

930C-8 09 47 7

EG132492

RECEIVED
LAND TITLE OFFICE
VICTORIA

10/08/93 A2432a CHARGE 50.00

LAND TITLE ACT
Form 35
(Sections 216(1))

DECLARATION OF BUILDING SCHEME


Nature of Interest: Charge: Building Scheme

Herewith fee of: \$50.00

Address of person entitled to register this Building Scheme: Full name, address, telephone number of person presenting application:

504 - 1367 West Broadway Street
Vancouver, British Columbia
V6H 4A7Cheryl Coburn
for Ramsay Thompson Lampman
#5 - 1611 Bowen Road
Nanaimo, British Columbia
V9R 5L9
Phone: 754-3321

K.A. POLLNER REGISTRY CO. LTD.


Signature of Authorized Agent

We, FAIRWINDS DEVELOPMENT CORPORATION, (Amalgamation No: 441838), a company duly incorporated pursuant to the laws of the Province of British Columbia, of 504 - 1367 West Broadway Street, Vancouver, British Columbia, V6H 4A7, DECLARE:

1. We are the registered owners in fee-simple of the following land (hereinafter called "the Lots"):

Port Alberni Assessment Area, Province of British Columbia:

Lots 1 to 20 and 24 to 33, District Lot 30,
Nanose District, Plan VIP 57407.

and

Lots 21 and 22, District Lots 30 and 78,
Nanose District, Plan VIP 57407.

and

- 2 -

Lot 23, District Lot 78,
Nanoose District, Plan VIP 57407.

2. We hereby create a Building Scheme relating to the Lots.
3. A sale of any of the Lots is subject to the restrictions enumerated in the schedule attached or annexed hereto.
4. The restrictions shall be for the benefit of all the Lots.

Execution Date

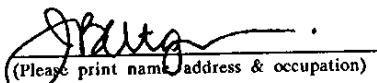
Officer Signature(s)

Y	M	D
93	08	27

Transferor(s) Signature(s)

FAIRWINDS DEVELOPMENT
CORPORATION by its authorized signatory


GEOFFREY BARKER


(Please print name, address & occupation)
JACQUELINE A. BELTGENS
Barrister & Solicitor
504 - 1367 West Broadway
Vancouver, B.C. V6H 4A7
Phone: 736-7368

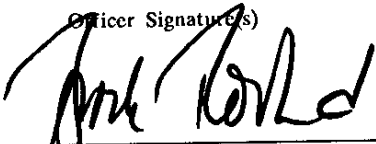
OFFICER CERTIFICATION:

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.

CONSENT

The undersigned, being the holder of a charge by way of Mortgage #EB41024, Extension #ED100279 and Modification #EG64243 for valuable consideration, hereby consents to the granting of the within Building Scheme and agrees that the same shall take priority over the said charge in the same manner and to the same effect as if it had been dated and registered prior to the said charge.

Execution Date

Officer Signature(s)


(Please print name, address & occupation)

A Commissioner for taking Affidavits
within the Province of British Columbia
700 West Georgia Street
Vancouver, B.C.
V7Y 1A2

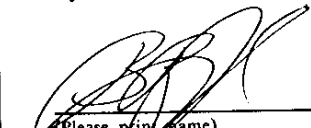
BROCK ROWLAND
Notary & Solicitor
26th FLOOR
700 WEST GEORGIA STREET
VANCOUVER, B.C.
V7Y 1B3

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.

Y	M	D
93	8	25

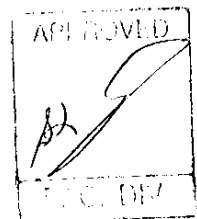
Transferor/Borrower/Party
Signature(s)

THE TORONTO-DOMINION BANK
by its Lawful Attorney



(Please print name)
Bryan Ross Querques
Senior Manager-Commercial Credit

D.F. EF108587



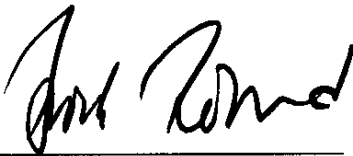
CONSENT

The undersigned, being the holder of a charge by way of Mortgage #K32096, Modification and Extension #S132213, Assignment #EC105053 and Extension #ED100280 for valuable consideration, hereby consents to the granting of the within Building Scheme and agrees that the same shall take priority over the said charge in the same manner and to the same effect as if it had been dated and registered prior to the said charge.

Execution Date

Y	M	D
93	8	25

Officer Signature(s)



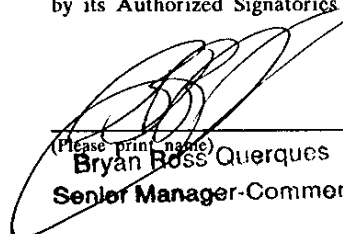
(Please print name, address & occupation)
R.J. McLEAN
 A Commissioner for taking Affidavits
 within the Province of British Columbia
 800 West Pender Street
 Vancouver, B.C.
 V6C 2V7

BROCK ROWE
 Barrister & Solicitor
 26th FLOOR
 700 WEST GEORGIA STREET
 VANCOUVER, B.C.
 V7Y 1E9

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.

Party(ies) Signature(s)

**CENTRAL GUARANTY TRUST
 COMPANY** by its Attorney,
THE TORONTO-DOMINION BANK
 Power of Attorney #EG15482
 by its Authorized Signatories



(Please print name)
Bryan Ross Querques
Senior Manager-Commercial Credit
 (Please print name)

DF. EG 15480 / EG 15481 / EG 15482

"END OF DOCUMENT"

SCHEDULE OF RESTRICTIONS

DEFINITIONS

1. In this Building Scheme, unless the subject matter or context requires otherwise, the following words or phrases shall have the meanings ascribed to them below:

- (a) "Ancillary Building" means any Building ancillary to the main Building on any Lot including, without limitation, detached garages and storage sheds;
- (b) "Architectural Guidelines" means the set of building restrictions and regulations prepared by the Developer and affecting the Lots, referred to and incorporated herein by reference, as may be amended from time to time by the Developer;
- (c) "Building" means all buildings, improvements and structures of any type or kind located above or below ground level and any parts thereof (footings excluded), but shall not include Landscaping or Fencing;
- (d) "Building Plans" means complete drawings and specifications of a proposed Building and any proposed addition to, or extension of any Building including, without limitation, plans, elevations, cross-sections drawn at 1:50 or 1/4"=1'-0" including details of type of building materials (including roofing), exterior finish materials and colour scheme, a Site Plan drawn at 1:100 or 1/8"=1'-0" showing existing and proposed lot grades, retaining walls, location and quantities and qualities of materials used or excavated in the event of fill or excavation on the Lot, floor elevations, setbacks, house location, type and slope of driveway, and Shoreline Treatment, a Landscape Plan drawn at 1:100 or 1/8"=1'-0" showing the type and location of Landscaping, and any other information the Developer may reasonably require to ensure compliance with this Building Scheme. Building Plans shall not be "mirror-image" type plans;
- (e) "Building Scheme" means the Declaration of Building Scheme to which this Schedule of Restrictions is attached, this Schedule of Restrictions and the Architectural Guidelines;
- (f) "Developer" means Fairwinds Development Corporation and its successors and assigns;
- (g) "Fencing" means a fence, wall or similar structure;

- 4 -

- (h) "Golf Course" means the property comprising the Fairwinds Golf Course including, inter alia, Dolphin Lake;
- (i) "Landscaping" means all plant materials of any type or kind located above or below ground level, and any type or kind of landscape lighting, retaining walls, walkways, sidewalks or driveways located on a Lot, but shall not include Shoreline Treatment;
- (j) "Lot" means any one of the Lots;
- (k) "Lots" means the lands described in paragraph 1 of the Declaration of Building Scheme to which this Schedule of Restrictions is attached and any portion or portions of the said lands from time to time constituting a single legally subdivided area in accordance with the requirements of the Land Title Act of British Columbia for which one or more Certificates of Title have been issued by the Registrar of the appropriate Land Title Office;
- (l) "Municipality" means the Regional District of Nanaimo or other successor local municipal body having jurisdiction over the Lots;
- (m) "Owner" means any of the following persons:
 - (i) the registered owner from time to time of any Lot or any part thereof;
 - (ii) the registered owner from time to time of a right to purchase any Lot or any part thereof; and
 - (iii) the beneficial owner from time to time of any Lot or any part thereof;
- (n) "Security Deposit" means a deposit of two thousand five hundred dollars (\$2,500.00), payable by the Owner to the Developer at the time of completion of the Contract of Purchase and Sale of the Lot in respect of the main Building on the Lot, and in the event the initial Security Deposit has been returned to the Owner, a Security Deposit payable by the Owner to the Developer prior to the commencement of construction of additional Buildings, Ancillary Buildings or any alterations or extensions thereof. The Security Deposit is required to:
 - (i) offset the cost of damage to municipal works on a Lot or neighbouring Lots, or both, prior to or during Building construction; and

- 5 -

- (ii) ensure compliance by the Owner with this Building Scheme;
 - (o) "Shoreline Treatment" means retaining walls or similar landscape treatment of the Dolphin Lake shoreline located at the rear property line of Lots adjacent to the Golf Course; and
 - (p) "Street" means any public street or road.
2. No person or persons shall:
- (a) place or deposit landfill, or any other like substance on any of the Lots;
 - (b) excavate, blast or remove any fill or ground cover from any of the Lots or fell trees, clear brush or otherwise remove natural vegetation from any of the Lots;
 - (c) apply for a building permit for the construction of any Building on any of the Lots; or
 - (d) commence, place, erect or construct any Building, or make any alterations or extensions to the exterior of any Building, on any of the Lots if a building permit would normally be required by the Municipality for any such alterations or extensions;

without in each case first:

- (e) paying the Developer a design control fee in the amount of one hundred dollars (\$100.00) at the time of application for approval of the Building Plans from the Developer;
- (f) providing to the Developer the Building Plans, in triplicate, in respect of such Building or any alterations or extensions of such Building;
- (g) obtaining the written approval of the Developer of the Building Plans; and
- (h) having paid the Developer the Security Deposit,

provided that:

- (i) the approval of the Building Plans by the Developer shall not be unreasonably withheld or delayed if all of the requirements of this Building Scheme have been complied with;

- 6 -

- (j) the Developer shall be deemed not to have approved the Building Plans if the person submitting the Building Plans pursuant to paragraph 2(f) has not received written notice of approval from the Developer within thirty days after receipt of the Building Plans by the Developer;
- (k) the refusal or failure of the Developer to approve the Building Plans will not be actionable by any person under any circumstances, it being in the sole discretion of the Developer to give or withhold such approval; and
- (l) any approval of Building Plans granted by the Developer shall expire one year from the date of such approval being granted.

3. If any person commences construction of any Building or alterations or extensions thereof on any Lot after complying with the foregoing restrictions such person shall not discontinue the construction of such Building or alterations or extensions thereof and shall complete same as to external appearance, including finished painting, not later than six (6) months from the date of the commencement of any such work on the Lot.

4. No Building nor any alteration or extension thereof, Ancillary Building, Fencing, Landscaping or Shoreline Treatment, as the case may be, shall be commenced, placed, erected, constructed or allowed to remain on any part of any of the Lots:

- (a) except in compliance with the provisions of this Building Scheme and all laws, bylaws, ordinances, rules, regulations and orders of all governmental bodies or authorities applicable to the Lots;
- (b) unless the Building is a single family residence;
- (c) unless the Building Plans in respect of any Building and any alteration or extension thereof are first approved in writing by the Developer;
- (d) unless the Building has either:
 - (i) a finished main floor of not less than 1,600 square feet (149 square metres) (excluding the area of the garage) in the case of a single storey building; or
 - (ii) a finished main floor area of at least 1,200 square feet (112 square metres) (excluding the area of the garage) in the case of a two storey building;

- 7 -

(e) unless the setbacks from the lot lines comply with the following minimum regulations:

(i) Side yards: Measuring at a distance of eight (8) metres from the front property line, on all Lots the Building shall be set back from each side yard lot line at least ten percent (10%) of the lot width, or two (2) metres, whichever is the greater, unless otherwise noted to the contrary hereunder:

<u>Side yards:</u>	<u>Minimum set back in metres</u>
Lot 1	5 metres from Rockhampton Road
Lot 3	3 metres from all side property lines
Lot 4	3 metres from all side property lines
Lot 5	3 metres from all side property lines
Lot 6	3 metres from all side property lines
Lot 10	5 metres from Rockhampton Road and 3 metres from all other side property lines
Lot 11	3 metres from all side property lines
Lot 14	3 metres from the side property lines
Lot 22	3 metres from the side property lines
Lot 24	3 metres from the side property lines
Lot 28	3 metres from the side property lines
Lot 29	3 metres from the side property lines
Lot 32	3 metres from the side property lines
Lot 33	3 metres from the side property lines

(ii) Front yards: For all Lots the Building shall be set back from and parallel to a line at least 8 metres from the front property lines.

(iii) Rear yards: For all Lots the Building shall be set back at least 8 metres from the rear property line, unless otherwise noted to the contrary hereunder:

- 8 -

<u>Rear yards</u>	<u>Minimum set back in metres</u>
Lot 14	5 metres from the rear property line
Lot 26	5 metres from the rear property line
Lot 27	4 metres from the rear property line
Lot 28	6 metres from the rear property line
Lot 29	5 metres from both rear property lines

- (f) unless the vertical face of the Building is not greater than two stories (including above ground basements) or six (6) metres; and in any event, the height of a Building shall be not greater than eight (8) metres. The height of a Building shall be measured as the vertical distance the Building extends, at any complete vertical section of the Building, above a straight line connecting any two intersections of the existing grade and the outermost exterior building walls or supports;
- (g) unless the Ancillary Building shall be of a type and design approved in writing by the Developer;
- (h) unless the Fencing for the Lot shall meet the following standards:
- (i) if the Lot is adjacent to the Golf Course, a fence at or near the boundary it shares with the Golf course shall not exceed 3.9 feet (1.2 metres) in height and a screen of vegetation shall be planted on the Golf Course side of the Fencing of a type and design to be approved in writing by the Developer;
 - (ii) side yard Fencing shall not exceed 3.9 feet (1.2 metres) in height for a distance of 32.8 feet (10 metres) from the point where the side yard fence meets the rear yard Fencing;
 - (iii) no Fencing shall be constructed, erected or allowed to remain in front yards except ornamental Fencing to a maximum height of 3.3 feet (1.0 metre) when such Fencing is constructed in accordance with the design of the Building on the Lot and the Developer has granted his prior written approval of such Fencing; and
 - (iv) in any event, no Fencing shall be constructed, erected or allowed to remain which is greater than 5.9 feet (1.8 metres) in height;

- 9 -

- (i) unless the Landscaping shall be of a type and design approved in writing by the Developer; and
 - (j) unless the Shoreline Treatment for the Lot shall be of a type and design approved in writing by the Developer;
5. The following limitations on the use of any of the Lots or any parts thereof shall be applicable:
- (a) no debris, dirt, building material, crates, packing cases, contractor's sheds, equipment or other unsightly objects or material shall be placed on any Street nor on any property adjoining any Lot nor allowed to remain on any Lot otherwise than during such time as construction work is actually in progress on such Lot, and no excavation shall be made unless necessary in connection with the erection of an approved Building or extension or alteration thereof;
 - (b) no mobile home, modular home, construction equipment, industrial trucks or industrial trailers shall be placed, maintained or occupied on any Lot and no trailer, boat, camper, mobile home, travel trailer, truck and camper, or recreation vehicle (collectively referred to as a "Recreational Vehicle") shall be parked or stored on any Lot unless the Recreational Vehicle is placed in an enclosed garage or other area bounded by screening approved by the Developer;
 - (c) no animals shall be kept on any Lot except dogs and cats and other household pets, which shall be kept on a leash when outside of the boundaries of the Lot owned by the owner of such pets;
 - (d) no construction and excavation wastes, overburden soil or other substances deleterious to aquatic life shall be disposed of in such a manner as to permit their entry into any watercourse, ravine, or storm sewer disposal system;
 - (e) no pole, mast, clothesline, antenna or similar object of any kind shall be erected or installed on any Lot or on the exterior of any Building, save and except an umbrella type clothesline;
 - (f) no radio or television or transmitting antenna including satellite television receiving devices shall be placed on any Lot unless the device is completely enclosed within a Building and is not visible from outside the Building;
 - (g) no heat pumps shall be placed in Buildings or on any Lot unless the siting has been approved by the Developer and

- 10 -

the sound level at the property lines of the Lot will not exceed fifty (50) decibels;

- (h) no billboards, placards, advertising or signs or any kind shall be erected or displayed on any Lot or on any Building, or in any window or door of any Building without the prior written consent of the Developer. In the event of a Lot being listed for sale, any signage used to advertise the sale, the frame for the signage, the sign itself, and the method of displaying the sign shall be first approved by the Developer. It is the intent that such signage shall be uniform for all the Lots and it is not the intent to control the agency with which an Owner lists Lots for sale;
- (i) no trees shall be permitted to grow to a height or in a location on any Lot which unreasonably blocks the views from the Building on another Lot; and
- (j) no decorative Christmas lights shall be permitted on Buildings except during the Christmas season.

6. The Owner of a Lot shall not:

- (a) construct, maintain, replace or repair any Buildings on the Owner's Lot except in compliance with the requirements of this Building Scheme;
- (b) allow a Building to fall into a state of disrepair, reasonable wear and tear excepted;
- (c) allow a Building which has been partially or totally destroyed by fire, earthquake or otherwise to remain in such state for more than three (3) months from the time of such destruction; or
- (d) allow the Lot to remain in an unlandscaped condition after the expiry of a period of three (3) months from the date of substantial completion of the Building on the Lot unless such date falls in the period between November 1st and May 1st of any year in which case landscaping shall be completed by the following June 1st.

7. None of the Lots nor any improvement on a Lot shall be put to any commercial, industrial, trade, business, or public or private utility use and without restricting the generality of the foregoing, none of them shall be used as an apartment house, boarding house, rooming house, hotel, beer parlour, resort, store, restaurant, shop or place of trade or business unless and until such use is approved in writing by the Developer who shall give such approval only where in its sole and absolute discretion such use is deemed not to be a detriment to any of the Lots.

- 11 -

8. The Developer or its agent shall at its sole discretion have the right to carry out on-site inspections during the construction period of a Building to ensure compliance by the Owner with the approved Building Plans. The Owner shall provide the Developer with timely notice of proposed changes to the approved Building Plans and approval for such changes must be received in writing from the Developer prior to such changes being constructed.

9. No grading, excavation, construction, or other work shall be carried out upon a Lot which would interfere with, or alter in any way, the natural or established drainage systems of the Lot or adjoining Lots.

10. No Lot shall be partitioned or subdivided into two or more lots nor any Lots consolidated into one or more lots unless and until the plan or plans thereof shall have been submitted to and approved in writing by the Developer who shall give such approval only where in its sole and absolute discretion such use is deemed to be for the general benefit of all of the Lots, and each and every lot so created shall be deemed to be one Lot.

11. The Security Deposit shall be held by the Developer until completion of the construction of the Building and the Landscaping of the Lot in accordance with the approved Building Plans. When requested to do so by the Owner, the Developer shall conduct a final inspection and prepare a site inspection report. The Deposit shall be refunded to the Owner if the site inspection report indicates that the following conditions have been satisfied;

- (a) the provisions of this Building Scheme have been fully satisfied;
- (b) a final Occupancy Permit is issued by the Municipality;
- (c) all subdivision services and municipal works on and bordering the Lot and on neighbouring Lots are free from damage; and
- (d) curbs, sidewalks, and Streets adjacent to the Lot and neighbouring rights-of-ways are free from construction debris and damage.

If the site inspection report indicates that any of the foregoing conditions have not been met, the Developer may, in its sole discretion, either:

- (e) use the Security Deposit, or a portion thereof, to rectify any deficiencies; or
- (f) provide the Owner with a list of deficiencies which must be completed prior to the Developer refunding the Security Deposit.

- 12 -

Without limiting the generality of the foregoing, failure to obtain the Developer's approval of Building Plans, failure to obtain the Developer's approval of any changes to the Building from the approved Building Plans or failure to complete the Landscaping shall result in the Deposit being absolutely forfeited to the Developer.

Retention of the Deposit by the Developer or forfeiture of the deposit to the Developer as a result of an Owner's failure to comply with the provisions of this Building Scheme shall not limit or otherwise affect any remedy at law or in equity otherwise available to the Developer or any Owner in respect of such failure.

12. If any provision of this Building Scheme is declared or found by any Court of competent jurisdiction to be illegal, invalid or unenforceable then such provision shall be severable from this Building Scheme to the extent of such illegality, invalidity or unenforceability and the remainder of this Building Scheme shall be construed as if such illegal, invalid, or unenforceable provision had been deleted.

13. The provisions hereof have been instituted for the general benefit of all Owners of all of the Lots, and all such Owners, in agreeing to buy any Lot, acknowledge such general benefit and a personal benefit attaching to that part of or interest in the Lot purchased by them and each of such Owners agrees that his or her being in violation of the restrictions of this Building Scheme will constitute an injury and damage to all of the Owners which is impossible to measure monetarily, and as a result, any or all of the other Owners shall, in addition to all of the other remedies in law and in equity (including the right to damages), be entitled on their own behalf to enforce the provisions of this Building Scheme and to obtain an order restraining or enjoining any breach of any of the provisions of this Building Scheme and any Owner in breach of any such provision and named in the application for such an order shall not plead in defence that damages would be an adequate remedy.

14. This Building Scheme constitutes a charge on the Lots which shall run with and bind all of the Lots and every part thereof, and render the Owner, each purchaser, Lessee, sublessee and occupant of any Lot or any part thereof, and each successor in title, future purchaser, lessee, sublessee and occupant of any Lot or any part thereof subject to the restrictions herein set out and confer on them the benefits herein set out.

15. Neither the Developer nor any of its agents, servants or employees shall be liable for any losses, costs, liabilities, claims, damages or injury to any person arising out of:

- (a) the approval or deemed disapproval of any Building Plans;

- (b) a failure to enforce any of the provisions contained in this Building Scheme; or
- (c) the non-compliance with or non-fulfilment of any of the covenants, conditions or restrictions contained herein by the Owner of any Lot,

whether caused by the negligence or wilful act of the Developer, or any of its agents, servants, employees or otherwise (herein collectively called the "Liabilities"). Each of the Owners of the Lots hereby releases the Developer, and each of its respective agents, servants and employees, in respect of the Liabilities.

16. No condoning, excusing or waiver by any person of any default, breach or non-observance by any other person at any time or times in respect of any provision herein contained shall operate as a waiver in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way the rights of any person in respect of such continuing default, breach or non-observance, and no waiver shall be inferred or implied by anything done or omitted to be done by the person having such rights.

17. Any and all reasonable legal fees and disbursements incurred by the Developer for the enforcement of, or the restraint of an anticipated or actual violation of, this Building Scheme or any provision of this Building Scheme shall, upon demand by the Developer, be paid and reimbursed to the Developer by the Owner or Owners of the Lot or Lots in respect of which the Developer incurs such legal fees and disbursements for the enforcement of, or the restraint of an anticipated or actual violation of, this Building Scheme.

18. No Owner or any other person shall be in breach of the provisions of this Building Scheme if construction or Landscaping is interrupted by reason of strike, lockout, labour dispute, act of God, fire or other casualty so long as the owner or other person takes such steps as a reasonably available to it to minimize the effect of such occurrence and such Owner or other person diligently recommences the construction or Landscaping immediately after such occurrence.

19. No person who is or has been an Owner of any Lot is liable for a breach of any of the provisions hereof if such breach arises after such person has ceased to be an Owner of such Lot in connection with which the breach has occurred.

20. It is to be expressly agreed and understood that the Developer reserves the right, in its sole and absolute discretion, to approve plans at minor variance with, or grant relief from, one or more of the restrictions set out in this Building Scheme dealing with buildings and plans approval provided that the

- 14 -

Developer is satisfied, in its sole discretion, that the design of the Building has architectural merit and is aesthetically appealing in relation to the site and neighbouring lots, and such relief shall not be considered as a waiver of the requirement of approval by the Developer for any of the restrictions and requirements contained in this Building Scheme.

21. This Building Scheme and all of the restrictions set out in this Schedule shall be effective from and after the date of execution of this Building Scheme by the Developer.