

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.**

RESPONDING MOTION RECORD OF MARIA ATHANASOULIS

June 22, 2021

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Lawyers for Maria Athanasoulis

I N D E X

Tab No.	Description
1	Affidavit of Maria Athanasoulis sworn June 22, 2021
A	Statement of Claim issued January 21, 2020
B	Order of Justice Hainey dated January 23, 2020
C	Proof of Claim of M. Athanasoulis dated June 10, 2021 (without appendices)
D	YSL Pro Forma dated October 20, 2019
E	Emails from R. Schwill to M. Dunn dated June 16, 2021
F	Email from M. Dunn to R. Schwill dated June 16, 2021

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**AFFIDAVIT OF MARIA ATHANASOULIS
Sworn June 22, 2021**

I, Maria Athanasoulis, of the City of Toronto, in the Province of Ontario, make oath and say:

1. I am the former President and Chief Operating Officer of Cresford (Rosedale) Developments Inc. and its affiliates and subsidiaries (collectively, “**Cresford**”), including YG Limited Partnership and YSL Residences Inc. (together, “**YSL**”). As such, I have personal knowledge of the matters deposed to herein.

A. Overview

2. On January 21, 2020, I issued a claim bearing Court File No. CV-20-00634836-0000 (the “**Action**”) against Cresford, including (among others) against:

- (a) the Clover on Yonge Inc. and the Clover On Yonge Limited Partnership (the “**Clover Defendants**”);
- (b) 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership (the “**Halo Defendants**”);
- (c) 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership (the “**Yorkville Defendants**”);

- (d) YSL Residences Inc. and YSL Residences Limited Partnership (the “**YSL Defendants**” and, collectively with the Clover Defendants, the Halo Defendants and the Yorkville Defendants, the “**Owners**”); and,
- (e) Daniel Casey, Cresford’s founder and principal.

3. A copy of my Statement of Claim is attached hereto as **Exhibit “A”**. The Action was transferred to the Commercial List by order of Justice Hainey dated January 23, 2020, a copy of which is attached as **Exhibit “B”**, and now bears Court File No. CV-20-00635914-00CL.

4. My Action seeks payment of damages for wrongful dismissal and damages for breach of an agreement that the Owner of each Cresford project (which are described below), including the YSL Defendants, would pay me 20% of the profits earned on its condominium development project (the “**Profit Sharing Agreement**”).

5. When my employment with Cresford ended, the YSL Project was the crown jewel of Cresford’s business. Cresford’s internal projections showed that YSL would yield a substantial profit. Indeed, as described below, a projection prepared by Finnegan Marshall Inc. (“**FM**”, the same firm retained by the Proposal Trustee in this proceeding) forecast a profit in excess of \$90 million.¹

6. I submitted a claim in this proceeding (which is described in detail below) for \$19 million. My claim is attached as **Exhibit “C”**. The claim valued my damages for breach of the Profit Sharing Agreement at \$18 million, and my claim for wrongful termination at \$1 million.

¹ This profit figure includes interest on a mezzanine loan to be advanced to YSL, which was treated as an equity contribution.

7. The Proposal Trustee took the position that I was not entitled to vote at the meeting. However, assuming that I prove my claim, I am an “Affected Creditor” within the meaning of the Proposal and a substantial portion of my claim will be eliminated.

8. I have set out below my concerns with respect to the valuation of the YSL Project that this proposal is based on.

B. The Status of the YSL Project in February 2020

9. YSL was a viable—and highly profitable—project when I was terminated by Cresford.

10. YSL had sufficient equity contributed (including the amounts now claimed by Cresford as unsecured loans) and financing to complete the YSL Project. YSL’s internal projections for the YSL Project forecast a profit in excess of \$190 million. A copy of this projection is attached as **Exhibit “D”**.

11. I understand that YSL’s *pro forma* was reviewed and analysed in February 2020 by Finnegan Marshall (the “**2020 FM Report**”). The 2020 FM Report was subsequently provided to me by Cresford in the course of negotiations relating to the potential purchase of YSL. The 2020 FM Report indicates that the YSL Project was to generate a profit of \$90 million.

II. THE 2021 FM REPORT

12. In its Second Report, the Proposal Trustee advised that it had retained FM to prepare the 2021 FM Report with respect to the value of the YSL Project. According to the Proposal Trustee, FM concluded that a sale of the YSL Project would not generate enough money to pay more than 58% of unsecured claims, and might generate no proceeds at all for unsecured creditors.

13. I was surprised by the conclusions in the 2021 FM Report, because I knew that FM had reached a very different conclusion in the 2020 FM Report, when FM forecast a \$90 million profit. I did not understand how or why the estimate could change so much between February 2020 and May 2021.

14. I received a copy of the 2021 FM Report, which I undertook to keep confidential, on June 11, 2021. As described below, my counsel, Mark Dunn of Goodmans LLP, engaged in several discussions with the Proposal Trustee in an attempt to resolve my concerns about the 2021 FM Report.

(ii) The Retail Component

15. The 2021 FM Report assumes that the retail component will be 60,914 square feet. Cresford's internal projections, and the 2020 FM Report, assumed that the retail component would be more than 73,000 square feet.

16. The YSL Project had received all of the development approvals required to begin construction and obtain building permits. Architectural drawings are submitted as part of this process, and those drawings show what will be built. Significant square footage reductions after approval are very uncommon. The issue also appears to be significant, since the 2021 FM Report indicated that a combination of space reductions and reduced rents decreased the value of the retail component by approximately \$30 million.

17. I am advised by Mr. Dunn, and believe, that Goodmans asked the Proposal Trustee to explain the reduction in the square footage during a discussion held June 11, 2021. On June 16, 2021, the Proposal Trustee responded that Concord told it that the reduction reflected the exclusion

of “non-leasable servicing areas, mechanical rooms and the like”. This e-mail exchange is attached as **Exhibit “E”**.

18. I do not believe that the information provided by Concord is correct. The 73,000 figure already excluded the non-leasable areas. In fact, the leasable areas in the drawings is more than 79,000 square feet and the 73,000 square feet estimate is already conservative.

19. On June 16, 2021, Goodmans sent the Proposal Trustee’s counsel copies of the following documents:

- (a) Architectural drawings from November 15, 2018, in which the gross areas is 94,000+sf, not the 73,000sf gross area referenced in the Proposal Trustee’s e-mail based on information from Concord;
- (b) The LPAT decision for the project, which approves retail/office/institutional of 18,629sm, or 200,520sf.

20. A copy of this e-mail, with attachments, is attached as **Exhibit “F”**. I provided the architectural drawings because they are the most reliable record of what will actually be built.

21. On June 22, 2021, Concord served the Affidavit of Cliff McCracken (the “**McCracken Affidavit**”). In the McCracken Affidavit, Mr. McCracken does not address these drawings in his affidavit.

22. Mr. McCracken appends to the McCracken Affidavit an exchange with Architects Alliance. Mr. McCracken says that Architects Alliance confirmed that “the net leaseable area of the retail component is 62,870.” But the e-mail from Architects Alliance states that the

calculations are based on “sketches” provided by Concord. It is not clear what these sketches are, or how they differ from the approved architectural drawings.

23. The 2021 FM Report also assumes that there will be a reduction in the size of the residential component of 6,413sf from the 2019 CBRE report, which was based on Cresford’s design of the project and the approved architectural drawings.

24. This reduction, which FM values at \$9.7 million, has also not been explained. Mr. McCracken does not address this in his affidavit, except to say that it is “premature”. to assess what the changes will be.

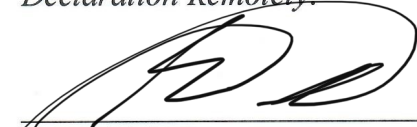
(iii) Construction costs

25. When I was terminated by Cresford, YSL had entered into contracts for approximately 60% of the construction budget. The 2021 FM Report says that the cost of all contractors will increase, even if those contractors have already signed fixed price contracts.

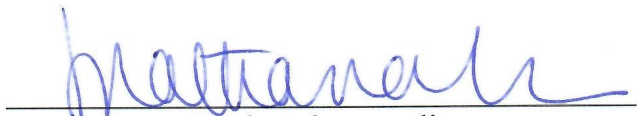
26. I prepared a spreadsheet comparing the 2021 FM Report to the 2020 FM Report, which shows that costs have increased by approximately \$45 million on signed contracts. Goodmans has asked the Proposal Trustee whether this increase has been verified by FM or whether it is an estimate provided by Concord.

27. In FM’s response, which was provided to me by the Proposal Trustee, Mr. Finnegan stated (among other things) that no contracts would be valid because a new developer was taking over the project. Based on the materials filed in this proceeding, I understand that if the Proposal is approved then an affiliate of Concord would acquire the Applicants in this proceeding. These are the entities that entered into the contracts with contractors.

SWORN remotely by Maria Athanasoulis stated as being located in the City of North York, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario on June 22, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.



A Commissioner for taking affidavits, etc.
Name: Mark Dunn



Maria Athanasoulis

A

This is Exhibit "A" referred to in the
Affidavit of Maria Athanasoulis, sworn
before me this 22nd day of June, 2021.



A Commissioner for Taking Affidavits, etc.



Electronically issued : 21-Jan-2020
Délivré par voie électronique : 21-Jan-2020
Toronto

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MARIA ATHANASOULIS

Plaintiff

- and -

CRESFORD (ROSEDALE) DEVELOPMENTS INC., EAST DOWNTOWN REDEVELOPMENT PARTNERSHIP, THE CLOVER ON YONGE INC., THE CLOVER ON YONGE LIMITED PARTNERSHIP, 33 YORKVILLE RESIDENCES INC., 33 YORKVILLE RESIDENCES LIMITED PARTNERSHIP, 480 YONGE STREET INC., 480 YONGE STREET LIMITED PARTNERSHIP, YG LIMITED PARTNERSHIP, YSL RESIDENCES INC., YSL RESIDENCES LIMITED PARTNERSHIP, 50 CHARLES STREET LIMITED, 50 CHARLES STREET LIMITED PARTNERSHIP and DANIEL C. CASEY

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date January 21, 2020 Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 7th Floor
Toronto ON M5G 1R7

TO: **NELLIGAN O'BRIEN PAYNE LLP**
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Tel 613.231.8224

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Counsel to the Defendants

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CLAIM

1. The Plaintiff, Maria Athanasoulis, claims against the Defendants for:
 - (a) A declaration that the Defendants wrongfully terminated Ms. Athanasoulis;
 - (b) Damages for wrongful dismissal in the amount of \$1,000,000;
 - (c) A declaration that Ms. Athanasoulis is entitled to 20% of the profits earned by each of the Projects (as defined below);
 - (d) Damages in the amount of \$48 million, representing the value of the entitlement referenced in (c) above;
 - (e) Damages for defamation, in an amount to be provided prior to trial;
 - (f) Punitive, aggravated and exemplary damages;
 - (g) Pre and post judgment interest; and
 - (h) Such further and other relief as this Court deems just.

PART I. BACKGROUND

A. THE DEFENDANTS' BUSINESS

(i) Cresford

2. The corporate defendants (collectively, “**Cresford**”) are all part of a group of companies engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario using the brand name Cresford.

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3. Cresford's corporate predecessors were founded by the Defendant, Daniel C. Casey, approximately 40 years ago. However, until approximately 2014, Cresford and its predecessors focused on small and medium-sized condominium developments.

4. Since 2014, Cresford has developed a reputation for developing and building large luxury condominium communities, largely as a result of the Plaintiff's efforts (which are described below). It has completed some of the largest and most ambitious condominium development and construction projects in the Greater Toronto Area.

5. Each of Cresford's development and construction projects is owned by a separate legal entity. That entity purchases the land where the relevant project is to be built, obtains the required permissions, markets the project to proposed purchasers, hires contractors to build the project and takes all of the other steps to convert real estate into a major condominium development.

6. The staff required to complete this work, including Ms. Athanasoulis, were paid by East Downtown Redevelopment Partnership ("EDRP"). However, EDRP does not own any real estate or conduct any active business. Cresford employees, including Ms. Athanasoulis, provided services directly to the entities that owned, developed and built Cresford's projects.

(ii) Ms. Athanasoulis was critical to Cresford's success

7. Ms. Athanasoulis joined Cresford in 2004 as its Manager, Special Projects. Although she had not previously worked in real estate, she quickly demonstrated a talent for marketing development projects. In 2005, she was promoted to Vice President of Sales and Marketing.

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8. In 2012, Ms. Athanasoulis was promoted again to President, Sales and Marketing. In that capacity, she reported directly to Mr. Casey. Over time, her role expanded to include virtually all aspects of Cresford's business except for land acquisition and project finance. In 2018, Ms. Athanasoulis was promoted again to President and Chief Operating Officer ("COO") around the time that Ted Dowbiggin, the President of Cresford Capital, resigned.

(iii) The real estate development and construction process

9. Condominium development and construction projects are complex, and each is unique to some extent. However, certain steps are common to virtually all projects. The builder/developer must:

- (a) identify an attractive development site;
- (b) negotiate an agreement to purchase the site;
- (c) hire third parties to design the proposed project;
- (d) obtain the municipal permissions required to build the proposed project, which often involves a long and extensive review and approval process. The process of obtaining these approvals is typically called the "development process";
- (e) market condominium units to purchasers. These purchasers provide a deposit (or a series of deposits) to secure their purchases;¹

¹ These deposits must be insured before they can be used to fund construction costs. The deposit insurer guarantees that the deposits will be repaid to purchasers if the units are not built, and registers a mortgage on title to protect itself against the risk of repayment.

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- (f) hire contractors to supply the labour and materials required to build the project; and
- (g) register the condominium and transfer control of it to the condominium corporation.

10. Importantly, the vast majority of revenues earned on a project are not released to the builder/developer until construction is complete and the condominium is registered. This means that the builder/developer must fund development and construction costs using both debt and equity.

(iv) Mr. Casey was responsible for providing or securing the equity that Cresford required

11. In recent years, Mr. Casey has had very little involvement in Cresford's day to day operations. He rarely attended Cresford's offices and was largely unaware of – and uninvolved in – Cresford's business except for financing matters and cost overruns. Unlike other aspects of the business, which were operated by Ms. Athanasoulis, Mr. Casey always kept control of Cresford's financing and limited Ms. Athanasoulis' access to information about it.

12. As noted above, almost all of the revenue from a condominium development is earned after the condominium is built and registered. Almost all of the costs required to complete the development must be incurred before then. Real estate development projects, and particularly the large-scale projects that Cresford has pursued recently, have substantial (and complex) funding needs.

13. Cresford, like all major developers, secures third party mortgage financing to fund a significant portion of its construction and development costs. Lenders agree to fund based on a detailed budget prepared for each project and carefully monitor costs. A project inspector reviews

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detailed information to ensure that funds are properly used and the project can be completed in accordance with the original budget. If the project inspector identifies cost overruns, then the owner of the project must immediately provide the required funds. The Altus Group (“**Altus**”) is the project inspector on Cresford’s current projects.

14. In addition, lenders rely on the financial position of the project owner in deciding to advance funds. As a result, the loan agreements all prohibit further borrowing without prior consent from the lender.

15. Cresford’s lenders required that the owner of each project make a significant equity investment before funds were advanced. Mr. Casey’s primary role at Cresford was to provide or secure these equity investments. The investments were critical. In order to complete its projects, Cresford needed a stable source of equity funds. Without such funds, Cresford could not meet its commitments to lenders, construction contractors, consultants, brokers, purchasers and other stakeholders.

16. Mr. Casey represented to Ms. Athanasoulis that he was a wealthy and successful businessman. Ms. Athanasoulis believed that Mr. Casey had the ability to make the investments that Cresford’s business required.

17. As described below, these funds either did not exist or Mr. Casey was not prepared to invest them in Cresford’s business. Mr. Casey was unwilling or unable to provide the equity funding that Cresford required. This failure threatened (and continues to threaten) the viability of Cresford’s business.

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18. Importantly, prior to the fall of 2018, Ms. Athanasoulis was not responsible for acquiring development sites or financing the purchase and construction of projects. Ted Dowbiggin, the President of Cresford Capital, was responsible for site acquisitions and finance until his resignation effective August 31, 2018. Mr. Dowbiggin reported directly to Mr. Casey, and together, they were solely responsible for financing Cresford's acquisition and development activities. Finance activities were separated from the rest of Cresford's operations. Ms. Athanasoulis and her team had little information about how Mr. Casey and Mr. Dowbiggin financed projects and what they communicated to lenders.

19. Thus, Ms. Athanasoulis was responsible for executing Cresford's projects successfully but was not responsible for how those projects were financed, did not participate in communications with lenders and did not know what Mr. Casey did (and did not) tell lenders.

(v) *Cresford's recent success*

20. Although Ms. Athanasoulis developed (and has) significant expertise in every aspect of the real estate development and construction business, she has a unique talent for designing and marketing residential condominium units to purchasers. As a result, Cresford was able to sell a large volume of condominium units quickly and for premium prices. Every condominium must pre-sell units worth a minimum amount before construction loan funding will be advanced – typically 65% or more of the total project revenue. Cresford's most recent projects have met their targets very quickly.

21. As importantly, Ms. Athanasoulis built Cresford into a recognized luxury condominium brand. Satisfied customers bought units in multiple Cresford projects, and the real estate brokers

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that represented Cresford's target customers trusted Cresford to keep its promises. This allowed Cresford to charge premium prices for its units. Few, if any, Canadian developers have the sort of reputation that Ms. Athanasoulis built for Cresford.

22. Put simply, Ms. Athanasoulis was the driving force behind Cresford's success. In the last five years alone, Cresford has sold more than 3,000 condominium units and generated revenues in excess of \$2.5 billion. In the process, she built a reputation (both for herself and for Cresford) for dealing honestly and fairly with consultants, construction contractors and real estate agents.

(vi) Ms. Athanasoulis' compensation

23. Mr. Casey recognized Ms. Athanasoulis' value. He knew that Ms. Athanasoulis was the key to Cresford's success and, over the years, he offered her significant incentives to remain at Cresford.

24. In 2014, Ms. Athanasoulis supervised the design, marketing and sales on the Vox project at Yonge and Wellesley in Toronto, as she had done on several previous projects. The Vox project met its sales targets with ease, and the project was a success. Moreover, because of Ms. Athanasoulis' sales and marketing expertise, Cresford saved the substantial cost of a third party marketing company. A third party marketing company would have charged Cresford more than \$3 million to market only the Vox project, but Ms. Athanasoulis was paid only \$300,000 per annum, plus a payment equal to 0.15% of Cresford's sales on every project, to market all of Cresford's projects and fulfill her other duties. Ms. Athanasoulis realized that she could earn much more working as a contractor for Cresford and other developers.

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25. Recognizing Ms. Athanasoulis' value, Mr. Casey agreed to increase her salary to \$500,000 per annum in 2014 and pay her 0.15% of Cresford's sales on every project going forward. Most importantly, after the Vox project, Mr. Casey agreed that Ms. Athanasoulis would be entitled to 15% of the profits earned on all projects launched by Cresford thereafter as well as an additional \$500,000 at registration of each of the active projects (i.e., 1000 Bay, Casa II and Casa III). Following the successful launch of YSL, Mr. Casey increased the percent of profits that Ms. Athanasoulis was to be entitled to from 15% to 20%. In an effort to assist with monthly cash flow, Ms. Athanasoulis never drew her increased salary. Mr. Casey knew this, and knew that Ms. Athanasoulis was still owed her increased salary.

26. Ms. Athanasoulis worked closely with Mr. Casey, and trusted him to protect her interests. As a result, their agreement was not immediately reduced to writing. Ms. Athanasoulis launched three more very successful projects in 2015, 2016 and 2017.

27. After the successful launch of YSL (as defined below) in October 2018, Ms. Athanasoulis realized that the services she provided to Cresford on its four most recent projects had saved it approximately \$37.5 million on fees that would otherwise have been paid to a third party marketing consultant. She asked Mr. Casey to memorialize his agreement to pay her 20% of the profits on existing projects. She subsequently attended a meeting with Mr. Casey and John C. Papadakis, Cresford's corporate lawyer. At the meeting, Mr. Casey confirmed that Ms. Athanasoulis was entitled to 20% of the profits generated by Cresford's projects and asked Mr. Papadakis to document the agreement.

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28. Ms. Athanasoulis did not receive the agreement that Mr. Papadakis was instructed to draft. She did not press for a written agreement, however, because Mr. Casey had confirmed her entitlement several times and she trusted him.

29. As described below, her trust was misplaced.

PART II. CRESFORD'S CASH CRISIS

A. CRESFORD'S CURRENT PROJECTS

30. In recent years, Cresford has focused on large condominium developments in or near downtown Toronto. Cresford currently has four active condominium developments (collectively, the "**Projects**"):

- (a) The Clover on Yonge ("**Clover**"), a 44 story condominium located near Yonge and Bloor. Clover is owned by Clover on Yonge Inc. ("**Clover Inc.**") in its capacity as General Partner of Clover on Yonge Limited Partnership ("**Clover LP**"). Clover LP is beneficially owned by entities related to or controlled by Mr. Casey;
- (b) Halo Residences on Yonge ("**Halo**"), a 38 story condominium tower located on Yonge Street between Wellesley and Carlton in Toronto. Halo is owned by 480 Yonge Street Inc. ("**Halo Inc.**"), the general partner of 480 Yonge Street Limited Partnership ("**Halo LP**"). Halo LP is, in turn, beneficially owned by entities related to or controlled by Mr. Casey;
- (c) The Residences of 33 Yorkville ("**33 Yorkville**"), a condominium with one 64-story tower and one 41-story tower. 33 Yorkville is owned by 33 Yorkville

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Residences Inc. (“**33 Yorkville Inc.**”), in its capacity as general partner of 33 Yorkville Residences Limited Partnership (“**33 Yorkville LP**”). There are two classes of limited partnership units in 33 Yorkville LP. The Class A limited partnership units are held by 20 third parties, who collectively invested \$75 million. These investments are described in more detail below; and

- (d) Yonge Street Living Residences (“**YSL**”), an 85-story condominium tower located at the corner of Yonge and Gerrard in Toronto. YSL is owned by YSL Residences Inc. (“**YSL Inc.**”), in its capacity as general partner of YG Limited Partnership (“**YSL LP**”). YSL LP is beneficially owned by entities controlled by or related to Mr. Casey and third party investors.

31. Revenue from the project will not be realized unless and until the Projects are completed. In order to complete the Projects, Cresford must meet its obligations to lenders, contractors and other stakeholders. This requires access to funding that Cresford does not currently have.

B. MR. CASEY’S FAILURE TO MAKE (OR SECURE) EQUITY INVESTMENTS

32. As noted above, each lender required that Cresford (or Mr. Casey) invest significant equity into each Project. Ms. Athanasoulis only role in these equity investments was to introduce potential investors to Mr. Casey.

33. Mr. Dowbiggin resigned from Cresford in August 2018. Around the time of Mr. Dowbiggin’s resignation, Ms. Athanasoulis learned, for the first time, that Cresford was woefully underfunded on Clover and Halo. Cresford did not have the funds required to complete the Projects, and Mr. Casey did not have a plan to secure the funds it needed.

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34. Mr. Casey and Mr. Dowbiggin initially directed Ms. Athanasoulis to reach out to CBRE, a well-known commercial real estate brokerage, to explore the possibility of selling the land owned by YSL Inc. Mr. Casey hoped to earn a gross profit on the sale of \$80-\$100 million and use that profit to fund cost overruns on the Clover and Halo projects.

35. Given the scale of the YSL Project, the pool of potential buyers was quite small. CBRE reached out to the most likely purchasers, but did not find an interested buyer. Accordingly, the only alternative was to design, market and sell the project in order to make it viable. Ms. Athanasoulis worked tirelessly in September and October to launch the YSL Project quickly. This work paid off, and the YSL launch was a huge success. Among other things, the purchasers were contracted to pay approximately \$140 million in deposits on YSL units.

36. Ms. Athanasoulis continued to work with Mr. Casey to try to find a solution to Cresford's cash issues. However, in the summer of 2019 she learned that Mr. Casey's own financial position was far more precarious than he had claimed.

37. Worse still, Ms. Athanasoulis learned in the fall of 2019 that Cresford had made significant misrepresentations to its lenders. When Ms. Athanasoulis pressed Mr. Casey to make the equity investments the business required and to deal honestly with lenders, she was stripped of her responsibilities and constructively terminated.

(i) Mr. Casey's secret loans

38. Cresford did not actually make many of the equity investments that it was contractually required to make, and claimed to have made. Instead, Mr. Casey represented to lenders that funds borrowed from a third party lender, OTB Capital Inc. ("**OTB**"), were equity investments made by

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Mr. Casey or entities that he controlled. These so-called equity investments were, in fact, high interest financing that was specifically prohibited by the applicable loan documents. OTB's loans are secured by every piece of collateral that Mr. Casey could offer, including the unsold retail and residential condominium units in the Clover and Halo projects. Neither Ms. Athanasoulis nor the affected lenders were aware of this.

39. Specifically, Ms. Athanasoulis learned that Mr. Casey had borrowed money from OTB in or around 2014. She also knew that Cresford had to make substantial monthly interest payments to OTB. This was a significant burden on Cresford's cashflow, since interest on most loans in the real estate development industry is capitalized and paid at the end of the project.

40. Ms. Athanasoulis did not, however, know the details of Mr. Casey's arrangements. Most importantly, she did not know what Mr. Casey had told lenders about OTB. She assumed that Mr. Casey had disclosed the nature of his relationship with OTB to existing and prospective lenders, as he was required to do. Shortly before her termination (which is described below), she learned that he had not.

(ii) Clover

41. Mr. Casey's scheme is illustrated by the funding of Clover. Pursuant to a commitment letter dated April 27, 2016 (the "**Clover Loan Agreement**"), British Columbia Investment Management Corporation ("**QuadReal**") agreed to provide Clover Inc. with:

- (a) a construction financing and letter of credit facility in the amount of approximately \$175 million, which was to be secured by a first mortgage charge; and

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- (b) a third mortgage facility in the amount of approximately \$30 million (including a \$9 million interest reserve).

42. The Clover Loan is managed by QuadReal Property Group (“QuadReal”), a real estate company owned by BC IMC.

43. The Clover Loan Agreement required that the borrower, Clover Inc., invest equity of approximately \$20.6 million before any funds could be advanced. The Clover Loan Agreement prohibited any other financing without the prior written consent of QuadReal, but it allowed Clover Inc. to register *its own* mortgage on title to secure the equity investment it was required to make.

44. Clover Inc. represented to QuadReal that it made the required equity investment, and registered a mortgage on title in favour of Cresford Financial Limited (“CFL”). Once it was satisfied that this investment had been made, QuadReal began to advance funds.

45. Unbeknownst to QuadReal, and to Ms. Athanasoulis, neither Clover Inc. nor any other entity related to Mr. Casey invested \$20.6 million in Clover. Most of the so-called equity investment was borrowed from OTB.

46. Specifically, OTB lent CFL \$17 million. The loan was guaranteed by Clover Inc., Mr. Casey and a host of other Cresford companies. CFL pledged all of its shares to OTB until OTB’s loan was repaid. Accordingly, the mortgage registered by CFL secured OTB’s loan and was effectively controlled by OTB.

47. Put simply, the majority of the “equity” in the Clover project was actually high interest secured debt.

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(iii) Halo

48. Mr. Casey made substantially identical arrangements relating to Halo, without the knowledge of Ms. Athanasoulis or QuadReal.

49. By commitment letter dated November 24, 2016 (the “**Halo Loan Agreement**”), QuadReal agreed to fund a first mortgage construction loan (including a \$2 million letter of credit facility) in the amount of approximately \$159 million and a third mortgage mezzanine loan in the amount of approximately \$29 million to fund the Halo Project. The Halo Loan Agreement required that Halo Inc. invest equity of \$13.6 million before any loan advances were made, and prohibited any other borrowing by Halo Inc. without QuadReal’s prior consent. Halo Inc. was, however, allowed to register a mortgage to secure its own equity investment in the Project.

50. Halo Inc. did not make the equity investment required of it. By Loan Agreement dated November 30, 2016, Cresford Equities Inc. (“**Cresford Equities**”) agreed to borrow \$10.1 million from OTB. This amount was guaranteed by, among other companies, Halo Inc.

51. Cresford Equities registered a fifth mortgage against the lands owned by Halo Inc. However, Cresford Equities pledged all of its shares to OTB until the loan was repaid. Thus, the fifth mortgage that was meant to secure Cresford’s equity was in fact registered to secure OTB’s loan. None of this was shared with Ms. Athanasoulis, or QuadReal.

(iv) 33 Yorkville

52. The budget submitted to lenders in respect of 33 Yorkville required an equity investment of approximately \$75 million. Mr. Casey approached Ms. Athanasoulis and asked her to identify third party investors who might fund some of this commitment. As a result of Cresford’s

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reputation for successful projects, and her own close relationships with a number of potential investors, Ms. Athanasoulis was able to introduce Mr. Casey to investors that ultimately purchased \$75 million worth of limited partnership units in 33 Yorkville LP (the “**33 Yorkville Investors**”). She trusted Mr. Casey to make appropriate arrangements and disclose those arrangements to the lenders. This did not happen.

53. Without Ms. Athanasoulis’ knowledge, Mr. Casey represented to QuadReal that the 33 Yorkville Investors had invested approximately \$20.5 million in 33 Yorkville and that Cresford and/or Mr. Casey had made the balance of the equity investment required.

(v) **YSL**

54. YSL is Cresford’s largest project to date, with its most complex funding structure. The purchase price and early stage project costs were funded by a \$100 million first mortgage from Timbercreek Financial Corp. (“**Timbercreek**”) and a deposit insurance facility in the amount of \$120 million from Westmount Guarantee Services Inc. (“**Westmount**”) that was arranged after the success of the YSL launch to repay a prior mortgage that had come due. Timbercreek’s first mortgage was to be repaid using a first mortgage construction loan from Otera Capital Inc. (“**Otera**”) in the amount of approximately \$623 million (the “**YSL Construction Loan**”). The YSL Construction Loan was arranged after the successful launch of YSL.

55. The YSL Construction Loan required equity of \$75 million. Mr. Casey represented to lenders that these funds had been raised from equity investments in YSL LP. Mr. Casey and YSL Inc. guaranteed that the investments would be repaid with interest.

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56. Indeed, Mr. Casey and YSL Inc. even agreed to grant one of the so-called limited partners, 247625 Ontario Inc. (“**247 Inc.**”) a mortgage over the YSL lands to secure its \$20 million “equity” investment. Mr. Casey told Cresford’s staff that he had personally borrowed the funds from 247 Inc. to invest in YSL, but this is not true. YSL Inc.’s corporate predecessor borrowed the funds, and YSL Inc. is liable for them. Although the mortgage has not yet been registered on title, the funds advanced by 247 Inc. (like the so-called equity investments in Halo and Clover described above) were high interest secured debt in all but name.

C. CRESFORD’S MANAGEMENT IDENTIFIES CASH SHORTFALLS

57. Beginning in mid-2018, Cresford’s management team identified significant cash shortfalls in the Clover and Halo projects. In late 2018, after the launch of YSL, a cash shortfall was identified in the 33 Yorkville Project. Each of these projects could (and still can) be completed successfully. But each project requires additional equity funding, and Mr. Casey has been unwilling or unable to provide or secure that funding.

(i) Clover cash shortfall

58. Clover is currently under construction. Construction costs are funded through the Clover Construction Loan, which is described above. These costs are carefully monitored by Altus, the project inspector hired by QuadReal (although paid by Clover Inc.). Clover Inc. must provide detailed information about the status of construction, and the projected cost to complete the project, in order to secure the advances that it needs to pay contractors. Clover Inc. is responsible for cost overruns, and if projected costs exceed the original budget, then Clover Inc. must fund the increased costs before further funds will be advanced.

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59. As noted, Clover is a 44-story condominium tower. Clover Inc. (through its contractors and suppliers) had to purchase a significant volume of steel and other material in order to build the project. In 2018, the price of steel and other construction materials increased significantly, primarily as a result of tariffs imposed by the United States. At the same time, unions representing the workers required to build Clover negotiated new agreements that significantly increased labour costs. These factors significantly increased the cost of building the Clover project, and all of the other condominium developments in Toronto.

60. In addition, the original construction schedule proposed for the Clover project was very aggressive. After construction began, it became clear that the original schedule was unrealistic. The delay further increased construction and project costs.

61. By the fall of 2018, Ms. Athanasoulis, and the rest of Cresford's senior management team, advised Mr. Casey that Clover would require an additional \$50 million to complete construction. Though this additional funding requirement would mean that no profit would be earned on this project, all lenders, trades and costs would be paid in full and Cresford could continue as a going concern with a solid reputation. Cresford funded some of the Clover obligations using fees earned on other projects, but a shortfall of \$37 million remains.

(ii) *Halo cash shortfall*

62. Cresford faces a similar cash shortfall on the Halo project, for substantially the same reasons. Halo construction costs increased substantially as a result of the increased costs of steel and other materials. In addition, the aggressive schedule originally proposed for the Halo project proved unachievable.

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63. Halo Inc. awarded a number of construction contracts in November 2018. When the contracts were awarded, Cresford's management estimated that the total overrun would be \$45 million. Some of the shortfall has been funded using fees earned on other projects, leaving a \$38 million funding shortfall for the Halo project. Though this additional funding requirement would mean that no profit would be earned on the Halo project, all lenders, trades and costs would be paid in full, and Cresford could continue as a going concern with a solid reputation.

(iii) 33 Yorkville cash shortfall

64. In late 2018, Cresford's construction team hired a third party peer review cost consultant, CB Ross, to assess the construction budget for 33 Yorkville to confirm the magnitude of anticipated cost overruns. As a result of this review, the projected cost of the project that had been presented by the construction team was confirmed. Based on the new estimate, 33 Yorkville is facing a cash shortfall of approximately \$65 million. Though an additional \$65 million funding requirement would mean that only nominal profit would be earned on this project, all lenders, trades and costs would be paid in full, and Cresford could continue as a going concern with a solid reputation.

(iv) Casa III

65. As noted, Mr. Casey used funds earned from earlier projects to fund overruns on later projects. One of these earlier projects was Casa III, a luxury condominium that was owned by 50 Charles Street Limited and registered in August 2018. Funds earned from Casa III were used to pay amounts due on other projects, which left Casa III without the funds required to make the final payments that it owed. The final work on Casa III, which will cost approximately \$4.5 million,

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cannot be completed. The owner of Casa III already owes approximately \$5 million to construction contractors and real estate contracts. It is unable to fund either the outstanding payables or the construction required to complete the project, leaving the building and landscaping unfinished for the past two years.

(v) *Mr. Casey proved unwilling or unable to address Cresford's cash flow issues*

66. Mr. Casey was unwilling or unable to provide an adequate solution – or any solution – to Cresford's cash flow problems. As noted, Mr. Casey told Ms. Athanasoulis for years that he had substantial assets available to him. Mr. Casey refused to use these funds (if they existed) to fund Cresford's business. The only funds invested in Clover, Halo, 33 Yorkville and YSL were generated from earlier projects that Cresford completed but these projects did not generate nearly enough cash to satisfy the requirements.

67. But taking funds from predecessor projects did not solve the problem. Instead, it caused the cash flow problem to grow and spread. For example, real estate brokers that were owed commissions for previously completed projects (including Cresford's own brokers, employed by Cresford Real Estate Corporation) are owed approximately \$5 million.

(vi) *Cresford's cash flow crisis worsened*

68. The understanding of the overall cash flow issues grew significantly worse over time. The projected cash shortfall across Casa III, Clover, Halo and 33 Yorkville ballooned to a combined \$150 million. Projects were unable to pay contractors what they were owed as payments came due on Casa III and Halo. Clover and 33 Yorkville would soon have the same issue, because Cresford did not have a plan in place, and because Mr. Casey was unwilling to use funds available

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to him personally, to fund the contracts it had entered into. These contractors pressed Cresford's construction staff (who reported to Ms. Athanasoulis) for payment. As the situation grew worse, contractors demanded answers from Ms. Athanasoulis. She did not have those answers. In addition, Cresford could not enter into new construction contracts because it did not have the ability to fund the resulting costs.

(vii) Mr. Casey could not or would not help solve Cresford's cash problems

69. As noted, Mr. Casey had repeatedly represented to Ms. Athanasoulis that he had access to significant funds. Ms. Athanasoulis believed that Mr. Casey could use some of this wealth to solve Cresford's cash problems. In the summer of 2019, however, Mr. Casey told Ms. Athanasoulis that he had substantial mortgages registered against both his cottage and home. Ms. Athanasoulis began to suspect that Mr. Casey was not as wealthy as he claimed, and that he would not be able to contribute the funds that Cresford required.

70. Ms. Athanasoulis' concerns about Mr. Casey were exacerbated by his lavish lifestyle. He told her in the summer of 2019 that he required between \$4 million and \$5 million annually to maintain his lifestyle, and Ms. Athanasoulis learned that funds needed by Cresford had been used for personal purposes. As noted, Cresford had used fees earned on earlier projects to fund some of the cost overruns on later projects. But Mr. Casey prioritized his own interests over Cresford's. For example, in February 2019, when Cresford was desperate for cash, he took approximately \$750,000 from Casa III (which should have been used to pay creditors) to buy a house for his son.

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(viii) The Defendants conduct caused significant mental and emotional harm

71. This caused Ms. Athanasoulis significant stress and anxiety. Ms. Athanasoulis had spent years building Cresford's reputation with Toronto's largest and most reliable contractors and real estate brokers. She developed close personal and professional relationships with many of these contractors and brokers. Her hard work and critical relationships were threatened by Cresford's inability to pay contractors and brokers on time, or at all. She also worried about how contractors and brokers would react when they learned that there were no funds available to pay them. She worried about what would happen to purchasers who had trusted Cresford and paid deposits on condominium units. She worried about what would happen to Cresford's staff if funding was not secured.

(ix) Potential purchaser to solve Cresford's cash flow crisis

72. Ms. Athanasoulis worked diligently to solve Cresford's financial difficulties. She explored a number of potential solutions once it became clear Mr. Casey could not or would not provide the funds that Cresford desperately needed. In the course of these discussions, Mr. Casey suggested that he would consider selling the business to solve the cash flow crisis.

73. Ms. Athanasoulis was ultimately introduced to a well-known Toronto businessman who expressed an interest in buying Cresford's four ongoing projects and other assets. The potential purchaser was, however, only interested in Cresford if Ms. Athanasoulis stayed with the company and continued to operate its business. Mr. Casey was of the same opinion and agreed the opportunity should be explored.

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74. Ms. Athanasoulis discussed the potential sale with Mr. Casey and he authorized her to continue discussions with the potential purchaser. The potential purchaser signed a non-disclosure agreement, and began to evaluate Cresford's business.

75. The potential purchaser offered Ms. Athanasoulis an interest in the business to incentivize her to participate in the transaction and remain with Cresford after the sale.

76. Ms. Athanasoulis told Mr. Casey that, if the purchase was completed, she would have an interest in the purchaser. He did not object, nor did he suggest that Ms. Athanasoulis' potential interest with the purchaser would interfere with her continued role at Cresford.

77. Discussions with the purchaser progressed to the point that the potential purchaser provided Mr. Casey with a non-binding letter of intent ("LOI") setting out the terms of a potential deal in December 2019. The proposed transaction would have addressed Cresford's cash flow issues, injected the proper required equity by paying out the high interest loans and investors, and generated a significant personal profit for Mr. Casey. But Mr. Casey did not accept, or even negotiate to improve, the LOI.

(x) *Mr. Casey tries to conceal Cresford's cash flow crisis*

78. Instead of completing the proposed purchase, or pursuing an alternative solution to Cresford's cash crisis, Mr. Casey focused on concealing that crisis from lenders and other stakeholders.

79. As noted above, Halo Inc. had an obligation to provide Altus with copies of all of its construction contracts. This allowed Altus to (among other things) identify cost overruns. In

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October 2018, Cresford hired Verdi Inc. (“**Verdi**”) to perform concrete forming work on the Halo project. The Verdi contract created a cash shortfall of approximately \$4.5 million. Instead of funding this overrun with equity (or finding outside funding), Mr. Casey directed Cresford’s staff to withhold the Verdi contract and all progress bills from Altus. This was a breach of the Halo Loan Agreement. It was also very short-sighted. Verdi erected a large crane on the Halo site, which is prominently located on Yonge Street, to complete its work. It is only a matter of time before Altus sees the crane, identifies the breach of contract and notifies the affected lenders.

80. The cash flow issues on 33 Yorkville are also urgent. The applicable loan agreements require that 75% of the remaining construction contracts be awarded by January 1, 2020. Awarding these contracts would crystallize cost overruns in the approximate amount of \$65 million, and 33 Yorkville Inc. would have to fund these overruns. Mr. Casey had no plan in place to fund the overruns, so he instructed Cresford’s construction staff to delay awarding the contracts. This breached the 33 Yorkville loan agreements. It is also short-sighted, since the contracts will still need to be awarded, and the cost overruns will need to be addressed.

81. In addition, contractors and real estate brokers already working on the Projects have not been paid on time. The owners of these projects owe approximately \$20 million to contractors and real estate brokers. Many of these amounts are significantly overdue. Mr. Casey has no funding in place to pay the contractors, and several have threatened to sue and/or register liens in accordance with the *Construction Lien Act* if they are not paid immediately.

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D. CONSTRUCTIVE TERMINATION

82. As soon as Ms. Athanasoulis discovered how Mr. Casey had funded Cresford's business, and the need for significant further funding, she urged Mr. Casey to find stable funding for Cresford so it could complete the Projects and comply with its lending agreements. She worked diligently to help him do so, but made it clear she would not help him deceive lenders, contractors or anyone else. As more time passed, and the issues grew more serious, Ms. Athanasoulis' efforts to convince Mr. Casey to address the issues became more urgent and forceful.

83. Despite Ms. Athanasoulis' efforts, Mr. Casey took no steps to rectify the situation.

84. Instead of focusing on the projects that required cash, Mr. Casey told Ms. Athanasoulis that Cresford's sole priority was to satisfy the conditions precedent on the YSL Construction Loan. In order to access that funding, YSL Inc. had to enter into an agreement to sell the retail component of YSL. This was the final funding condition, so once a suitable purchaser was found YSL could access the first tranche of the YSL Construction Loan.

85. As is standard, funds advanced pursuant to the YSL Construction Loan can only be used to fund construction costs on YSL. Thus, funding the YSL Construction Loan would do nothing at all to help Cresford's overall cash position unless YSL diverted funds to other projects. Such diversions would be fraud.

86. Ms. Athanasoulis raised this concern with Mr. Casey, but did not receive a meaningful response. Instead, Mr. Casey sent a non-binding letter of intent purporting to relate to the sale of the retail component of YSL directly to YSL's construction lender, Otera. The letter of intent did not satisfy the condition of the YSL Construction Loan, since an actual agreement of purchase and

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sale was required, no one (including Cresford's management) knew who the purchaser was and the transaction contemplated by the letter of intent did not satisfy the requirements of the YSL Construction Loan in any event. The YSL Construction Loan required that the deposit on the retail component be available to fund construction costs, and such use was prohibited by the letter of intent Mr. Casey provided.

87. Ms. Athanasoulis, and other members of Cresford's management, asked Mr. Casey to clarify these issues. Mr. Casey provided no meaningful response. Instead, he instructed his litigation lawyer, Allan O'Brien, to write to Ms. Athanasoulis and accuse her of breaching her fiduciary duty by interfering with YSL Inc.'s attempts to close the YSL Construction Loan. Mr. O'Brien provided no particulars to support this allegation, because there was no interference.

88. Otera was, understandably, confused by Mr. Casey's e-mail. Ms. Athanasoulis had been responsible for Cresford's relationship with Otera since early 2019, so Otera asked to speak with her. Mr. Casey prohibited her from communicating with Otera, or any other lender, and indicated that he alone would speak to Cresford's lenders.

89. Mr. Casey then went further still, and advised that he alone would deal with *all* of Cresford's key stakeholders including contractors and lenders. He also told Cresford's staff, who previously reported to Ms. Athanasoulis, that they would now report to him directly.

90. Mr. Casey's actions stripped Ms. Athanasoulis of essentially all of her responsibilities as Cresford's president and COO. She was terminated in all but name. But Mr. Casey refused to formalize this termination because he was concerned about how Cresford's key stakeholders, including contractors, lenders, investors and employees, would react.

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91. All of this put Ms. Athanasoulis in an impossible situation. She was nominally an officer of Cresford (and a director of YSL Inc.) but had no ability to understand or affect how Cresford conducted business. She had good reason to believe that Mr. Casey planned to take steps that would violate Cresford's legal obligations and potentially expose her to personal liability.

92. The conduct described above constituted repudiation of Ms. Athanasoulis' employment contract, and constructive termination of her employment by Cresford. By letter dated January 2, 2020, Ms. Athanasoulis wrote to accept this repudiation.

E. DEFAMATION

93. Ms. Athanasoulis' January 2, 2020 letter indicated that she would like to negotiate an amicable separation from Cresford and that, while negotiations were ongoing, she would tell third parties only that she was no longer with Cresford and that all inquiries relating to Cresford should be directed to Mr. Casey.

94. Ms. Athanasoulis did what she said she would do. When lenders, contractors and other stakeholders contacted her, she referred them to Mr. Casey and said nothing about Cresford's business.

95. Unfortunately, Mr. Casey followed the opposite path. Before Ms. Athanasoulis accepted Cresford's repudiation, Mr. Casey began telling lies meant to harm her reputation and blame her for Cresford's cash flow issues. His false and defamatory statements continued after Ms. Athanasoulis' termination.

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96. On December 21, 2019, Mr. Casey told the potential purchaser – who was also Ms. Athanasoulis’ potential business partner – that “people” had invented Cresford’s cash crisis to further their own financial interests. Mr. Casey’s statement obviously referred to Ms. Athanasoulis, since she was the only person in a position to “create” the cash flow crisis and then profit from it. Mr. Casey’s statement was, in essence, an allegation that Ms. Athanasoulis committed a grievous breach of her duties as President by harming Cresford to further her own interests.

97. In addition, on January 2, 2020, Mr. Casey told members of Cresford’s staff that Ms. Athanasoulis had caused Cresford’s cash crisis by selling condominium units for less than they were worth. This, too, was defamatory.

98. Mr. Casey’s defamatory campaign continued. After terminating Ms. Athanasoulis, Mr. Casey hired Ted Dowbiggin, the former president of Cresford Capital. He told Mr. Dowbiggin that Ms. Athanasoulis had devalued Cresford so that she could buy it. Mr. Dowbiggin relayed Mr. Casey’s false allegations to Cresford personnel and others.

99. On January 7, 2020, Mr. Casey met again with the prospective purchaser. At that meeting, Mr. Casey repeated his allegations against Ms. Athanasoulis. He claimed again that “people” had “hidden” Cresford’s profits for their own benefit. It was clear to the potential purchaser that Mr. Casey was referring to Ms. Athanasoulis, and alleging again that she had breached her duties to Cresford in order to further her own financial interests.

100. Ms. Athanasoulis has spent many years building a stellar reputation in the real estate development industry. She is known to be a talented executive who conducts business honestly.

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This reputation is very valuable. Indeed, because of her reputation, Ms. Athanasoulis had the opportunity to acquire an interest in Cresford's business if the purchase transaction described above was completed. That reputation is particularly important now, since Ms. Athanasoulis has been terminated by Cresford and must now seek new opportunities in the industry.

101. Mr. Casey's statements harmed – and were meant to harm – Ms. Athanasoulis' reputation. Mr. Casey's false allegations that she betrayed him would, if believed, make it difficult or impossible for Ms. Athanasoulis to do business with the potential purchaser or other business partners. Potential new employers would, of course, never hire an executive who had tried to destroy her previous employer so its business could be purchased at a discount.

102. Mr. Casey's statements are unquestionably defamatory. They are also entirely false. Ms. Athanasoulis did not – and would not – do anything to harm Cresford. Cresford's cash crisis was (and is) real. It was caused by Mr. Casey's own failure to inject equity into the business, and the secret high interest loans he took out to fool lenders into thinking he had made the equity injections he agreed to make.

F. COMPENSATORY DAMAGES

(i) Notice period

103. Ms. Athanasoulis was constructively dismissed without notice or cause. The defendants are liable for damages in an amount equal to what Ms. Athanasoulis would have earned during the notice period that she was entitled to. Ms. Athanasoulis is entitled to 24 months' notice, having regard to:

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- (a) **Character of employment:** Ms. Athanasoulis was Cresford's most senior employee except for Mr. Casey, with overall responsibility for virtually all aspects of Cresford's business except financing. In that capacity, she successfully executed some of the most ambitious development and construction projects in Canada;
- (b) **Age and length of employment:** Ms. Athanasoulis worked at Cresford for 16 years and is 42 years old;
- (c) **Availability of similar employment:** similar employment is not currently available to Ms. Athanasoulis and will not be available to her for the foreseeable future. There are only a handful of developers in Canada that execute projects of the type, size and scope that Ms. Athanasoulis worked on while she was at Cresford. These developers already have presidents. As a result, Ms. Athanasoulis is unlikely to find comparable employment for at least 24 months.

(ii) *Profit and revenue shares owed*

104. As noted, Ms. Athanasoulis was entitled to \$500,000 per annum, plus benefits. She also was entitled to 0.15% of all revenue earned by Cresford on new projects during her notice period.

105. In addition, and most importantly, Ms. Athanasoulis continued to dedicate her time, energy and talent to Cresford's business because Mr. Casey agreed to pay her 20% of the profits yielded by that business. She is entitled to 20% of all the profits earned by Cresford on the Projects. The Projects are expected to yield profits of \$242 million, with a majority of this coming from YSL, and Ms. Athanasoulis is entitled to 20% of those profits, which are equal to \$48 million.

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G. PUNITIVE AND EXEMPLARY DAMAGES

106. As described above, Ms. Athanasoulis was terminated because she insisted that Mr. Casey deal honestly with Cresford's stakeholders. Cresford's actions, and those of Mr. Casey, demonstrate a wanton and contumelious disregard for Ms. Athanasoulis' rights and warrant an award of punitive and exemplary damages. Those actions also caused significant mental and emotional distress to Ms. Athanasoulis, and an award of aggravated damages is also warranted.

January 21, 2020

GOODMANS LLP
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Lawyers for the Plaintiff, Maria Athanasoulis

MARIA ATHANASOULIS
Plaintiff

- and - DANIEL CASEY *ET AL.*
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

STATEMENT OF CLAIM

GOODMANS LLP

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Lawyers for the Plaintiff, Maria Athanasoulis

B

This is Exhibit "B" referred to in the Affidavit of Maria Athanasoulis, sworn before me this 22nd day of June, 2021.

A handwritten signature in black ink, consisting of several loops and strokes, positioned above a horizontal line.

A Commissioner for Taking Affidavits, etc.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)
JUSTICE *HAINES*)
)

, THE *23* DAY
OF JANUARY, 2020

BETWEEN:

MARIA ATHANASOULIS

Plaintiff

- and -

CRESFORD (ROSEDALE) DEVELOPMENTS INC., EAST DOWNTOWN REDEVELOPMENT PARTNERSHIP, THE CLOVER ON YONGE INC., THE CLOVER ON YONGE LIMITED PARTNERSHIP, 33 YORKVILLE RESIDENCES INC., 33 YORKVILLE RESIDENCES LIMITED PARTNERSHIP, 480 YONGE STREET INC., 480 YONGE STREET LIMITED PARTNERSHIP, YG LIMITED PARTNERSHIP, YSL RESIDENCES INC., YSL RESIDENCES LIMITED PARTNERSHIP, 50 CHARLES STREET LIMITED, 50 CHARLES STREET LIMITED PARTNERSHIP and DANIEL C. CASEY

Defendants

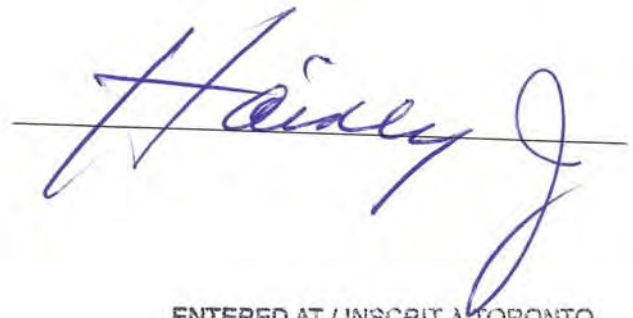
ORDER

THE REQUEST OF the Plaintiff, Maria Athanasoulis for an Order transferring this action, currently Court File No. CV-19-00634836-0000, to the Commercial List was heard in writing this day at 330 University Avenue, Toronto, Ontario.

ON READING the submissions in writing made on behalf of Ms. Athanasoulis:

1. THIS COURT ORDERS that this action is hereby transferred to the Commercial List.

SUPERIOR COURT OF JUSTICE
ENTERED
JAN 24 2020 C.D.
COUR SUPÉRIEURE DE JUSTICE
ENTRÉ



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 28 2020

PER / PAR:



MARIA ATHANASOULIS
Plaintiff

and
DANIEL C. CASEY ET AL.
Defendants

Court File No: CV-19-00634836-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

ORDER

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Lawyers for the Plaintiff, Maria Athanasoulis

C

This is Exhibit "C" referred to in the Affidavit of Maria Athanasoulis, sworn before me this 22nd day of June, 2021.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line and a short vertical stroke.

A Commissioner for Taking Affidavits, etc.

Bankruptcy and Insolvency Act ("Act")

Proof of Claim

(Section 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1), and Paragraphs 51(1)(e) and 66.14(b) of the Act)

All notices or correspondence regarding this claim must be forwarded to the following address:

Creditor Name: **Maria Athanasoulis** Telephone: **(416) 849-6895 (Counsel)**

Address: **Creditor:** Fax: **(416) 979-1234 (Counsel)**

**44 Glenallan Rd, North
York, Ontario, M4N 1G8**

Counsel to Creditor:

Goodmans LLP

**3400 - 333 Bay Street,
Toronto, Ontario, M5H
2S7**

Email: **mdunn@goodmans.ca (Counsel)**
cfox@goodmans.ca (Counsel)

Account No.: _____

In the matter of the bankruptcy (or the proposal, or the receivership) of **YG Limited Partnership and YSL Residences Inc.** and the claim of **Maria Athanasoulis**, creditor.

I, **Maria Athanasoulis**, of **North York, Ontario**, do hereby certify:

1. That I am a creditor of the above-named debtors.
2. That I have knowledge of all the circumstances connected with the claim referred to below.
3. That the debtor was, at the date of bankruptcy, (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 30th day of April, 2021, and still is, indebted to the creditor **in the amount of \$19 million, as described in Schedule "A" hereto and in the Statement of Claim attached as Schedule "B".** ~~in the sum of \$ —, as specified in the statement of account (or affidavit) attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)~~

4. (Check and complete appropriate category.)

A. UNSECURED CLAIM (AFFECTED CLAIM) OF \$ [See Schedule A and Appendix B hereto.]

(other than as a customer contemplated by Section 262 of the Act)

That in respect of this debt, I do not hold any assets of the debtor as security and (Check appropriate description.)

Regarding the amount of \$ 19,000,000 I do not claim a right to a priority.

Regarding the amount of \$ _____ I claim a right to a priority under Section 136 of the Act.

(Set out on an attached sheet details to support priority claim.)

B. SECURED CLAIM OF \$ _____

That in respect of this debt, I hold assets of the debtor valued at \$ _____ as security, particulars of which are as follows:

(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

C. CONSTRUCTION LIEN CLAIM OF \$ _____

That in respect of this debt I have registered a lien on title to the Debtors' real property in accordance with the *Construction Act* (Ontario), particulars of which are as follows:


(Give full particulars of the lien, including the date on which the lien was registered and the value secured by such lien, and attach a copy of any relevant documents, including any statement of claim).

5. That, to the best of my knowledge, I am (or the above-named creditor is) (or am not or is not) related to the debtor within the meaning of Section 4 of the Act, and have (or has) (or have not or has not) dealt with the debtor in a non- arm's-length manner.

6. That the following are the payments that I have received from, the credits that I have allowed to, and the transfers at undervalue within the meaning of Subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of Section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Subsection 2(1) of the Act: (Provide details of payments, credits and transfers at undervalue.)

Dated at North York, this 10th day of June, 2021.


Witness


Creditor Authorized Signatory

SCHEDULE “A” TO THE PROOF OF CLAIM OF MARIA ATHANASOULIS

A. Ms. Athanasoulis’ Action Against Cresford

1. Maria Athanasoulis is the former President and Chief Operating Officer of Cresford (Rosedale) Developments Inc. and its affiliates and subsidiaries (collectively, “**Cresford**”), including the debtors, YG Limited Partnership and YSL Residences Inc. (together, “**YSL**” or the “**YSL Debtors**”). She is also the Plaintiff in the Action having Court File No. CV-20-00635914-00CL (the “**Action**”) against Cresford, including YSL.

2. The Action seeks (among other things) damages for wrongful dismissal and damages for breach of an oral agreement that the owner of each Cresford project, including YSL, would pay Ms. Athanasoulis 20% of the profits earned on each project (the “**Profit Sharing Agreement**”).

B. The Profit Sharing Agreement

3. The Profit Sharing Agreement was an agreement entered into between Ms. Athanasoulis and the owners of each Cresford development project (the “**Owners**”). The YSL Debtors own Yonge Street Living Residences (the “**YSL Project**”), and they are bound by the Profit Sharing Agreement.

4. The terms of the Profit Sharing Agreement were negotiated between Ms. Athanasoulis and Mr. Dan Casey who was, at the time, the sole officer and director of each of the Owners, including the YSL Debtors.

5. The YSL Debtors are bound by the Profit Sharing Agreement. In fact, the YSL Debtors specifically admitted that they are bound by the Profit Sharing Agreement in their Statement of Defence and Counterclaim.

(i) *The Terms of the Profit Sharing Agreement*

6. The terms of the Profit Sharing Agreement were initially negotiated in 2014. The parties agreed that each Owner would pay Ms. Athanasoulis 10% of the profits earned on each project undertaken by an Owner (each, a “**Project**”) when the Project was completed and profits were realized.

7. In November 2014, Ms. Athanasoulis drafted an employment agreement based on a form of agreement that Cresford had used for another employee. The draft employment agreement prepared by Ms. Athanasoulis, which is attached as **Appendix “A”**, specified (among other things) that Ms. Athanasoulis’ entitlement under the Profit Sharing Agreement would not be extinguished if Ms. Athanasoulis left Cresford or was terminated by it. Ms. Athanasoulis provided the draft agreement to Mr. Casey, but does not recall whether Mr. Casey signed it. Ms. Athanasoulis does not have a signed copy of the agreement.

8. The draft agreement is between Ms. Athanasoulis and “Cresford Developments.” Although each Owner is not specifically named in the draft agreement, it was these Owners that had the ability to pay a share of the profits. “Cresford Developments” did not have any right to receive profits from the Owners, and it therefore had no ability to pay these profits to Ms. Athanasoulis. Ms. Athanasoulis and Mr. Casey agreed that the obligation to pay profits would rest with the Owners.

9. In 2015, Ms. Athanasoulis and Mr. Casey agreed that the Profit Sharing Agreement would be amended to provide that Ms. Athanasoulis would receive 15% of the profits earned on each project.

10. In October 2018, the parties (including the YSL Debtors) agreed that Ms. Athanasoulis' entitlement would increase to 20% of the profits earned on each Project. This included the YSL Project.

11. In late 2018 and early 2019, Ms. Athanasoulis also pressed Mr. Casey to properly document the Profit Sharing Agreement. Ms. Athanasoulis and Mr. Casey agreed that John Papadakis, a lawyer with Blaney McMurtry LLP, would reduce the terms of the Profit Sharing Agreement into a formal agreement.

12. The terms of the Profit Sharing Agreement were discussed and confirmed at a meeting with Mr. Papadakis on February 16, 2019. Specifically, Mr. Casey and Ms. Athanasoulis both confirmed during the meeting that:

- (a) Although it had never been reduced to writing, the Profit Sharing Agreement was an existing agreement that had been in place since 2014;
- (b) Under the Profit Sharing Agreement, Ms. Athanasoulis was entitled to 20% of the profits earned on each of the Projects, including the YSL Project; and
- (c) The Profit Sharing Agreement was an agreement between Ms. Athanasoulis and each Owner, including the YSL Debtors.

13. Ms. Athanasoulis never received a written Profit Sharing Agreement for her review and approval. She does not know why a written copy of the Profit Sharing Agreement was not provided to her, since Mr. Casey promised that it would be.

14. Although Ms. Athanasoulis was entitled to be paid a share of the YSL Debtors' profits, she was never a shareholder of the YSL Debtors.

(ii) The YSL Debtors' repudiation of the Profit Sharing Agreement

15. As noted, Ms. Athanasoulis commenced the Action, which seeks (among other things) a declaration that she is entitled to 20% of the profits earned on each of Cresford's Projects including the YSL Project. In their Defence and Counterclaim, the Defendants (including the YSL Debtors) admit the existence of the Profit Sharing Agreement but claim that Ms. Athanasoulis' entitlement was conditional on her continued employment by Cresford. They claim that Ms. Athanasoulis effectively waived her rights under the Profit Sharing Agreement by accepting her constructive termination (which is described below).

16. By refusing to honour or acknowledge the Profit Sharing Agreement, the YSL Debtors repudiated the essential terms of that agreement, thereby crystallizing Ms. Athanasoulis' claim against them for breach of contract. The YSL Debtors are liable for the damages caused by their repudiation of the Profit Sharing Agreement.

(iii) Damages for breach of the Profit Sharing Agreement

17. Ms. Athanasoulis is entitled to damages that will put her in the position that she would occupy but-for the YSL Debtors' breach of the Profit Sharing Agreement. Specifically, she is entitled to compensation for the lost opportunity to receive 20% of the profits from the YSL Project.

18. As described in detail in Ms. Athanasoulis' Statement of Claim, a copy of which is attached as **Appendix "B"**, as of the date of YSL's repudiation of the Profit Sharing Agreement, YSL was in a position to earn substantial profits. In fact, Cresford's internal documents forecast a profit of in excess of \$90 million as of February 2020. Thus, as of the date of the YSL Debtors' repudiation

of the Profit Sharing Agreement, Ms. Athanasoulis' claim under that agreement was worth approximately \$18 million.

C. Wrongful termination claim

(i) Cresford's wrongful termination of Ms. Athanasoulis

19. The corporate defendants in the Action (including the YSL Debtors) are all part of a group of companies engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario using the brand name Cresford.

20. Ms. Athanasoulis was hired by Cresford in 2004, and worked in progressively more senior positions thereafter. These positions are described in more detail in Ms. Athanasoulis' Statement of Claim.

21. Until 2014, Ms. Athanasoulis earned a salary of \$300,000 plus benefits. Recognizing Ms. Athanasoulis' value, Mr. Casey agreed to (among other things) increase her salary to \$500,000 per annum in 2014 and pay her 0.15% of Cresford's sales on every project going forward.

22. As described in Ms. Athanasoulis' Statement of Claim, Ms. Athanasoulis discovered how Mr. Casey had funded Cresford's business, and the need for significant further funding in 2018. She urged Mr. Casey to find stable funding for Cresford so it could complete the Projects and comply with its lending agreements. She worked diligently to help him do so, but made it clear she would not help him deceive lenders, contractors or anyone else. As more time passed, and the issues grew more serious, Ms. Athanasoulis' efforts to convince Mr. Casey to address the issues became more urgent and forceful.

23. Despite Ms. Athanasoulis' efforts, Mr. Casey took no steps to rectify the situation.

24. Ms. Athanasoulis, and other members of Cresford's management, asked Mr. Casey to clarify these issues. Mr. Casey provided no meaningful response. Instead, he instructed his litigation lawyer, Allan O'Brien, to write to Ms. Athanasoulis to accuse her of breaching her fiduciary duties to Cresford. Mr. O'Brien provided no particulars to support this allegation because there was no such breach.

25. Mr. Casey then prohibited Ms. Athanasoulis from communicating with any of Cresford's lenders, and indicated that he alone would speak to these lenders.

26. Mr. Casey then went further still, and advised that he alone would deal with *all* of Cresford's key stakeholders, including contractors. He also told Cresford's staff, who previously reported to Ms. Athanasoulis, that they would now report to him directly.

27. Mr. Casey's actions stripped Ms. Athanasoulis of essentially all of her responsibilities as Cresford's president and COO. She was terminated in all but name. On December 20, 2019, Mr. Casey even told Cresford staff that Ms. Athanasoulis was gone and would not be returning. He said that Cresford would be better and stronger without her.

28. Mr. Casey refused to formalize this termination because he was concerned about how Cresford's key stakeholders, including contractors, lenders, investors and employees, would react.

29. All of this put Ms. Athanasoulis in an impossible situation. She was nominally an officer of Cresford (and a director of YSL Residences Inc.) but had no ability to understand or affect how Cresford conducted business. She had good reason to believe that Mr. Casey planned to take steps that would violate Cresford's legal obligations and potentially expose her to personal liability.

30. The conduct described above, and set out in more detail in Ms. Athanasoulis' Statement of Claim, constituted repudiation of Ms. Athanasoulis' employment contract, and constructive termination of her employment by Cresford. By letter dated January 2, 2020, Ms. Athanasoulis wrote to accept this repudiation.

(ii) Damages for wrongful termination

31. Ms. Athanasoulis was constructively dismissed without notice or cause. The Defendants, including the YSL Debtors, are liable for damages in an amount equal to what Ms. Athanasoulis would have earned during the notice period to which she was entitled. Ms. Athanasoulis is entitled to 24 months' notice, having regard to:

- (a) **Character of employment:** Ms. Athanasoulis was Cresford's most senior employee except for Mr. Casey, with overall responsibility for virtually all aspects of Cresford's business except financing. In that capacity, she successfully executed some of the most ambitious development and construction projects in Canada;
- (b) **Age and length of employment:** Ms. Athanasoulis worked at Cresford for 16 years and was 42 years old at the time of her termination;
- (c) **Availability of similar employment:** similar employment is not currently available to Ms. Athanasoulis and will not be available to her for the foreseeable future. There are only a handful of developers in Canada that execute projects of the type, size and scope that Ms. Athanasoulis worked on while she was at Cresford. These developers already have presidents. As a result, Ms. Athanasoulis is unlikely to find comparable employment for at least 24 months.

(iii) Punitive and exemplary damages

32. As described above, and in the Statement of Claim, Ms. Athanasoulis was terminated because she insisted that Mr. Casey deal honestly with Cresford's stakeholders. Cresford's actions demonstrate a wanton and contumelious disregard for Ms. Athanasoulis' rights and warrant an award of punitive and exemplary damages. Those actions also caused significant mental and emotional distress to Ms. Athanasoulis such that an award of aggravated damages is also warranted.

(iv) YSL's liability for wrongful termination

33. Ms. Athanasoulis was simultaneously employed by each of the Cresford companies, including the YSL Debtors. They are jointly and severally liable for her wrongful termination.

34. Ms. Athanasoulis did not have a written employment agreement. Accordingly, YSL's liability is determined by the common law.

35. Cresford functioned as a single, integrated unit under the ultimate control of Mr. Casey. Each Cresford company operated from the same premises, and all were marketed as being part of the same entity. Each Cresford company had the same director and shareholder, Mr. Casey.

36. One important aspect of Cresford's integrated business was Mr. Casey's practice of moving funds between companies to meet liabilities. Mr. Casey routinely directed Cresford's accounting personnel to use funds belonging to one company to satisfy debts owed by another.

37. Cresford was in the business of buying, developing, marketing and selling new condominiums. Each new condominium project was owned by one of the Owners, and Ms. Athanasoulis provided her services directly to each of the Owners. Although the Owners sometimes paid fees to other Cresford entities, there was no written management agreement setting

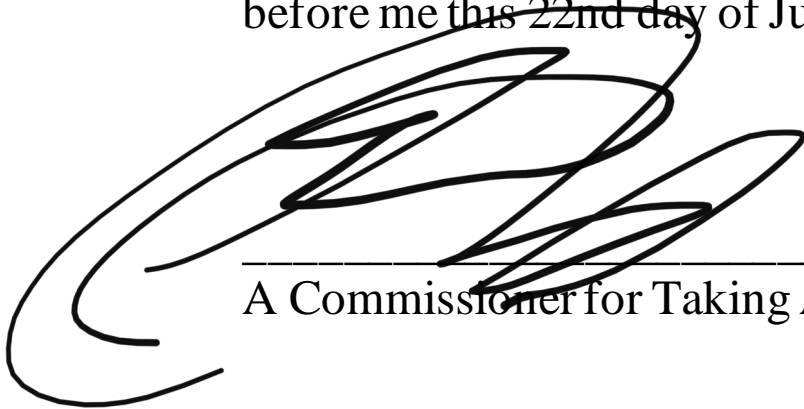
out what fees would be paid and when. The timing and quantum of the fee payments were determined by Ms. Casey.

38. In light of the foregoing, the YSL Debtors and the other Cresford companies are common employers who are jointly and severally liable with the other Defendants in the Action for Ms. Athanasoulis' wrongful termination damages.

7173246

D

This is Exhibit "D" referred to in the Affidavit of Maria Athanasoulis, sworn before me this 22nd day of June, 2021.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and curves, positioned above a horizontal line.

A Commissioner for Taking Affidavits, etc.

PROFORMA SUMMARY			
REVENUE	Amount	Per NSA	Per GFA
Residential Units/Parking/Lockers/Retail/Office			
Units	1,123,656,300	1551	1389
Profit on Upgrades	1,780,660		
Incentives	-11,210,151		
Residential Parking	19,920,000	28	25
Lockers	3,705,000	5	5
Retail (No HST)	97,764,364	1332	929
Commercial Parking			
Office Space (No HST)	46,866,757	484	492
Total	1,282,482,930	1434	1271
HST			
Less HST included on Res	-107,208,185	-148	-106
Recoverables			
Guest Suites	2,310,000		
Development / Education charge recovery	23,713,894	33	23
S37 and Parkland recovery	15,041,600	21	15
Tarion enrollment recovery	1,511,515	2	1
TOTAL REVENUE	1,217,851,754	1361	1206

COSTS	Amount	Per NSA	Per GFA
Land and levies			
Land at current value	195,000,000	218	193
Land transfer tax & redemption premium	19,146,664	21	19
Development levies & building permits	70,284,159	79	70
Total	284,430,823	318	282
Construction			
Construction contract	362,163,378	405	359
Contingency	23,813,719	27	24
TI Allowance - Retail/Office	4,841,607	5	5
Construction exclusions	21,226,760	24	21
Total	412,045,464	461	408
Design			
Architect & Interior Design	9,020,000	10	9
Structural engineer	1,173,698	1	1
Mechanical engineer	820,000	1	1
Planning consultant/legal	847,691	1	1
Secondary consultants	4,277,051	5	4
Total	16,138,440	18	16
Legal & Administration			
Legal Fees - Finance	600,000	1	1
Legal Fees - Misc	1,500,000	2	1
Legal Fees - Unit Closings	1,106,000	1	1
Administration fees/Development fees	29,725,000	33	29
Insurance-Liability & Builders Risk	3,110,449	3	3
Tarion Fees	1,614,600	2	2
Realty taxes	13,683,305	15	14
Total	51,339,354	57	51
Marketing/Advertising			
Advertising/Agency fees	24,577,815	27	24
Marketing-signage	250,000	0	0
Sales Commissions - Res&Com	49,687,009	56	49
Sales office - construction/model suite	1,700,000	2	2
Sales Office - operations	1,155,000	1	1
Total	77,369,823	86	77
Operating Expenses & Customer Service			
Operating expenses	2,583,113	3	3
Customer service	2,210,000	2	2
Total	4,793,113	5	5
Finance			
Financing fees	15,655,108	18	16
Marketing & ECDI bond fees	7,365,264	8	7
Miscellaneous	2,123,695	2	2
Interest due on purchasers deposits	2,630,840	3	3
Interest earned on purchasers deposits	-2,155,591	-2	-2
Interest on Land Loan	6,163,818	7	6
Interest on Construction loan	67,720,599	76	67
Mezzanine interest	61,252,252	68	61
Preconstruction VTB Interest	7,514,605	8	7
Preconstruction Loan Interest	22,074,805	25	22
Total	190,345,396	213	189
Contingency			
Development Contingency	15,530,539	17.4	15.4
GROSS PROJECT COSTS	1,051,992,951	1,176	1042
Offsetting Income			
Occupancy Fees	-9,597,033	-11	-10
NET PROJECT COSTS	1,042,395,918	1,165	1,033

PROFIT	Amount	Per NSA	Per GFA
Add: Adjustment for current land value	37,500,000	42	37
Project Profit Before Accrued Interest	274,208,088	307	272
Profit (Before Accr Int) % of Revenue	22.5%		
Project Profit Net of Accrued Interest	212,955,836	238	211
Profit (Net of Accr Int) % of Revenue	17.5%		
Equity Loan Interest	-59,214,572		
Equity Return	42,900,336		
Net Profit (after Equity Interest)	196,641,600		
Profit Net of Acc Int & Eq Cost	16.1%		

FUNDING SOURCES	Amount	% of Funds
Construction Loan	613,217,774	62.5%
Deposits	153,609,495	15.7%
Deferred Costs	26,816,397	2.7%
Total	793,643,666	80.9%
Mezzanine Loan	75,000,000	7.6%
Cresford Equity	112,500,000	11.5%
Total	187,500,000	19.1%
TOTAL SOURCES OF FUNDS	981,143,666	100%
Mezzanine Accrued Interest	61,252,252	
TOTAL PROJECT FOR FINANCING	1,042,395,918	

*Includes Any Appraisal Surplus Equity if Applicable

PROJECT INFORMATION	
Site Area:	40,522 sf
Floors Above Grade:	85
Floors Below Grade:	4
GFA Above - Residential:	808,908 sf
GFA - Office	95,228 sf
GFA - Retail:	105,293 sf
Total GFA:	1,009,429 sf
GFA Below:	241,876 sf
NSA - Residential:	724,283 sf
NSA - Office	96,832 sf
NSA - Retail:	73,378 sf
Total NSA:	894,493 sf
Efficiency:	90%
Density Factor:	24.9 x
Res Condo Units:	1,106
Total Number of Units:	1,106
Average Unit Size:	655 sf
Saleable Parking Stalls:	166
Saleable Lockers:	494

MANAGEMENT FEES	
Development Mgmt:	\$29,725,000
Sales Mgmt:	\$16,699,371
Construction Admin:	\$2,656,896
Construction Mgmt:	\$10,381,350
TOTAL:	\$59,462,617

MAJOR SCHEDULE DATES	
Excavation	Oct-19
Formwork Commences:	Apr-20
Formwork at Grade Commences:	Jan-21
Phase 1 Occupancy:	Sep-23
Phase 2 Registration:	Apr-24
Phase 2 Top Off:	Sep-24
Phase 2 Occupancy:	Apr-25
Phase 2 Registration:	Jun-25

SALES STATISTICS		
	Units	\$
Total Sold	786	661,289,300
Total Remaining	320	462,386,000
Total	1,106	1,123,675,300
Parking - Sold	76	9,120,000
Parking - Remaining	94	11,280,000
Total	170	20,400,000

E

This is Exhibit "E" referred to in the Affidavit of Maria Athanasoulis, sworn before me this 22nd day of June, 2021.

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

A Commissioner for Taking Affidavits, etc.

From: [Schwill, Robin](#)
To: [Dunn, Mark](#)
Cc: [Bobby Kofman](#); [Mitch Vininsky](#); [Murtaza Tallat](#)
Subject: RE: YSL - Square Feet Discrepancy
Date: Wednesday, June 16, 2021 4:30:26 PM

Comes from Concord.

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: June 16, 2021 3:47 PM
To: Schwill, Robin <rschwill@dwpv.com>
Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Murtaza Tallat <mtallat@ksvadvisory.com>
Subject: RE: YSL - Square Feet Discrepancy

External Email / Courriel externe

Thank you. Could you let me know who advised you of that? Is this a conclusion that FM reached on its own, or does it come from Cresford?

***** Attention *****

This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, or wish to unsubscribe, please advise us immediately at privacyofficer@goodmans.ca and delete this email without reading, copying or forwarding it to anyone. Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, ON, M5H 2S7, www.goodmans.ca. You may unsubscribe to certain communications by clicking [here](#).

From: Schwill, Robin <rschwill@dwpv.com>
Sent: Wednesday, June 16, 2021 3:46 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Murtaza Tallat <mtallat@ksvadvisory.com>
Subject: YSL - Square Feet Discrepancy

Mark,

We have been advised that the 73,000 sq. ft. is the gross retail area, while the 60,000 sq. ft. is the net leasable area (having regard to non-leasable servicing areas, mechanical rooms and the like).

Accordingly, the sq. ft. used in the 2019 appraisal was likely overstated.

Robin B. Schwill | [Bio](#) | [vCard](#)
T 416.863.5502
rschwill@dwpv.com

DAVIES

155 Wellington Street West
Toronto, ON M5V 3J7
dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

This email may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply email or by telephone. Delete this email and destroy any copies.

F

This is Exhibit "F" referred to in the Affidavit of Maria Athanasoulis, sworn before me this 22nd day of June, 2021.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

A Commissioner for Taking Affidavits, etc.

From: [Dunn, Mark](#)
To: [Schwill, Robin](#)
Cc: [Armstrong, Christopher](#); [Fox, Carlie](#)
Subject: YSL Retail
Date: Wednesday, June 16, 2021 7:56:51 PM
Attachments: [YSL_plans.zip](#)
[181115 YSL Area Calculations Update.pdf](#)
[PL171277-OCT-23-20181.pdf](#)

Robin,

Further to our discussion this afternoon, I am attaching the following documents:

- These were completed by Extreme Measures, a leading commercial measurement firm. These match the architectural drawings and show a leasing retail space totaling 79,669. I understand that the area was reduced on the architectural drawings to remove an area on the 2nd floor surrounding the escalator to be conservative;
- Architectural drawings from November 15, 2018. The gross areas is 94,000+, not the 73,000 gross area referenced in your earlier e-mail based on information from Concord;
- The LPAT decision for the project, which approves retail/office/institutional of 18,629, or 200,520 square feet.

I sent to you earlier the valuation summary for the retail which includes, at pages 8-12, a summary of the saleable areas based on the architectural drawings. I understand that this was reduced from the approximately 73,000 estimated by Extreme Measures to be conservative by reducing the circulation area on the second floor.

Mark Dunn

Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

Cresford Developments

Version: **FP1A** Prepared: **02/05/2019**
 Measured: **N/A**

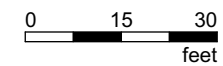
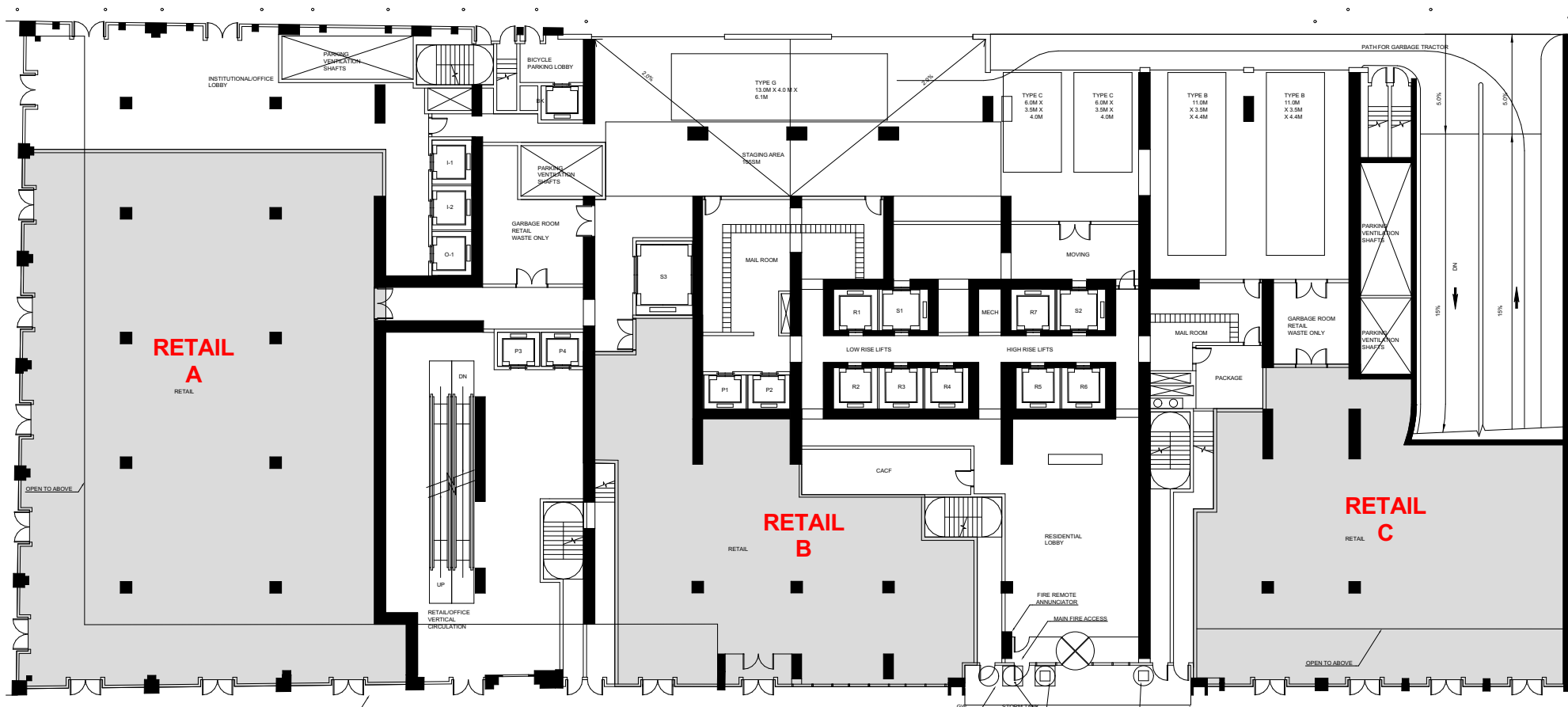
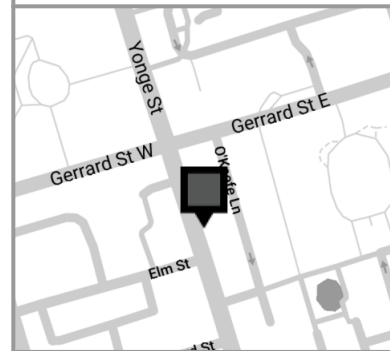
YSL
 363-391 Yonge Street
 Toronto, Ontario
 Canada

Floor 01

Gross Leasable Area*

Retail A: 7,658 sq ft
 Retail B: 3,653 sq ft
 Retail C: 4,032 sq ft

*Area determined according to:
 ANSI/BOMA Z65.5-2010 Retail



This work product has been prepared by Extreme Measures Inc. pursuant to a contract with the Client for the sole benefit of and use by the Client. No third party may rely on this work product without the receipt of a reliance letter from Extreme Measures Inc.

This work product or portions thereof relies upon information provided by the Client and/or from third parties introduced by the Client that has not been independently verified by Extreme Measures Inc. Extreme Measures Inc. is not liable for any errors, omissions or inaccuracies that may result from such information.

Cresford Developments

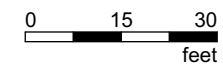
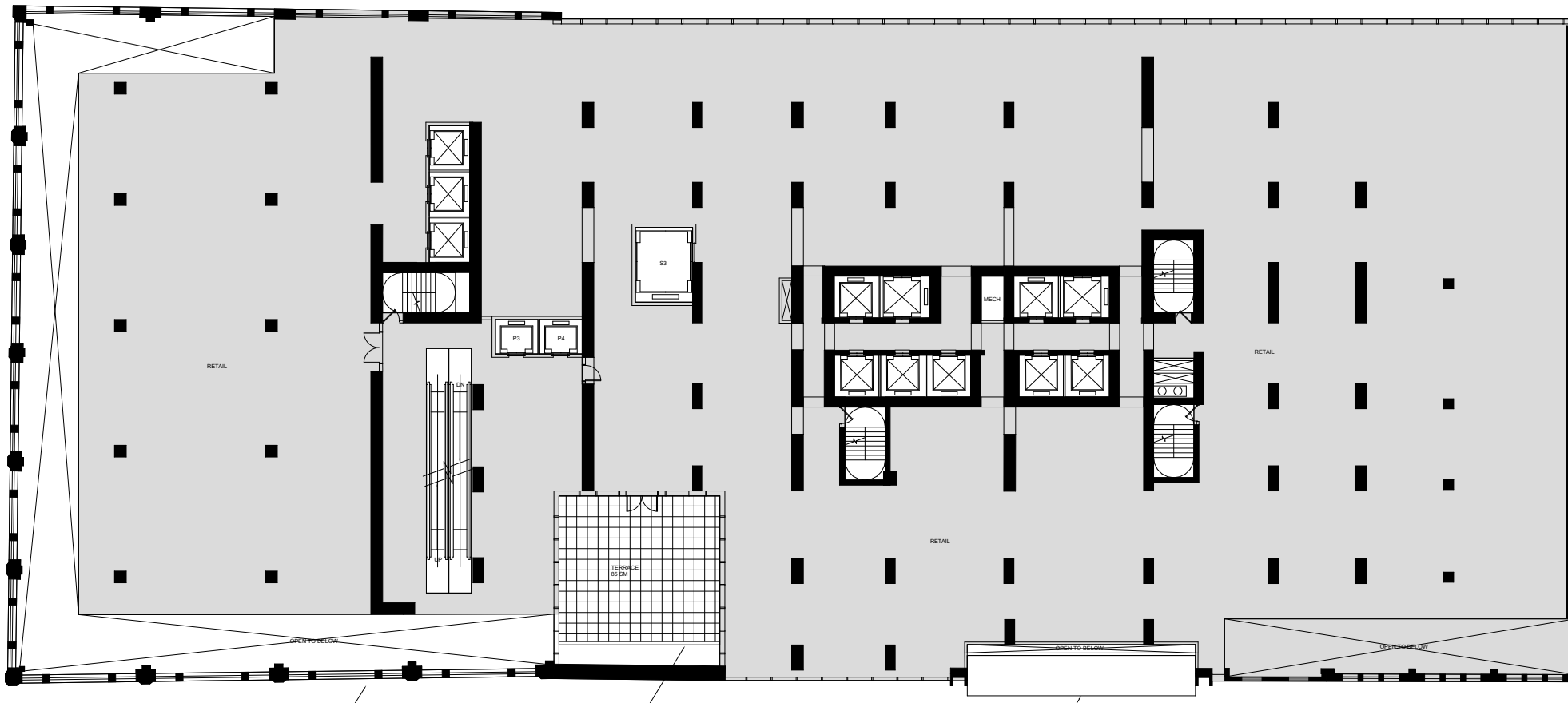
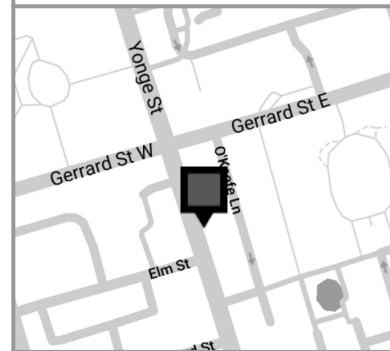
Version:	Prepared: 02/05/2019
FP1A	Measured: N/A

YSL
 363-391 Yonge Street
 Toronto, Ontario
 Canada

Floor 02

Gross Leasable Area*
32,688 sq ft

*Area determined according to:
 ANSI/BOMA Z65.5-2010 Retail



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Cresford Developments

Version:	Prepared: 02/05/2019
FP1A	Measured: N/A

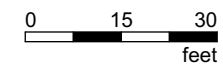
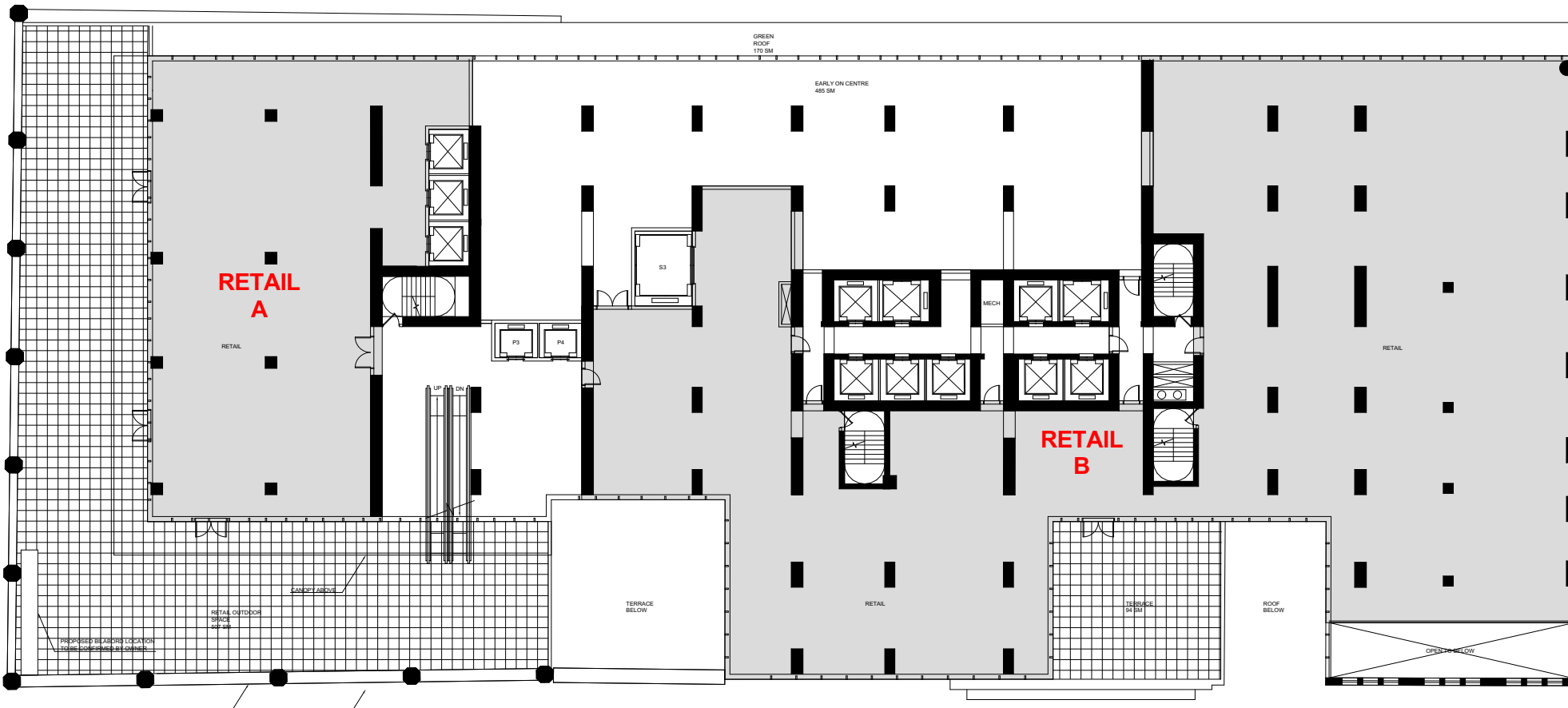
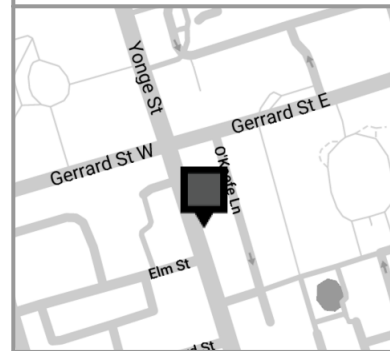
YSL
363-391 Yonge Street
Toronto, Ontario
Canada

Floor 03

Gross Leasable Area*

Retail A:	4,694 sq ft
Retail B:	13,979 sq ft

*Area determined according to:
ANSI/BOMA Z65.5-2010 Retail



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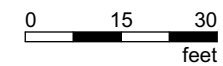
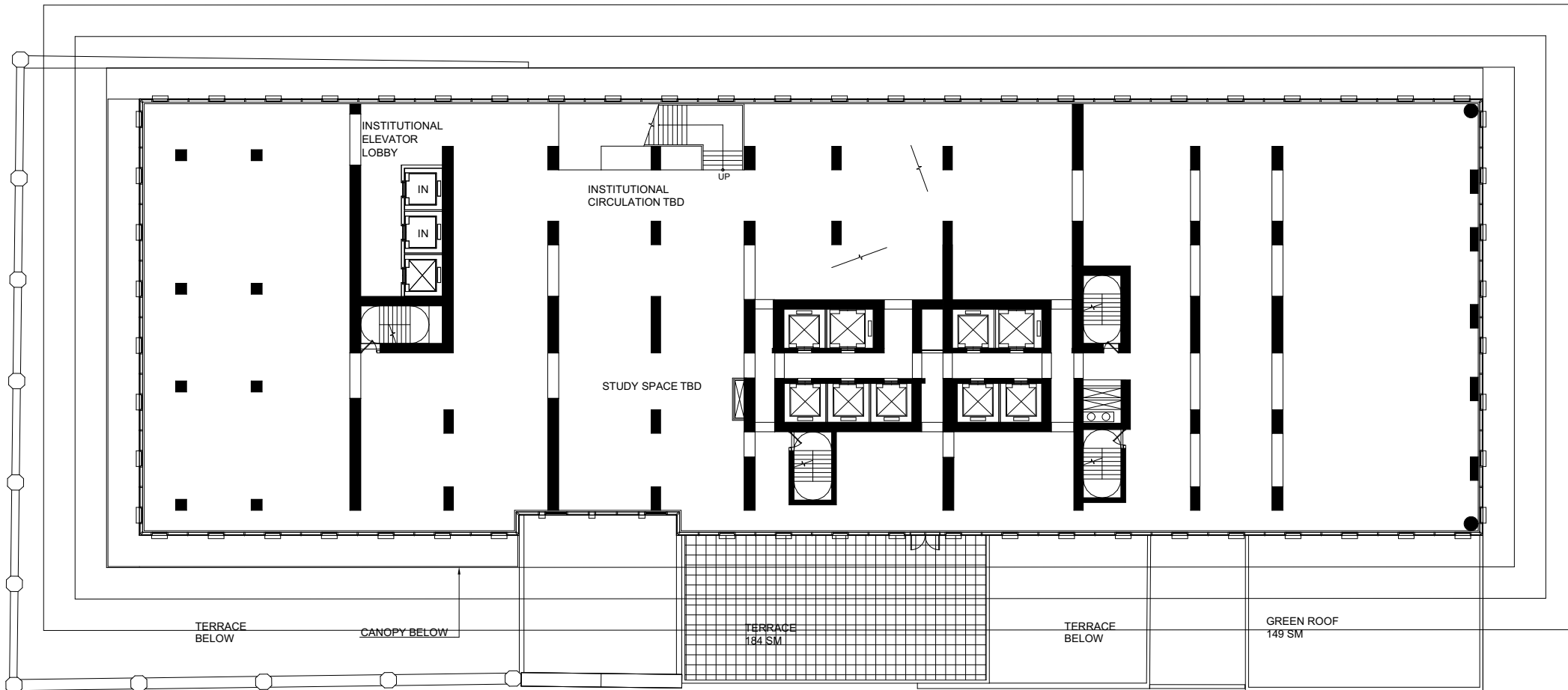
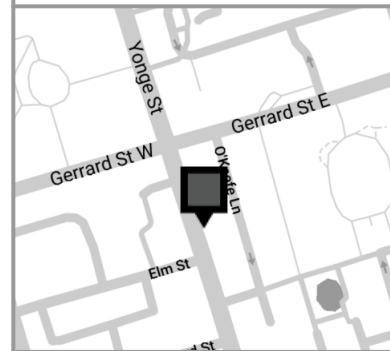
Version: *FP1A* Prepared: 02/05/2019
Measured: N/A

YSL
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Toronto, Ontario
Canada

Floor 04

Gross Floor Area*
25,407 sq ft

*Area determined according to:
Provided Lease



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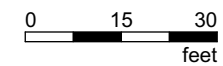
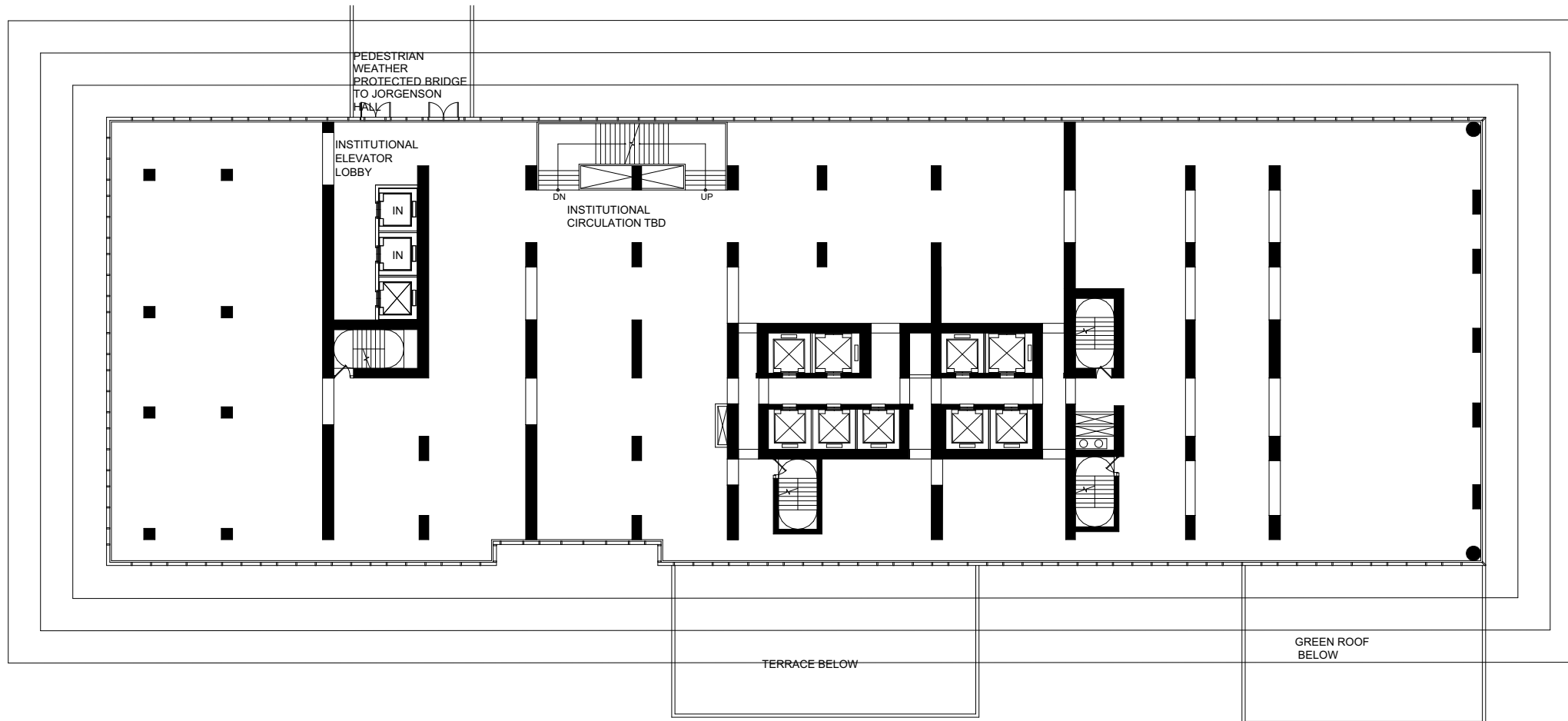
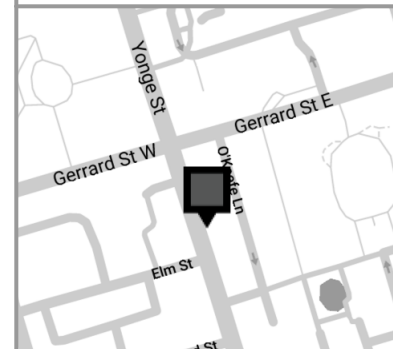
Version:	Prepared: 02/05/2019
FP1A	Measured: N/A

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Toronto, Ontario
Canada

Floor 05

Gross Floor Area*
25,407 sq ft

*Area determined according to:
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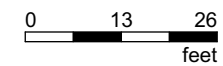
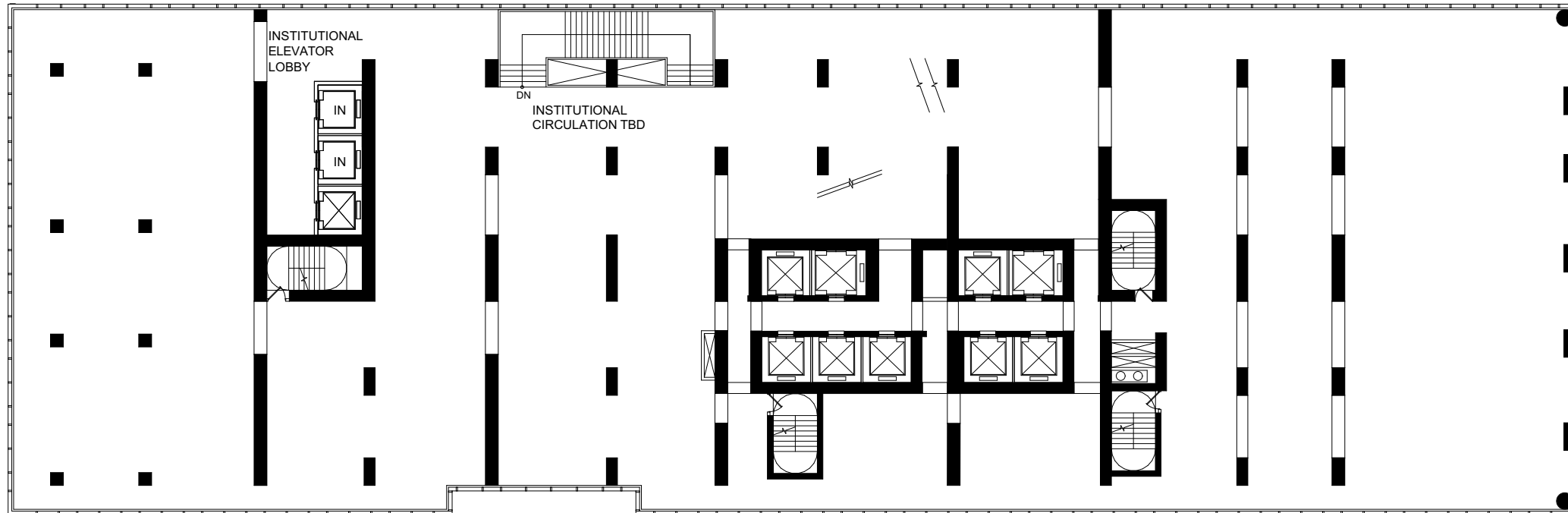
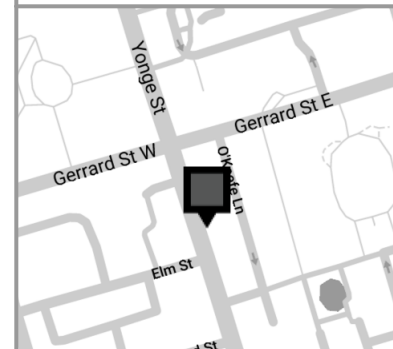
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FP1A	Measured: N/A

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Floor 06

Gross Floor Area*
25,407 sq ft

*Area determined according to:
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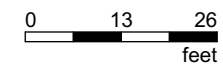
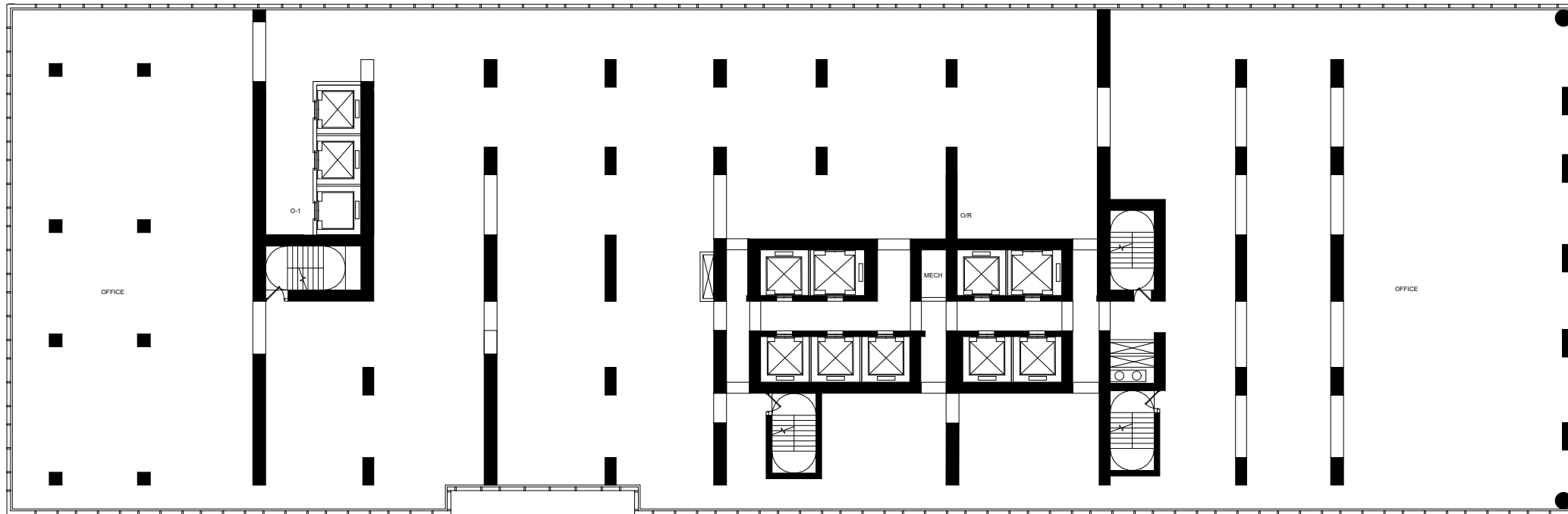
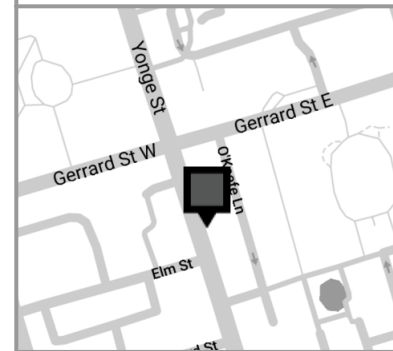
Version:	Prepared: 02/05/2019
FP1A	Measured: N/A

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Floor 07

Gross Floor Area*
25,407 sq ft

*Area determined according to:
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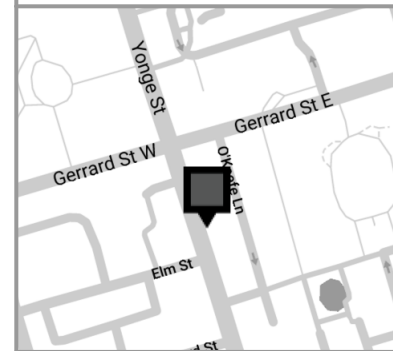
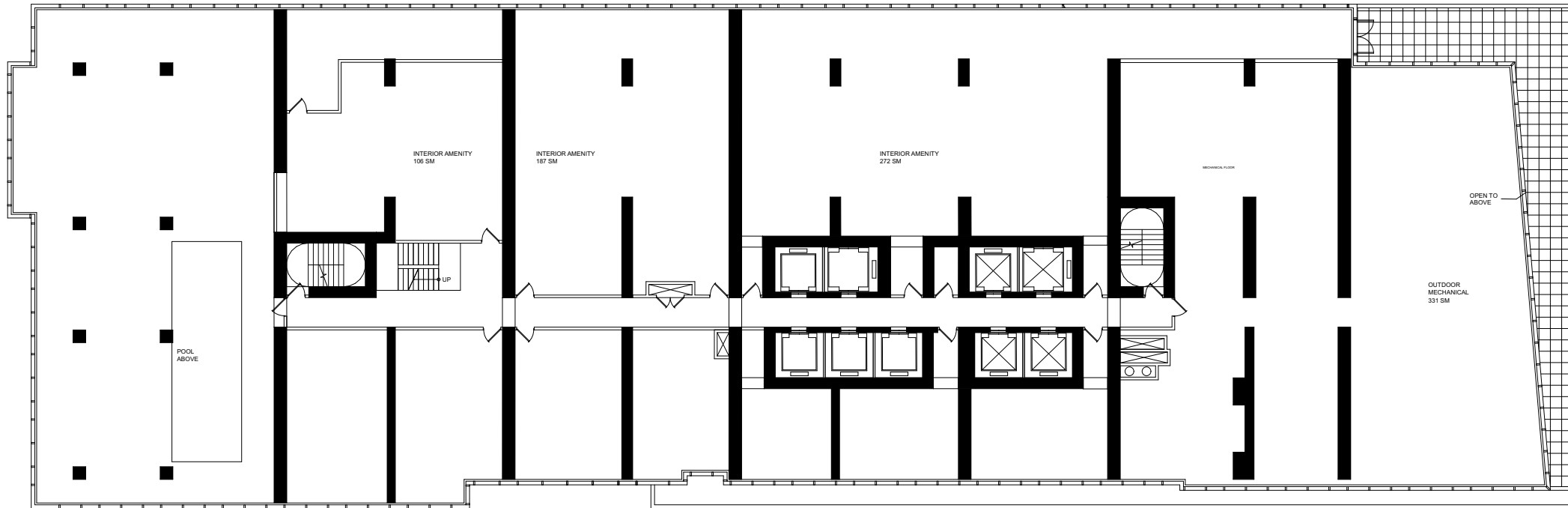
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FP1A	Measured: N/A

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Floor 08

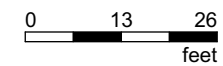
Gross Floor Area*
21,218 sq ft

*Area determined according to:
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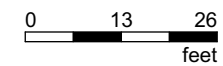
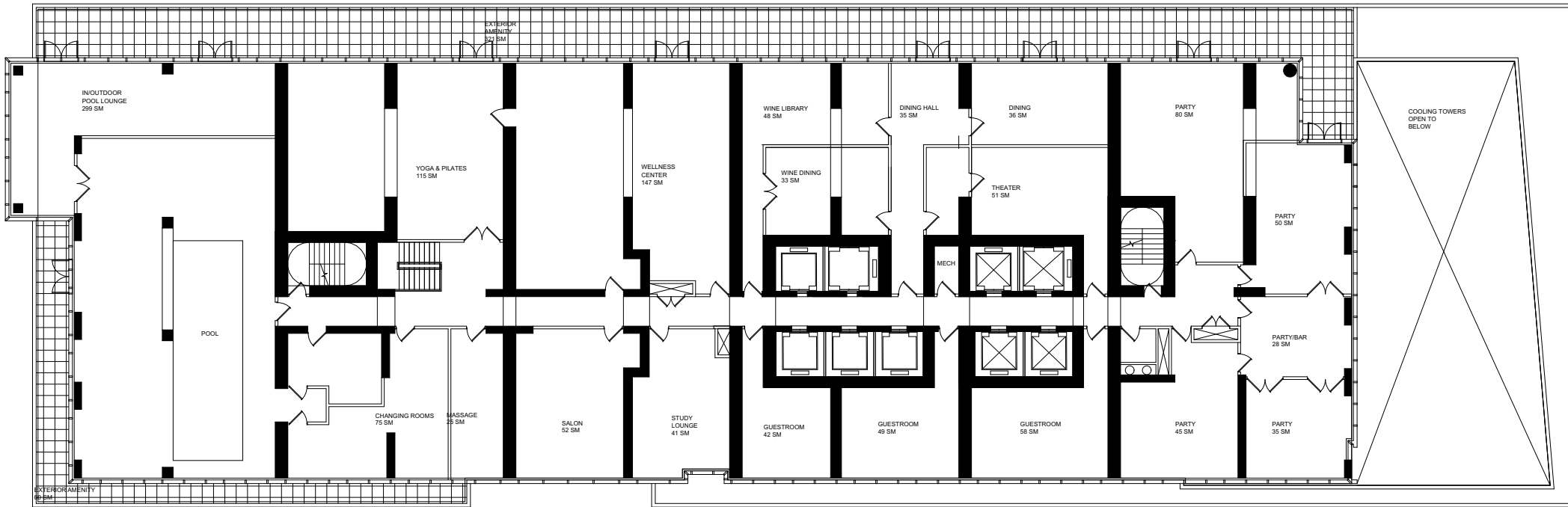
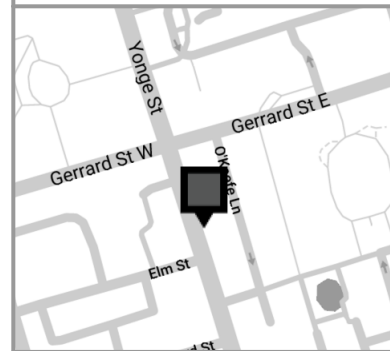
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FP1A	Measured:	N/A

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Floor 09

Gross Floor Area*
18,157 sq ft

*Area determined according to:
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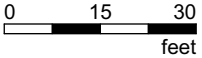
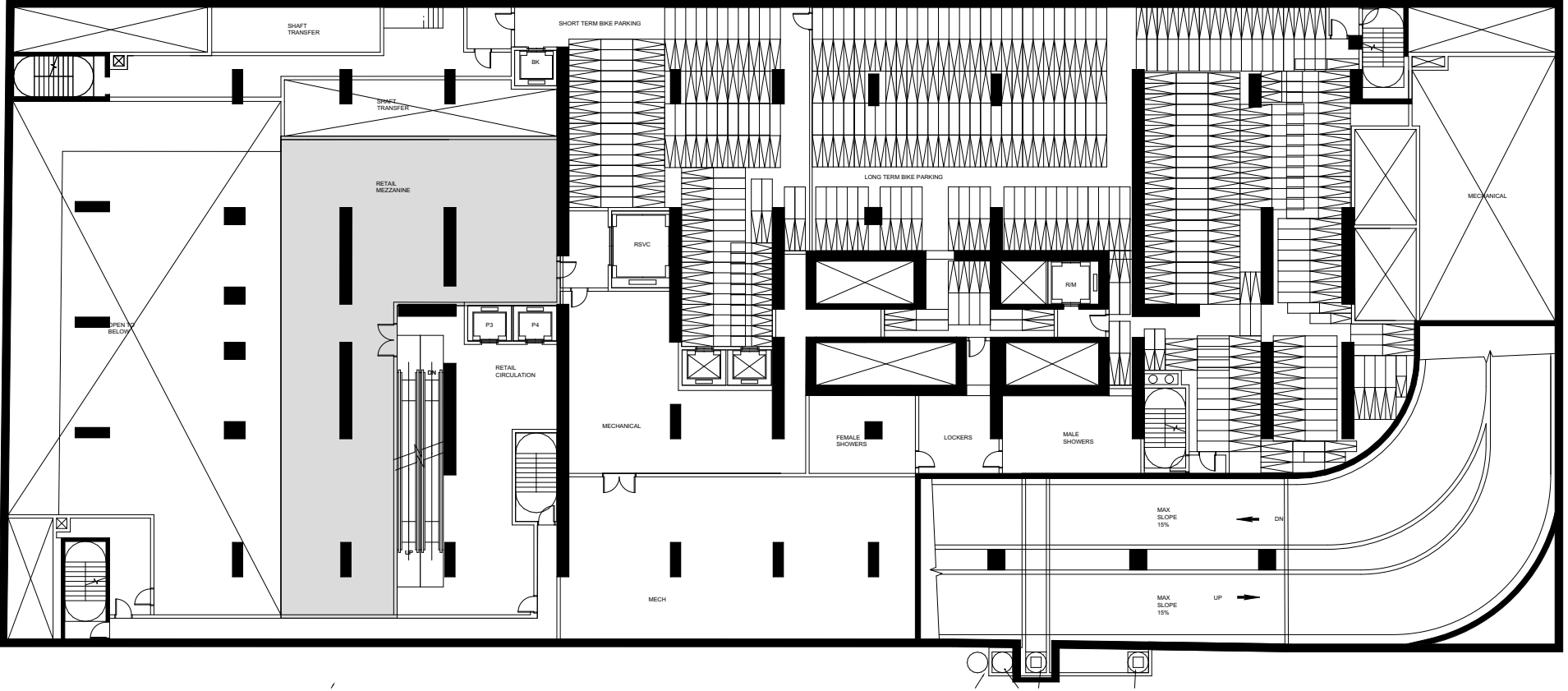
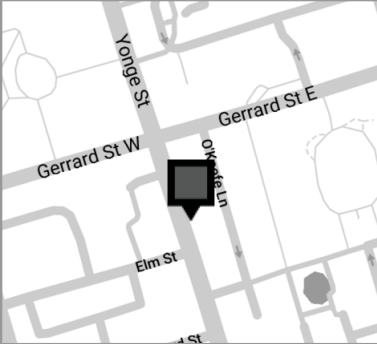
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YSL
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Canada

Floor B1

Gross Leasable Area*
3,065 sq ft

*Area determined according to:
ANSI/BOMA Z65.5-2010 Retail



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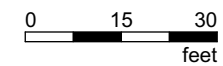
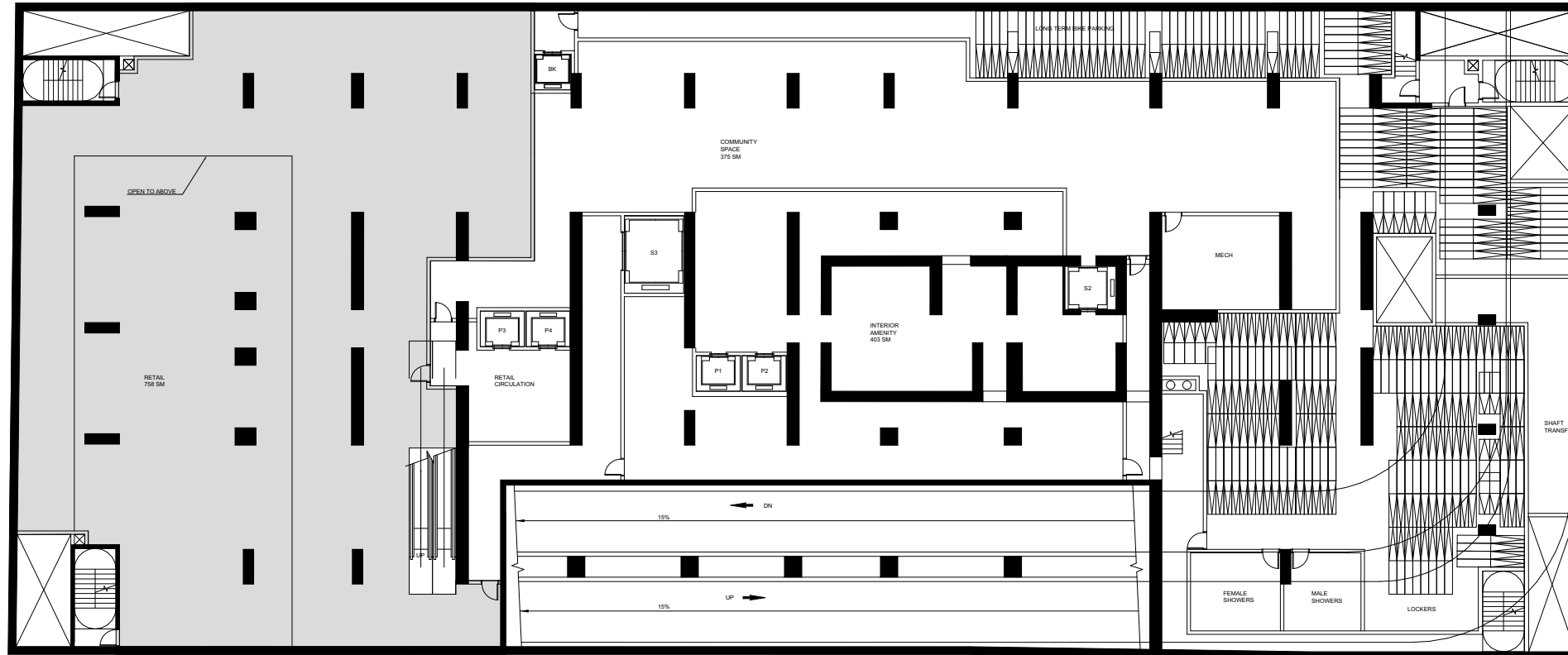
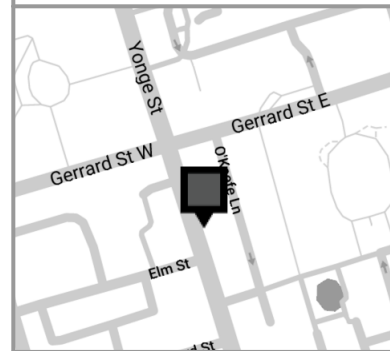
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FP1A	Measured: N/A

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Floor B2

Gross Leasable Area*
9,900 sq ft

*Area determined according to:
ANSI/BOMA Z65.5-2010 Retail



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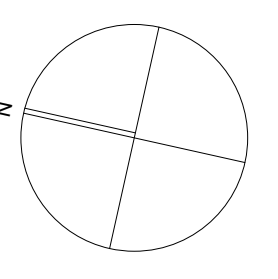
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- GCA
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- NON-RES DEDUCTIONS (RETAIL)
- ELEVATOR DEDUCTIONS
- LOADING DEDUCTIONS
- GARBAGE CHUTE DEDUCTIONS
- EXIT STAIR DEDUCTIONS
- AMENITY DEDUCTIONS
- BELOW-GRADE MECH / MECH PH DEDUCTIONS

All GFA deductions calculated according to Toronto Zoning By-Law 549-2013



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 205-317 Adelaide St. West
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 f 416 593 4911
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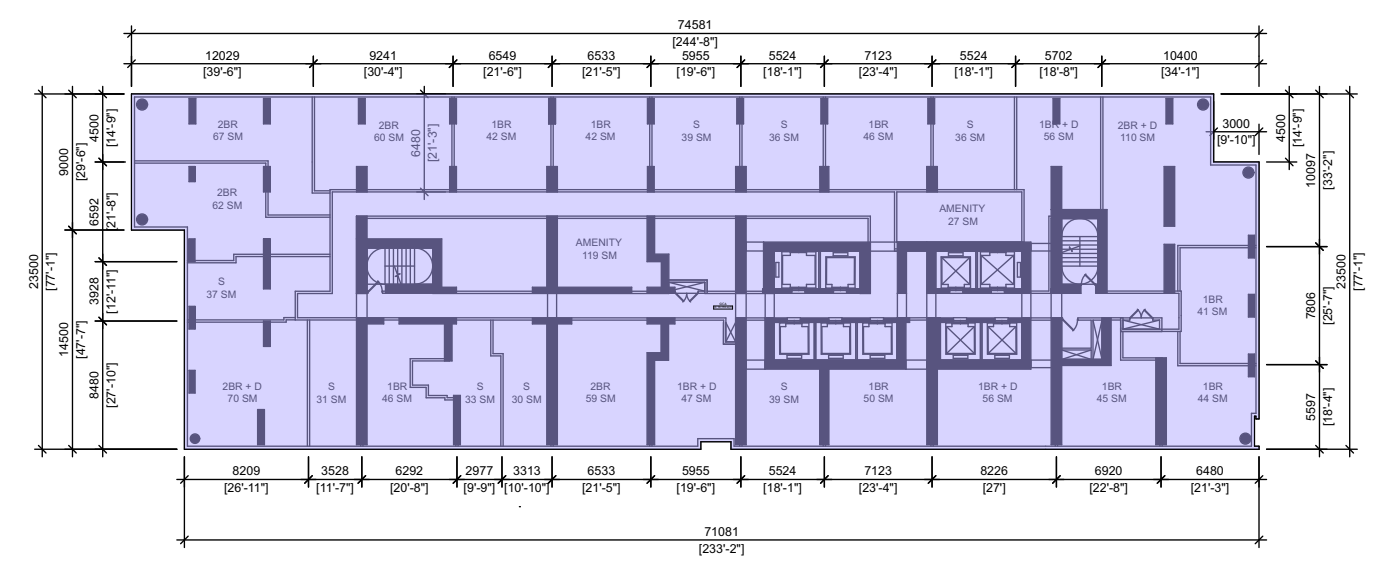
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CRESFORD DEVELOPMENTS

GCA Diagrams

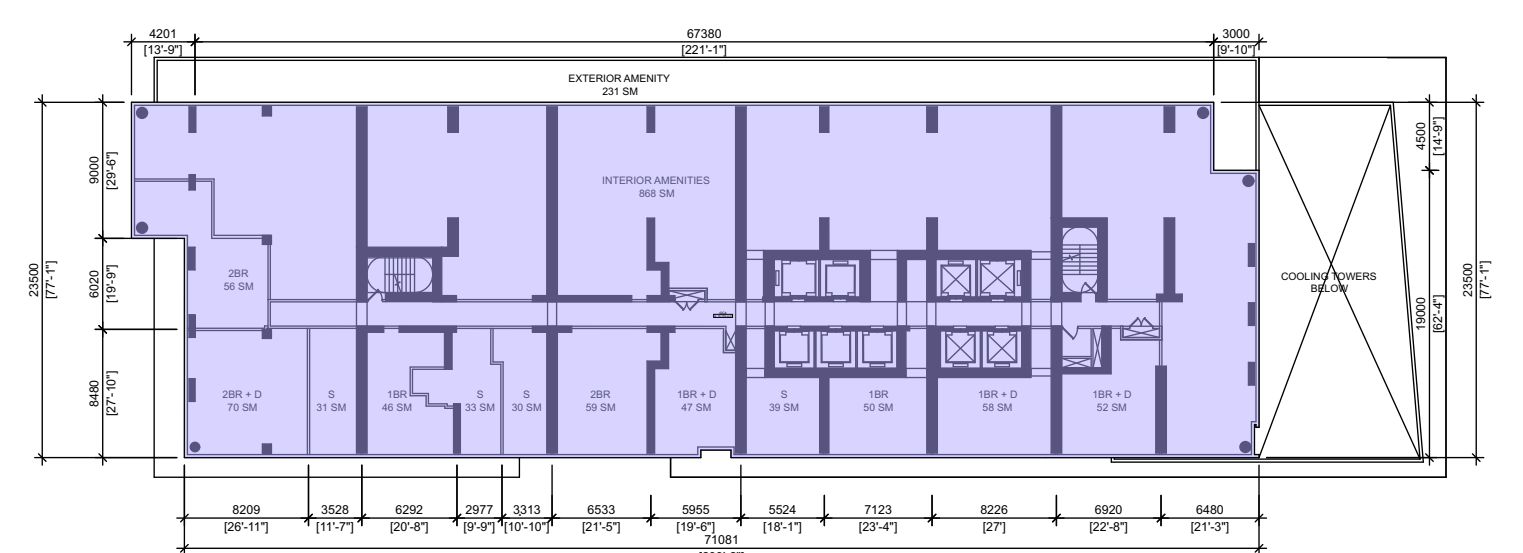
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2018-11-15

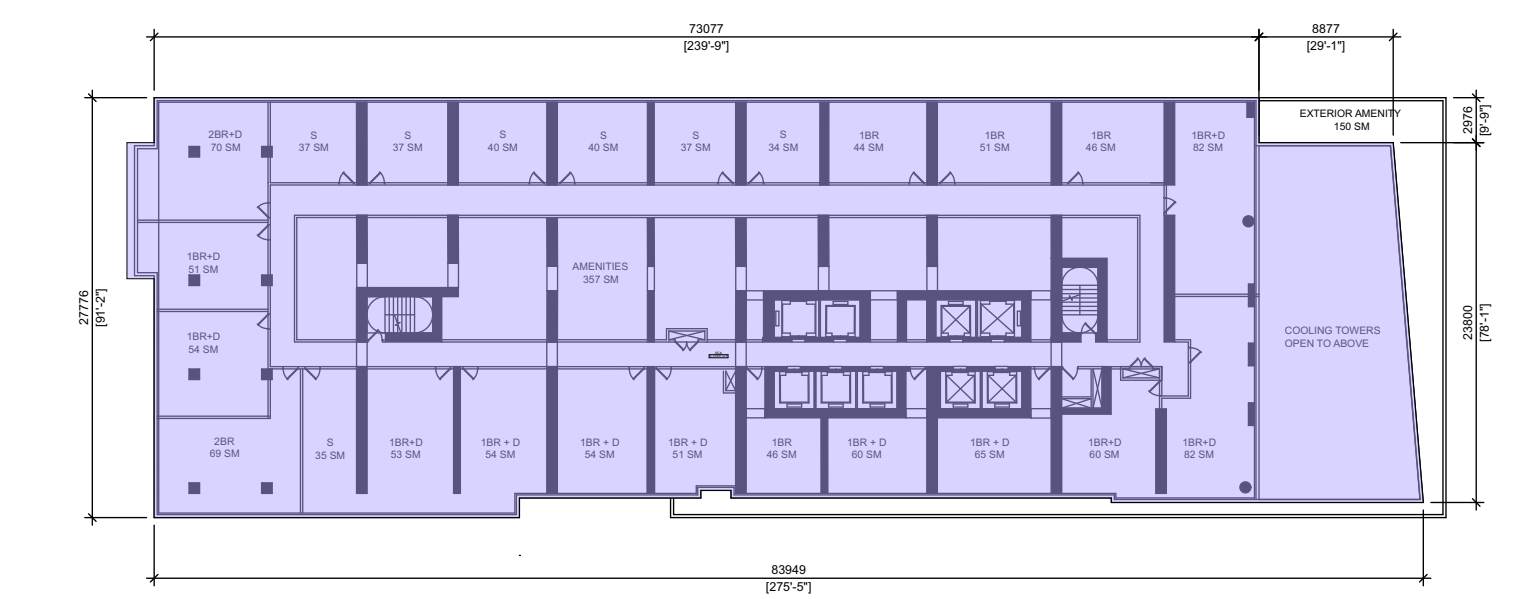
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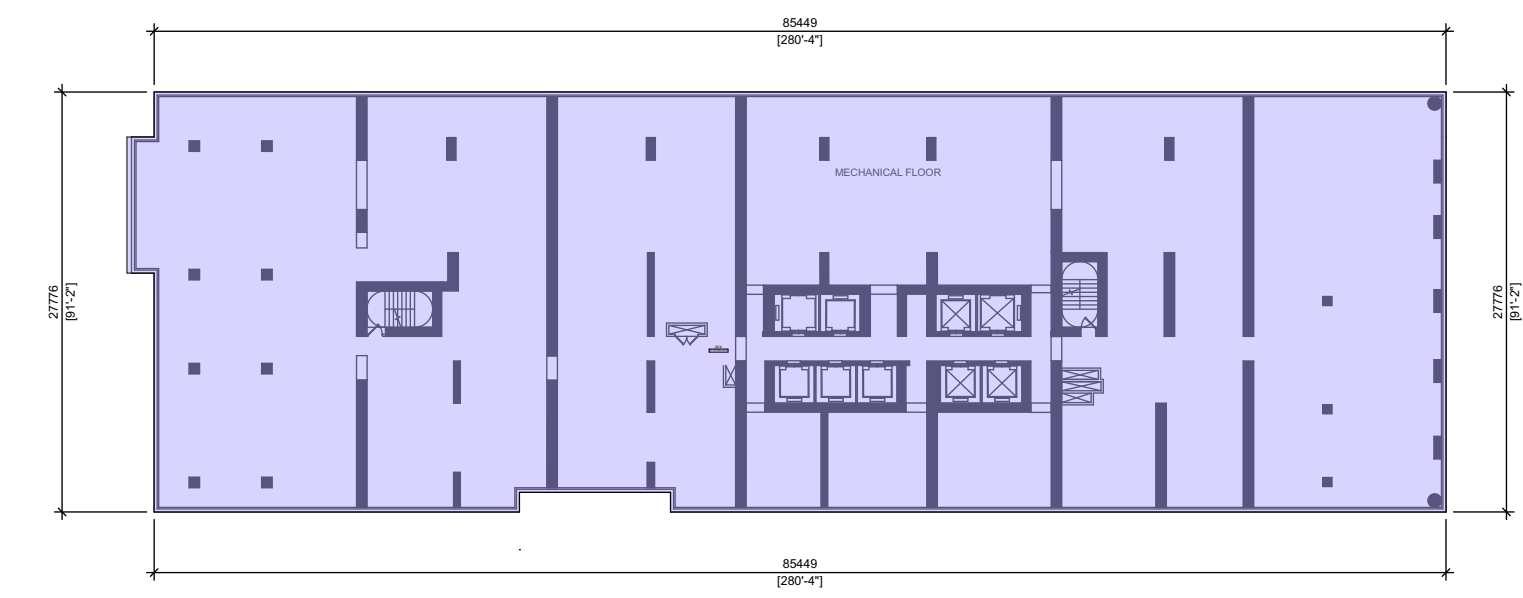
12 L11 - L14 Res. / Amenities
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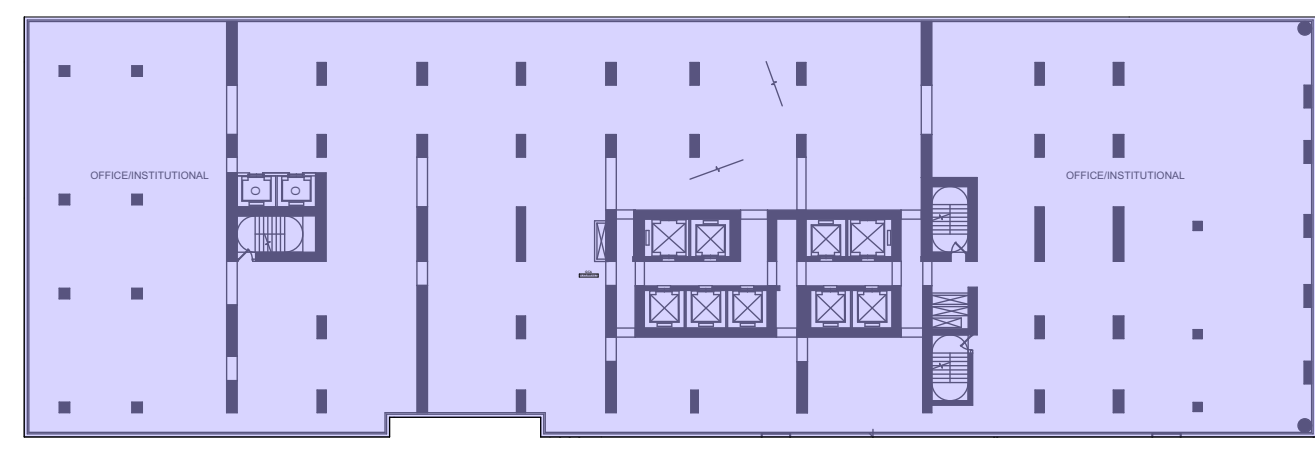
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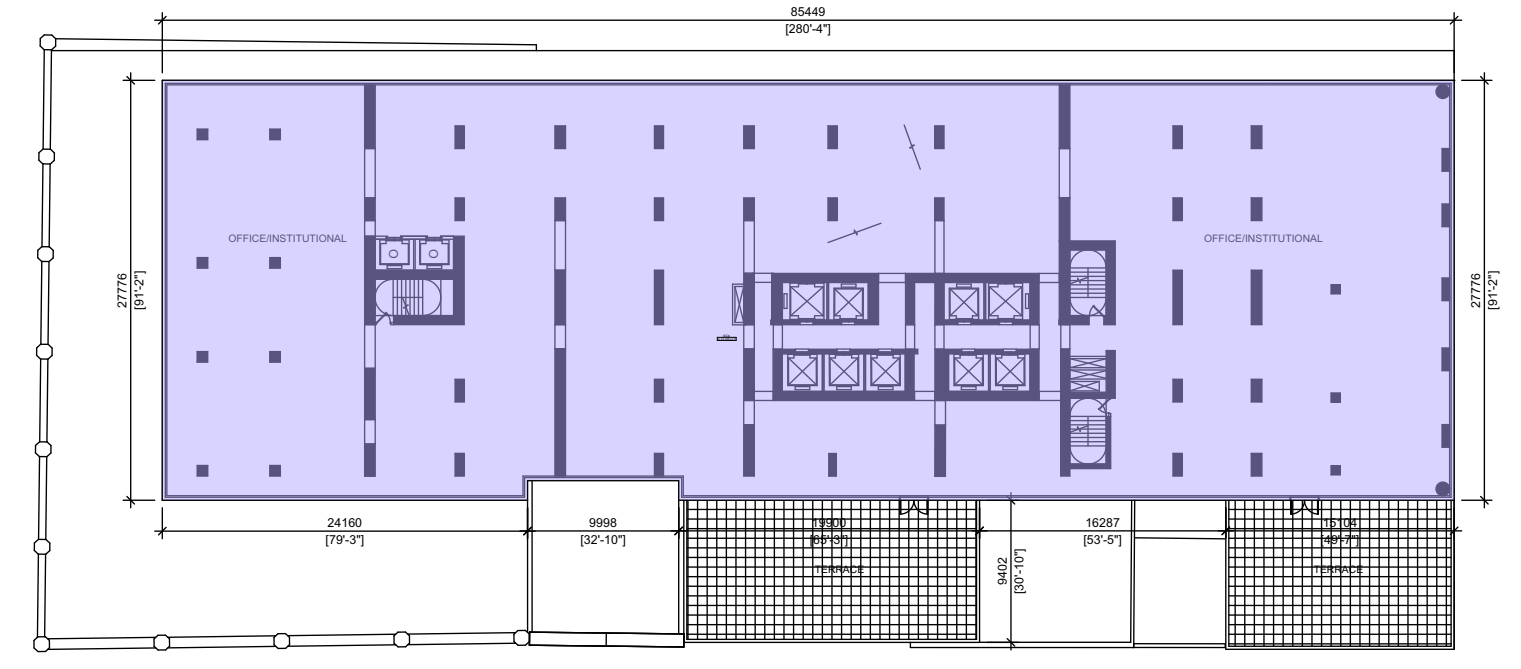
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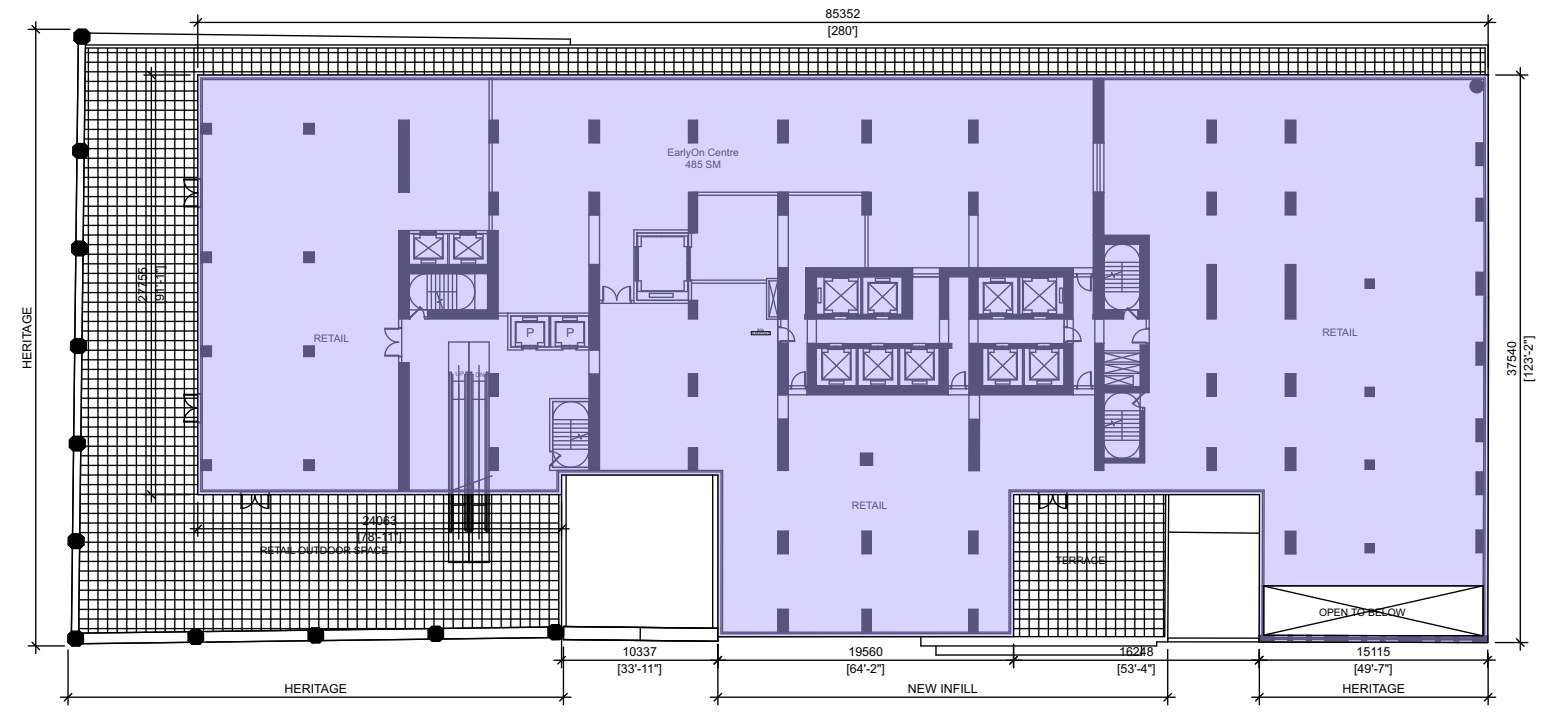
9 L8 Mech
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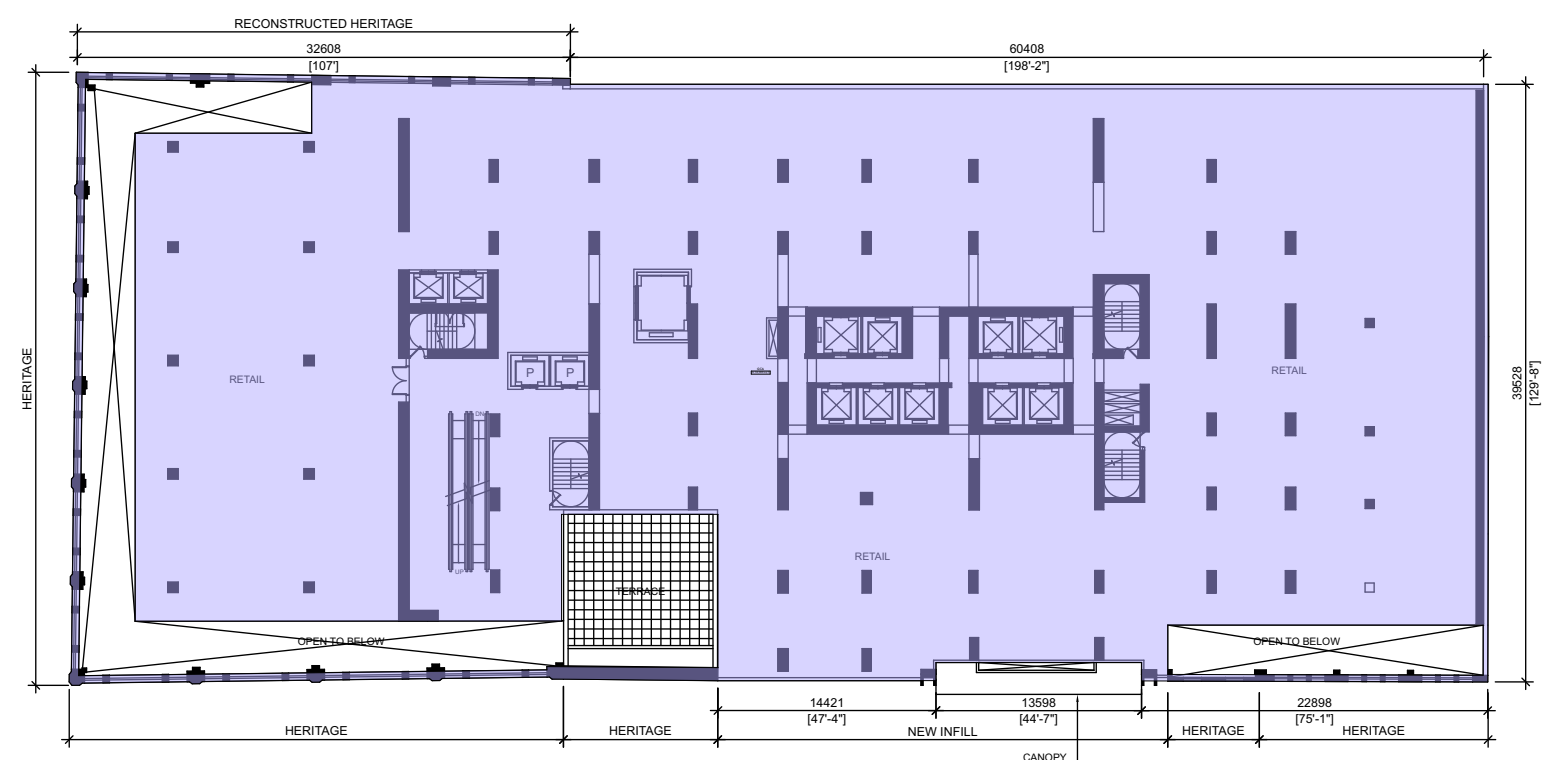
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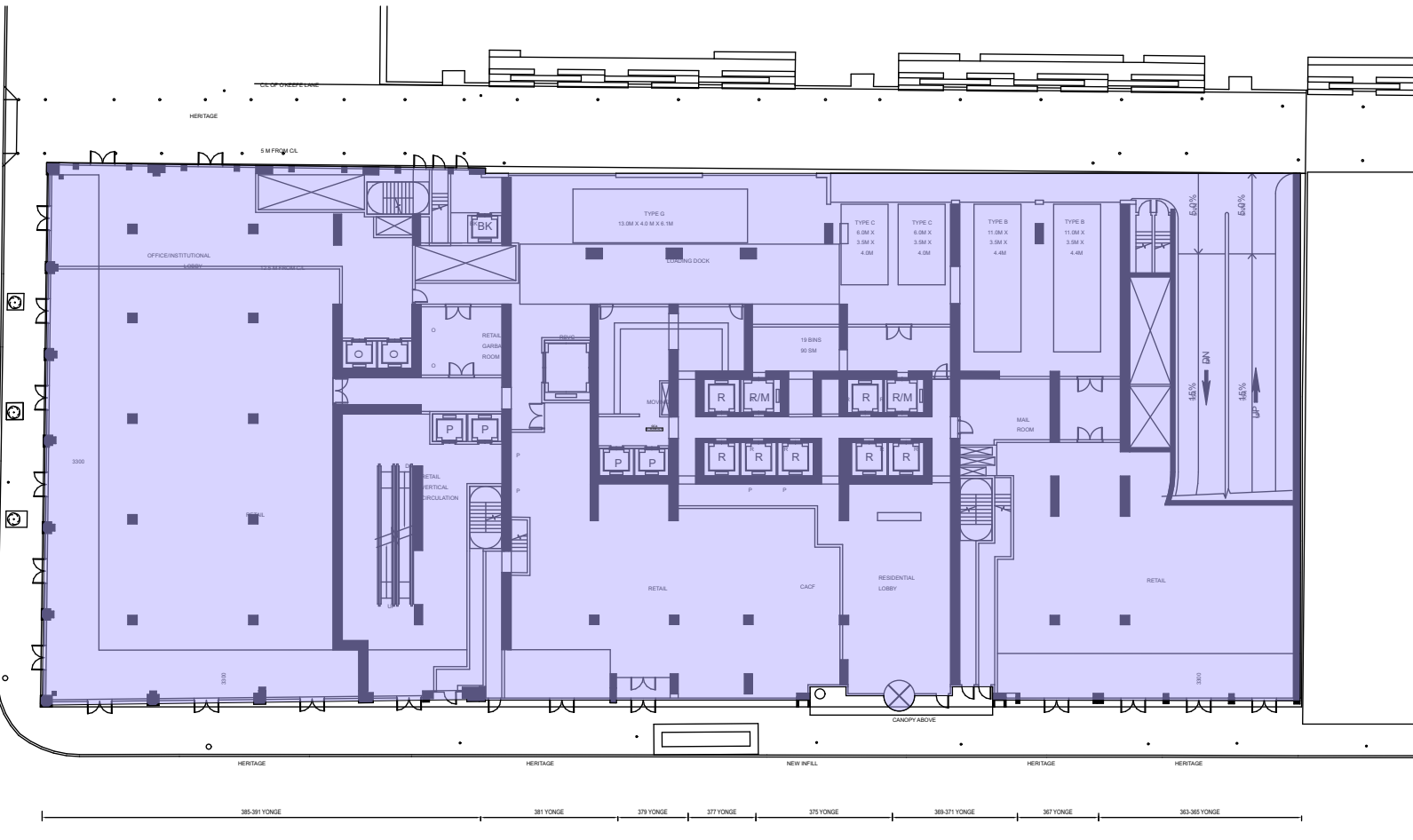
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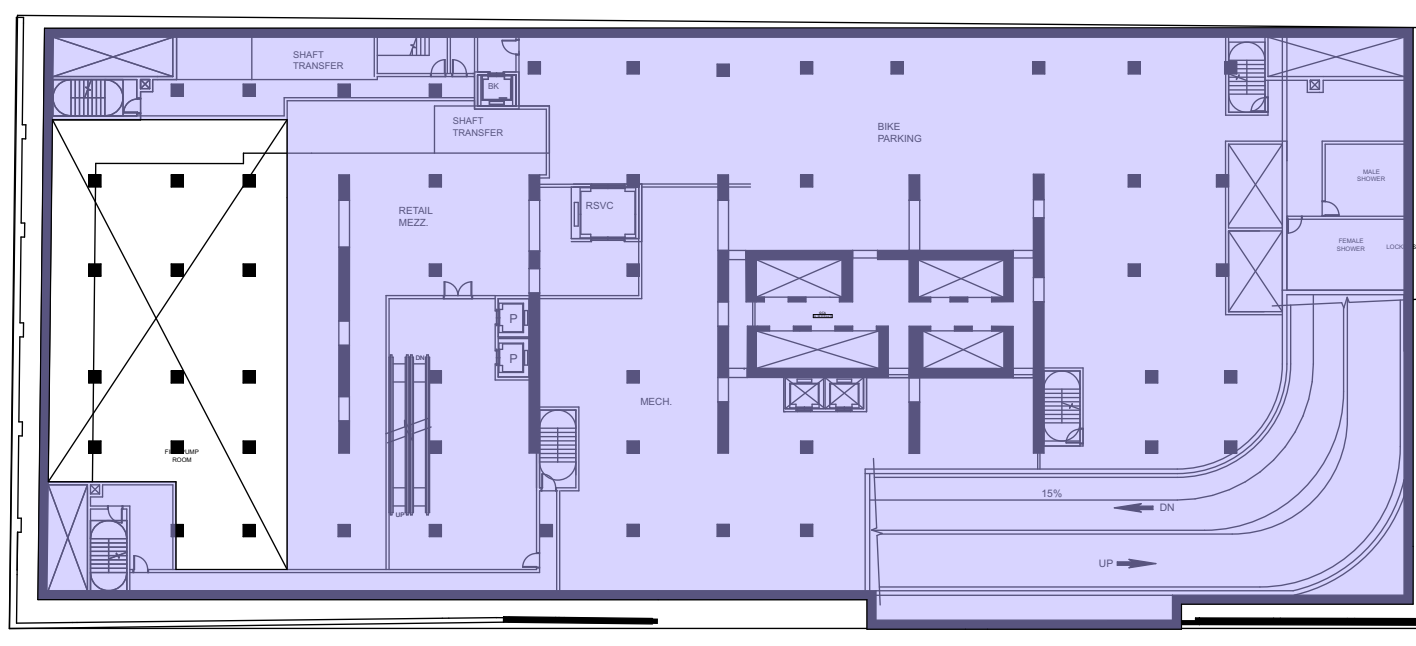
6 L3 Retail
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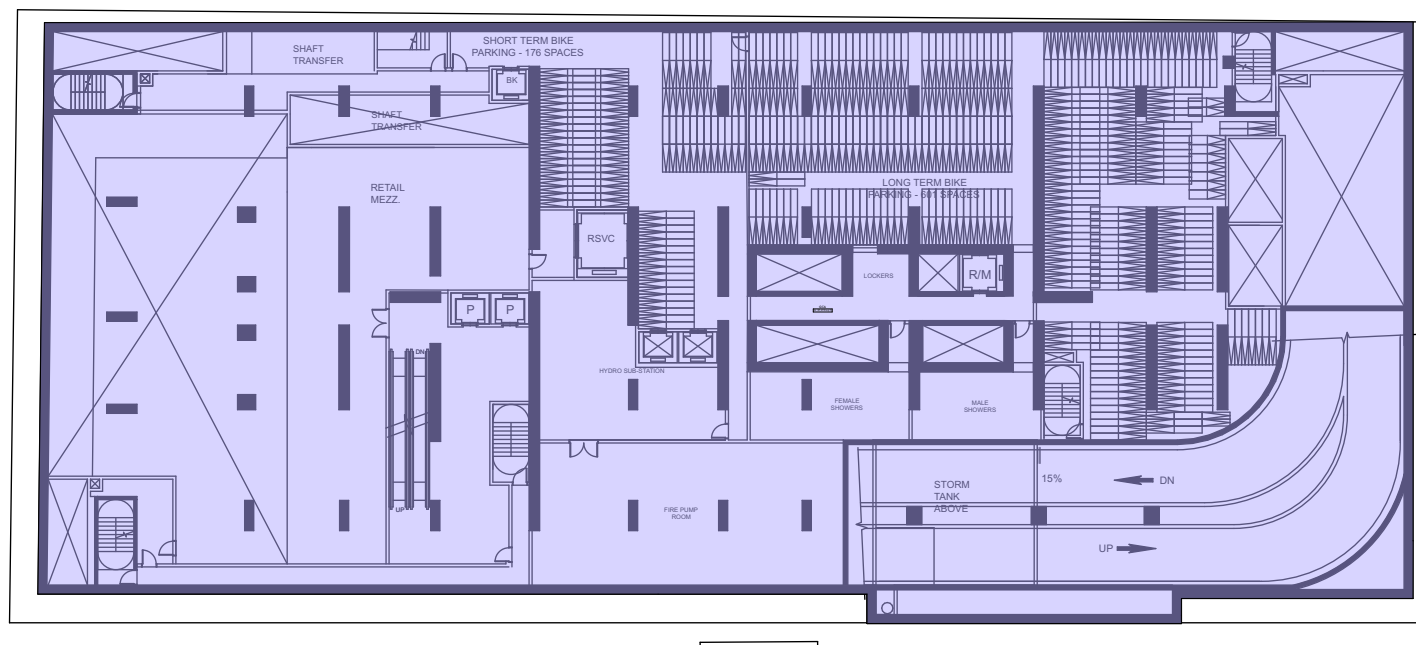
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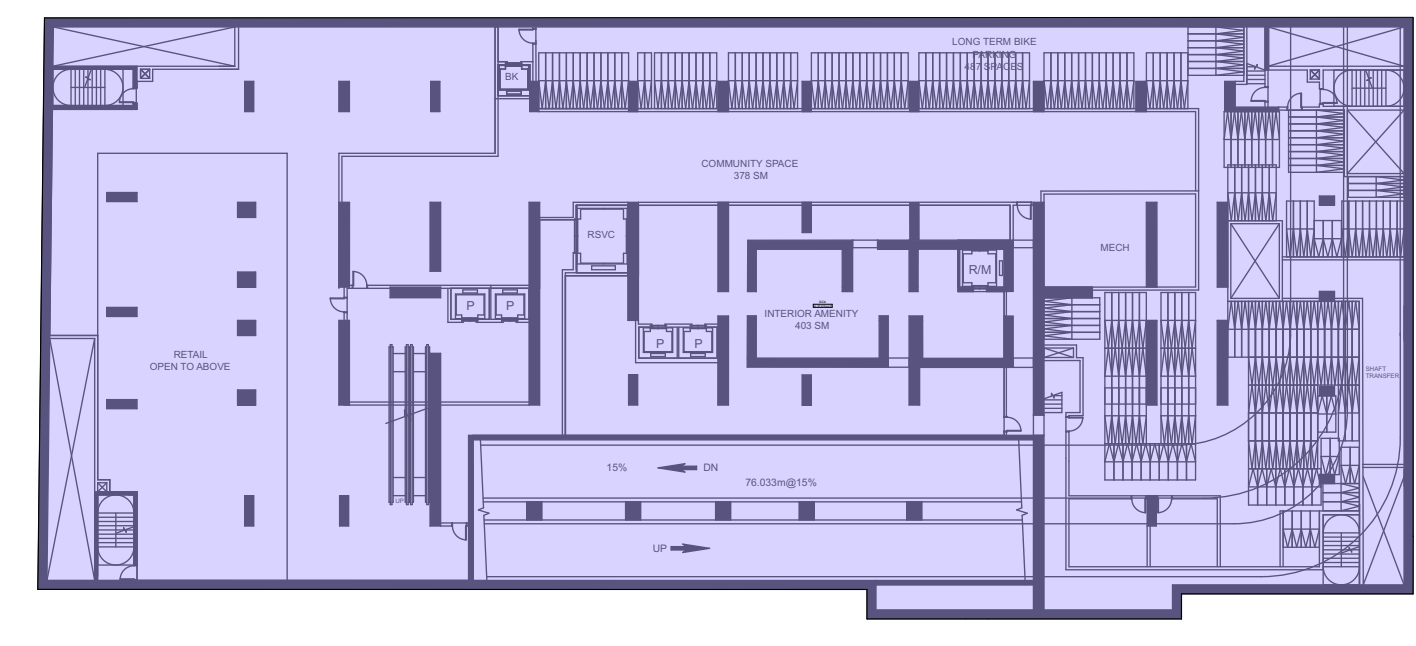
4 Ground
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3 B1M Retail
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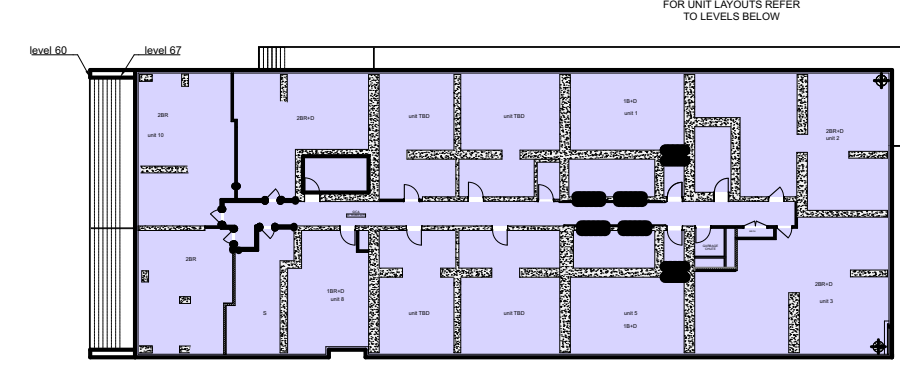
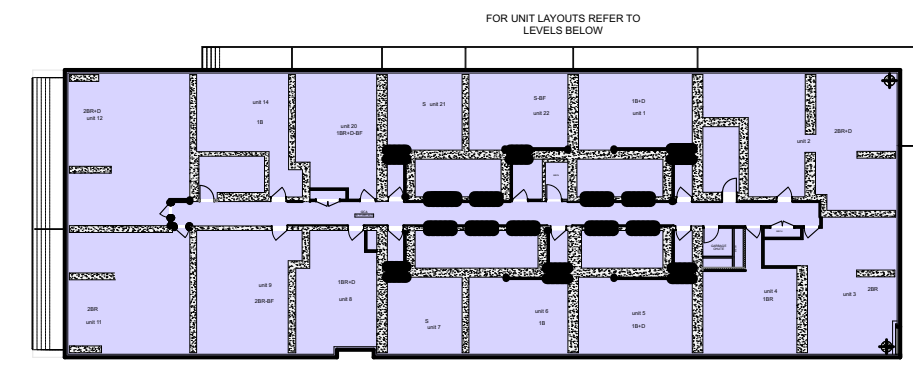
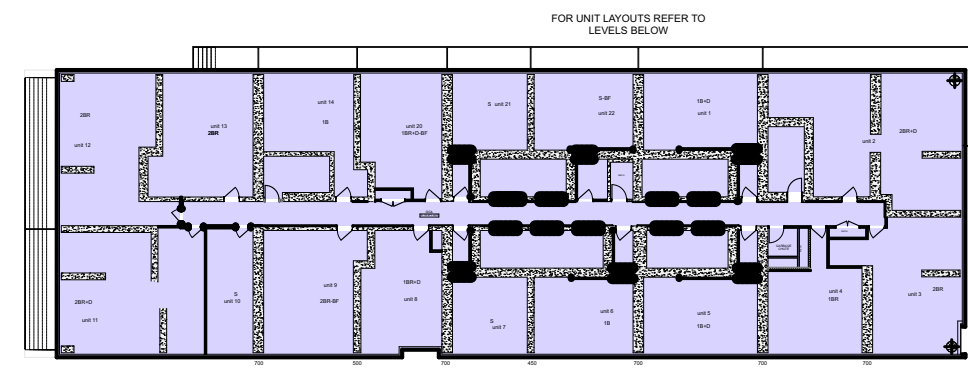


2 B1 Retail
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1 B6 - B2
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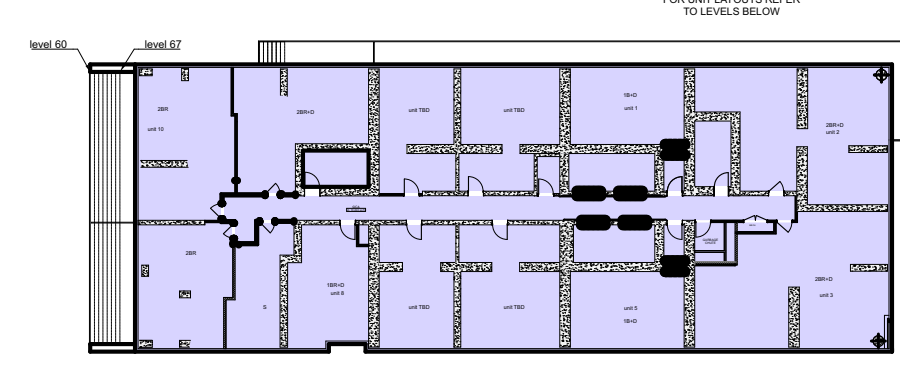
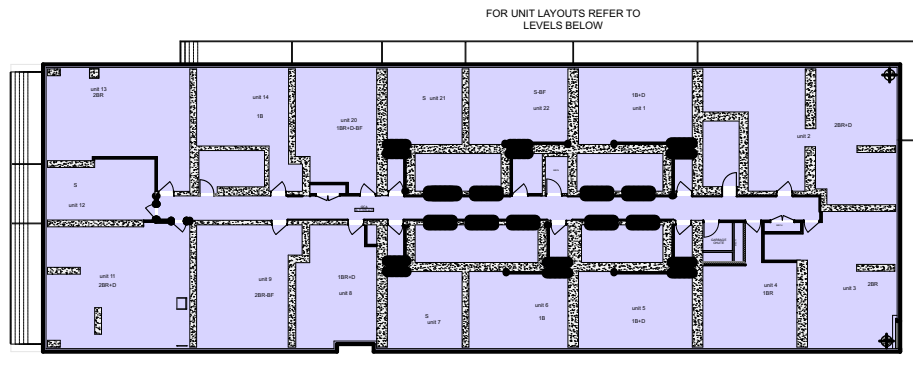
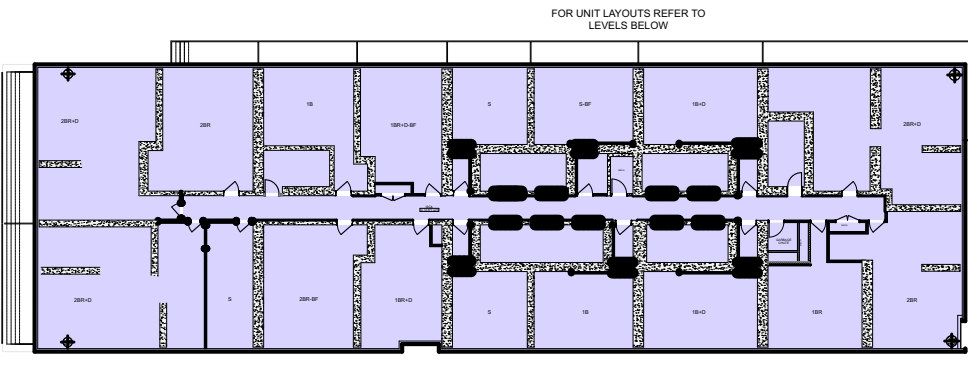
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 Volumes\Acad\Proj21616 YSL Creford3 DRAWINGS3.1 ARCHICAD\BUILDINGS



16 L29 - L33 Res.
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20 L46 - L49 Res.
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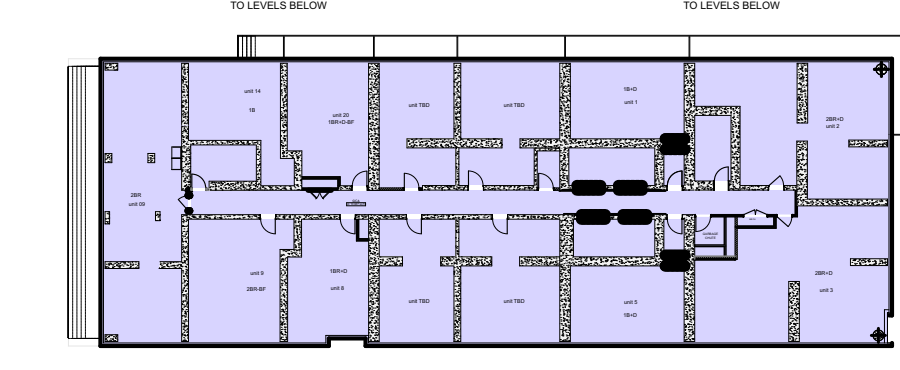
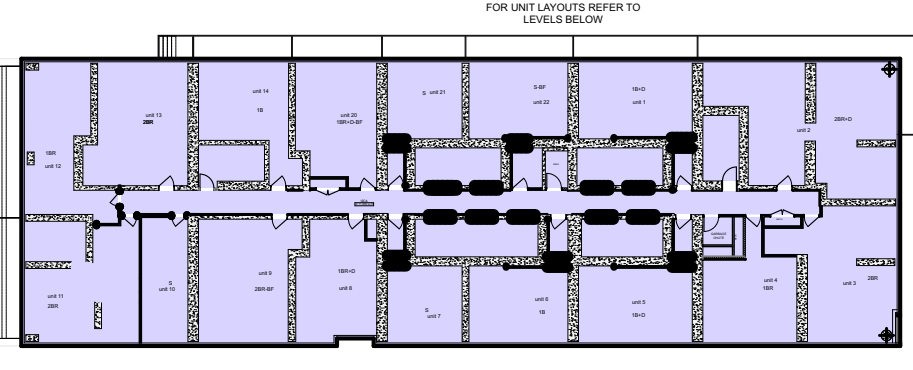
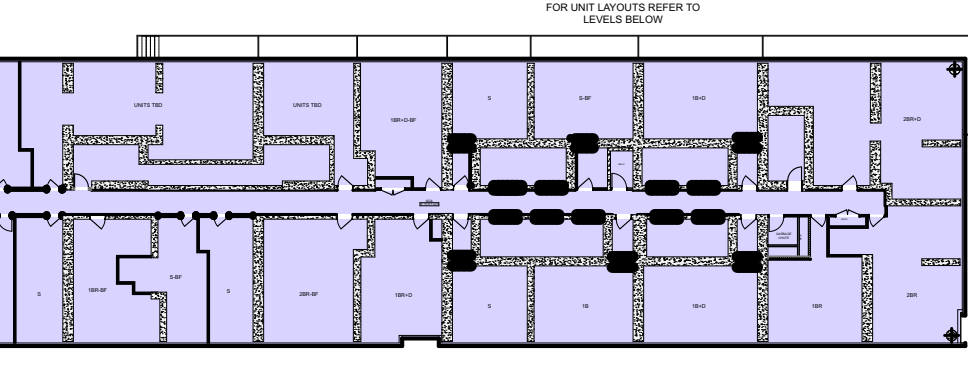
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15 L22 - L28 Res.
SCALE: 1:500

19 L41 - L45 Res.
SCALE: 1:500

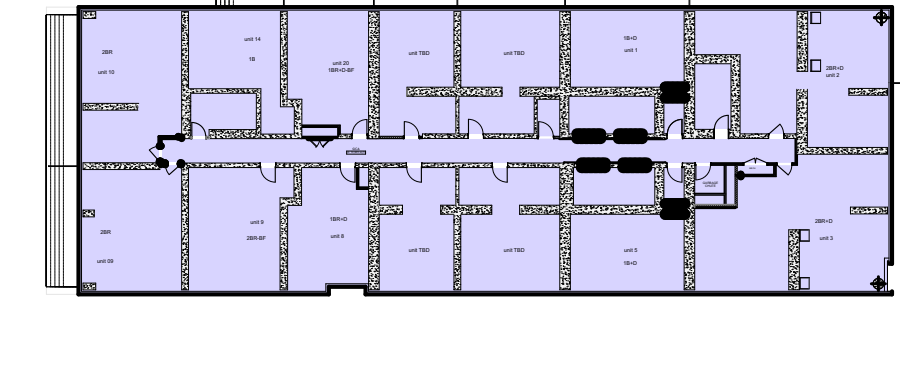
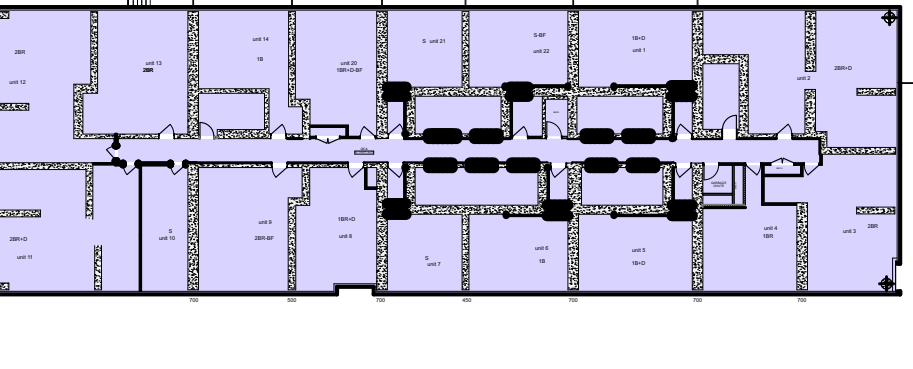
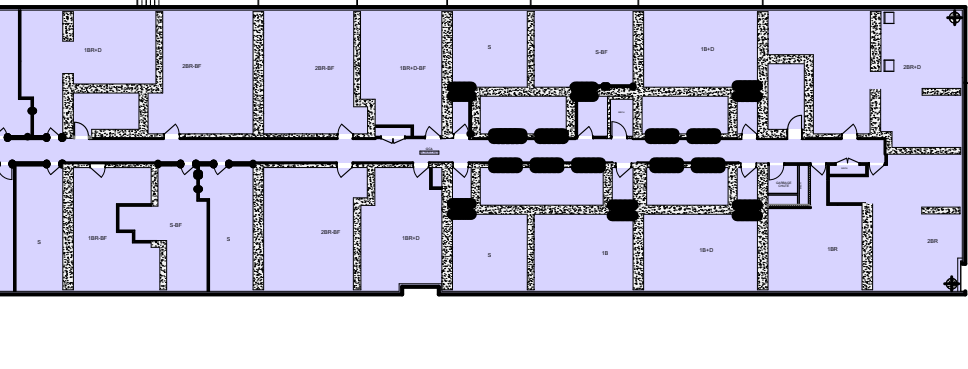
23 L60 - L61 Res. / Mech.
SCALE: 1:500



14 L21 Res. / Transfer
SCALE: 1:500

18 L36 - L40 Res.
SCALE: 1:500

22 L56 - L59 Res.
SCALE: 1:500



13 L15 - L20 Res.
SCALE: 1:500

17 L34 - L35 Res. / Mech.
SCALE: 1:500

21 L50 - L55 Res. / Elev. Overrun
SCALE: 1:500

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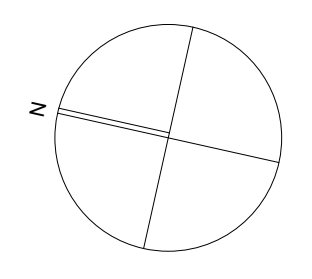
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- GFA DEDUCTION LEGEND**
- GCA
 - NON-RES DEDUCTIONS (OFFICE)
 - NON-RES DEDUCTIONS (RETAIL)
 - ELEVATOR DEDUCTIONS
 - LOADING DEDUCTIONS
 - GARBAGE CHUTE DEDUCTIONS
 - EXIT STAIR DEDUCTIONS
 - AMENITY DEDUCTIONS
 - BELOW-GRADE MECH / MECH PH DEDUCTIONS

All GFA deductions calculated according to Toronto Zoning By-Law 569-2013



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GCA Diagrams

1:1, 1:500

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A-1.2

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\\Volumes\Acad\Proj21816\YSL_Cresford3 DRAWINGS\3.1 ARCH\CAD\BUILDINGS PLAN\PLN\YSL Area Calculations - 6.plt

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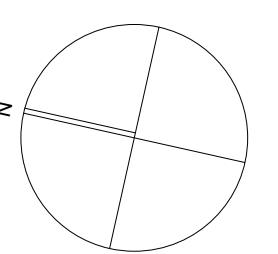
GFA DEDUCTION LEGEND

- GCA
- NON-RES DEDUCTIONS (OFFICE)
- NON-RES DEDUCTIONS (RETAIL)
- ELEVATOR DEDUCTIONS
- LOADING DEDUCTIONS
- GARBAGE CHUTE DEDUCTIONS
- EXIT STAIR DEDUCTIONS
- AMENITY DEDUCTIONS
- BELOW-GRADE MECH / MECH PH DEDUCTIONS

All GFA deductions calculated according to Toronto Zoning By-Law 549-2013



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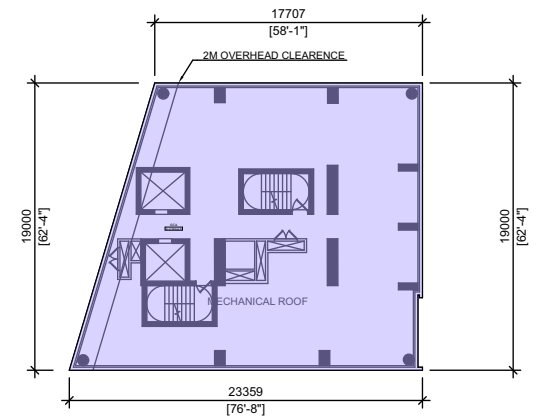
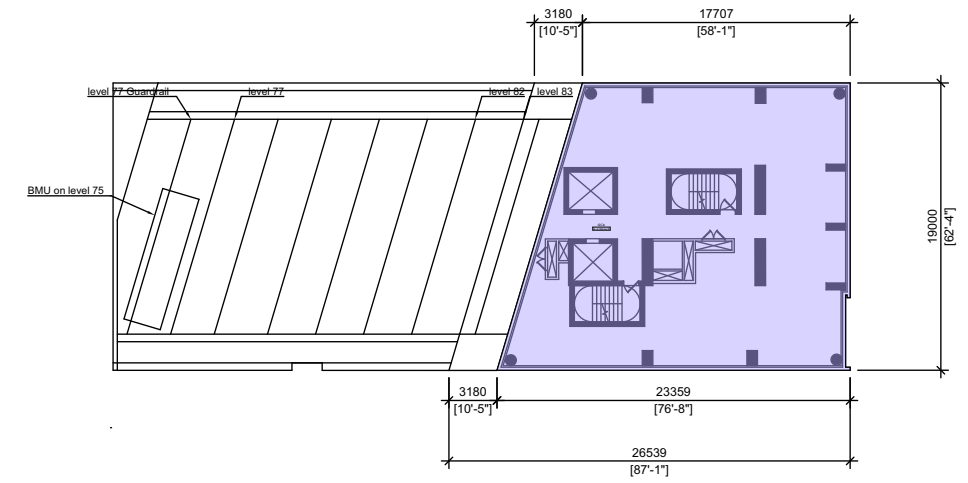
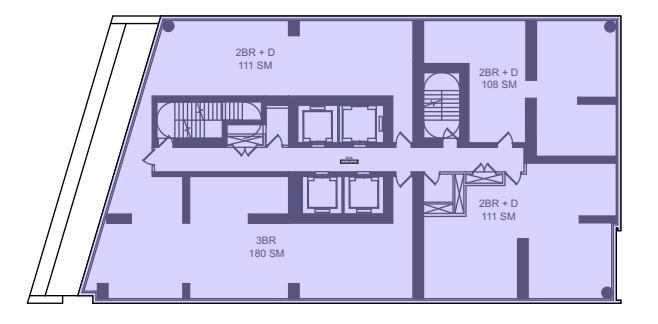
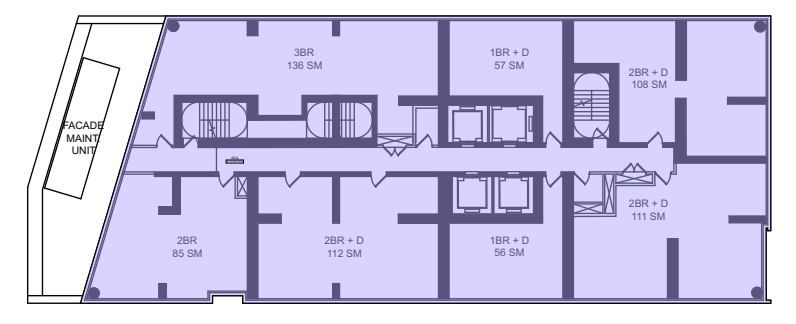
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CRESFORD DEVELOPMENTS

GCA Diagrams

1:500, 1:1
 2018-11-15

A-1.3

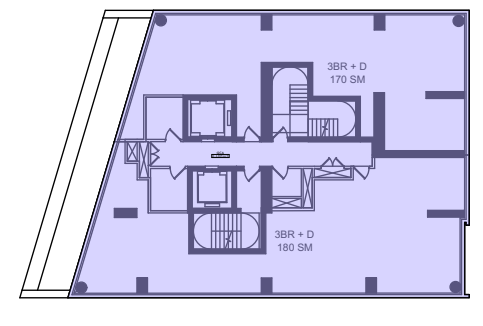
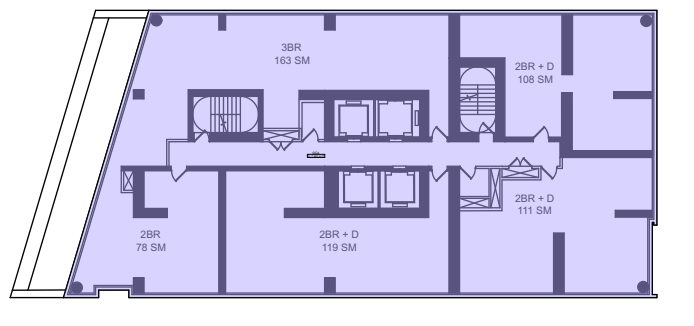
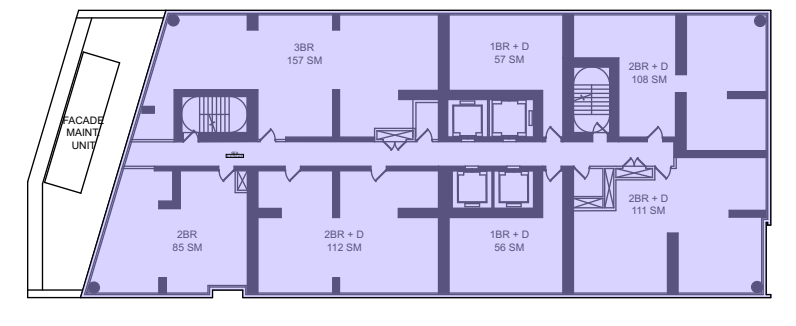


28 L77 Res. / Transfer
 SCALE: 1:500

32 L81 Res.
 SCALE: 1:500

36 L85 Res.
 SCALE: 1:500

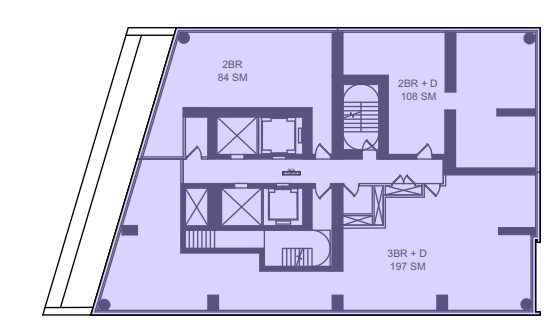
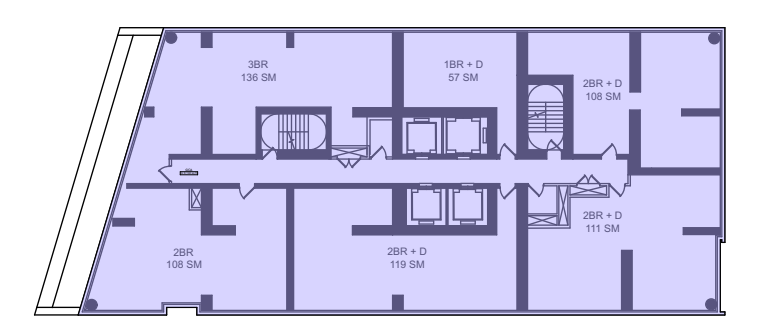
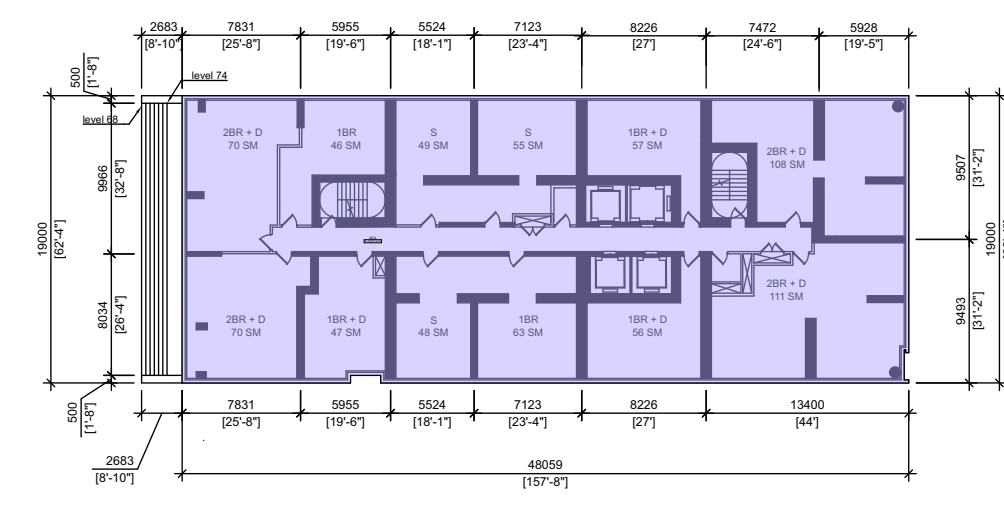
37 L86 Mech. Penthouse
 SCALE: 1:500



27 L76 Res.
 SCALE: 1:500

31 L80 Res.
 SCALE: 1:500

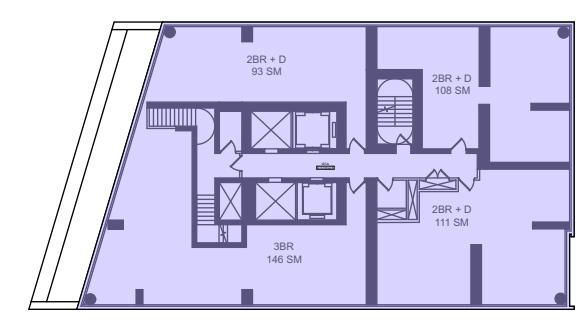
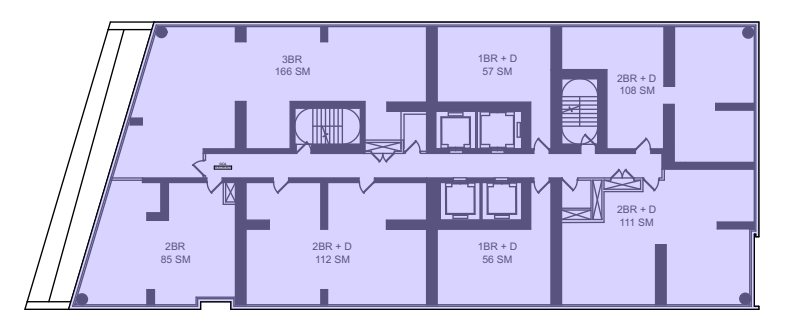
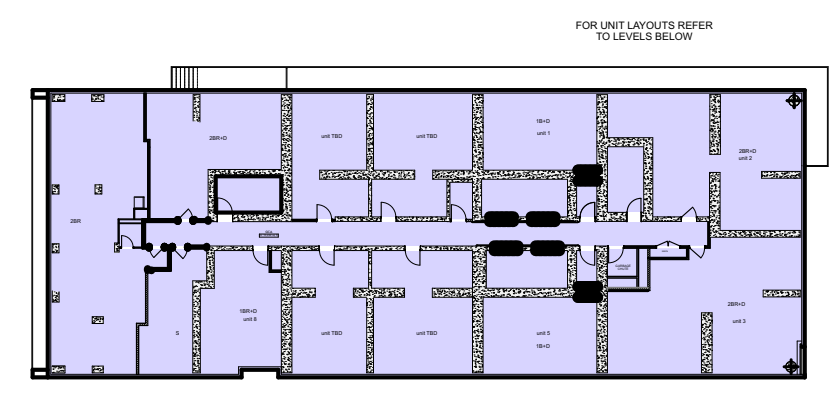
35 L84 Res. / Transfer
 SCALE: 1:500



26 L69 - L75 Res.
 SCALE: 1:500

30 L79 Res.
 SCALE: 1:500

34 L83 Res.
 SCALE: 1:500



25 L68 Res. / Transfer
 SCALE: 1:500

29 L78 Res.
 SCALE: 1:500

33 L82 Res. / Transfer
 SCALE: 1:500

GCA: Above Grade	
Storey	Area
L1 Ground	3,688.1
L2 Retail	3,243.0
L3 Retail	2,640.0
L4 Office / Institutional	2,360.5
L5 Office / Institutional	2,360.5
L6 Office / Institutional	2,360.5
L7 Office / Institutional	2,360.5
L8 Mech.	2,376.7
L9 Residential / Mech.	2,219.5
L10 Residential / Amenity	1,687.0
L11 Residential	1,687.0
L15 Residential	1,348.7
L21 Transfer	1,348.7
L22 Residential	1,167.8
L29 Residential	1,140.1
L34 Residential/Mech.	1,140.1
L35 Residential/Mech.	1,140.1
L36 Residential	1,102.6
L41 Residential	1,075.4
L46 Residential	1,048.1
L50 Elevator Overrun A	1,020.6
L51 Residential	1,020.6
L54 Elevator Overrun B	1,020.6
L56 Residential	992.9
L60 Residential / Mech	949.8
L61 Residential/Mech.	949.8
L62 Residential	949.8
L68 Transition	949.6
L69 Residential	911.6
L76 Residential	811.4
L77 Transfer	811.4
L78 Residential	811.4
L79 Residential	756.6
L80 Residential	689.7
L81 Residential/Transfer	629.7
L82 Residential/Transfer	570.0
L83 Residential	509.6
L84 Residential	449.2
L85 Residential	388.7
Mech PH.	388.7

GCA: Below Grade	
Storey	Area
B6 Parking	3,476.3
B5 Parking	3,476.3
B4 Parking	3,476.3
B3 Parking	3,476.3
B2 Parking	3,476.3
B1 Retail & Bicycle Parking	3,476.3
B1M Retail & Bicycle Parking	3,058.2

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 P:\A-1.3\YSL Area Calculations - 6.ppt
 P:\A-1.3\YSL Area Calculations - 6.ppt
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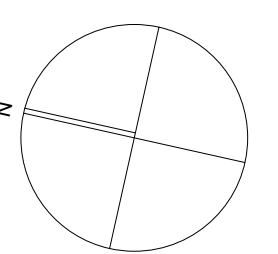
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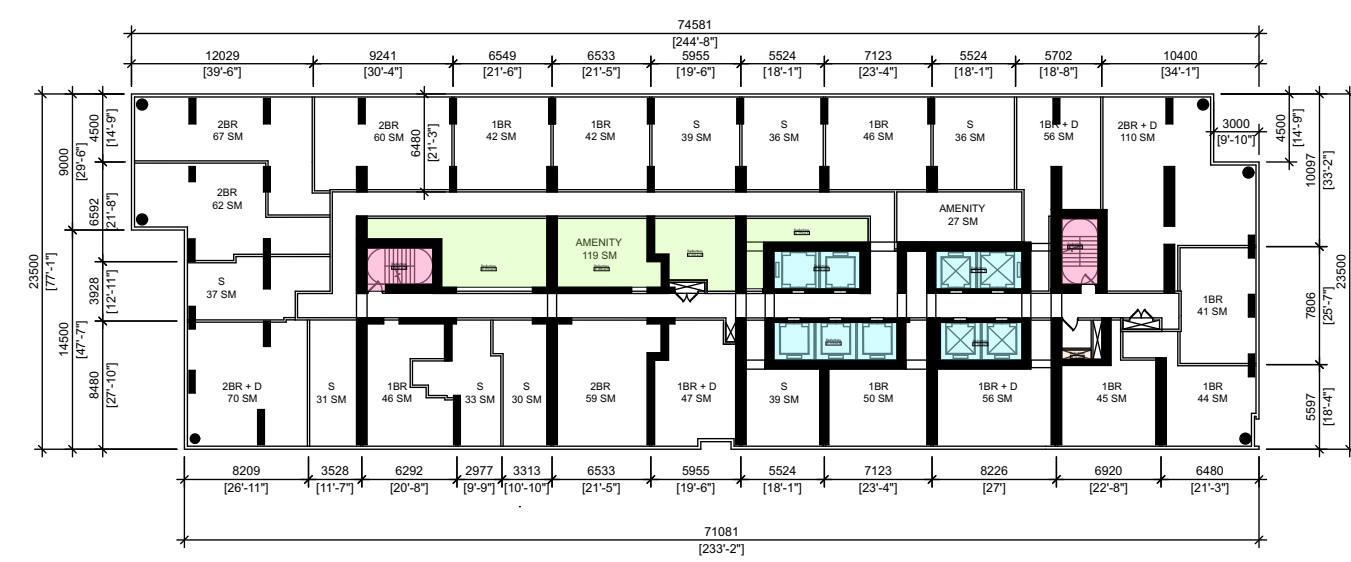
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CRESFORD DEVELOPMENTS

GFA Deduction Diagrams
 Per By-Law 569-2013

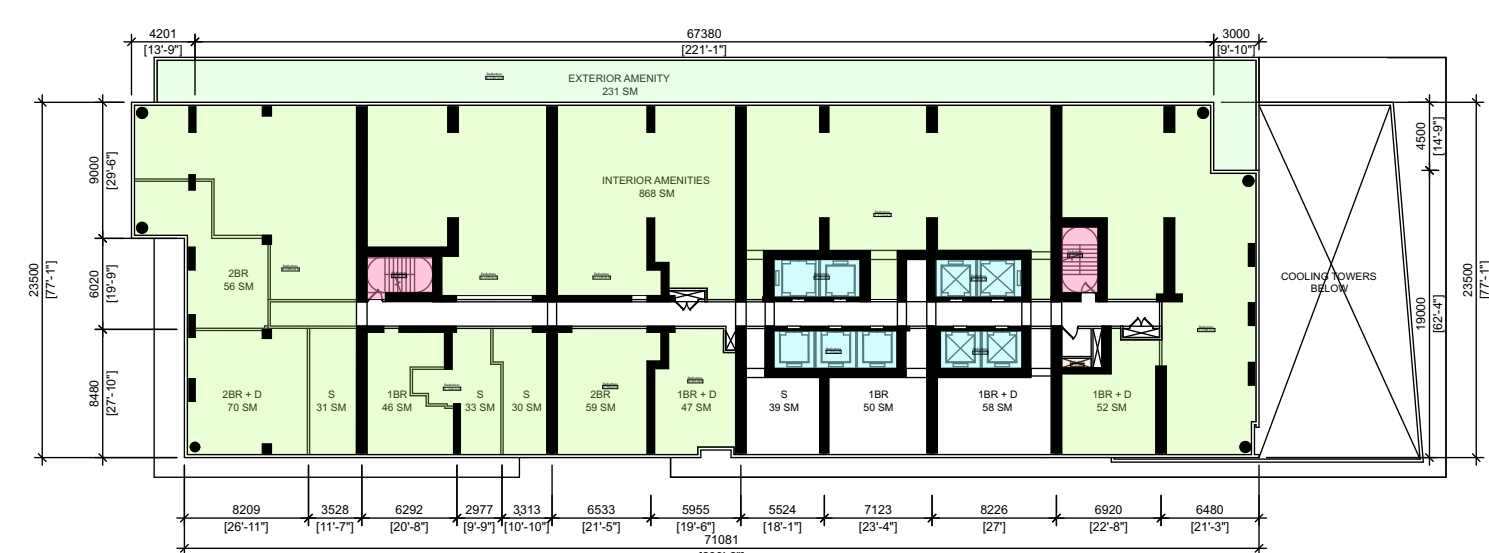
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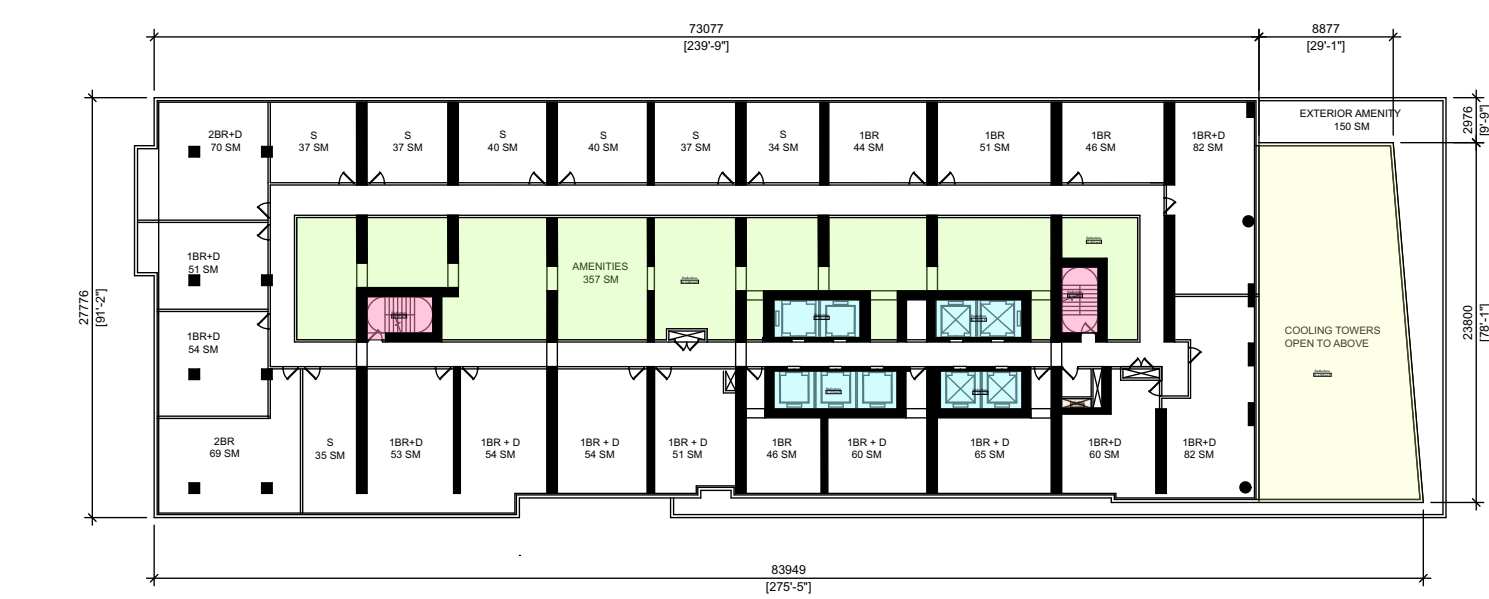
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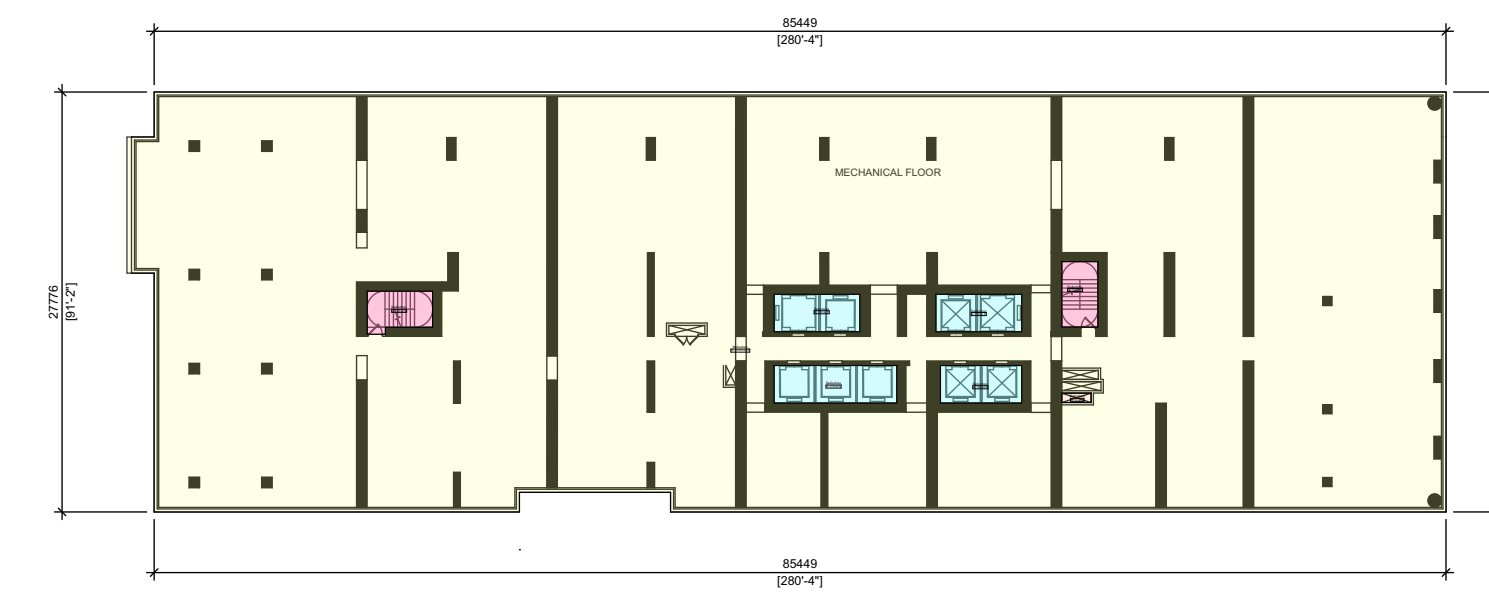
11 L11 - L14 Res. / Amenities
 SCALE: 1:500



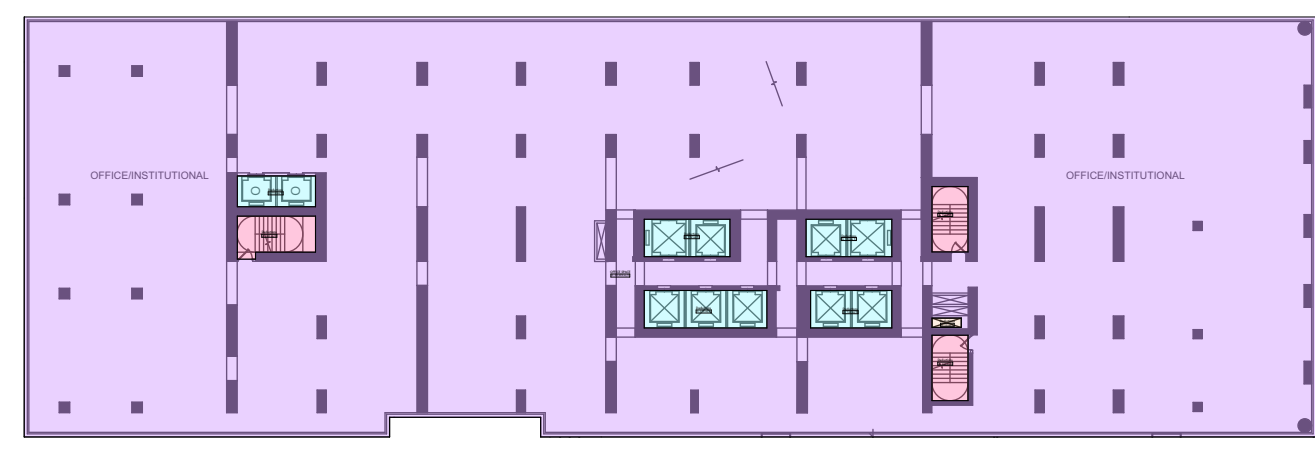
10 L10 Amenities
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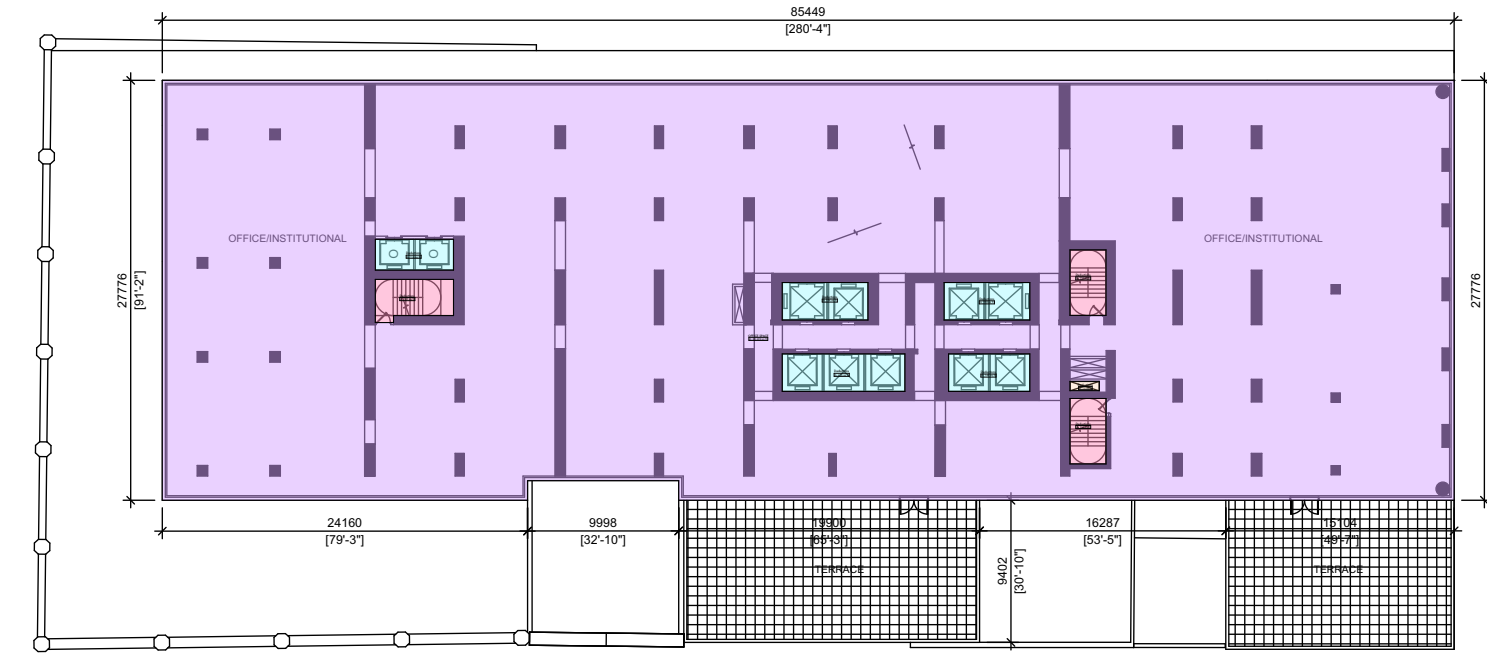
9 L9 Res. / Mech.
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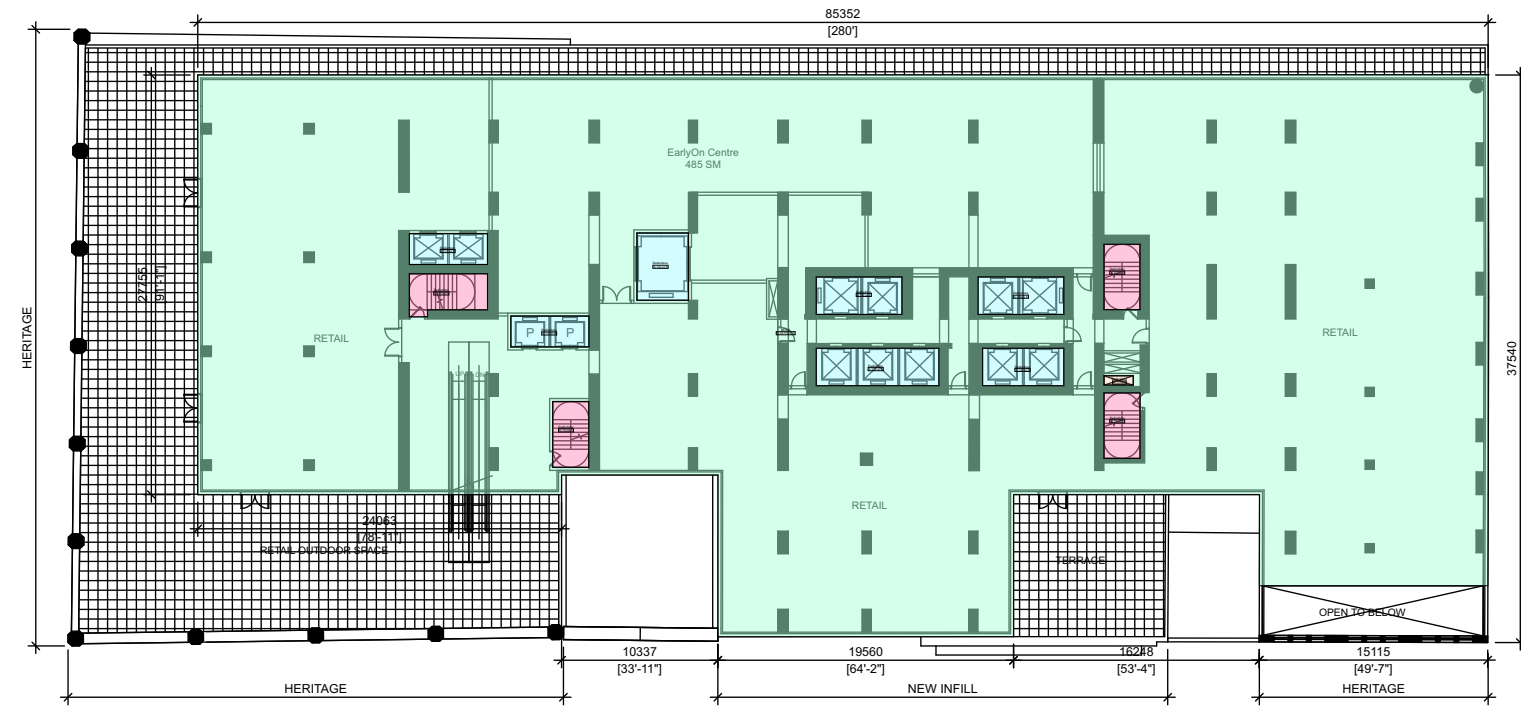
8 L8 Mech
 SCALE: 1:500



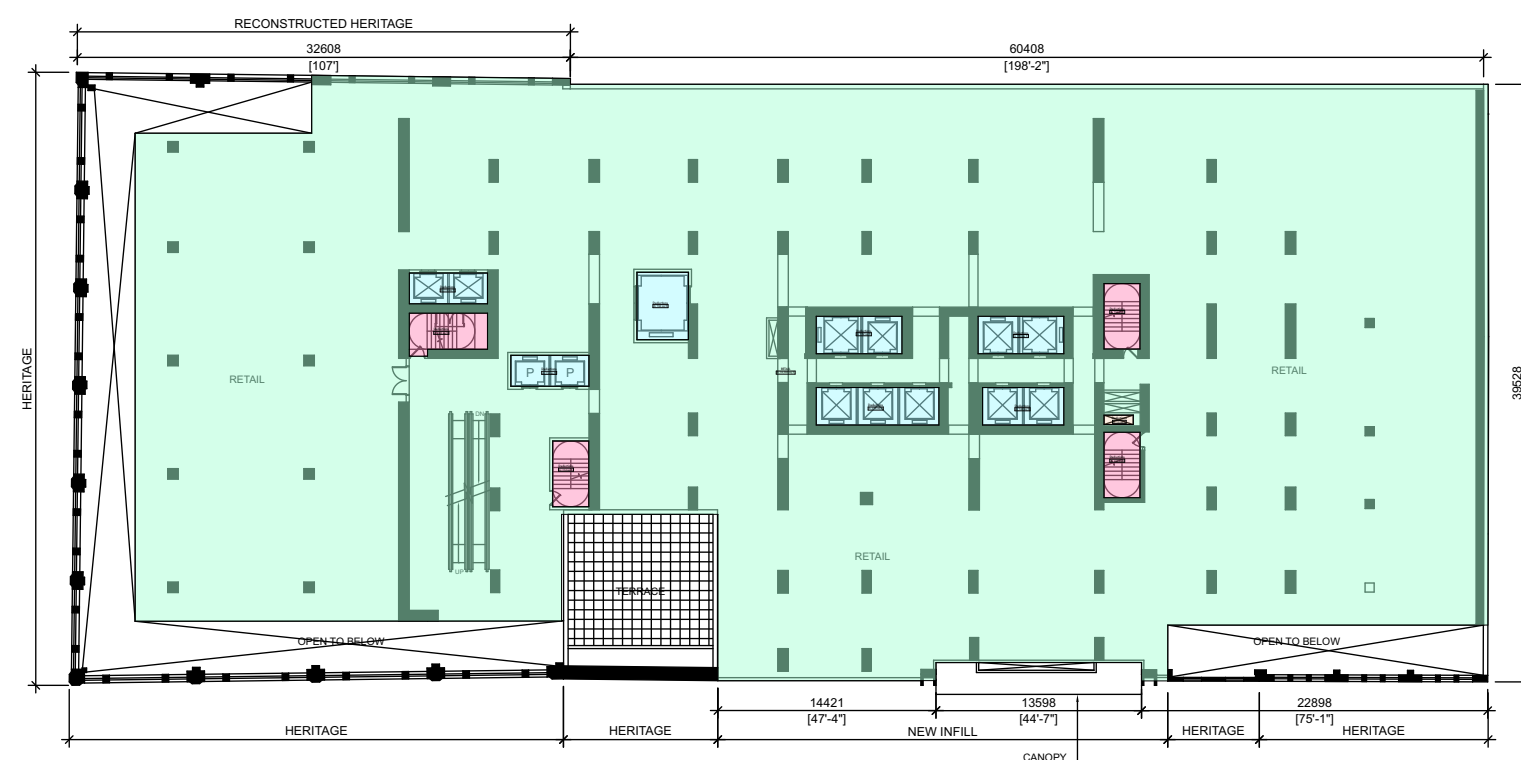
7 L5 - L7 Office
 SCALE: 1:500



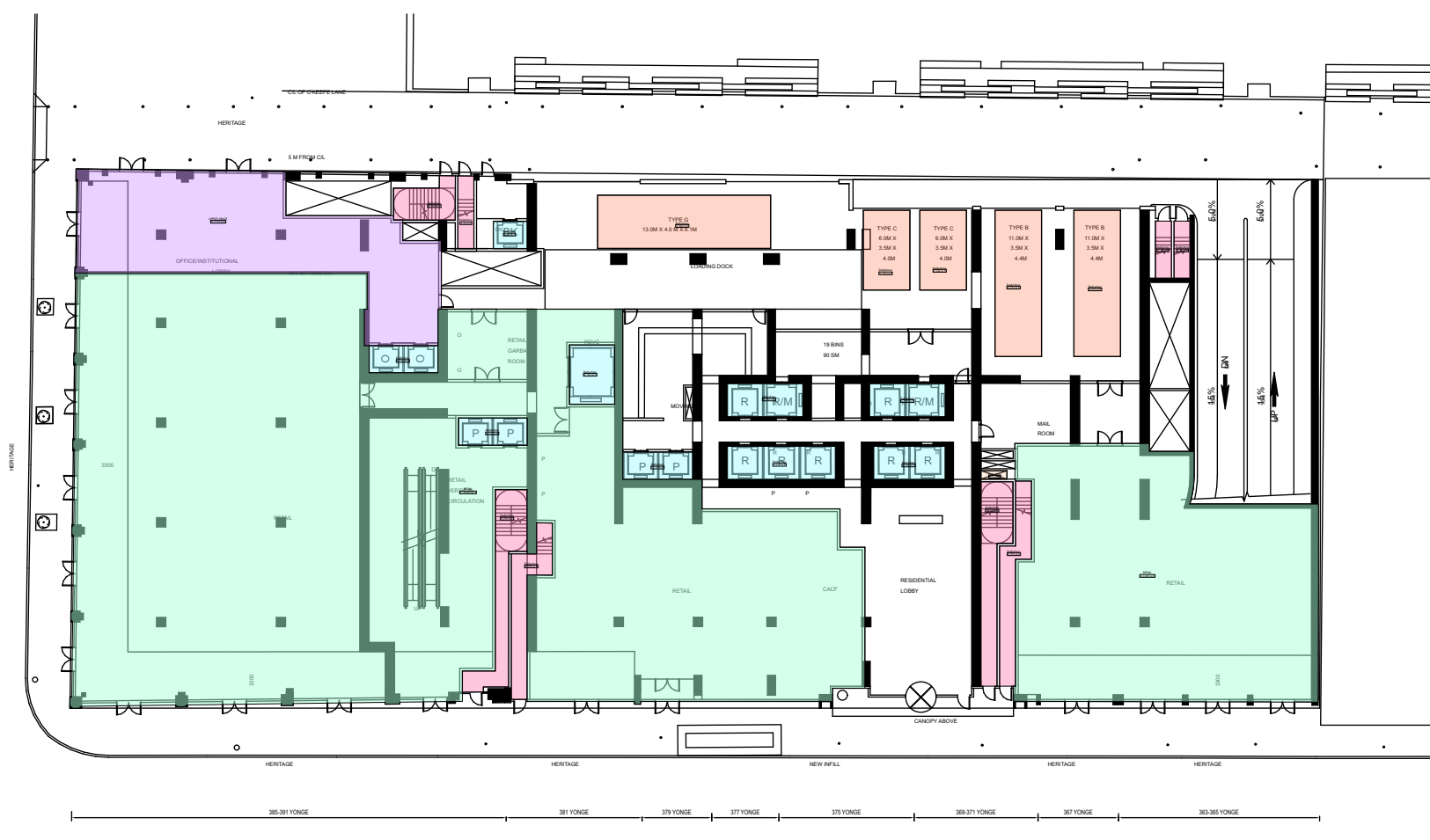
6 L4 Office
 SCALE: 1:500



5 L3 Retail
 SCALE: 1:500



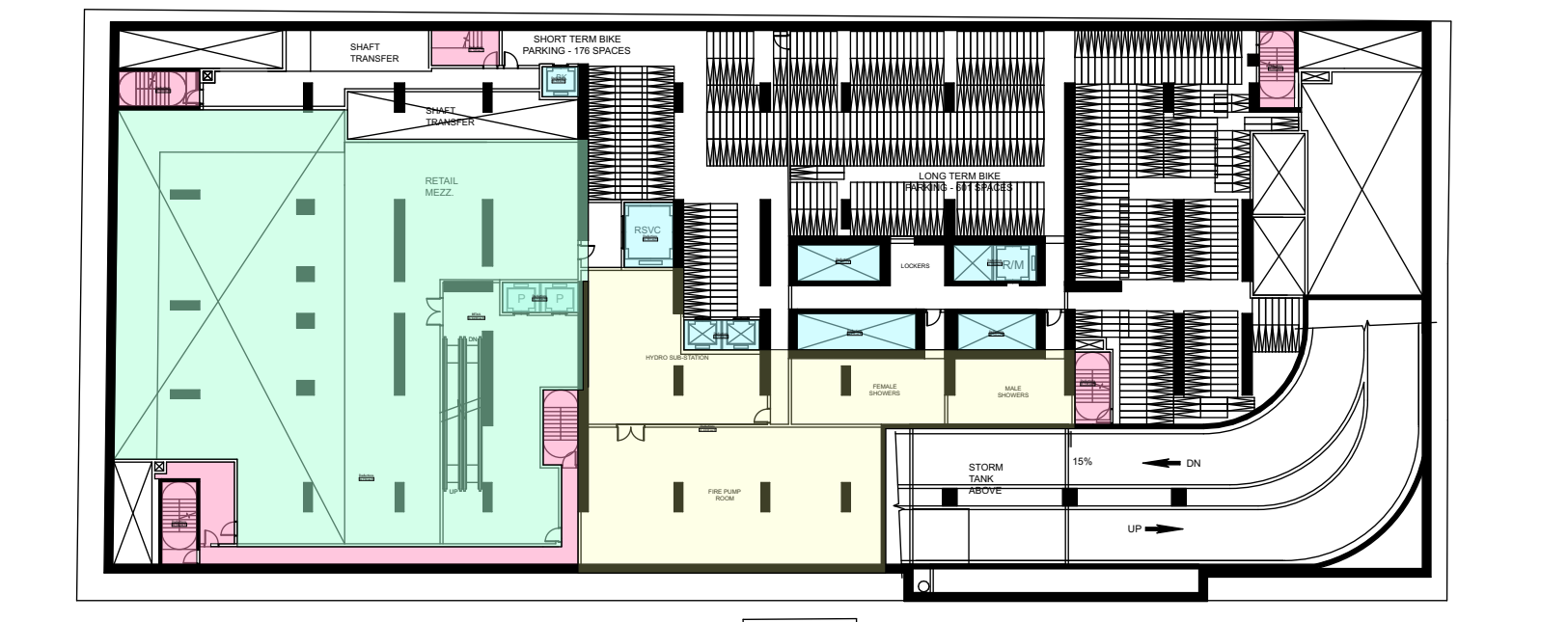
4 L2 Retail
 SCALE: 1:500



3 Ground
 SCALE: 1:500



2 B1M Retail
 SCALE: 1:500



1 B1 Retail
 SCALE: 1:500

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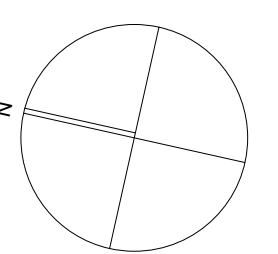
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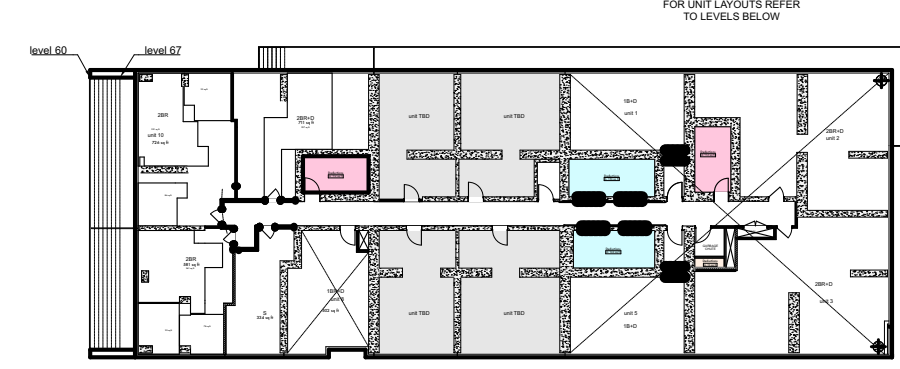
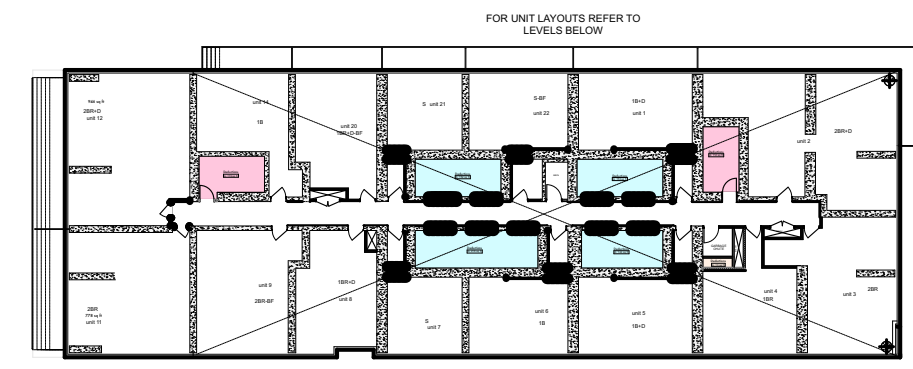
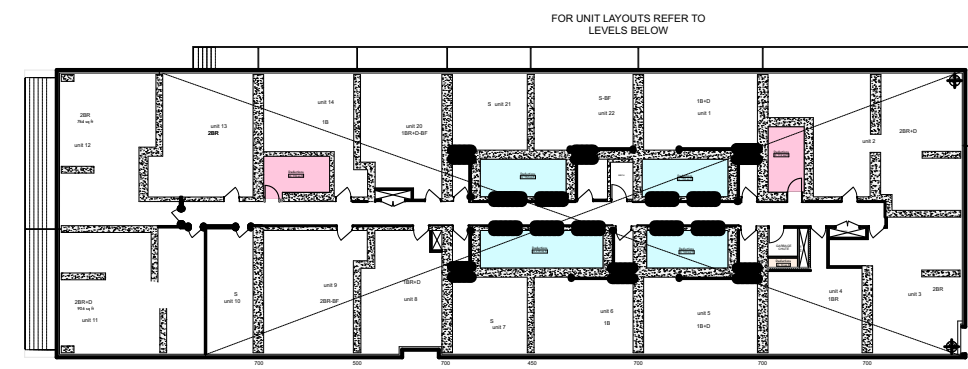
CRESFORD DEVELOPMENTS

GFA Deduction Diagrams
 Per By-Law 569-2013

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2018-11-15

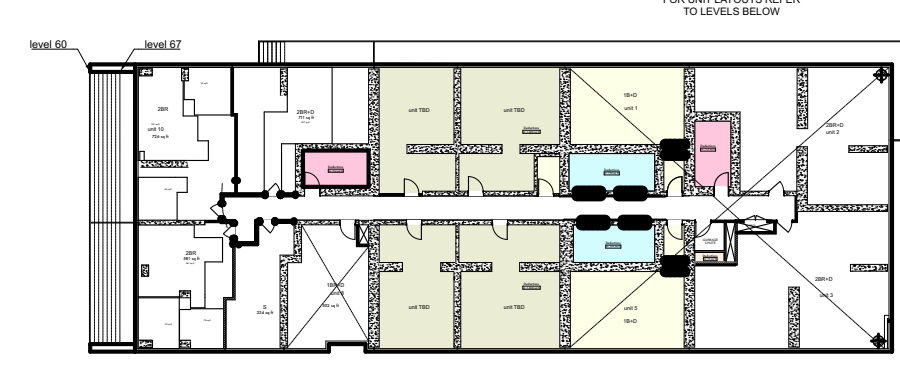
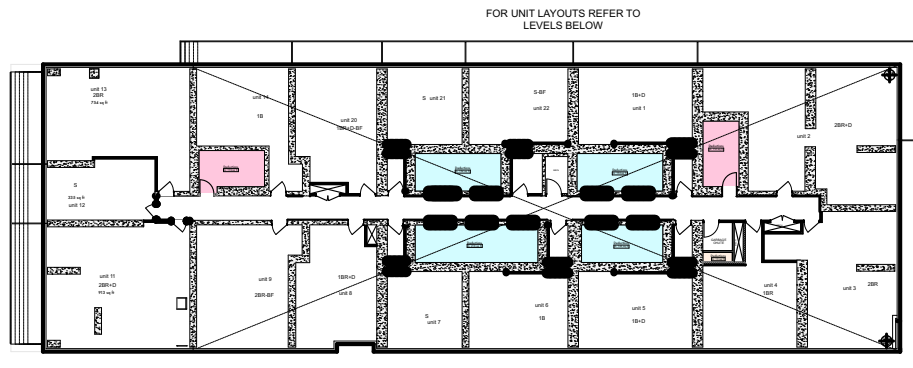
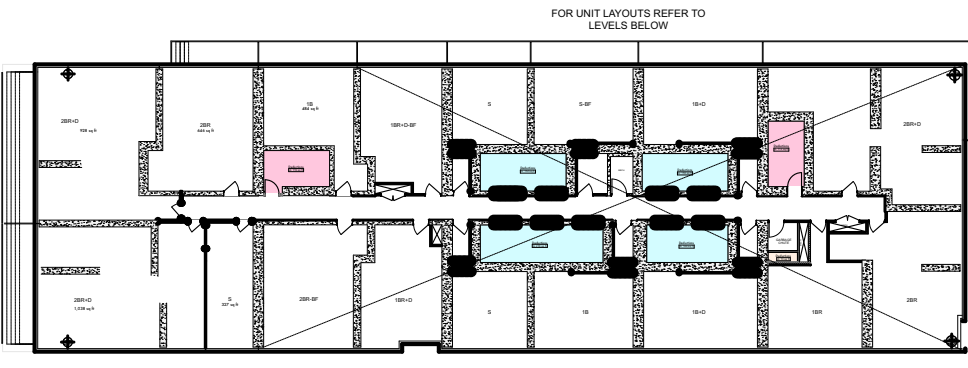
A-2.2



15 L29 - L33 Res.
 SCALE: 1:500

19 L46 - L49 Res.
 SCALE: 1:500

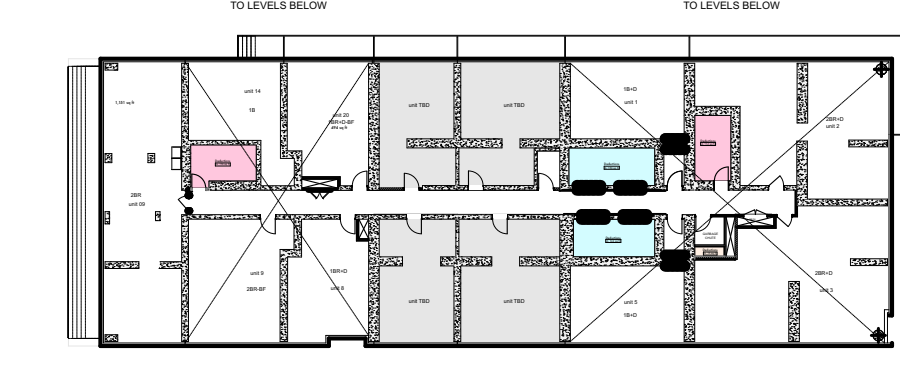
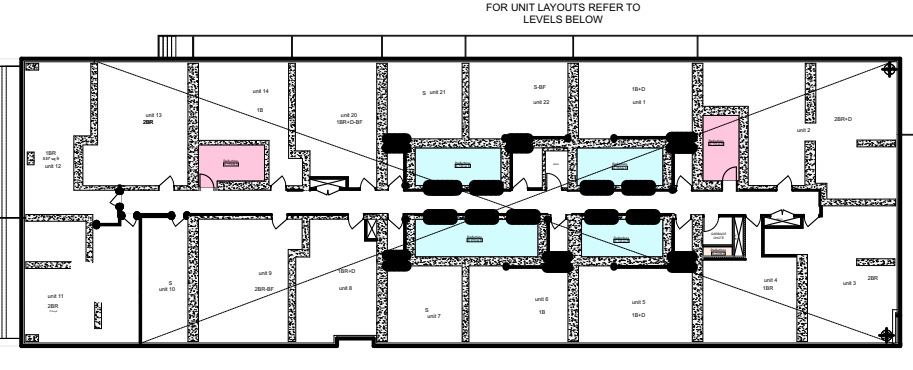
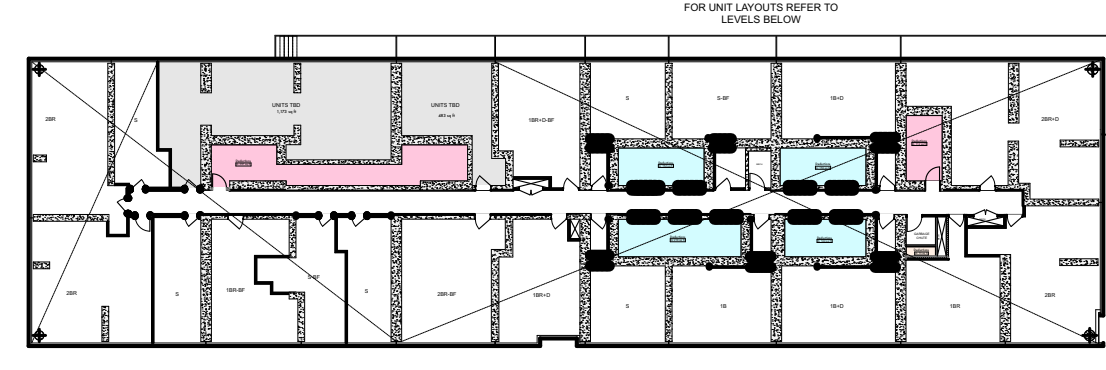
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 SCALE: 1:500



14 L22 - L28 Res.
 SCALE: 1:500

18 L41 - L45 Res.
 SCALE: 1:500

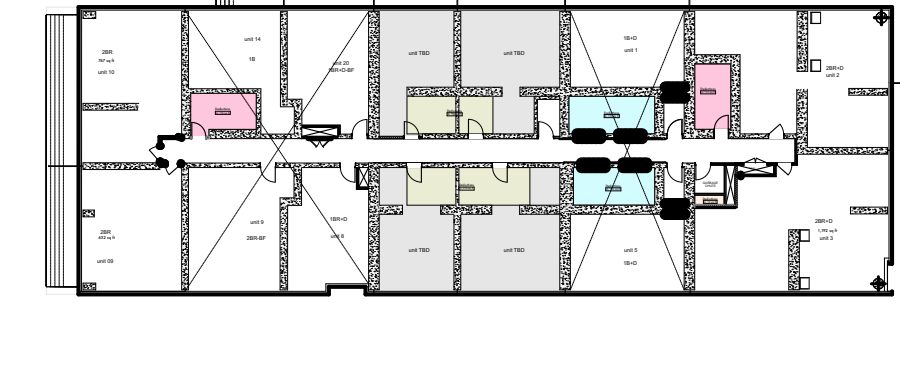
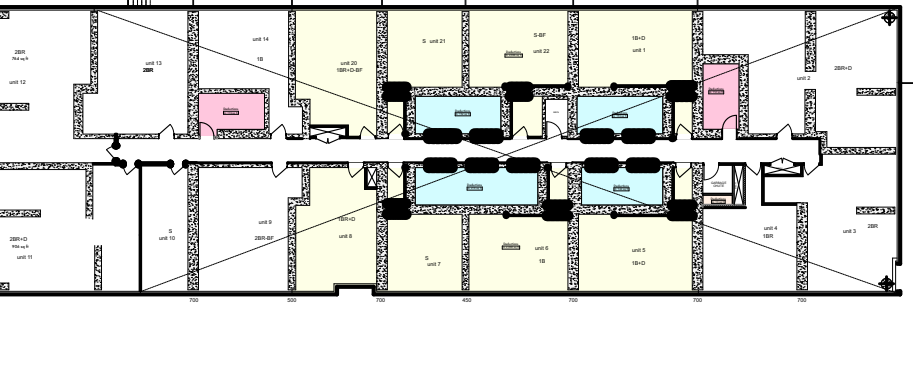
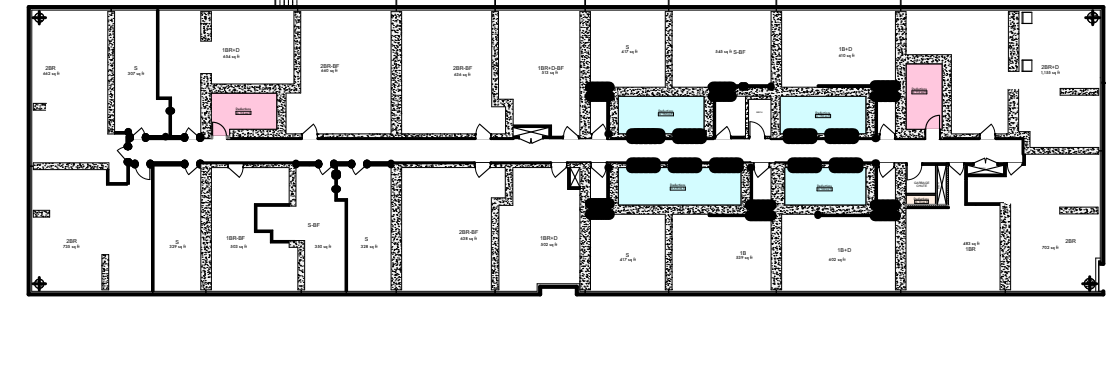
22 L60 - L61 Res. / Mech.
 SCALE: 1:500



13 L21 Res. / Transfer
 SCALE: 1:500

1 L36 - L40 Res.
 SCALE: 1:500

21 L56 - L59 Res.
 SCALE: 1:500



12 L15 - L20 Res.
 SCALE: 1:500

16 L34 - L35 Res. / Mech.
 SCALE: 1:500

20 L50 - L55 Res. / Elev. Overrun
 SCALE: 1:500

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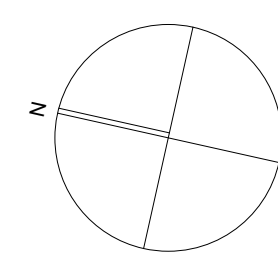
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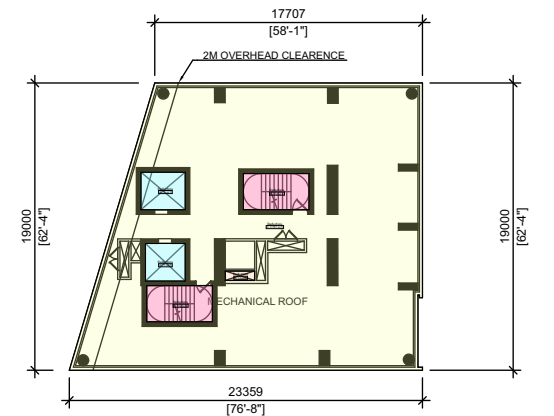
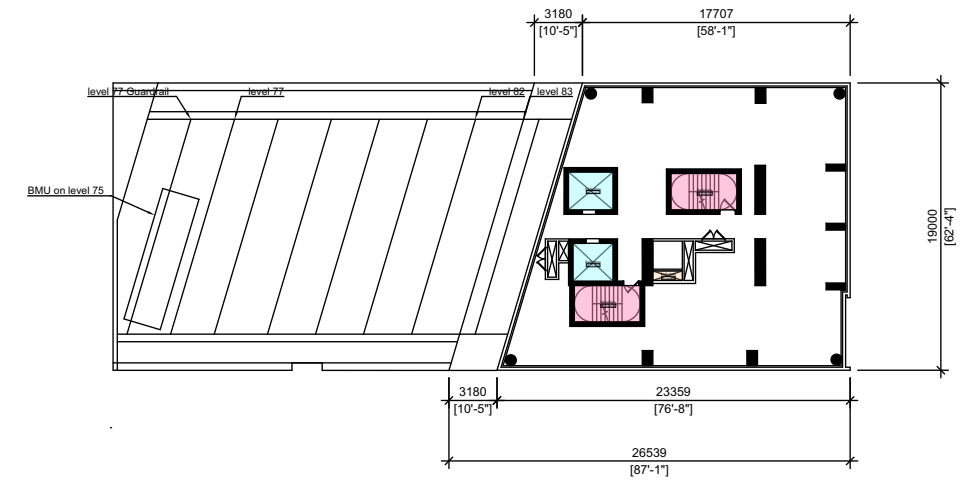
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CRESFORD DEVELOPMENTS

GFA Deduction Diagrams

1:500, 1:1
 2018-11-15

A-2.3



36 L86 Mech. Penthouse
 SCALE: 1:500

2013 GFA Deductions: Elev./Stairs/Garb.

Home Story	Area
B2 Parking	93.8
B1 Retail & Bicycle Parking	128.9
B1M Retail & Bicycle Parking	136.3
L1 Ground	403.2
L2 Retail	143.9
L3 Retail	143.9
L4 Office / Institutional	107.6
L5 Office / Institutional	107.6
L6 Office / Institutional	107.6
L7 Office / Institutional	107.6
L8 Mech.	84.6
L9 Residential / Mech.	84.6
L10 Residential / Amenity	84.6
L11 Residential	84.6
L15 Residential	84.6
L21 Transfer	106.8
L22 Residential	84.7
L29 Residential	84.7
L34 Residential/Mech.	84.7
L35 Residential/Mech.	84.7
L36 Residential	84.7
L41 Residential	84.7
L46 Residential	84.7
L50 Elevator Overrun A	50.3
L54 Elevator Overrun B	50.3
L56 Residential	50.3
L60 Residential / Mech	49.6
L61 Residential/Mech.	49.6
L62 Residential	49.6
L68 Transition	49.6
L69 Residential	49.6
L76 Residential	49.6
L77 Transfer	64.8
L78 Residential	49.6
L79 Residential	49.6
L80 Residential	49.6
L81 Residential/Transfer	49.6
L82 Residential/Transfer	58.7
L83 Residential	60.0
L84 Residential	48.3
L85 Residential	35.9
Mech PH.	35.9

2013 GFA Deductions: Loading

Home Story	Area
L1 Ground	171.0

2013 GFA Deductions: Indoor Amenity

Home Story	Area
L9 Residential / Mech.	333.3
L10 Residential / Amenity	1,174.7
L11 Residential	104.7

2013 GFA Deductions: Mechanical

Home Story	Area
L8 Mech.	2,292.1
L9 Residential / Mech.	235.0
L34 Residential/Mech.	383.3
L35 Residential/Mech.	383.3
L50 Elevator Overrun A	34.4
L60 Residential / Mech	336.1
L61 Residential/Mech.	336.1
Mech PH.	352.8

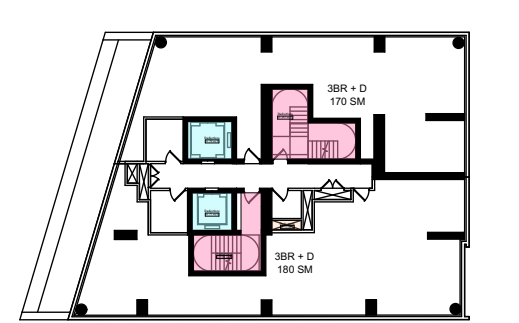
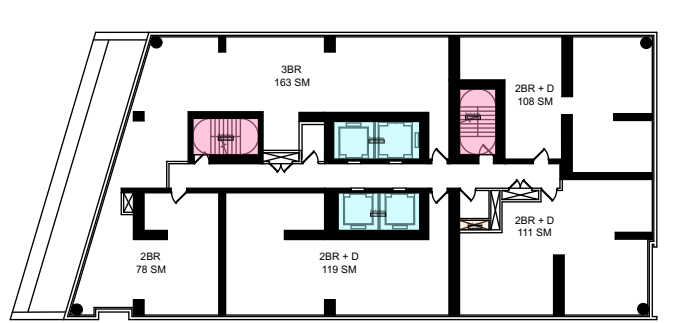
Retail GFA

Home Story	Area
B1 Retail & Bicycle Parking	857.8
B1M Retail & Bicycle Parking	511.1
L1 Ground	1,840.6
L2 Retail	3,037.6
L3 Retail	2,487.5
	8,734.6 m²

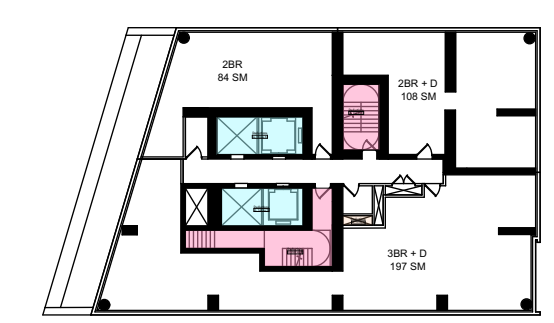
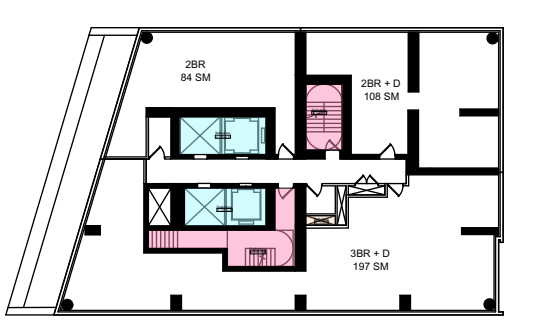
Office GFA

Home Story	Area
L1 Ground	196.0
L4 Office / Institutional	2,252.8
L5 Office / Institutional	2,252.8
L6 Office / Institutional	2,252.8
L7 Office / Institutional	2,252.8
	9,207.2 m²

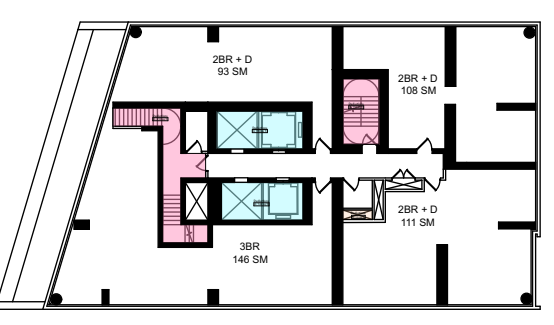
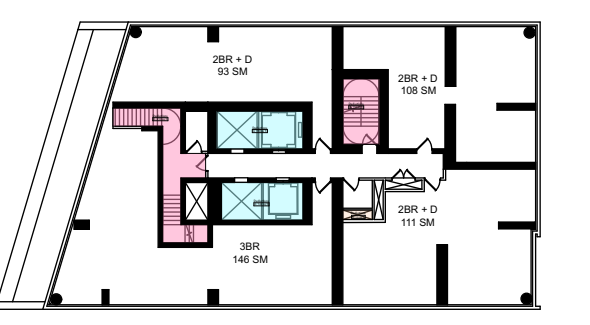
35 L85 Res.
 SCALE: 1:500



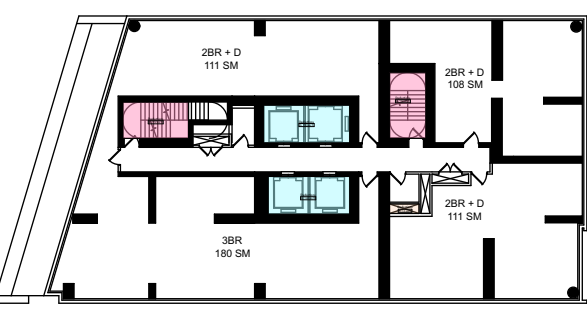
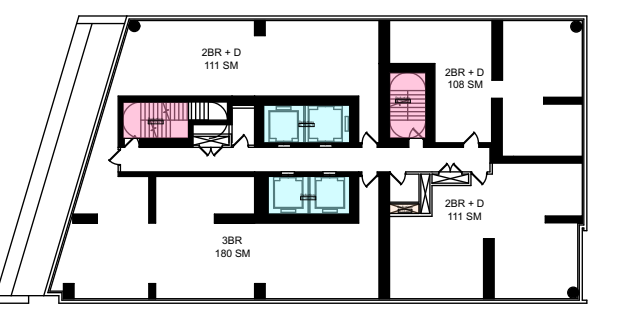
34 L84 Res. / Transfer
 SCALE: 1:500



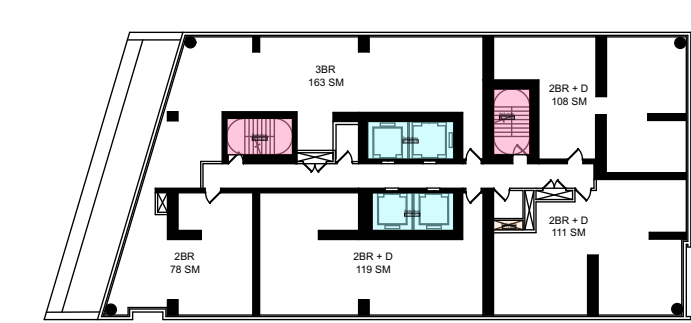
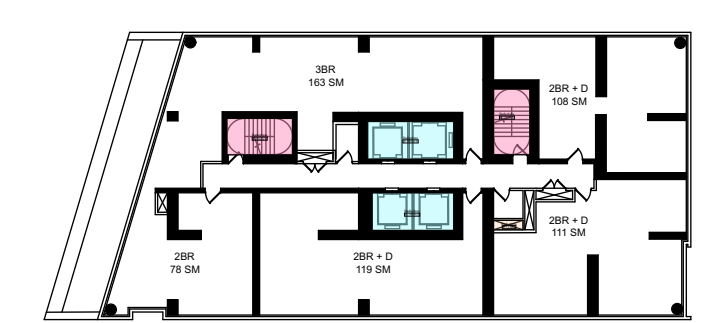
33 L83 Res.
 SCALE: 1:500



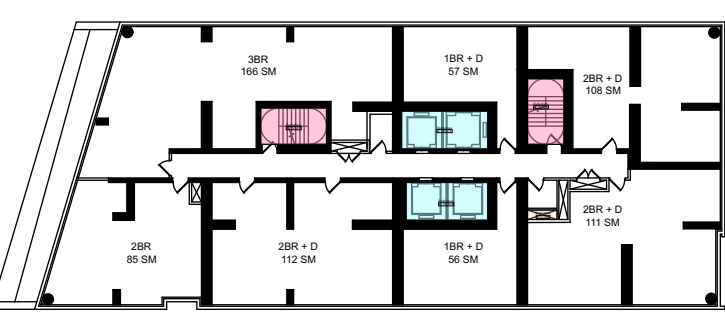
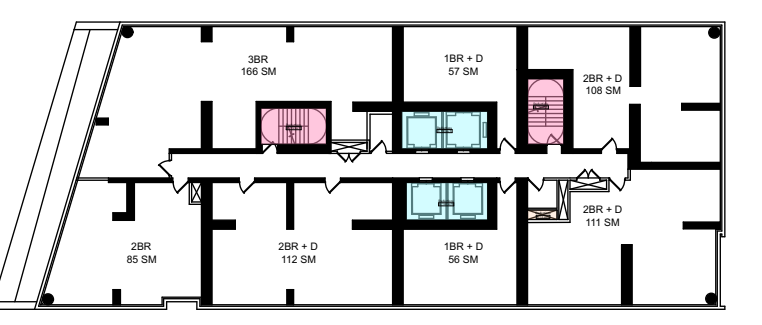
31 L81 Res.
 SCALE: 1:500



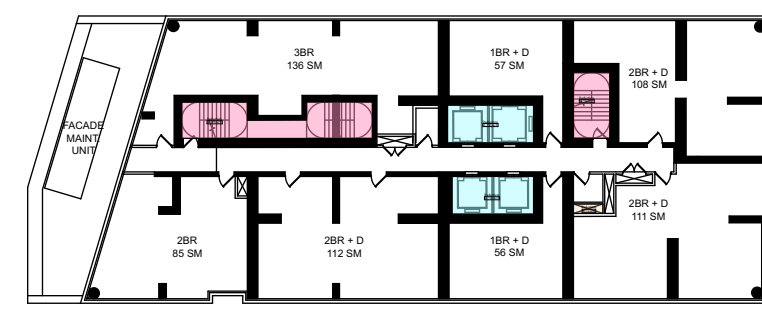
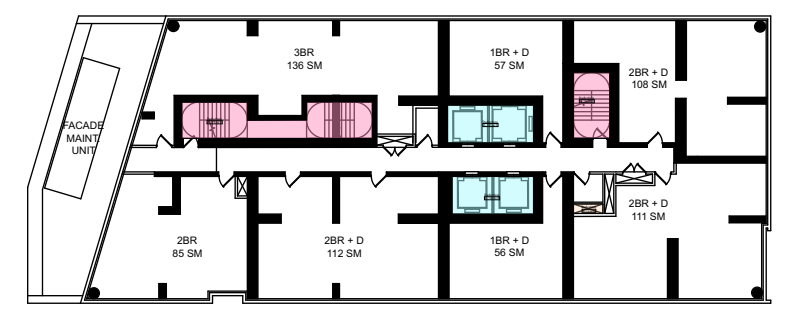
30 L80 Res.
 SCALE: 1:500



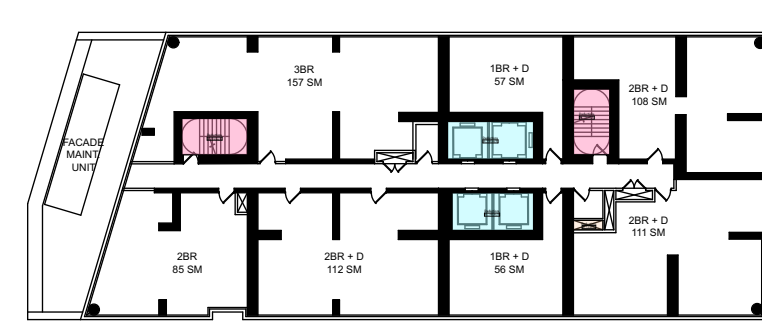
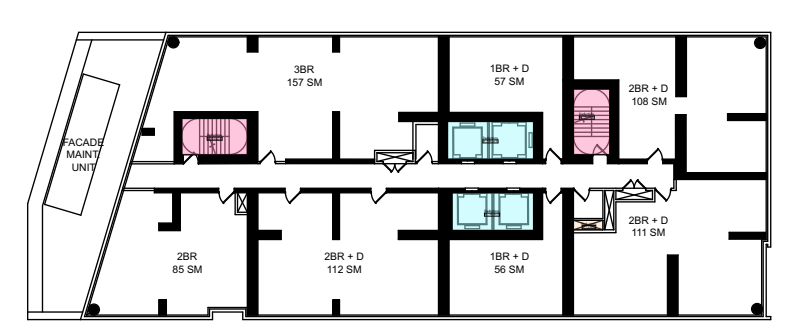
29 L79 Res.
 SCALE: 1:500



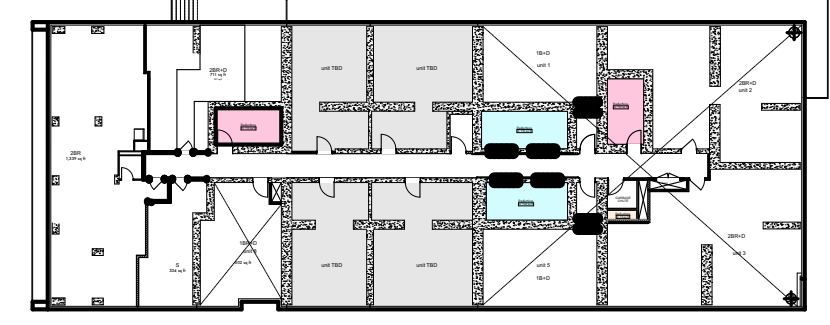
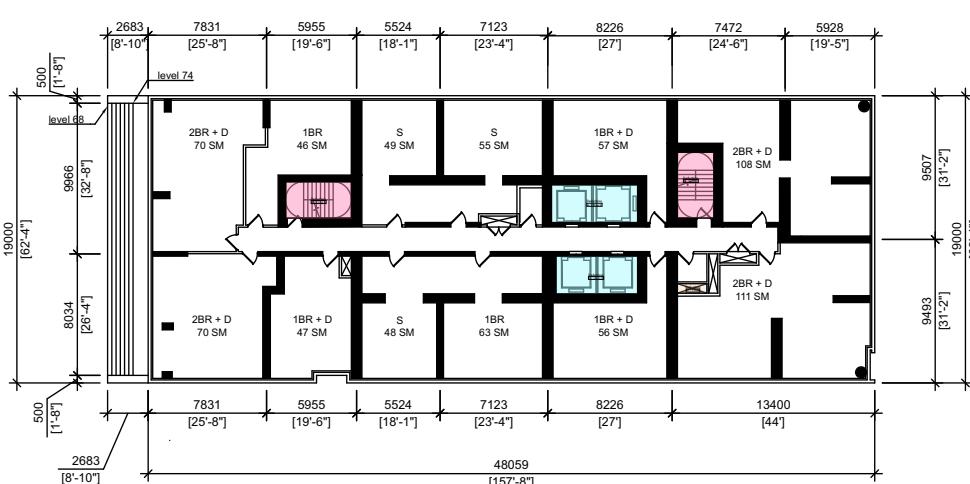
27 L77 Res. / Transfer
 SCALE: 1:500



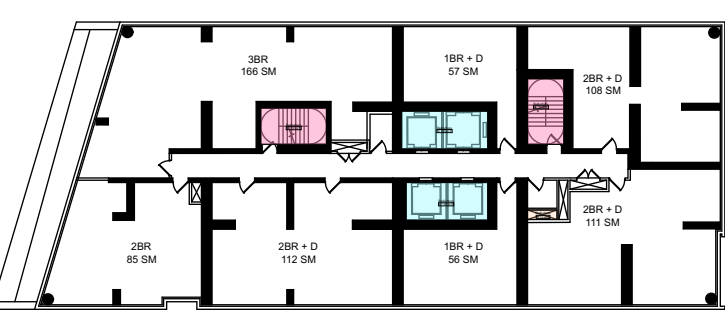
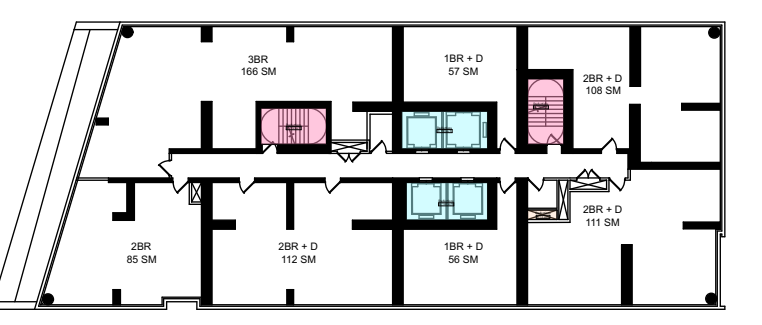
26 L76 Res.
 SCALE: 1:500



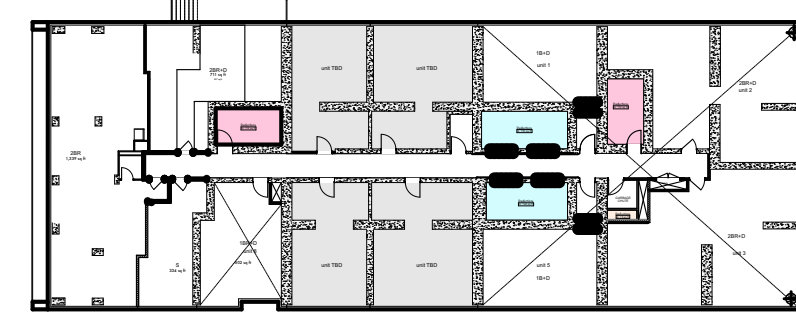
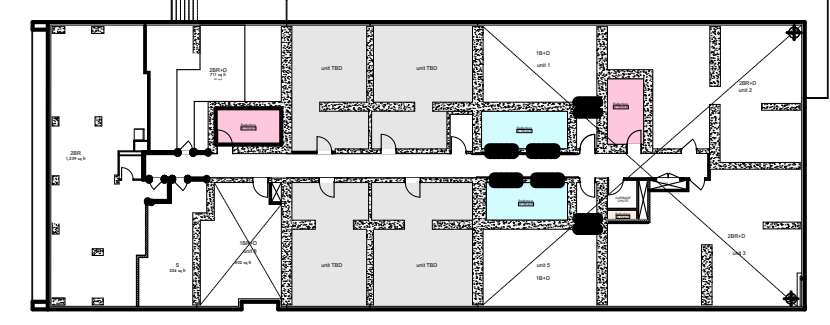
25 L69 - L75 Res.
 SCALE: 1:500



28 L78 Res.
 SCALE: 1:500



24 L68 Res. / Transfer
 SCALE: 1:500



Yonge & Gerrard

18-11-15 all areas in sm

	Floor Area															Salable Area	
	Level	Use	total levels	Ht / flr	Total Ht _ m	GCA/level	Total GCA	Exterior Residential Amenity	Interior Residential Amenity	Loading Deductions	GFA Deductions	Res GFA	Non-Res GFA Mechanical	Non-Res GFA (Office / Inst.)	Non-Res GFA (Retail)	Total GFA	Total Unit SA
Below Grade	B6-B3	Parking	4			3,476	13,905				13,905					0	
	B2	Parking	1			3,476	3,476				3,476					0	
	B1	Retail + Bikes	1			3,476	3,476				2,619				858	858	
	B1 M	Retail + Bikes	1			3,058	3,058				2,650				511	408	
	Subtotal Below Grade		7				23,916		0		22,650				1,369	1,266	
Podium	L1	Ground	1		0.00	3,688	3,688		0	171	403	1,019		255	1,841	3,114	0
	L2	Retail	1		0.00	3,243	3,243		0		144	0		0	3,038	3,099	0
	L3	Retail	1		0.00	2,640	2,640		0		144	0		0	2,488	2,496	0
	L4-L7	Office / Inst.	4		0.00	2,361	9,442		0		430	0		9,011	0	9,012	0
	L8	Mech	1		0.00	2,377	2,377		0		85	0	2,292	0	0	0	0
	L9	Res. + Mech.	1		0.00	2,220	2,220		333		85	1,567	235	0	0	1,567	1,234
Lower Tower	L10	Res + Amenity	1		0.00	1,687	1,687	214	1,175		85	428		0	0	428	0
	L11-L14	Res + Amenity	4		0.00	1,687	6,748		419		338	5,991		0	0	5,991	5,133
	L15-L20	Res	6		0.00	1,349	8,092		0		508	7,585		0	0	7,585	7,018
	L21	Res. + Transfer	1		0.00	1,349	1,349		0		107	1,242		0	0	1,242	1,147
	L22-L28	Res	7		0.00	1,168	8,175		0		593	7,582		0	0	7,582	7,062
	L29-L33	Res	5		0.00	1,140	5,701		0		424	5,277		0	0	5,277	4,906
	L34-L35	Res + Mech	2		0.00	1,140	2,280		0		169	1,344	767	0	0	1,344	1,962
	Mid Tower	L36-L40	Res	5		0.00	1,103	5,513		0		424	5,090		0	0	5,090
L41-L45		Res	5		0.00	1,075	5,377		0		424	4,954		0	0	4,954	4,583
L46-L49		Res	4		0.00	1,048	4,192		0		339	3,854		0	0	3,854	3,649
L50-L55		Res. + Ele. Over.	6		0.00	1,021	6,124		0		302	5,822		0	0	5,822	5,420
L56-L59		Res	4		0.00	993	3,972		0		251	3,721		0	0	3,721	3,515
L60-L61		Res + Mech	2		0.00	950	1,900		0		142	1,083	675	0	0	1,083	1,005
Upper Tower	L62-L67	Res	6		0.00	950	5,699		0		298	5,401		0	0	5,401	5,027
	L68	Res. + Transfer	1		0.00	950	950		0		50	900		0	0	900	841
	L69-L75	Res	7		0.00	912	6,381		0		347	6,034		0	0	6,034	5,634
Tower Top	L76	Res	1		0.00	811	811		0		50	762		0	0	762	704
	L77	Res. + Transfer	1		0.00	811	811		0		50	761		0	0	761	689
	L78	Res	1		0.00	757	757		0		50	706		0	0	706	713
	L79	Res	1		0.00	690	690		0		50	640		0	0	640	658
	L80	Res	1		0.00	690	690		0		50	640		0	0	640	599
	L81	Res	1		0.00	630	630		0		50	580		0	0	580	541
	L82	Res. + Transfer	1		0.00	570	570		0		59	511		0	0	511	486
	L83	Res	1		0.00	510	510		0		60	450		0	0	450	422
	L84	Res. + Transfer	1		0.00	449	449		0		48	401		0	0	401	377
	L85	Res	1		0.00	389	389		0		36	353		0	0	353	352
L86 Mech PH	Mech PH	1		0.00	389	389		0		36	0	353	0	0	0	0	
Subtotal Above Grade		86				104,442	214	1,927	171	6,627	74,694	4,322	9,266	7,366	91,396		
Project Totals		86		N/A		128,358		1,927		6,627	74,694		9,266	8,735	92,662	68,395	
Max / Min Permitted								2,212			75,871		18,629		94,500		

1. Copyright of this drawing is reserved by the Architect. The drawing and all associated documents are an instrument of service by the Architect. The drawing and the information contained therein may not be reproduced in whole or in part without prior written permission of the Architect.

2. These Contract Documents are the property of the Architect. The Architect bears no responsibility for the interpretation of these documents by the Contractor. Upon written application, the Architect will provide written/graphic clarification or supplementary information regarding the intent of the Contract Documents. The Architect will review Shop Drawings submitted by the Contractor for design conformance only.

3. Drawings are not to be scaled for construction. The Contractor is to verify all existing conditions and dimensions required to perform the work and report any discrepancies with the Contract Documents to the Architect before commencing any work.

4. Positions of exposed finished mechanical or electrical devices, fittings, and fixtures are indicated on architectural drawings. The locations shown on the architectural drawings govern over the Mechanical and Electrical drawings. Those items not clearly located will be located as directed by the Architect.

5. These drawings are not to be used for construction unless noted below as "Issuance: For Construction"

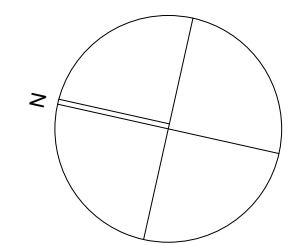
6. All work is to be carried out in conformance with the Code and Bylaws of the authorities having jurisdiction.

7. The Architect of these plans and specifications gives no warranty or representation to any party about the constructability of the building(s) represented by them. All contractors or subcontractors must satisfy themselves when bidding and at all times ensure that they can properly construct the work represented by these plans.

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YONGE & GERRARD
 383 Yonge Street

CRESFORD DEVELOPMENTS

YSL Statistics Update

1:0.40

2018-11-15

A-3.3

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: October 23, 2018

CASE NO(S): PL171277

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	9615334 Canada Inc.
Subject:	Request to amend the Official Plan - Failure of the City of Toronto to adopt the requested amendment
Existing Designation:	Mixed Use Areas
Proposed Designated:	Site Specific (To be determined)
Purpose:	To permit a 98-storey mixed use building
Property Address/Description:	363-391 Yonge Street, 3 Gerrard Street East and 357A & 357 ½ Yonge Street
Municipality:	City of Toronto
Approval Authority File No.:	15 227133 STE 27 OZ
OMB Case No.:	PL171277
OMB File No.:	PL171277
OMB Case Name:	9615334 Canada Inc. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	9615334 Canada Inc.
Subject:	Application to amend Zoning By-law No. 438-86 - Refusal or neglect of the City of Toronto to make a decision
Existing Zoning:	CR T4.0 C4.0 R1.5 under By-law 438-86 and zoned CR 4.0 (c4.0; r1.5) SS1 (x2553) under By-law 569-2013
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 98-storey mixed use building

Property Address/Description: 363-391 Yonge Street, 3 Gerrard Street East
and 357A & 357 ½ Yonge Street
Municipality: City of Toronto
Municipality File No.: 15 146478 STE 27 OZ
OMB Case No.: PL171277
OMB File No.: PL171278

Heard: August 20, 2018 in Toronto, Ontario

APPEARANCES:

Parties

9615334 Canada Inc.

City of Toronto

Zantav Limited

Ryerson University

Counsel

N. J. Pepino

R. Kallio

S. Rouleau

A. Jeanrie

M. Shodeinde (student at law)

MEMORANDUM OF ORAL DECISION DELIVERED BY THOMAS HODGINS ON AUGUST 20, 2018 AND INTERIM ORDER OF THE TRIBUNAL

INTRODUCTION

Disposition

[1] After considering the evidence and submissions received at the above-noted hearing, the Tribunal allows the appeal in part and makes an Interim Order to approve an Official Plan Amendment (“OPA”) and Zoning By-law Amendments (“ZBLAs”).

Background

[2] This Memorandum of Oral Decision and Interim Order results from the first Pre-hearing Conference (“PHC”) on appeals by 9615334 Canada Inc. (“9615334”) of the City of Toronto’s (“City”) failure to make decisions on its applications to amend the

Official Plan (“OP”) and the applicable Zoning By-laws (“ZBLs”) for the above-noted municipal addresses (“Site”) which are generally at the south-east corner of Yonge and Gerrard Streets.

[3] Notice of the PHC was undertaken by 9615334’s Counsel, at the direction of the Tribunal, and the requisite Affidavit of Service was submitted.

THE PHC

[4] 9615334 and the City were represented as noted above.

[5] On request and without challenge, the Tribunal granted Party status to Zantav Limited and Ryerson University.

[6] There were no requests for Participant status.

[7] Jane Pepino and Ray Kallio advised that 9615334 and the City had reached a settlement and requested that the Tribunal convert the PHC into a settlement hearing. Counsel for Zantav Limited and Ryerson University had no objection to this request.

[8] The Tribunal converted the PHC to a settlement hearing.

SETTLEMENT HEARING

[9] Ms. Pepino called Craig Hunter to provide evidence in support of the settlement. Mr. Hunter is a consultant who was qualified without challenge to give expert opinion evidence in land use planning.

[10] Mr. Hunter described the Site and its context, including other relevant development approvals in the area. He reported the key changes and revisions that had been made to the original proposal since its submission to the City.

[11] Mr. Hunter described the current proposal which is to be advanced by the

settlement and the requested OPA and ZBLAs and it includes: a maximum 85-storey tower (with a height of 299 metres to the top of the mechanical penthouse) and a 21-storey podium; a maximum of 1106 residential units of which a portion will be on-Site affordable rental housing; and significant retail/office/institutional space (the Interim Order provides some additional detail on the scale of certain parts of the project). He also explained how certain heritage features on the Site will be preserved and incorporated into the project.

[12] Mr. Hunter described the current municipal policy planning framework and the current zoning and advised why and how the OP and ZBLs had to be amended to accommodate the current proposal.

[13] Mr. Hunter testified that the current proposal and its implementing OPA and ZBLAs have sufficient regard to matters of Provincial interest as set out in s. 2 of the *Planning Act*, are consistent with the Provincial Policy Statement (“PPS”) and conform to the applicable Provincial Plan—the Growth Plan for the Greater Golden Horseshoe , 2017 (“Growth Plan”) .

[14] Mr. Hunter also testified that the current proposal aligns with the objectives of the OP and applicable guidelines. The proposed ZBLAs will comply with the OP as amended.

[15] Mr. Hunter explained that the settlement addresses and provides for affordable rental housing, public art, heritage preservation, a potential day care centre and upgrades to both O’Keefe Lane and Yonge Street. The final design of the project will be reviewed by the City’s Design Review Panel.

[16] In summary, Mr. Hunter described the current proposal as a significant mixed-use project that went through a comprehensive planning process. He said it will have many benefits and no adverse planning impacts. Mr. Hunter believes the current proposal and its implementing OPA and ZBLAs are in the public interest and represent good planning. He recommended that the Tribunal approve the current proposal on an

interim basis and withhold its Final Order until certain detailed and technical matters are addressed.

[17] Ms. Pepino submitted, consistent with Mr. Hunter's advice, that it would be appropriate for the Tribunal, in the event it supported the settlement, to issue an Interim Order and withhold its Final Order until certain matters are finalized.

[18] Mr. Kallio confirmed that the City supports the current proposal, accepts Mr. Hunter's evidence and agrees with the request for an Interim Order.

[19] When offered an opportunity by the Tribunal, Sylvain Rouleau had no comment.

[20] Andrew Jeanrie submitted a letter from Mohamed Lachemi, President and Vice-Chancellor of Ryerson University, in support of the proposed development and advising that Ryerson University intends to occupy space within the proposed development for academic purposes and that the proposed development will provide students with new, distinct urban facilities, integrating campus expansion with the growth of the neighbourhood and the City.

ANALYSIS AND FINDINGS

[21] The Tribunal accepts and relies upon the uncontested expert evidence of Mr. Hunter in making its decision and notes that the current proposal and settlement are supported by the 9615334, the City and Ryerson University with no objection from the fourth Party – Zantav Limited.

[22] Accordingly, based on the evidence of Mr. Hunter and with the concurrence of the Parties, the Tribunal finds that it is appropriate to allow the appeals in part and to issue an Interim Order which approves an implementing OPA and ZBLAs.

[23] The content of the Interim Order is consistent with the submissions of Ms. Pepino and Mr. Kallio.

[24] The Final Order is withheld pending notice to the Tribunal that certain detailed and technical matters, as set out in the Interim Order, are addressed.

[25] In arriving at its Decision, the Tribunal had regard to matters of Provincial interest.

[26] The Tribunal also finds that its Decision is consistent with the PPS and conforms with the Growth Plan.

INTERIM ORDER

[27] The Tribunal orders as follows:

A) Pursuant to subsections 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, the appeals filed by 9615334 are allowed, in part and the City of Toronto's Official Plan, Zoning By-law No. 438-86 and Zoning By-law No. 569-2013, as they relate to the Site, are hereby amended.

B) The Tribunal's Order with respect to paragraph 1 is withheld until the Tribunal is advised by the City Solicitor that the following conditions have been satisfied:

- a. That the draft Official Plan Amendment has been finalized, to the satisfaction of 9615334 and the City of Toronto, and provided to the Tribunal;
- b. That the draft By-law has been finalized, to the satisfaction of 9615334 and the City of Toronto, and provided to the Tribunal and that such By-law provides for the following:
 - i. 75,871 square metres of residential space (a maximum of 1,106 residential units including a minimum of 1,511 square meters and a maximum of 2,658 square metres of on-site affordable rental housing);
 - ii. 18,629 square metres of retail/office/institutional, space including between 6,682 square metres – 8,847 square metres of institutional space, 375 square metres of community and/or cultural space at the B1 level and 485 square metres day care, if acceptable to the Ministry of Child and Youth Services (with an additional 278 square metres of outdoor day care space);

- iii. A maximum 85-storey tower (height of 299 metres to top of mechanical penthouse with a 21-storey podium);
 - iv. A maximum 94,500 square metres of gross floor area (By-law No. 569-2013);
 - v. A maximum Floor Space Index (FSI) of 25 (By-law No. 569-2013);
 - vi. A maximum TAR of 24 percent;
 - vii. An average tower floor plate of 983 square metres;
 - viii. Minimum tower setbacks of 11.3 metres (Yonge Street), 10 metres (Gerrard Street East from floors 10-21 with 6.5 metres at the northeast corner on floors 10 to 14, 17.9 metre setback from floor 24, 33.5 metre setback from floor 76), 12.5 metres (centre line of O'Keefe Lane) and 12.5 metres (south property line).
- c. That the properties at 385-391 Yonge Street and 3 Gerrard Street East, 381 Yonge Street, 367 Yonge Street and 363-365 Yonge Street are designated pursuant to Section 29 of the Ontario Heritage Act;
- d. That 9615334 enters into a Heritage Easement Agreement for the properties at 385-391 Yonge Street and 3 Gerrard Street East, 381 Yonge Street, 367 Yonge Street and 363-365 Yonge Street in accordance with the Heritage Impact Assessment prepared by ERA Architects revised June 14, 2018 and architectural drawings prepared by KPF Architects dated June 13, 2018 and subject to and in accordance with an approved Conservation Plan, all to the satisfaction of the Senior Manager, Heritage Preservation Services, including registration of such agreement to the satisfaction of the City Solicitor;
- e. That 9615334 has filed a Conservation Plan, prepared by a qualified heritage consultant, that is consistent with the conservation strategy set out in a Heritage Impact Statement prepared by ERA Architects revised June 14, 2018 for the properties at 385-391 Yonge Street and 3 Gerrard Street East, 381 Yonge Street, 367 Yonge Street and 363-365 Yonge Street to the satisfaction of the Senior Manager, Heritage Preservation Services;
- f. That 9615334 obtains, in consultation with the Toronto Preservation Board, City Council approval for the required alterations to the heritage properties at 385-391 Yonge Street and 3 Gerrard Street East, 381 Yonge Street, 367 Yonge Street and 363-365 Yonge Street pursuant to Section 33 of the Ontario Heritage Act;
- g. That all outstanding matters identified in the Engineering and Construction Services letter dated April 11, 2017 are to be resolved;
- h. That 9615334 and the City have entered into and registered a Section 37 Agreement to the satisfaction of the City Solicitor to secure the agreed upon Section 37 contribution in the amount of \$16,930,000 to be allocated as follows:

- i. A 375 m² (4,000ft²) community and/or cultural space to be located within the development (Level B1) with access from grade, finished to shell condition (\$3,250,000.00);
- ii. The design and construction of family sized affordable rental housing dwelling units within the podium level(s) of the approved development (totally a minimum of 1,511m² and a maximum of 2,658m²), to be constructed in accordance with a Term Sheet to be secured in the Section 37 Agreement and shall provide such affordable rental housing dwelling units in accordance with such agreement(s) to be entered into with the City, all to the satisfaction of the Director, Affordable Housing Office, the Chief Planner and Executive Director, City Planning and the City Solicitor (maximum contribution value of \$4,000,000.00);
- iii. A public art contribution in the amount of \$850,000.00 in accordance with the City's public art policies. Prior to the issuance of the first above-grade building permit, the owner will submit a plan detailing the possible locations of any public art installations on the site, to the satisfaction of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor;
- iv. An above-grade elevated or below-grade pedestrian weather protected connection from the east elevation of the proposed tower to Ryerson University's Jorgensen Hall in a manner acceptable to Ryerson University. If the elevated or below-grade pedestrian connection cannot feasibly be constructed or if Ryerson University does not consent to the proposed connection at this time, 9615334 Canada Inc. shall provide a knock-out panel to facilitate a future connection if pursued by Ryerson which shall be constructed by the owner in a location which is satisfactory to the City in consultation with Ryerson University (\$1,200,000.00);
- v. A mix of residential dwelling units with at least 10% of the total residential dwelling units having a minimum size of 106 square metres;
- vi. The design, construction and provision of improvements to the public realm for O'Keefe Lane, which will include, but not be limited to, details regarding hard and soft landscaping, paving and curbing details, animation of the land with the wrapping of retail or institutional uses onto a portion of the lane from the Gerrard Street East frontage. The details of the streetscape and landscape improvement shall be secured through the site plan approval process with input from Ryerson University, and shall be constructed by the owner no later than two years following the first residential or commercial occupancy (contribution valued maximum \$750,000.00);
- vii. An onsite daycare located on the third level of the podium with a maximum indoor area of 485m² and a maximum outdoor area of 278m² located immediately adjacent to the indoor space in order to accommodate 49 children (10 infants, 15 toddlers and 24 pre-schoolers), provided that such space is acceptable to the Ministry of Child and Youth Services. If the proposed daycare space is not accepted by the Ministry,

acting reasonably, or the Ministry has failed to respond to this matter by the point at which the Chief Building Official is in a position to issue any above-grade building permit associated with the development, 9615334 Canada Inc. will provide an additional 375 m² (4,000ft²) of on-site community space within the B1 level of the development (\$5,800,000.00); and

viii. A financial contribution of \$1,080,000.00 towards improvements to Yonge Street.

i. That the Section 37 agreement referenced in paragraph h above, secure, as a legal convenience, the requirement for and associated details respecting the satisfaction of the following conditions:

i. the conveyance to the City of a 313 square metre portion of 69 Hayden Street (in base park condition) as a Parkland contribution. If the off-site dedication of 69 Hayden Street is deemed acceptable by the General Manager, Parks Forestry and Recreation, it is acknowledged that it would only partially satisfy the parkland dedication requirements for 480-494 Yonge Street, 587-599 Yonge Street and 363-387 Yonge and 3 Gerrard Street East, the remaining parkland dedication requirement would need to be satisfied through cash-in-lieu;

ii. the provision of a minimum of 2 square metres of indoor amenity space per dwelling unit and a minimum of 381 square metres of outdoor amenity space. It is acknowledged that additional outdoor amenity space shall be provided for non-residential uses on the lower podium levels. If for any reason the non-residential outdoor amenity space is not used for its intended purpose, it shall be reallocated as residential outdoor amenity space;

iii. the provision of 10 percent of the residential units to be a minimum 106 square metres;

iv. the provision of a minimum of 0.19 resident parking spaces per dwelling unit and 106 non-residential;

v. the provision of bicycle parking spaces to be provided in accordance with the requirements of By-law 569-2013;

vi. the provision of a minimum of 5 loading spaces (1 Type G, 2 Type B and 2 Type C);

vii. the execution of a restrictive covenant to be registered on title at 357A and 357 ½ Yonge Street, should they not be accepted as parkland;

viii. confirmation from the Hospital for Sick Children (Sick Kids) and St. Michael's Hospital, or its representative that there is no intrusion by the approved development into the helicopter flight path by any crane activities;

- ix. the completion by 9615334 of a TTC Technical Review and obtain the TTC's written acknowledgment that 9615334 has satisfied all of the conditions arising out of the review; and
- x. that the subsequent Site Plan application associated with the approved development be submitted to the Design Review Panel.

"Thomas Hodgins"

THOMAS HODGINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,
AS AMENDED**

**AND IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.**

Consolidated Court File No. 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF MARIA ATHANASOULIS
Sworn June 22, 2021

GOODMANS LLP
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Lawyers for Maria Athanasoulis

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**RESPONDING MOTION RECORD OF
MARIA ATHANASOULIS**

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