference to Sections 1 and 2 and the Schedules to this Restrictive Covenant.

2) Despite Section 11(1), the Grantor covenants and agrees that damages shall not be an adequate remedy for any breach of any obligation of the Grantor hereunder, including any failure to conserve and maintain the Protected Heritage Property and the City shall be entitled to make application to the Supreme Court of British Columbia for an injunction to require compliance with this Covenant and the Grantor shall not be entitled to claim that damages are an adequate remedy.

No Waiver

12. No restrictions, requirements or other provisions in this Restrictive Covenant shall be deemed to have been waived by the City unless a written waiver authorized by resolution of the Council and signed by an officer of the City has first been obtained, and without limiting the generality of the foregoing, no condoning, excusing or overlooking by the City on previous occasions of any default nor any previous written waiver shall be taken to operate as a waiver by the City of any subsequent default or in any way to defeat or affect the rights of remedies the City.

Statutory Authority and Proprietary Rights

13. Nothing in this Restrictive Covenant shall limit, impair, fetter, or derogate from the statutory powers of the City all of which powers may be exercised by the City from time to time and at any time to the fullest extent that the City is enabled, and no permissive bylaw enacted by the City, or permit, license or approval, granted, made or issued thereunder, or pursuant to Statute, by the City shall estop, limit or impair the City from relying upon and enforcing this Restrictive Covenant in its proprietary capacity as the owner of an interest in the Lands.

Compliance with Laws

14. Despite any provision of this Restrictive Covenant, except to the extent varied by a heritage alteration permit issued by the City, the Grantor shall comply with all laws, including bylaws of the City and all regulations and orders of any authority having jurisdiction, and to the extent only that such laws, regulations and orders are mandatory and necessarily require the breach of any restriction or positive obligation herein to be observed or performed by the Grantor, or less than strict compliance with the terms hereof, then the Grantor upon sixty (60) days written notice to the City shall be excused from complying with such restrictions or performing such obligation and such restriction or obligation shall be suspended but only to the extent and for the time that such mandatory law, regulation or order is inconsistent with compliance with the said restrictions or obligations.

Notice

15. Any notice to be given hereunder shall be in writing and may be either delivered personally or sent by prepaid registered mail and if so mailed shall be deemed to have been given five (5) days following the date upon which it was mailed. The address of the parties for the purpose of notice shall be as follows:

If to the City:

Attention: City Clerk

City of Port Moody
100 Newport Drive
Port Moody, B.C.
V3H 3E1

If to the Grantor:

Attention: Registered Owner(s)
2346 Clarke Street
Port Moody, B.C.
V3H 1Z5

Any party hereto may at any time give notice in writing to the other of any change of address and after the third day of the giving of such notice the address therein specified shall be the address of such party for the purpose of the giving of notices hereunder.

Reconsideration by Council

16. Where an applicant or owner has applied to the Council for reconsideration of a decision of the Director in accordance with Section 3, the procedure will be that:

- (a) an application for reconsideration must be delivered in writing to the City Clerk and must set out the grounds upon which the applicant considers the requirement or decision of the Director is inappropriate and what, if any, requirement or decision the applicant considers the Council ought to substitute;
- (b) the City Clerk must place each application for reconsideration on the agenda of a regular meeting of Council to be held not earlier than two weeks from the date the application for reconsideration was delivered and must notify the applicant and any other party who the City Clerk reasonably considers may be affected by the reconsideration of the date of the meeting at which the reconsideration will occur; and
- (h) at the meeting the Council may hear from the applicant and any other person interested in the matter under reconsideration to be heard and may either confirm the requirement or decision of the Director or substitute its own requirement or decision.

17. Without limiting the City's power of inspection conferred by statute and in addition thereto, the City shall be entitled at all reasonable times and from time to time to enter onto the Lands for the purpose of ensuring that the Grantor is fully observing and performing all of

the restrictions and requirements in this Restrictive Covenant to be observed and performed by the Grantor.

Headings

18. The headings in this Restrictive Covenant are inserted for convenience only and shall not affect the construction of this Restrictive Covenant or any provision hereof.

Schedules

19. All schedules to this Restrictive Covenant are incorporated into and form part of this Restrictive Covenant.

Number and Gender

20. Whenever the singular or masculine or neuter is used in this Restrictive Covenant, the same shall be construed to mean the plural or feminine or body corporate where the context so requires.

Interpretation

21. Terms used in this Restrictive Covenant that are defined in the *Local Government Act*, R.S.B.C. 1996, c. 323 shall take their meaning from that Act.

Successors Bound

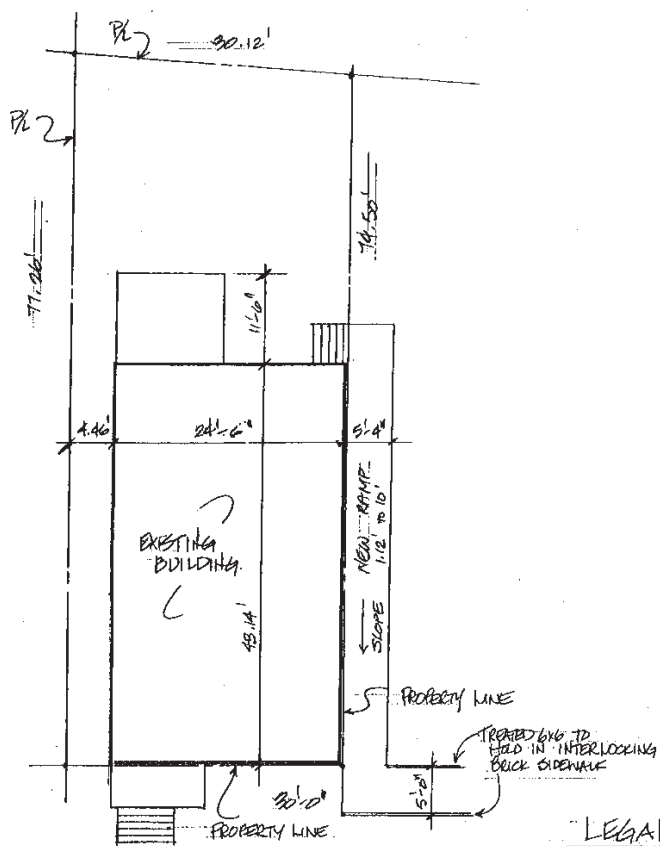
22. All restrictions, rights and liabilities herein imposed upon or given to the respective parties shall extend to and be binding upon their respective heirs, executors, administrators, successors and assigns. When the Grantor is more than one party they shall be bound jointly and severally by the terms, covenants and agreements herein on the part of the Grantor.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Restrictive Covenant under seal by executing Part 1 of the *Land Title Act* Form C to which this Restrictive Covenant is attached and which forms part of this Restrictive Covenant.

Page 12 of 26

SCHEDULE "A"
Building A – Elevations and Siting
2346 Clarke Street

Page 13 of 26



2221/2 CLARKE STREET
PORT HADY B.C.

SCALE 1/8" = 1'-0"

LEGAL DESCRIPTION

PARCEL A LOT 53
BLOCK 1 DISTRICT LOT 202
GROUP 1 NWD PLAT 55

[illegible]

Page 16 of 26

SCHEDULE "A"
Building A – Elevations and Siting
2346 Clarke Street

List of Pictures attached showing elevations and detail.

1. East side elevation.
2. East window close-up.
3. East window & wall.
4. North rear basement.
5. East basement window.
6. East window detail.
7. South front view.
8. South top window.
9. South main floor window
10. South front door.
11. West and South corner wall view.
12. South and East corner wall view.
13. Rear basement window.
14. East window detail.
15. West wall and fire escape.
16. North rear wall and parking.

Page 11 of 36

(1)



EAST SIDE ELEVATION

(2)



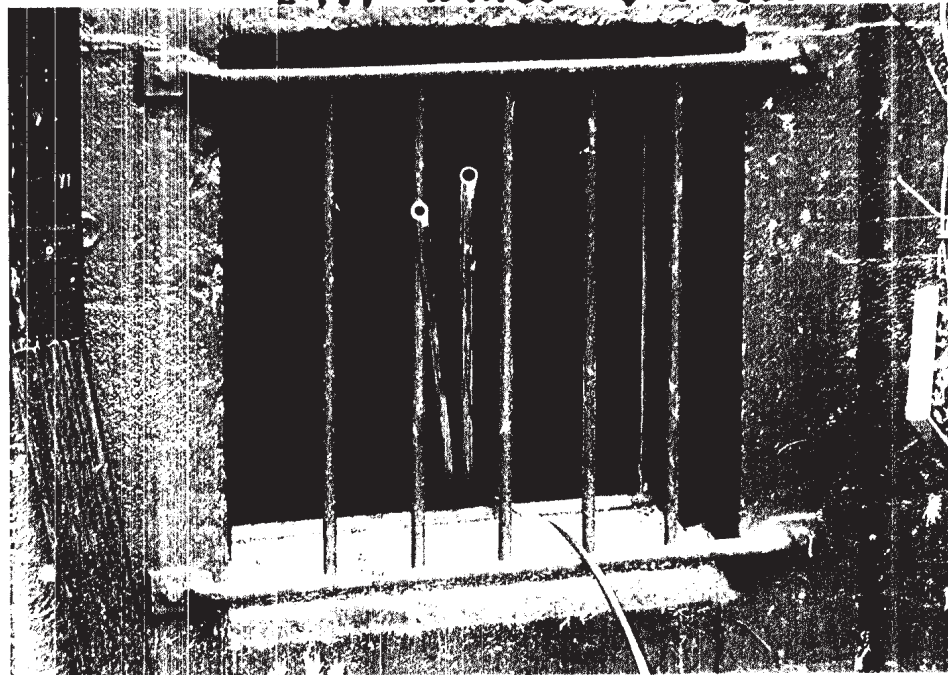
EAST WINDOW CLOSEUP

(3)



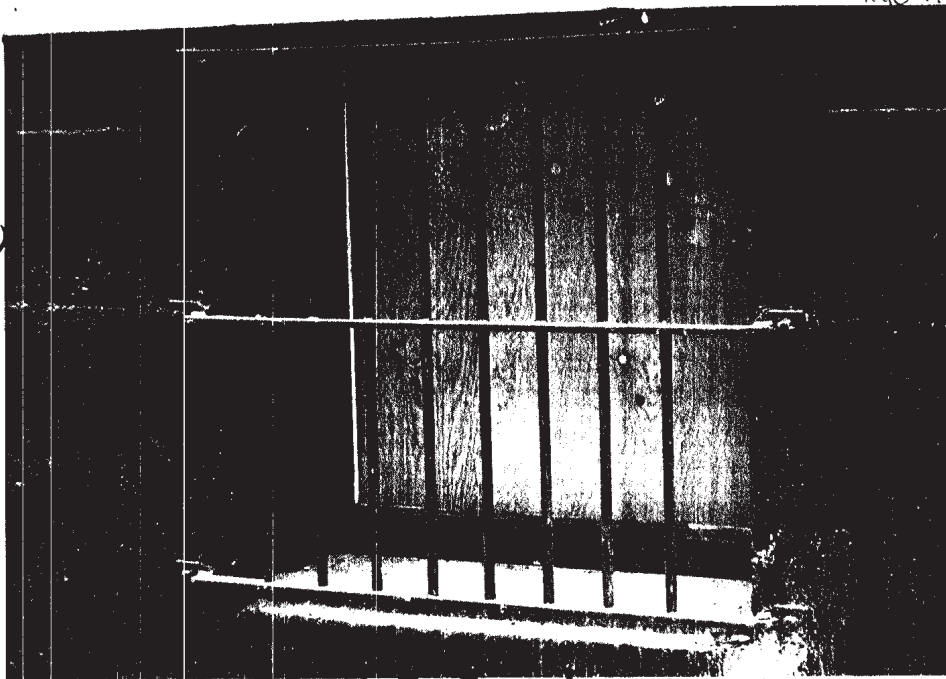
EAST WINDOW & WALL

(4)



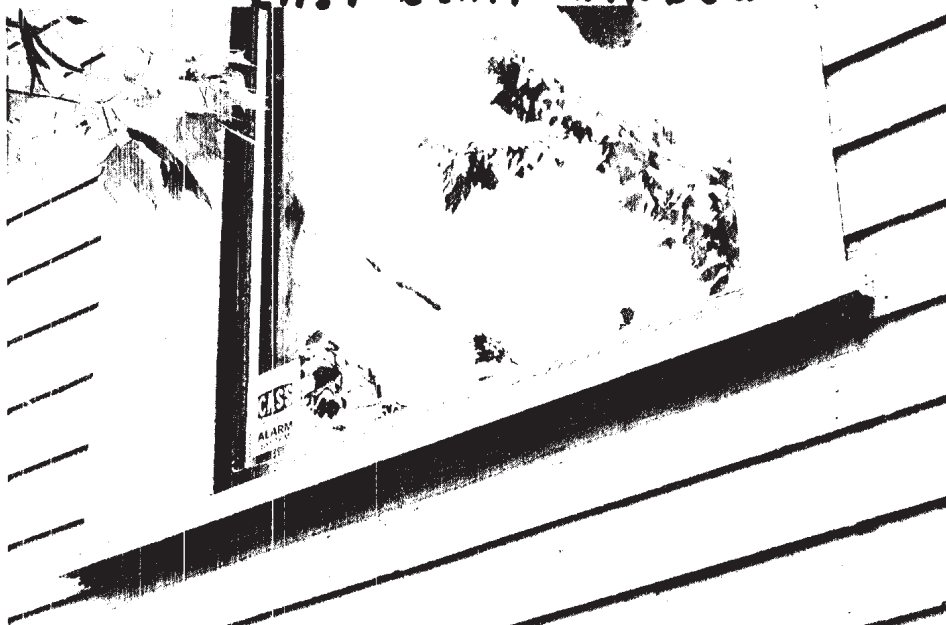
NORTH REAR ASMT

(5)



EAST BSMT WINDOW

(6)



EAST WINDOW DETAIL

Page 20 of 26

(7)



SOUTH - FRONT

(8)



SOUTH TOP WINDOW

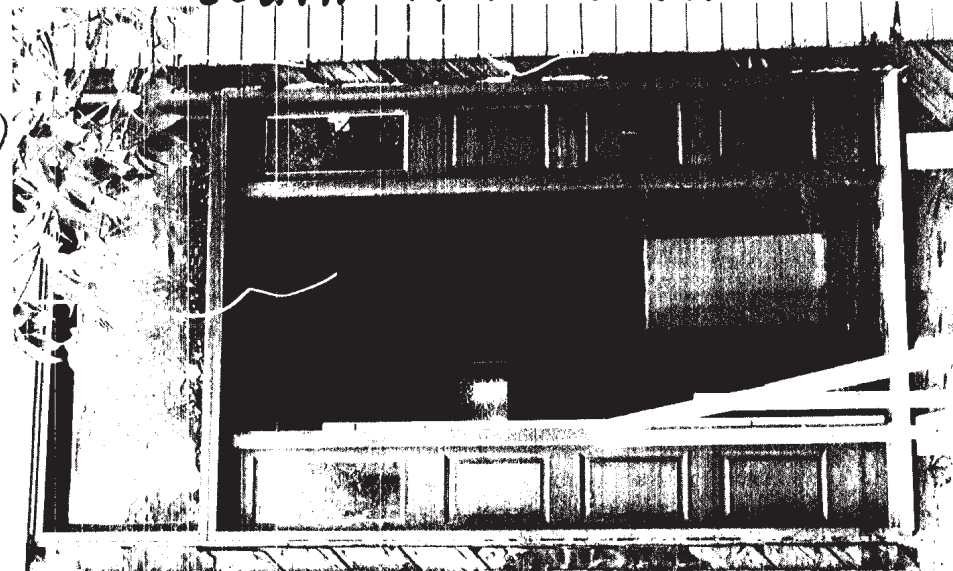
Page 21 of 26

(9)



SOUTH - MAIN FLOOR

(10)



SOUTH - FRONT DOOR

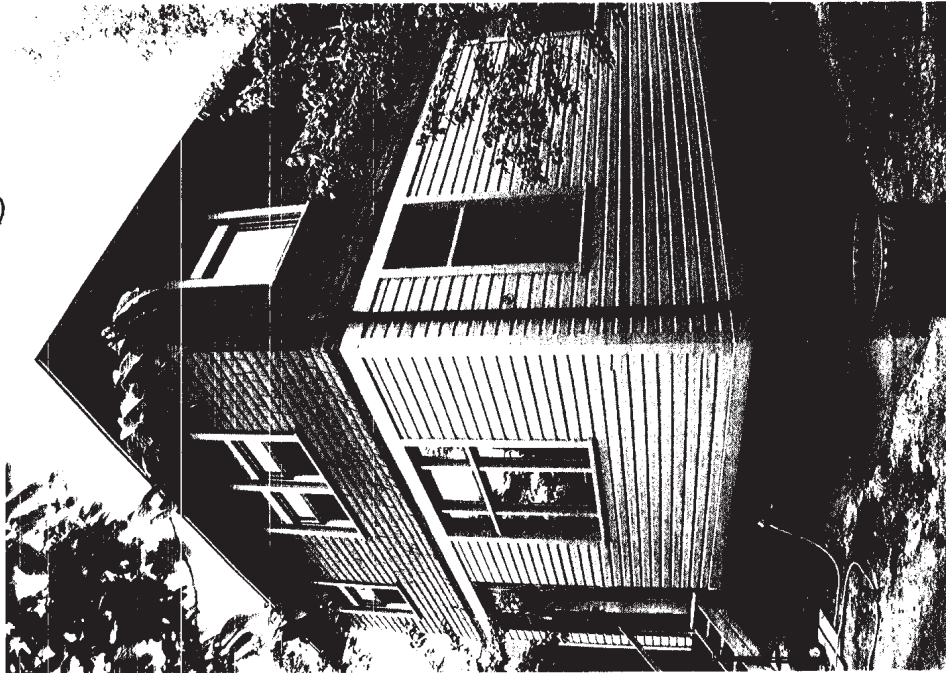
Page 22 of 26

(11)



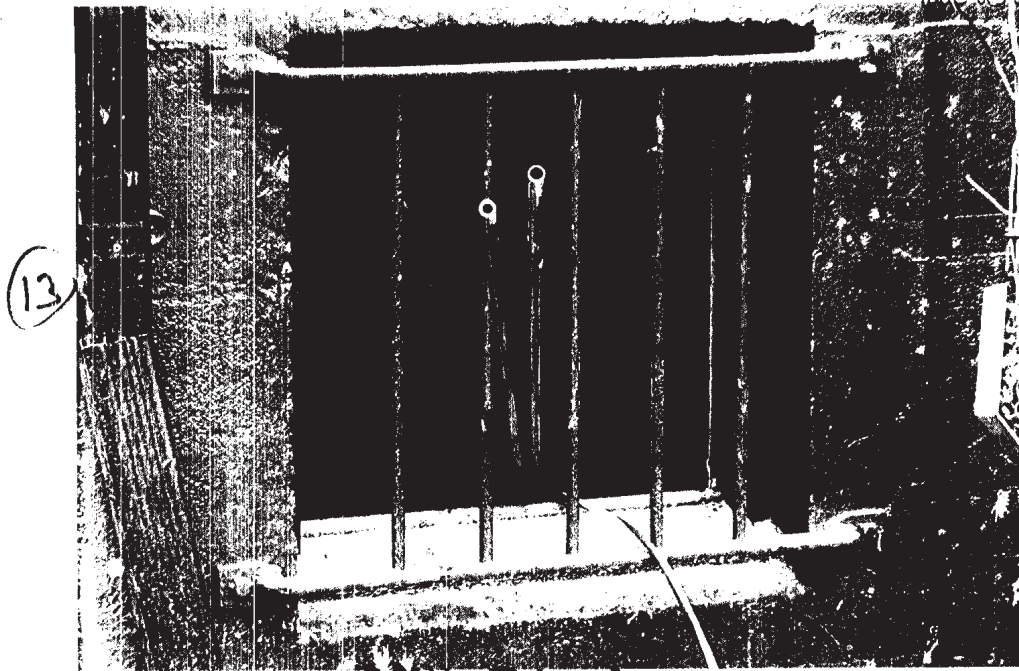
WEST SIDE VIEW

(12)

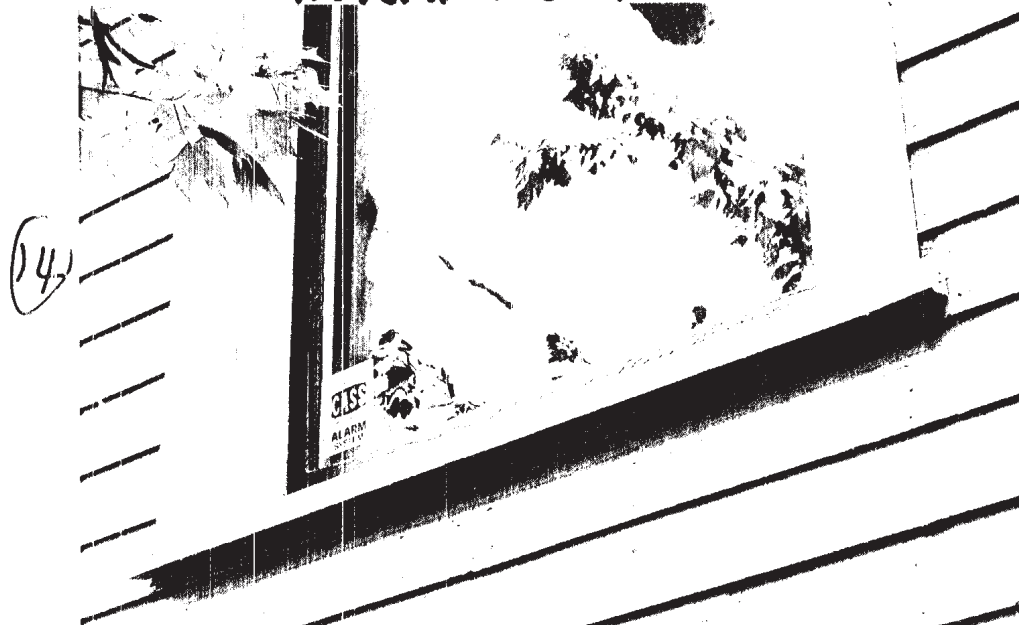


EAST SIDE VIEW

Page 23 of 26



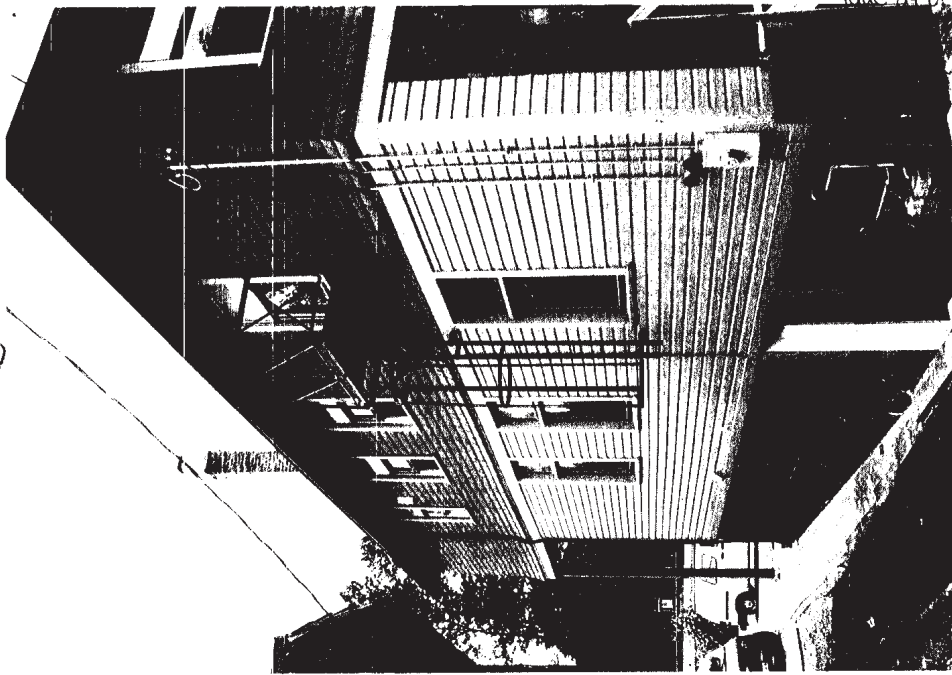
NORTH REAR



EAST WINDOW DETAIL

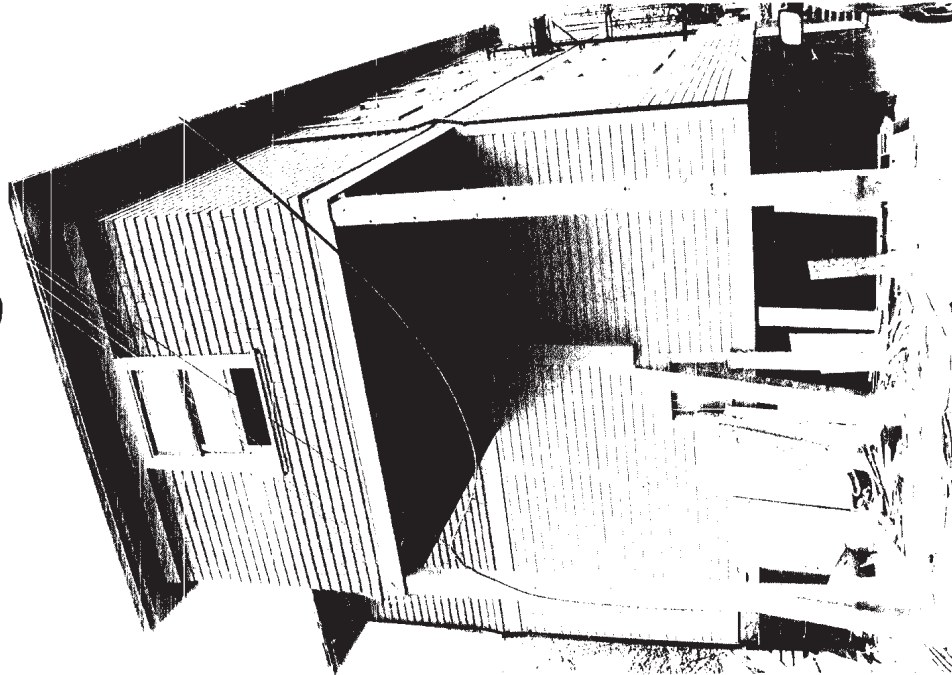
Page 24 of 26

(15)



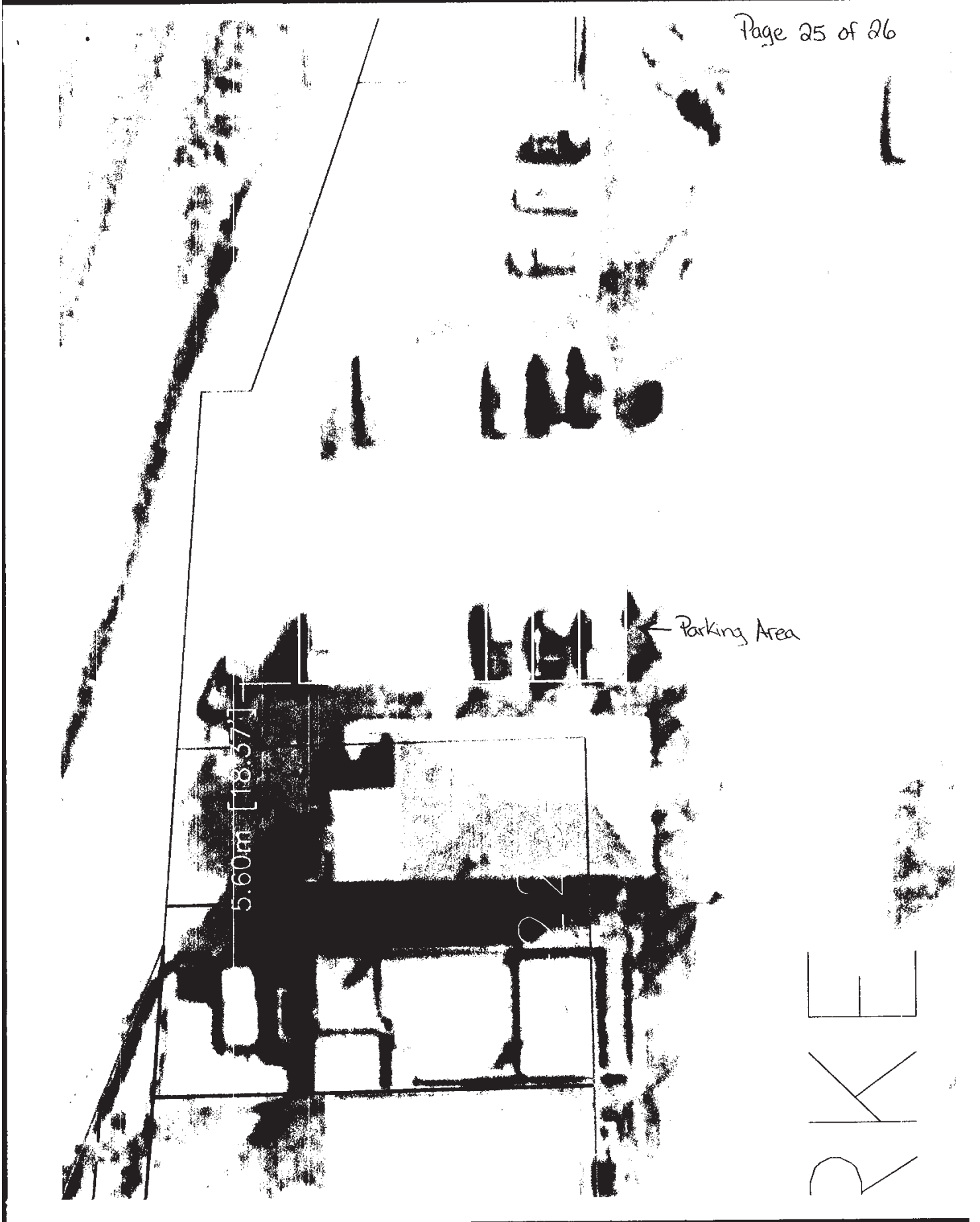
WEST WALL

(16)



NORTH REAR

Page 25 of 26



SCHEDULE "B"
Minimum Maintenance Standards

1. Introduction

Protected Heritage Properties require a reasonable level of maintenance to be effectively retained. The purpose of the standards is to ensure that significant deterioration does not jeopardize the life of the building.

The maintenance of a Protected Heritage Property is the responsibility of the Grantor. The Grantor may need to obtain a heritage alteration permit, development permit, building permit or other approval from the City, depending upon the extent and type of work to be done. This may include referral to the City's Heritage Commission for evaluation.

2. General Maintenance

Protected heritage properties shall be maintained in good repair. Original exterior features shall be retained, when possible. When replacement is necessary, new materials shall replicate the original in terms of design, colour and texture.

3. Weather and Infestation

Protected heritage properties shall be maintained so as to reasonably prevent, or effectively retard, damage from the elements. This includes, but is not limited to, preventing water penetration and excessive damage to materials from the wind, sun and infestations.

4. Painting

Protected heritage buildings shall be painted as necessary to protect exterior finish materials.

5. Structural Integrity

A protected heritage building and its structural members shall be maintained in good repair and in a manner that provides sufficient structural integrity so as to sustain safely its own weight and any additional loads and influences to which it may be subjected through normal use.

End of Document