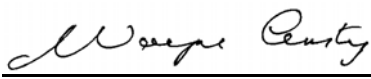


**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**   
Wayne Anstey, Acting Chief Administrative Officer

**DATE:** July 14, 2008

**SUBJECT:** **Case 01046: Development Agreement, South Park Street and Brenton Place, Halifax**

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**SUPPLEMENTARY REPORT**

**ORIGIN**

- Public hearing held by Regional Council on June 10, 2008, to consider amendments to the Halifax MPS and Halifax Peninsula LUB, as well as a draft development agreement, to permit a mixed use residential/commercial building on the northeast corner of South Park Street and Brenton Place (1441-1467 South Park Street and 5679-5683 Brenton Place), Halifax.
- Approval by Regional Council on June 10, 2008, of amendments to the Halifax MPS and Halifax Peninsula LUB.
- Request by W.M. Fares Group to enter into a development agreement for a 19-storey mixed use residential/commercial building on the northeast corner of South Park Street and Brenton Place (1441-1467 South Park Street and 5679-5683 Brenton Place), Halifax.

**RECOMMENDATION**

It is recommended that Regional Council:

1. Approve the development agreement, as contained in Attachment A, to allow for a 19-storey mixed use residential/commercial building on the northeast corner of South Park Street and Brenton Place, Halifax.
2. Require that the development agreement be signed and returned within 120 days, or any extension thereof granted by Regional Council on request of the Applicant, from the date of final approval by Regional Council or any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND/DISCUSSION**

On June 10, 2008, Regional Council held a public hearing to consider amendments to the Halifax Municipal Planning Strategy (MPS) and Halifax Peninsula Land Use By-law (LUB), as well as a draft development agreement, to permit a mixed use residential/commercial building on the northeast corner of South Park Street and Brenton Place (1441-1467 South Park Street and 5679-5683 Brenton Place), Halifax. Subsequent to the public hearing, Regional Council gave its approval to the amendments to the Halifax MPS and Halifax Peninsula LUB. While the draft development agreement was part of the public hearing process, it could not be approved by Council until the MPS and LUB amendments took effect.

The amendments have since been reviewed by the Provincial Department of Service Nova Scotia and Municipal Relations as per Section 208 of the *Municipal Government Act*. These amendments became effective on July 12, 2008.

As noted in the March 28, 2008 report, staff was to bring the matter back to Regional Council for a decision on the draft development agreement once the MPS and LUB amendments took effect. It is now appropriate for Council to consider the attached draft development agreement.

## **BUDGET IMPLICATIONS**

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

## **FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

## **ALTERNATIVES**

1. Regional Council may choose to approve the entire development agreement, as contained in Attachment A. This is the recommended course of action.
2. Regional Council may choose to alter the terms of the development agreement. This may necessitate further negotiations with the applicant, and may require an additional public hearing.
3. Regional Council may choose to refuse the entire development agreement. Pursuant to Section 230(6) of the *Municipal Government Act*, Council must provide reasons for this refusal, based on the policies of the MPS.

**ATTACHMENTS**

Attachment A

Draft Development Agreement

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

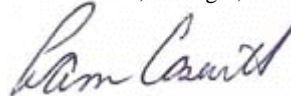
Report Prepared by: Luc Ouellet, Planner I, 490-3689

Report Approved by:



Austin French, Manager, Planning Services, 490-6717

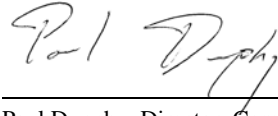
Financial Approval by:



for

Catherine Sanderson, Senior Manager, Financial Services, 490-1562

Report Approved by:



Paul Dunphy, Director, Community Development



## **1.2 Applicability of Land Use By-law and Subdivision By-law**

Except as otherwise provided for herein, the development, subdivision, and use of the Lands shall comply with the requirements of the Halifax Peninsula Land Use By-law and the Regional Subdivision By-law, as may be amended from time to time.

## **1.3 Applicability of Other By-laws, Statutes and Regulations**

- 1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial and Federal Governments and the Developer and/or lot owner agree to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.
- 1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by other approval agencies.

## **1.4 Conflict**

- 1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.
- 1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.
- 1.4.3 Where imperial units of measurement conflict with metric units of measurement within the written text of this Agreement, the imperial units of measurement shall prevail.

## **1.5 Costs, Expenses, Liabilities and Obligations**

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all federal, provincial and municipal laws, by-laws, regulations, and codes applicable to the Lands.

## 1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

## PART 2: DEFINITIONS

### 2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law.

### 2.2 Definitions Specific to this Agreement

The following words used in this Agreement shall be defined as follows:

- (a) **“Brise Soleil”** means a permanent sun-shading horizontal projection equipped with louvers, and which extends from the facade of a building to prevent glass curtain wall systems from overheating during summer months.
- (b) **“Cornice”** means any molded projection which crowns or finishes the part to which its is fixed, e.g. a wall, door or window.
- (c) **“Landscape Architect”** means a professional, full member in good standing with the Canadian Society of Landscape Architects.
- (d) **“Living Wall”** means a vertical garden affixed to a building facade.
- (e) **“Louver”** means a system of metal slats which are angled in such a way that light is admitted, all the while keeping out direct sunshine.
- (f) **“Shouldice Block”** means a manufactured stone lookalike veneer.

## PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

### 3.1 Schedules

The Developer shall develop and use the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the Schedules attached to this Agreement, unless further specified under the Agreement, and filed in the Halifax Regional Municipality as Case Number 01046:

Schedule A

Legal Description of the Lands

Schedule B	Site Plan
Schedule C	South Park Street Elevation
Schedule D	Brenton Place Elevation
Schedule E	Brenton Street Elevation
Schedule F	Spring Garden Road Elevation
Schedule G	Partial Enlarged Elevation
Schedule H	Section A
Schedule I	Aerial View - North East
Schedule J	Parking Plan Level 001
Schedule K	Parking Plan Level 002
Schedule L	Floor Plan Retail Level 100
Schedule M	Floor Plan Office Level 200
Schedule N	Floor Plan Residential Level 300
Schedule O	Floor Plan Residential Level 400
Schedule P	Floor Plan Residential Level 500 to 700
Schedule Q	Floor Plan Residential Level 800 to 1300
Schedule R	Floor Plan Residential Level 1400
Schedule S	Floor Plan Residential Level 1500 to 1800
Schedule T	Floor Plan Residential Level 1900
Schedule U	Site Plan - Street Level Landscape Plan
Schedule V	Common Landscape Podium - Level 300
Schedule W	Common Landscape Podium - Level 1400
Schedule X	South Park Preliminary Lighting Scheme
Schedule Y	Brenton Place Preliminary Lighting Scheme
Schedule Z	Brenton Street Preliminary Lighting Scheme
Schedule AA	Spring Garden Road Preliminary Lighting Scheme

### **3.2 General Description of Land Use**

The use(s) of the Lands permitted by this Agreement is a nineteen (19) storey mixed use residential/commercial building consisting of two (2) floors of underground parking, two (2) floors of above-ground commercial uses and seventeen (17) residential floors.

### **3.3 Detailed Provisions for Land Use**

- 3.3.1 The building shall contain a maximum of eighty (80) dwelling units to be located on Residential Levels 300 to 1900, inclusively.
- 3.3.2 For the purpose of calculating population density on the Lands, bachelor units shall be assigned one (1) person per unit, one-bedroom units shall be assigned two (2) persons per unit, and all other dwelling units shall be assigned 2.25 persons per unit.
- 3.3.3 The following uses shall be permitted on Retail Level 100:
  - (a) Retail and personal services, excluding adult entertainment uses and amusement

- centres;
  - (b) Restaurants and lounges in association with a restaurant, as outlined in the “Spring Garden Road Area” of the Land Use By-law;
  - (c) Financial institutions; and,
  - (d) The entrances for uses permitted and established on the upper floors.
- 3.3.4 The following uses shall be permitted on Office Level 200:
- (a) Minor commercial uses permitted under the RC-2 (Residential/Minor Commercial) Zone of the Land Use By-law; and,
  - (b) Lounges in association with a restaurant, as outlined in the “Spring Garden Road Area” of the Land Use By-law.
- 3.3.5 The Developer shall provide a landscaped area on the ground level, as shown on Schedule B for use by the occupants of the building.
- 3.3.6 The Developer shall provide two (2) landscaped terraces, one (1) on Residential Level 300 and one (1) on Residential Level 400, as shown on Schedules N and W respectively, for common use by the residents of the building.
- 3.3.7 The Developer shall be permitted to utilize the area shown as an outdoor visitor parking area on Schedule B, as an outdoor restaurant patio, a landscaped area for common use by the occupants of the building, or a loading/unloading area.

### **3.4 Building Siting, Massing and Scale**

The building constructed on the Lands shall comply with the following siting, massing and scale requirements:

- (a) The building and the underground parking garage shall be permitted to coincide with the property line on both the South Park Street and Brenton Place frontages;
- (b) The building, excluding the underground parking podium, shall be located no closer than 30 cm (1 foot) from the northern boundary of the Lands;
- (c) The building, excluding the underground parking podium, shall be located no closer than 10.5 m (35 feet) from the eastern boundary of the Lands;
- (d) The underground parking garage/podium shall be located no closer than 45 cm (18 inches) from both the northern and eastern boundaries of the Lands;
- (e) The building footprint, excluding the underground parking garage/podium, shall not be greater than 1393.5 sq. m (15,000 sq. feet);
- (f) The massing of the building and the sizes and locations of exterior terrace spaces



shall be as generally shown on Schedules L to T, inclusively;

- (g) The maximum height of the building shall not exceed 64.5 m (215 feet) above the mean grade of the finished ground adjoining the building; and,
- (h) The building shall not violate Section 26B of the Land Use By-law.

### **3.5 Materials and Colours**

- 3.5.1 The building shall be clad in brick, architectural precast concrete, and glass curtain wall.
- 3.5.2 The use of brick shall be limited to portions of Retail Level 100, Office Level 200, and Residential Level 300, as generally shown on Schedules C to F, inclusively.
- 3.5.3 The brick to be used on the building shall match the colour and texture of the Lord Nelson Hotel's (PID # 41019704) brick cladding, as it existed on January 1, 2008.
- 3.5.4 The brick to be used on the building shall be traditional brick and not a precast brick cladding or other type of imitation brick.
- 3.5.5 The architectural precast concrete cladding to be used on the building shall be limited to portions of the building from Retail Level 100 to Residential Level 1900, as generally shown on Schedules C to F, inclusively.
- 3.5.6 The architectural precast concrete cladding to be used on the building shall have, in the opinion of the Development Officer, the colour and texture of limestone.
- 3.5.7 A clear and transparent glass curtain wall system shall clad the South Park Street and Brenton Place corner entrance, as generally shown on Schedule C and D, and shall climb the entire height of the building.
- 3.5.8 A clear and transparent glass curtain wall system shall clad the South Park Street facade of Residential Level 1400 to Residential Level 1900, inclusively, as generally shown on Schedule C.
- 3.5.9 The glass curtain wall system specified under Subsection 3.5.8 shall be continued to a portion of the Spring Garden Road facade, as generally shown on Schedule F.
- 3.5.10 A clear and transparent glass curtain wall system shall clad a portion of the Brenton Street facade of Residential Level 800 to Residential Level 1500, inclusively, as generally shown on Schedule E.
- 3.5.11 A clear and transparent glass curtain wall system shall clad a portion of the Brenton Street facade of Residential Level 1800 to Residential Level 1900, inclusively, as generally shown

on Schedule E.

3.5.12 The Developer shall be permitted to install brise soleils on the building.

### **3.6 Window Treatment**

3.6.1 All windows shall be of a clear and transparent glass with aluminum frame.

3.6.2 All windows on the Retail Level 100 shall have a sill added above a shouldice block.

3.6.3 The building's fenestration pattern in terms of window sizes and locations shall be in general conformance with the pattern found on Schedules C to F, inclusively.

### **3.7 Weather Protection**

3.7.1 Fixed or retractable canvas awnings made of a black, burgundy, or royal blue coloured fabric and containing the corporate logo of individual businesses shall be permitted along each retail bay.

3.7.2 A clear and transparent glass canopy shall be installed above the South Park Street and Brenton Place corner entrance.

### **3.8 Roof**

3.8.1 All roof mounted mechanical and/or telecommunication equipment shall be visually integrated into the roof design of the building and shall not be visible from any public street or public park.

3.8.2 Roof mounted mechanical and/or telecommunication equipment shall not violate Section 26B of the Land Use By-law.

### **3.9 Balconies**

All balconies shall be made of aluminum framing with insert glass.

### **3.10 Blank Wall**

The scale of the large blank wall covering portions of Residential Levels 1400 to 1900, inclusively, as shown on Schedule F, shall be tempered by the introduction of artwork (murals), living wall systems, fixed windows, or a combination thereof.

### **3.11 Functional Elements**

- 3.11.1 All vents, down spouts, electrical conduits, meters, service connections, and other functional elements shall be treated as integral parts of the design. Where appropriate these elements shall be painted to match the colour of the adjacent surface, except where used expressly as an accent.
- 3.11.2 The building on the Lands shall be designed such that the mechanical systems (HVAC, cooking exhaust fans, etc.) are not visible from South Park Street and Brenton Place. Furthermore, no mechanical equipment or exhaust fans shall be located between the building and the abutting properties unless screened as an integral part of the building design and noise reduction measures are implemented. This shall exclude individual residential mechanical systems.

### **3.12 Other Architectural Treatments**

- 3.12.1 A band of a minimum width of 20 cm (8 inches) shall be placed between each retail bay and between the ceiling of the Retail Level 100 and the floor of Office Level 200, as shown on Schedule C to E, inclusively.
- 3.12.2 A band of a minimum width of 20 cm (8 inches) shall be placed to top off the brick cladding on the Office Level 200 for those portions of the Office Level 200 brick wall that do not continue up to the Residential Level 300 as shown on Schedules C to F, inclusively.
- 3.12.3 A band of a minimum width of 20 cm (8 inches) shall be placed to top off the brick cladding on the Residential Level 300, as shown on Schedules C to F, inclusively.
- 3.12.4 A cornice of a minimum width of 45 cm (18 inches) shall crown the top of the portions of the building clad with architectural precast concrete on Residential Levels 1300, 1800, and 1900, as shown on Schedules C to F, inclusively.
- 3.12.5 The bands and cornices shall be made of stone, architectural precast concrete, or an acceptable equivalent in the opinion of the Development Officer.
- 3.12.6 All exposed concrete surfaces shall be reasonably free from fins, bulges, ridges, offsets, defects, honeycombing, or roughness of any kind, and shall present a finished, smooth, continuous hard surface.
- 3.12.7 Service/delivery entrances shall be integrated into the design of the building and shall not be a predominate feature.

### **3.13 Lot Consolidation**

The Developer agrees to have all six (6) parcels, which make up the Lands to be consolidated into

one (1) lot prior to making an application for a Building or Development Permit for any of the components of the development.

### **3.14 Parking, Circulation and Access**

- 3.14.1 The driveway layout and entrance to the underground parking on the Lands shall be as generally illustrated on Schedule B.
- 3.14.2 An outdoor visitor parking area containing a maximum of four (4) parking spaces may be located on the Lands as generally illustrated on Schedule B.
- 3.14.3 The driveway access on the Lands shall be designed to the widest extent possible as approved by the Development Engineer.
- 3.14.4 The driveway and outdoor visitor parking area on the Lands shall have a hard finished surface such as asphalt, concrete, interlocking precast concrete paver stones, or an acceptable equivalent in the opinion of the Development Officer.
- 3.14.5 The limits of the driveway and the outdoor visitor parking area on the Lands shall be defined by curbing.
- 3.14.6 Where the driveway and the outdoor visitor parking area is to be delineated by curbing, such curbing shall not be asphalt.
- 3.14.7 The building on the Lands shall be serviced by two (2) levels of underground parking containing a minimum of eighty (80) parking spaces.
- 3.14.8 The layout of the two (2) levels of underground parking shall be as generally shown on Schedules J and K.
- 3.14.9 All parking spaces contained within the two (2) levels of underground parking and the outdoor visitor parking area shall comply with the minimum requirements of the Land Use By-law.
- 3.14.10 The building on the Lands shall include designated bicycle parking as per the Land Use By-law.

### **3.15 Landscaping**

- 3.15.1 Prior to the issuance of Building or Development Permits for any of the components of the development on the Lands, the Developer agrees to provide a detailed Landscape Plan, prepared by a Landscape Architect, and which comply with the provisions of this Section

and generally conform with the overall intentions of Schedules U to W, inclusively.

- 3.15.2 Sidewalk construction, planting, street lighting and site furnishings at ground/sidewalk level shall be the responsibility of the Developer and shall comply with the HRM's Capital District Urban Design Project standards. The Development Officer shall consult with the HRM Streetscape Program's Senior Landscape Architect and the Development Engineer on the detailed design prior to the issuance of a Development Permit. The Developer agrees to provide streetscaping of a type consistent with the aforementioned municipal standards subject to detailed design and review.
- 3.15.3 It is the responsibility of the Developer to ensure that the underground parking structure and rooftop terraces are capable of supporting the loads from all landscaping as well as the anticipated mature weight of the plant material.
- 3.15.4 Planting on rooftops and podiums above structures shall be carefully selected for their ability to survive in rooftop environments. Rooftop trees shall be located in planting beds or containers.
- 3.15.5 The minimum acceptable sizes for plant material shall be as follows:
- (a) High branching deciduous trees at grade - 60 mm CAL;
  - (b) High branching deciduous trees on slab - 45 mm CAL;
  - (c) Coniferous trees - 1.5 m in height; and,
  - (d) Shrubs - 0.6 m in height or spread.
- 3.15.6 Planting details for at grade and on slab planting situations for each type of plant material proposed on the detailed Landscape Plan shall be provided, including a species list with quantities, size of material, and common and botanical names (species and variety).
- 3.15.7 All plant material shall conform to the Canadian Nursery Trades Association's Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.
- 3.15.8 The detailed Landscape Plan shall include a fence of a minimum of 1.5 m (5 feet) in height but no greater than 1.8 m (6 feet) in height along the eastern property line.
- 3.15.9 Construction Details and/or Manufacturer's Specifications (including model and colour) for all tree protection hoarding, benches, light standards and luminaries, trash receptacles, bike racks, tree grates/guards, planter seating wall, wood arbour, patio table and chairs, outdoor garbage enclosure, railings, and fencing shall be provided to the Development Officer with the application for the first Building or Development Permit, and shall describe their design, construction, specifications, hard surface areas, materials and placement so that they will enhance the design of the building on the Lands and the character of the surrounding area.



- 3.15.10 The detailed Landscape Plan shall include information on the type of public art to be installed at the corner of South Park Street and Brenton Place, as shown on Schedule U, along with an identification of how it is to be displayed and secured/protected.
- 3.15.11 No HRM street trees are to be removed or damaged during the construction phase. The detailed Landscape Plan shall identify plywood tree protective hoarding located as close to the dripline of the existing street trees as possible to protect them during the construction phase.
- 3.15.12 Prior to issuance of the first Occupancy Permit, the Developer shall submit to the Development Officer a letter prepared by a Landscape Architect certifying that all landscaping has been completed according to the terms of this Agreement.
- 3.15.13 Notwithstanding Subsection 3.15.12, Occupancy Permits may be issued provided the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein, and as approved by the Development Officer. Should the Developer not complete the landscaping within twelve (12) months of issuance of the first Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this Section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification by a Landscape Architect.

### **3.16 Building and Site Lighting**

- 3.16.1 The Developer shall submit a Lighting Plan prepared by a Licenced Architect, a Professional Engineer experienced in lighting engineering, or a qualified Lighting Designer to the Development Officer for review to determine general compliance with the preliminary lighting scheme, as described in Schedules X to AA, inclusively. The Lighting Plan shall contain the following:
- (a) Plans indicating the type and the location on the premises of illuminating devices, fixtures, lamps, supports, and other related devices;
  - (b) A description of the illuminating devices, fixtures, lamps, supports and other related devices, which shall include the manufacturers' catalog cuts and drawings including sections; and,

- (c) A written description of the lighting effects that the Lighting Plan will achieve when fully operational.
- 3.16.2 The plans and descriptions referred to under Subsection 3.16.1 shall be sufficient to enable the Development Officer to ensure compliance with the requirements of the preliminary lighting scheme will be satisfied. If the plans and descriptions referred to under Subsection 3.16.1 cannot enable this ready determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the Developer shall submit evidence of compliance by certified test reports as performed by a recognized testing lab.
- 3.16.3 Should the Developer desire to substitute outdoor light fixtures or lamps and install them on the Lands after a permit has been issued, the Developer shall submit all changes to the Development Officer for approval, with adequate information to assure compliance with this Section.
- 3.16.4 Lighting shall be directed to driveways, parking areas, loading areas, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

### **3.17 Signage**

- 3.17.1 Signage on the Lands shall be in accordance with the requirements of the RC-2 (Residential/Minor Commercial) Zone of the Land Use By-law, as amended from time to time.
- 3.17.2 Notwithstanding Subsection 3.17.1, projecting and/or canopy signs may be permitted on the Lands provided that encroachment permits/licences are approved.
- 3.17.3 Notwithstanding Subsection 3.17.1, signs on the Lands shall only be externally illuminated.

### **3.18 Outdoor Storage and Display**

- 3.18.1 No outdoor storage shall be permitted on the Lands.
- 3.18.2 Propane tanks and electrical transformers shall be located on the Lands in such a way as to ensure minimal visual impact from South Park Street and Brenton Place and abutting properties. These facilities shall be secured in accordance with the applicable approval agencies and screened by means of opaque fencing/masonry walls with suitable landscaping.



### **3.19 Solid Waste Facilities**

The building shall include a designated space for three stream (refuse, recycling and composting) source separation services. This designated space for source separation services shall be shown on the building plans and approved by the Development Officer and Building Official in consultation with Solid Waste Resources.

### **3.20 Maintenance**

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of the building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow removal/salting of walkways and driveways.

### **3.21 Construction/Sales Structure**

A temporary structure shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction and sale of the development in accordance with this Agreement. The structure shall be removed from the Lands prior to the issuance of the last Occupancy Permit.

### **3.22 Deliveries and Solid Waste Collection**

- 3.22.1 The private collection of refuse and recyclables on the Lands shall occur only between the hours of 9:00 a.m. and 4:00 p.m.
- 3.22.2 Vehicular loading and unloading from Brenton Place shall only be permitted between the hours of:
  - (a) 9:00 a.m. and 4:00 p.m.; and,
  - (b) 6:00 p.m. and 9:00 p.m.
- 3.22.3 Delivery trucks that are required to back up from Brenton Place to use the loading/unloading bay on the Lands shall only be permitted between the hours of:
  - (a) 9:00 a.m. and 4:00 p.m.; and,
  - (b) 6:00 p.m. and 9:00 p.m.
- 3.22.4 The hours specified under Section 3.22 shall apply seven (7) days a week.

### **3.23 Requirements Prior to Approval**

- 3.23.1 Prior to the issuance of any municipal permits for the nineteen (19) storey mixed use residential/commercial building, the Developer shall complete the MICI (Multi-unit/Industrial/Commercial/Institutional) process, as outlined by the Municipality.
- 3.23.2 Prior to the issuance of Building and Development Permits for any of the components of the development on the Lands, the Developer shall provide all of the following to the Development Officer:
- (a) Written certification from a Professional Surveyor that the proposed development does not violate Section 26B of the Land Use By-law;
  - (b) A detailed Landscape Plan prepared by a Landscape Architect in accordance with Section 3.15 of this Agreement;
  - (c) A Lighting Plan in accordance with Section 3.16 of this Agreement;
  - (d) A report outlining proposed wind mitigation measures for the development in accordance with Section 5.3 of this Agreement; and,
  - (e) A Site Servicing Plan prepared by a Professional Engineer and acceptable to the Development Engineer.
- 3.23.3 Prior to the issuance of Building and Development Permits for any of the components of the development on the Lands, the Developer shall have all six (6) parcels of land comprising the Lands consolidated into one (1) lot.
- 3.23.4 Prior to the issuance of an Occupancy Permit for any of the components of the development on the Lands, the Developer shall provide all of the following to the Development Officer:
- (a) Written certification from a Professional Surveyor that the completed development on the Lands does not violate Section 26B of the Land Use By-law;
  - (b) Certification from a Landscape Architect indicating that the Developer has complied with the Landscape Plan required pursuant to Section 3.15 of this Agreement, or Security in accordance with Subsection 3.15.13;
  - (c) Certification from a Licenced Architect, a Professional Engineer experienced in lighting engineering, or a qualified Lighting Designer indicating that the Developer has complied with the Lighting Plan required pursuant to Section 3.16 of this Agreement; and,

- (d) Written confirmation from the Development Engineer indicating compliance with Section 4.2 of this Agreement.

3.23.5 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licences, and approvals required to be obtained by the Developer pursuant to this Agreement.

### **3.24 Variation by Development Officer**

The Development Officer may approve:

- (a) The following variations to the Schedules:
  - (i) changes to the internal floor plans of the building provided the number of dwelling units and building size has not increased and the exterior appearance of the building is not affected; and,
  - (ii) changes to the interior layout of the underground parking levels provided the changes do not reduce the minimum number of parking spaces required by the Agreement.
- (b) Minor variations to the exterior design of the building and landscaping, in order to accommodate wind mitigation measures as contained in a report prepared by a Professional Engineer experienced in wind engineering, provided that the intent of this Agreement is met.
- (c) A reduction in the number of retail bay entrances/doorways, as shown on Schedule C, from eight down to four, to permit the establishment of large retail tenants that attract high volumes of pedestrian traffic.

## **PART 4: STREETS AND MUNICIPAL SERVICES**

### **4.1 General Provisions**

All construction shall satisfy Municipal Service Systems Specifications unless otherwise varied by this Agreement and shall receive written approval from the Development Engineer prior to undertaking any work.

### **4.2 Off-site Disturbance**

Any disturbance to existing off-site infrastructure resulting from the development, including but not

limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

#### **4.3 Garbage Collection from Building**

The Developer shall be responsible for garbage collection from the building. The Municipality shall be relieved of any and all responsibility respecting garbage collection from the Lands.

#### **4.4 Underground Services**

The Developer agrees to place all primary and secondary utility services (electrical and communication distribution systems) underground. In addition to being responsible for the full cost of placing secondary services underground, the Developer agrees to pay for all infrastructure costs required to place the primary utility services underground that are currently above ground within those portions of South Park Street and Brenton Place which abut the Lands. It is expected that any cabling or pole removal costs associated with the placement of the primary services underground will be borne by the respective utility. The Developer is responsible for ensuring that the requirements of the applicable utility companies are met.

#### **4.5 Street Lighting**

The Developer shall install light standards and luminaries for street lighting. These light standards and luminaries shall have the ballast in the fixture, meet the illumination standards of the Municipal Service Systems Specifications and the design standards of the HRM's Capital District Urban Design Project and shall be approved by the Development Officer, in consultation with the Development Engineer and the HRM Streetscape Program's Senior Landscape Architect.

#### **4.6 Encroachments**

Any proposed building encroachments into the street rights-of-way, illustrated on the attached schedules or otherwise, shall require HRM approval and a separate encroachment permit/licence as per the requirements of the Encroachment By-law (By-law E-200).

### **PART 5: ENVIRONMENTAL PROTECTION MEASURES**

#### **5.1 Archaeological Monitoring and Protection**

The Lands fall within the High Potential Zone for Archaeological Sites identified by the Province of Nova Scotia. The Developer shall contact the Curator of Special Places, Heritage Division, Tourism, Culture, and Heritage prior to any disturbance of the site and the Developer shall comply with the requirements set forth by the Province of Nova Scotia in this regard.



## 5.2 Sulphide Bearing Materials

The Developer agrees to comply with the legislation and regulations of the Province of Nova Scotia with regards to the handling, removal, and disposal of sulphide bearing materials, which may be found on the Lands.

## 5.3 Wind Mitigation Measures/Solutions

- 5.3.1 The Developer shall submit a report to the Development Officer prepared by a Professional Engineer experienced in wind engineering, which outlines proposed wind mitigation measures for the development. The report shall specify various mitigation measures/solutions, which will result in acceptable wind conditions as identified in the wind study report titled Final Report: Pedestrian Wind Study South Park Halifax, Nova Scotia dated February 12, 2008, and prepared by Rowan Williams Davies & Irwin Inc. Consulting Engineers & Scientists (RWDI Project Number 08-1182).
- 5.3.2 Appropriate wind mitigation measures/solutions shall be approved by the Development Officer under Section 3.24(b) prior to the issuance of a Building or Development Permit, except those which, in the opinion of the Development Officer, involve a substantial change in the design of the building, those which are not in accordance with HRM's Capital District Urban Design Project standards and/or those which require an encroachment licence. In these instances, such measures shall be considered by Regional Council under Section 6.2 (m) prior to the issuance of a Building or Development Permit. Mitigation measures/solutions shall be shown on the building plans submitted for a Building or Development Permit approval and completed prior to the issuance of an Occupancy Permit.

## PART 6: AMENDMENTS

### 6.1 Substantive Amendments

Amendments to any matters not identified under Section 6.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Municipal Government Act*.

### 6.2 Non-substantive Amendments

The following items are considered by both Parties to be non-substantive and may be amended by resolution of Council:

- (a) The granting of an extension to the date of commencement of development, as identified under Subsection 8.3.3 of the Agreement;

- (b) The granting of an extension to the length of time for the completion of the development, as identified under Section 8.4 of the Agreement;
- (c) Changes to the Preliminary Lighting Scheme Schedules of the Agreement (Schedules X to AA, inclusively);
- (d) Changes to the building and site lighting detailed under Section 3.16 of the Agreement;
- (e) Changes to the landscaping measures shown on Schedules U to W, inclusively, which is above and beyond the allowable variation identified under Section 3.24 of the Agreement;
- (f) Changes to any of the landscaping measures detailed under Section 3.15 of the Agreement;
- (g) Changes to the permitted hours of deliveries and solid waste collection detailed under Section 3.22 of the Agreement;
- (h) A reduction in the number of floors associated to the building;
- (I) The replacement of the second floor commercial uses with residential uses;
- (j) An increase in the number of dwelling units provided the building size has not increased and the exterior appearance of the building is not affected;
- (k) Changes to the exterior architectural appearance of the building, including materials, colours, architectural treatments and fenestration pattern, provided that plans are submitted for any changes to the building design and that such changes, in the opinion of Council, are an improvement over the design detailed in the Agreement;
- (l) Changes to the signage requirements detailed under Section 3.17 of the Agreement;
- (m) Wind mitigation measures other than those that may be approved by the Development Officer under Section 3.24(b) and Subsection 5.3.2 of the Agreement;
- (n) Changes to Schedule B of the Agreement; and,
- (o) The replacement of the first and second floor commercial uses with residential uses, which on the South Park Street and Brenton Street frontages shall be in the form of individually accessible townhouse-style dwelling units.

## **PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT**

### **7.1 Enforcement**

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four (24) hours of receiving such a request.

### **7.2 Failure to Comply**

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; and/or,
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remediation under the *Municipal Government Act* or Common Law in order to ensure compliance with this Agreement.



## **PART 8: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE**

### **8.1 Registration**

A copy of this Agreement and every amendment and/or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office for Halifax County, Nova Scotia and the Developer shall incur all cost in recording such documents.

### **8.2 Subsequent Owners**

- 8.2.1 This Agreement shall be binding upon the Parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which is the subject of this Agreement until this Agreement is discharged by Council.
- 8.2.2 Upon the transfer of title to any lot, the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.

### **8.3 Commencement of Development**

- 8.3.1 In the event that development on the Lands has not commenced within five (5) years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
- 8.3.2 For the purposes of Subsection 8.3.1, commencement of development shall mean the installation of the foundation for the nineteen (19) storey mixed use residential/commercial building on the Lands.
- 8.3.3 For the purpose of Subsection 8.3.1, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.2(a), if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

### **8.4 Completion of Development**

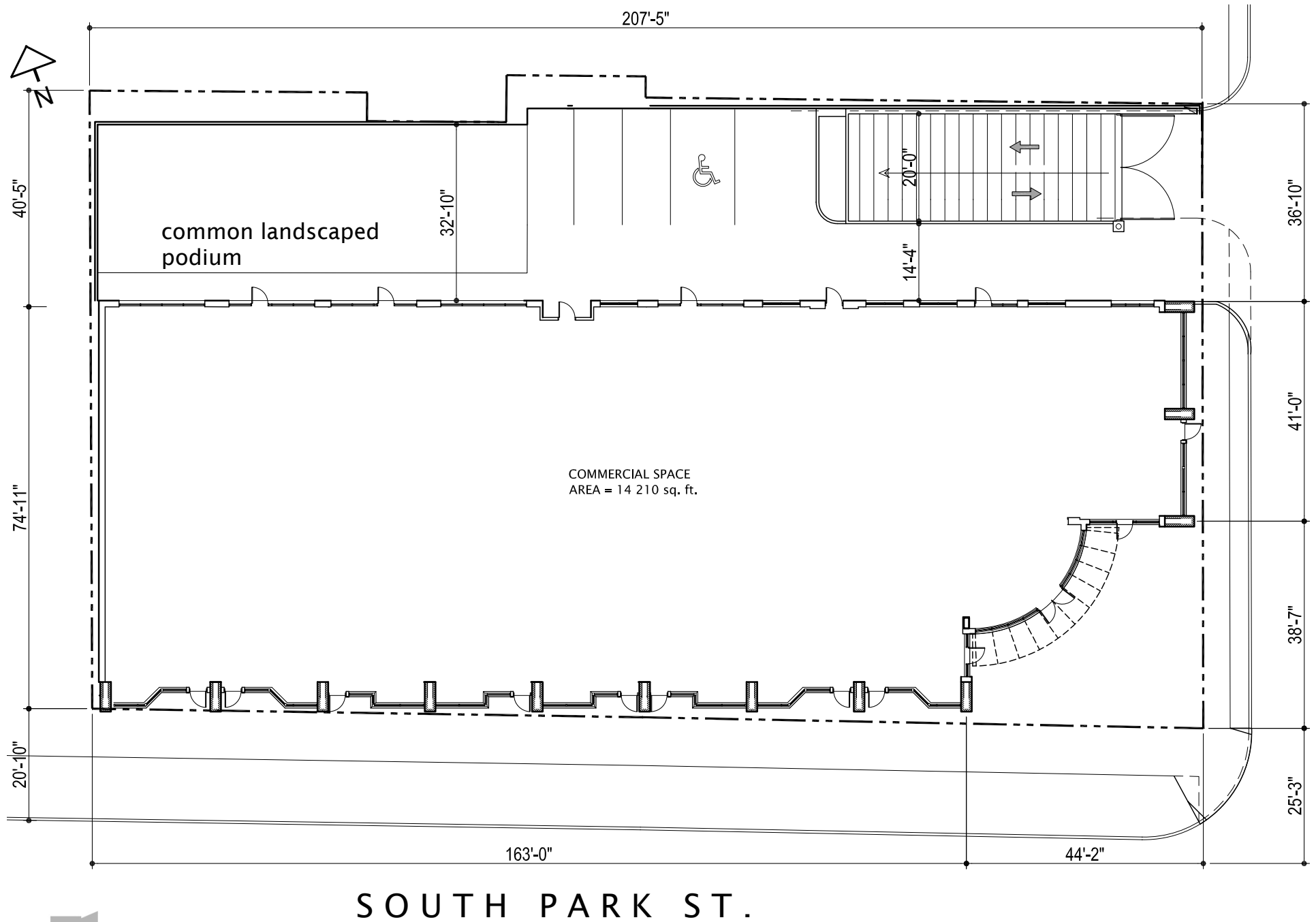
Upon the completion of the development or portions thereof, or after ten (10) years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office for Halifax County, Nova Scotia, whichever time period is less, Council may review this Agreement, in whole or in part, and may:

- (a) Retain the Agreement in its present form;
- (b) Negotiate a new Agreement; or,

- (c) Discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Halifax Municipal Planning Strategy and Halifax Peninsula Land Use By-law, as may be amended from time to time.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2008.

SIGNED, SEALED AND DELIVERED	)	3225655 NOVA SCOTIA LIMITED
in the presence of	)	
_____	)	Per: _____
	)	
	)	
	)	
SEALED, DELIVERED AND	)	
ATTESTED to by the proper	)	
signing officers of Halifax Regional	)	_____
Municipality duly authorized	)	HALIFAX REGIONAL MUNICIPALITY
in that behalf in the presence	)	
of	)	Per:
_____	)	MAYOR
	)	
	)	Per:
	)	MUNICIPAL CLERK



SITE PLAN

schedule: B revised

WM FARES  
GROUP

level 1900

level 1400

level 400

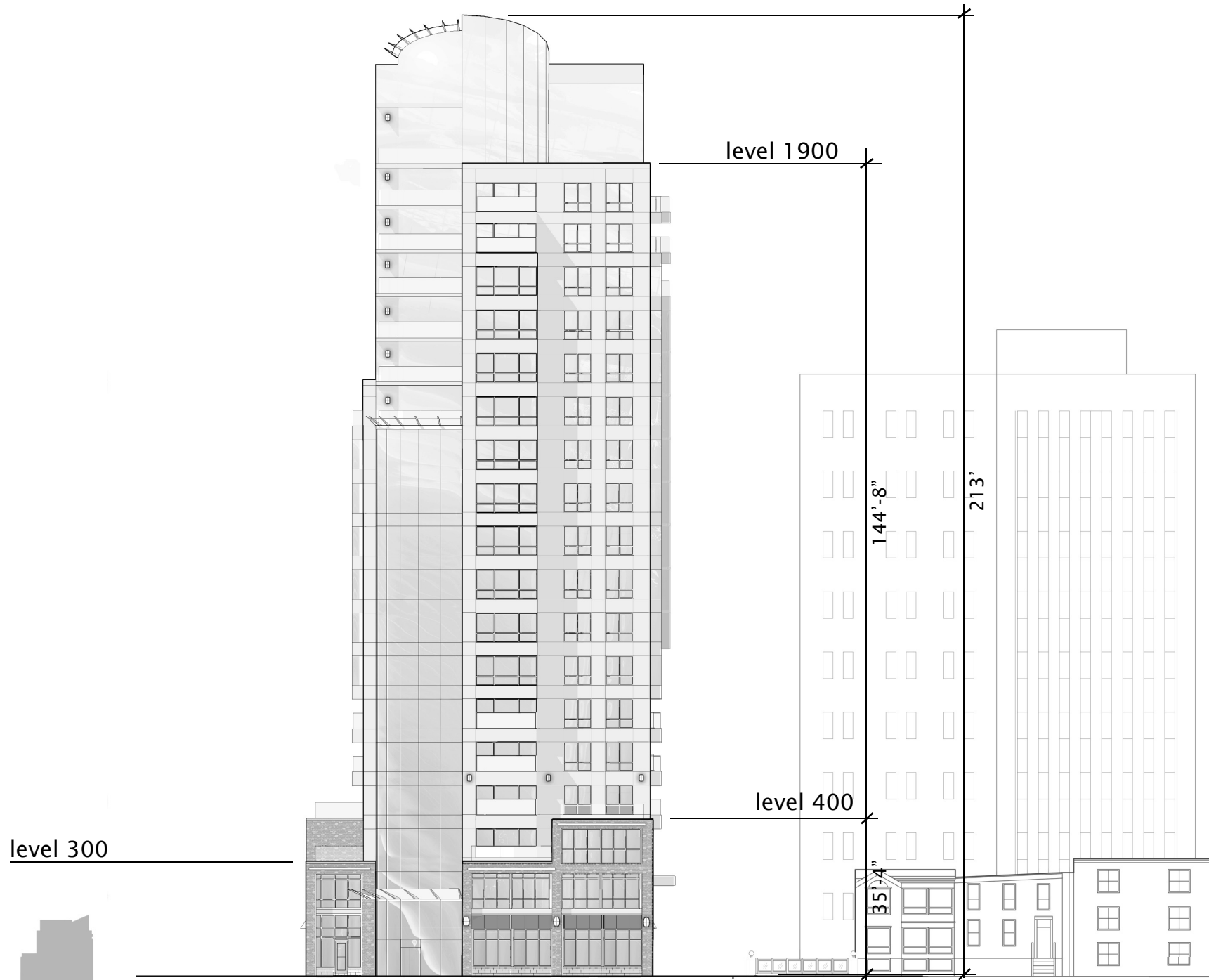
level 300

213'

ELEVATION - South Park St.

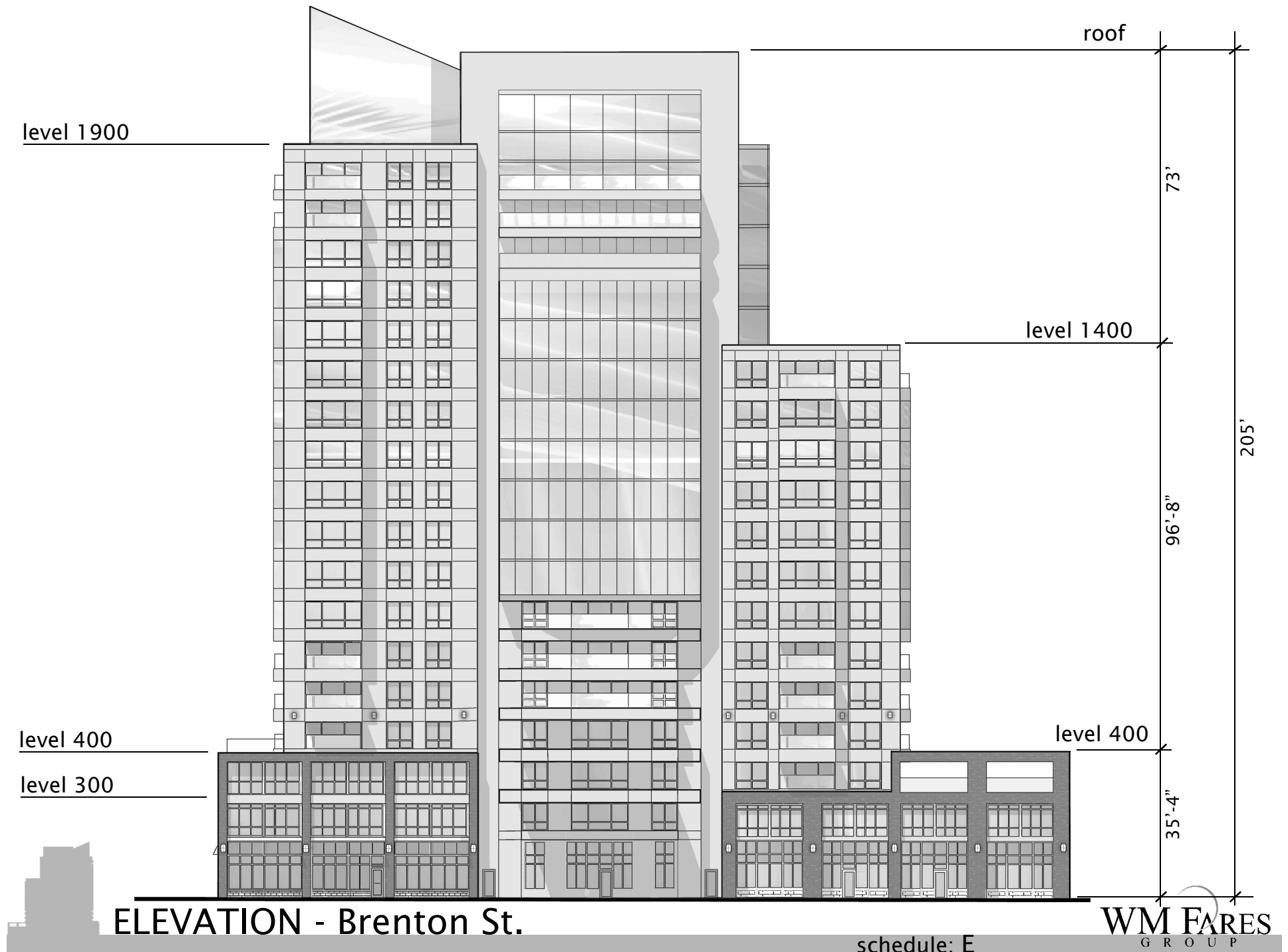
schedule: C

WM FARES  
GROUP

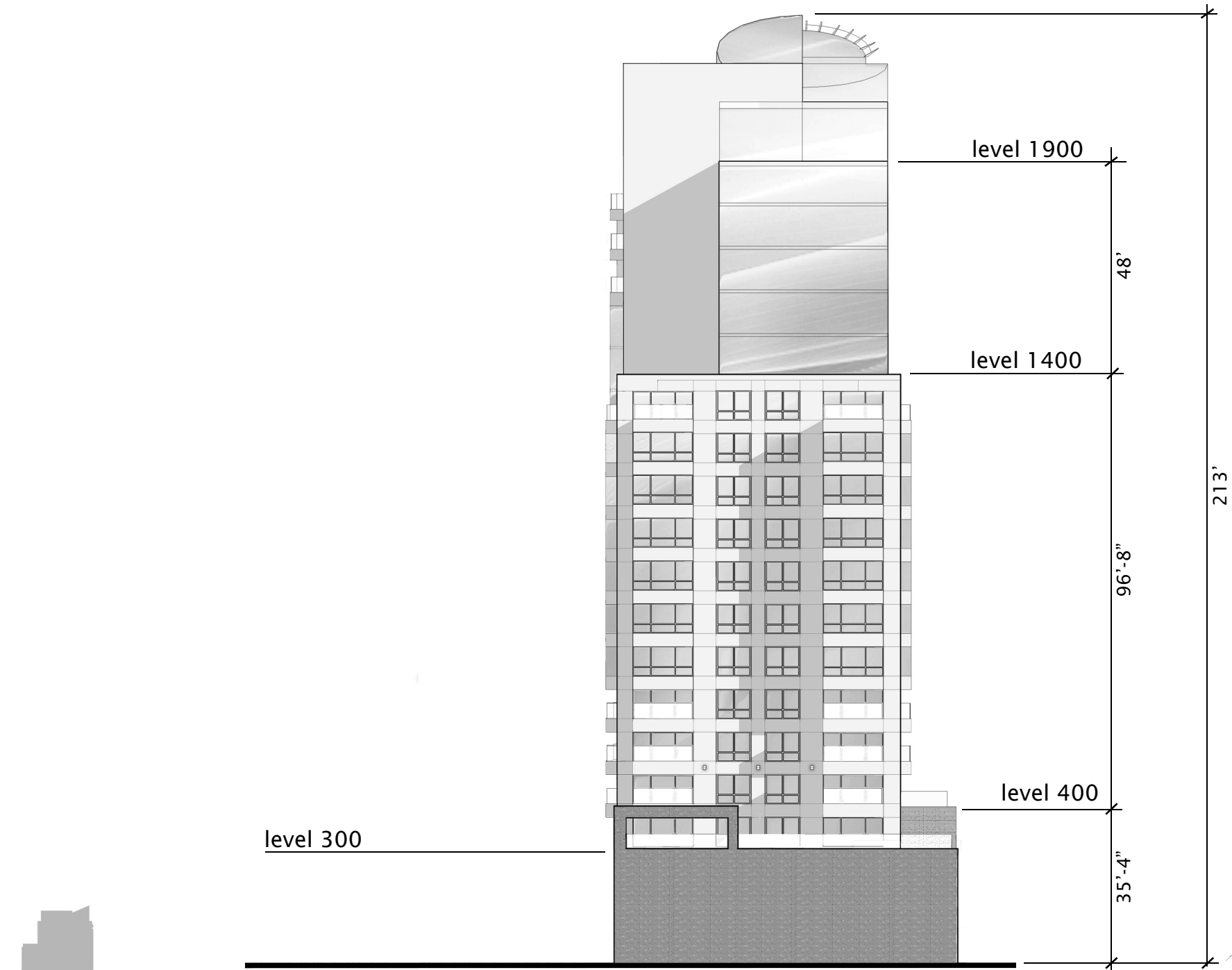


ELEVATION - Brenton Pl.

schedule: D



schedule: E



ELEVATION - Spring Garden

schedule: F



sec A

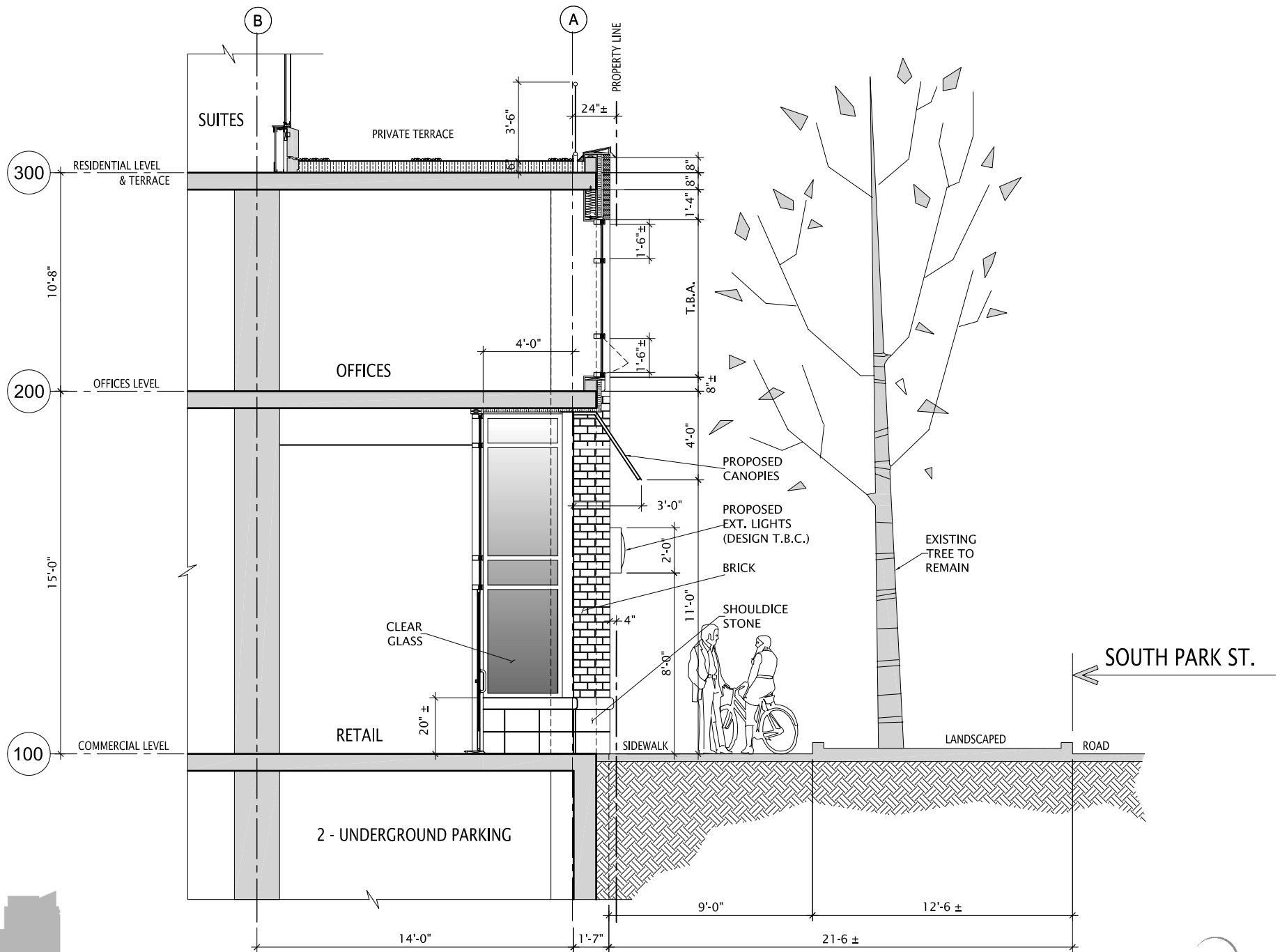
## PARTIAL ENLARGED ELEVATION

NOTE: FOR EXTERIOR MATERIAL FINISHES REFER TO SECTION A

schedule: G

WM FARES  
GROUP

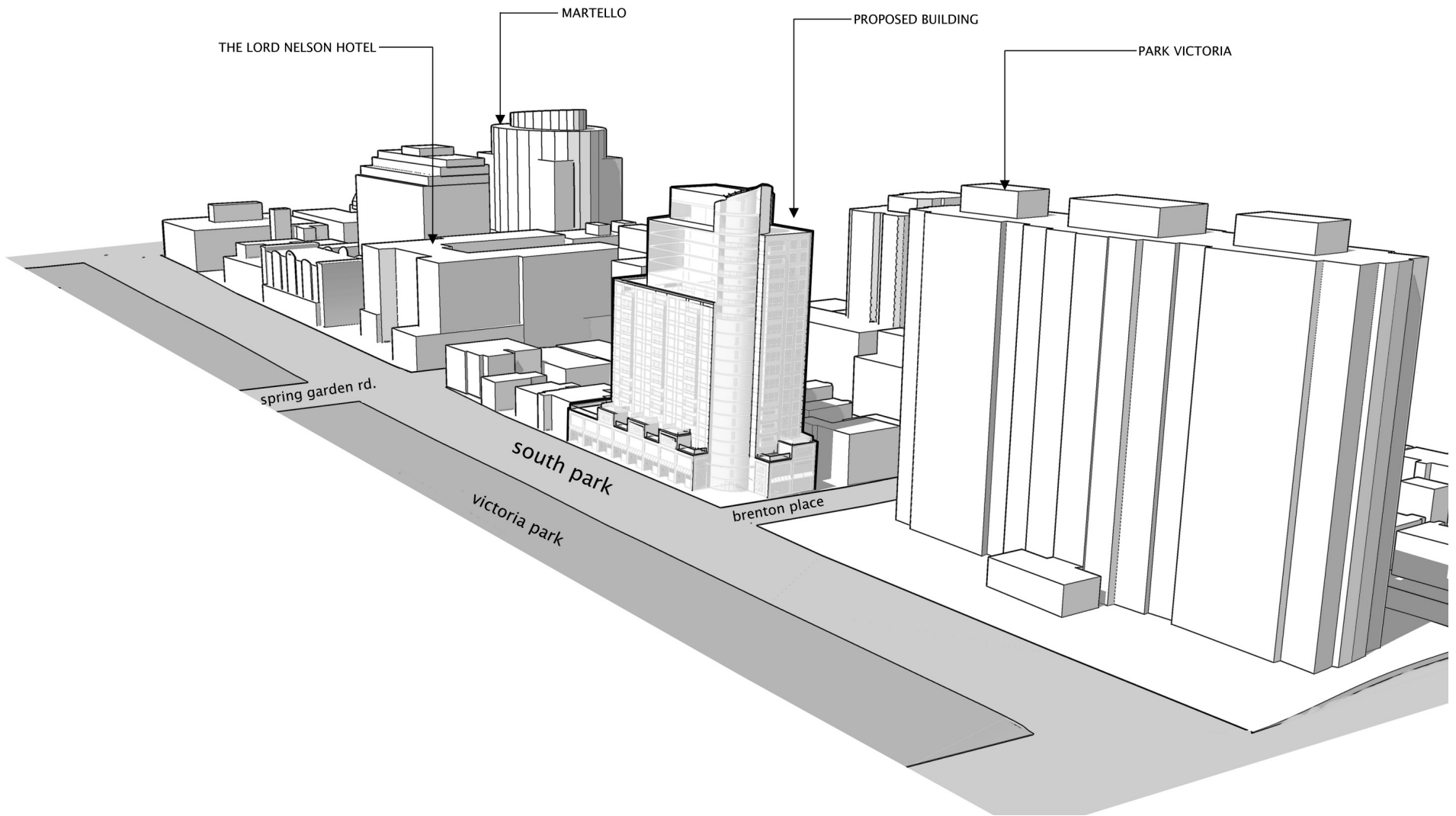




**SECTION A**

schedule: H

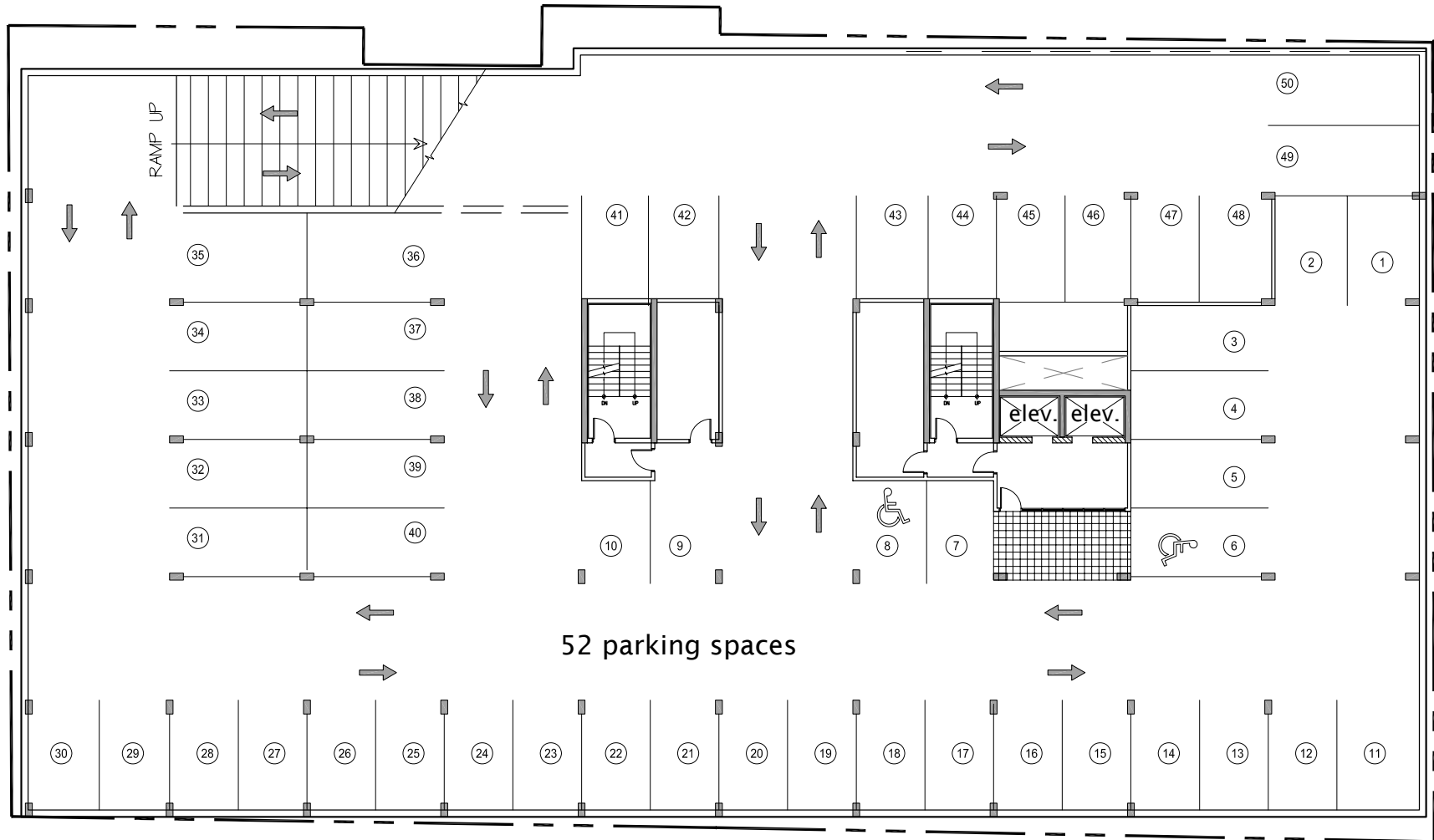
**WM FARES**  
GROUP



AERIAL VIEW - NORTH EAST

schedule: I

WM FARES  
GROUP

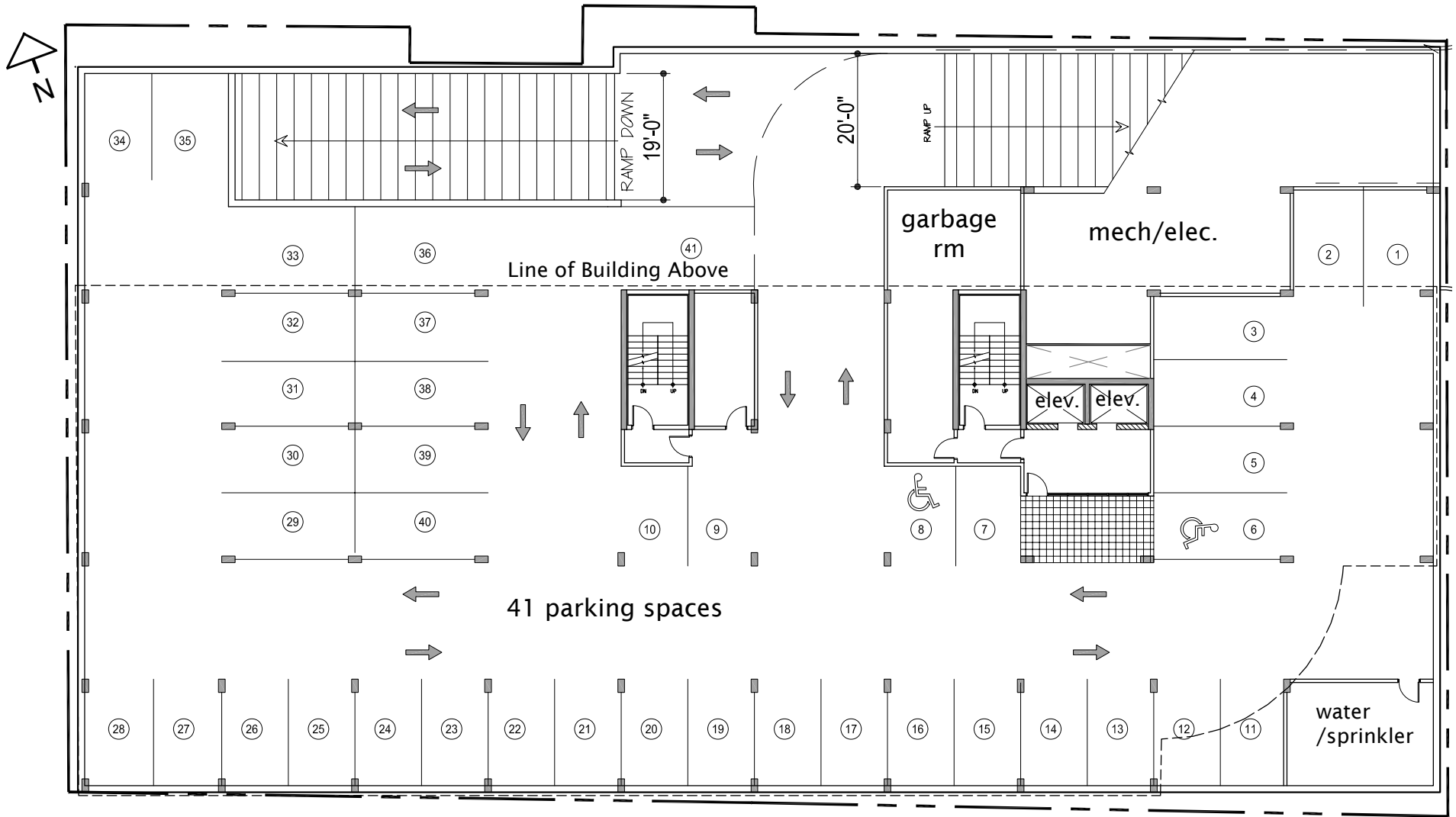


52 parking spaces

UNDERGROUND PARKING LEVEL 1

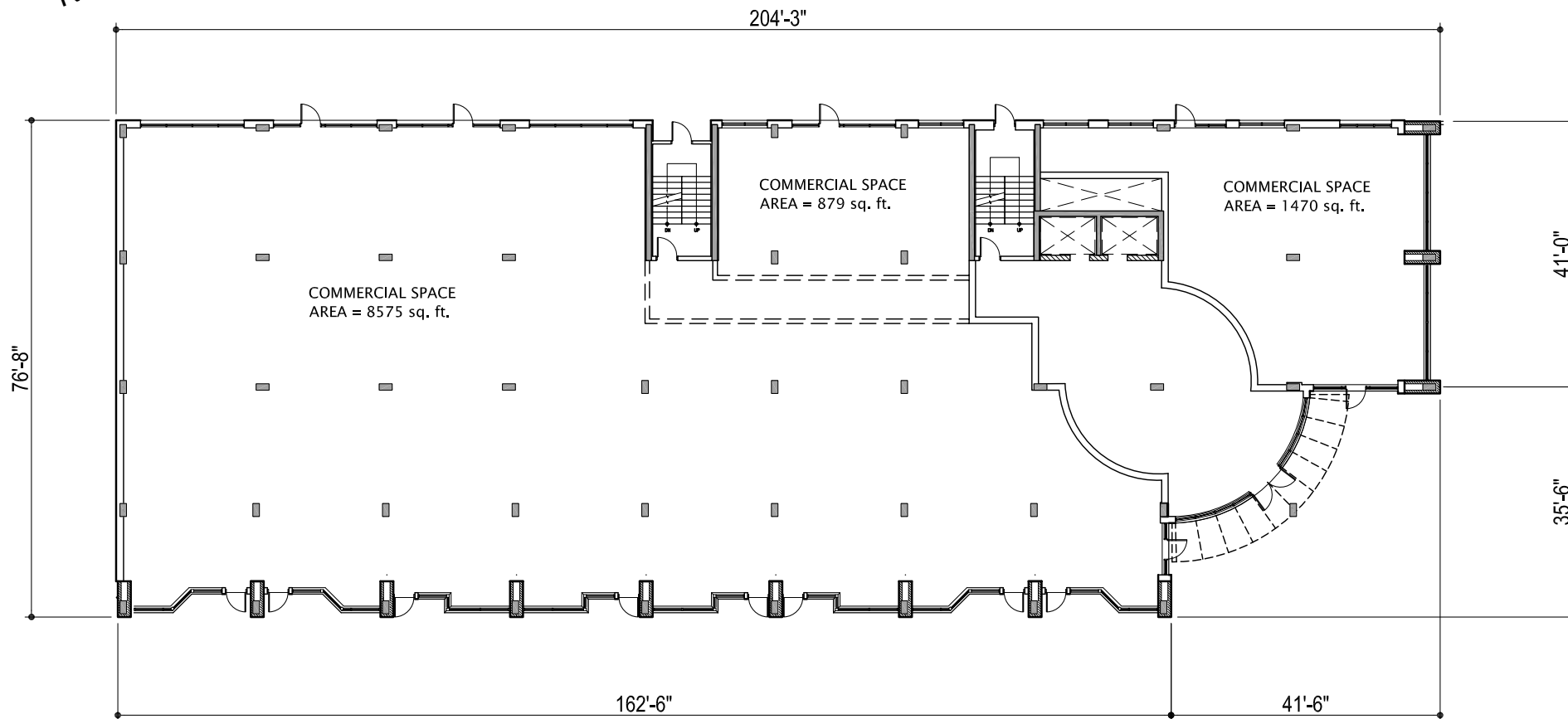
schedule: J

WM FARES  
GROUP



# UNDERGROUND PARKING LEVEL 2

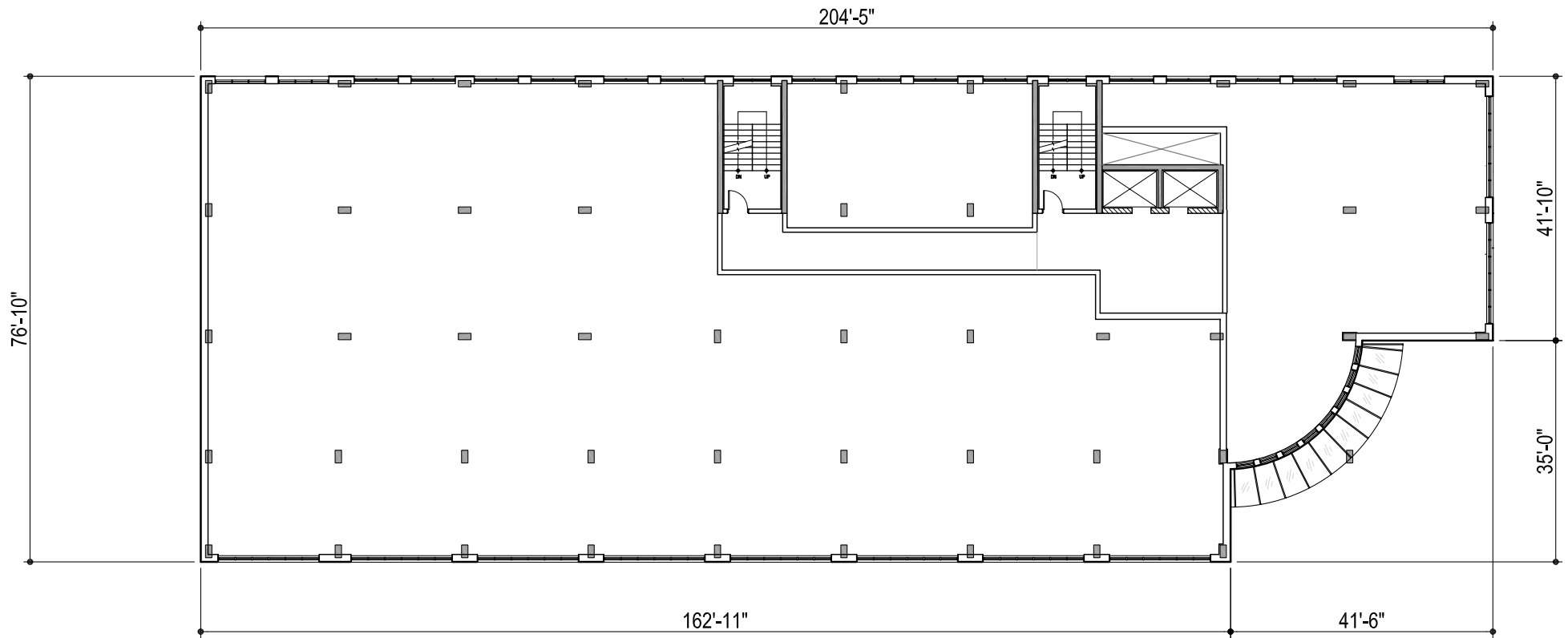
schedule: K



LEVEL 100

schedule: L

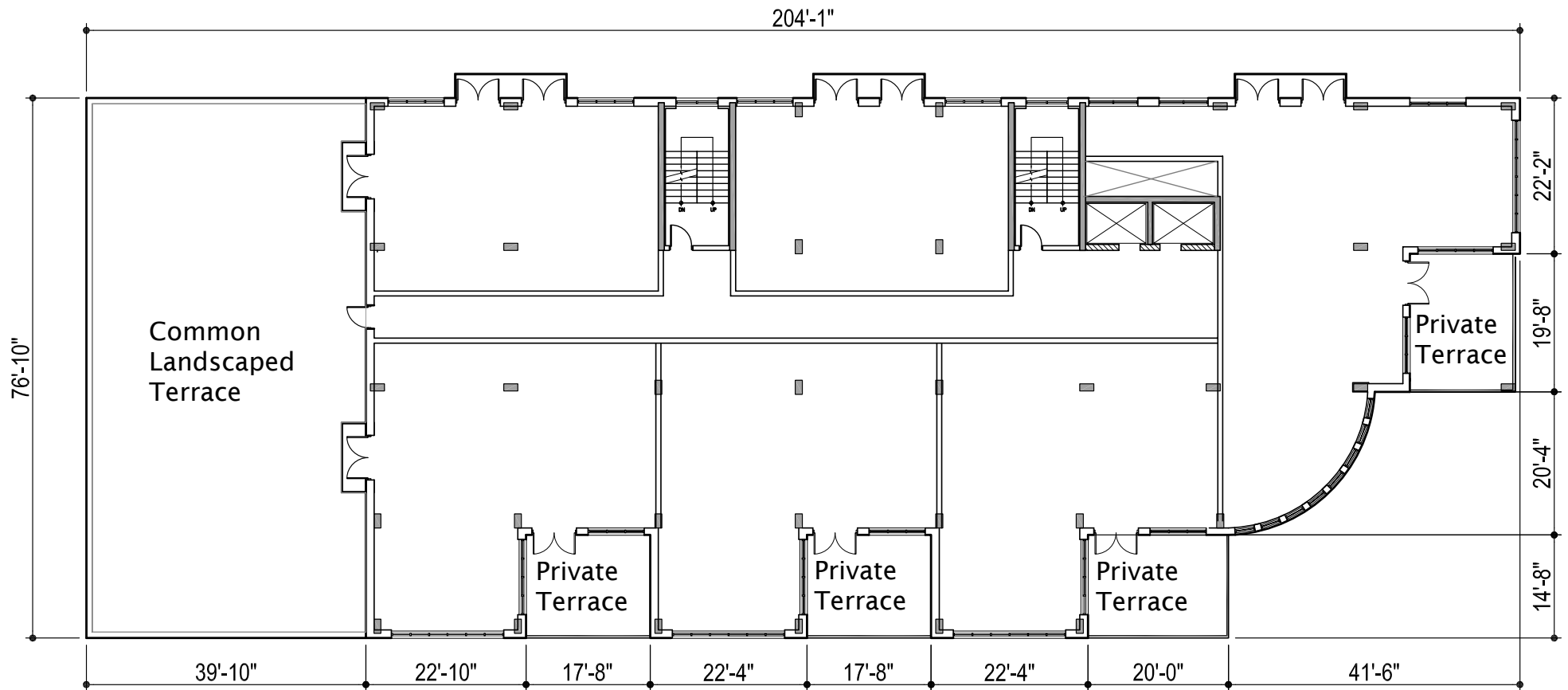
WM FARES  
GROUP



LEVEL 200

schedule: M

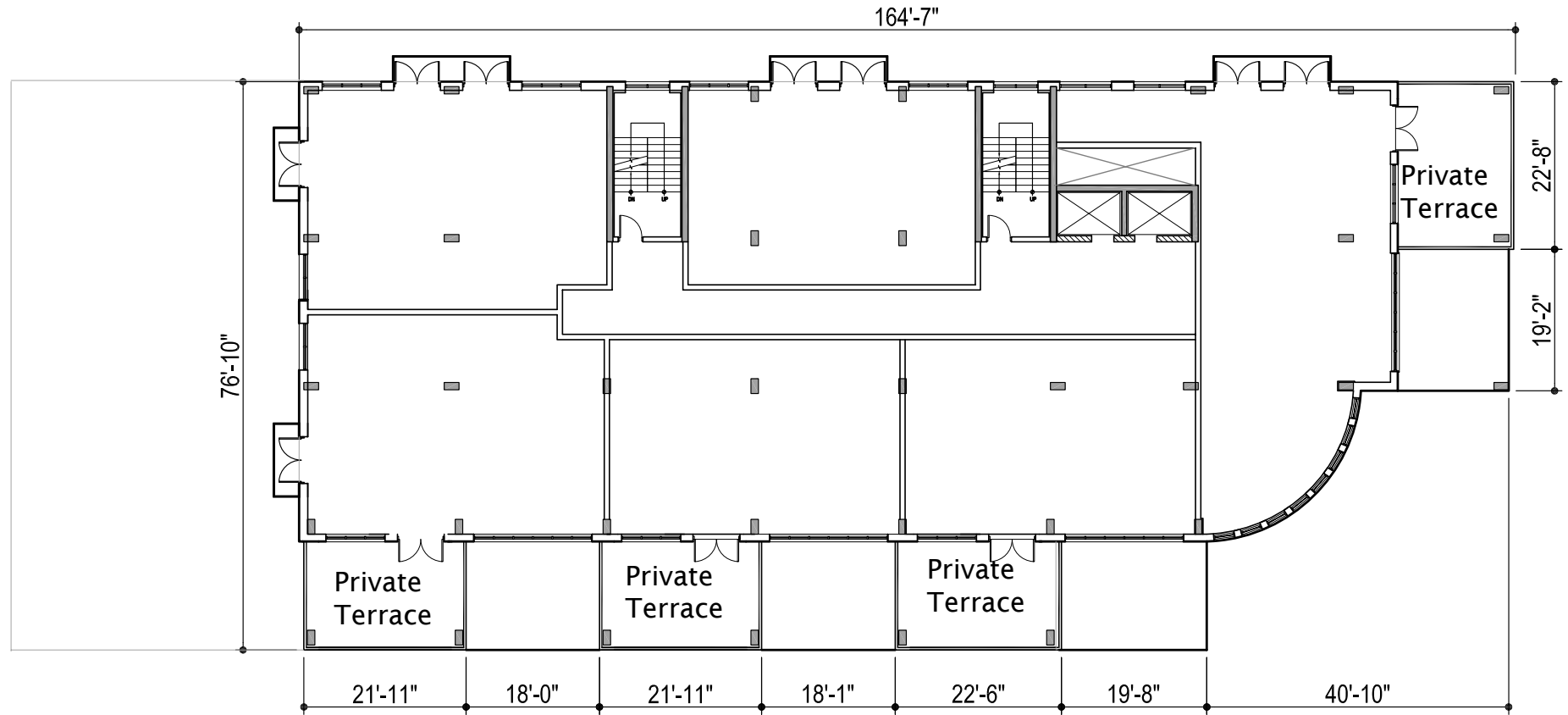
WM FARES  
GROUP



LEVEL 300

schedule: N

WM FARES  
GROUP

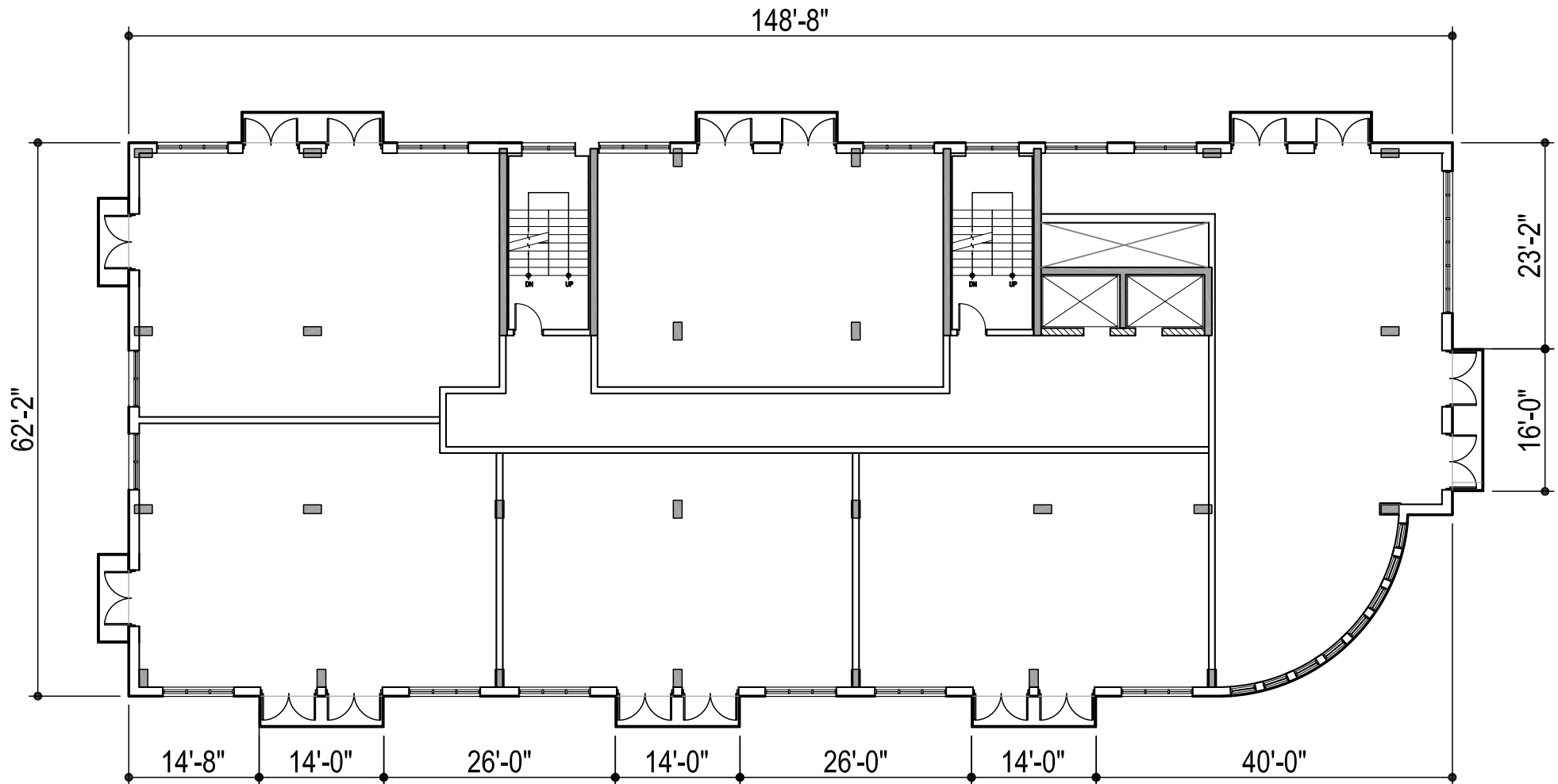


LEVEL 400

schedule: O

WM FARES  
GROUP

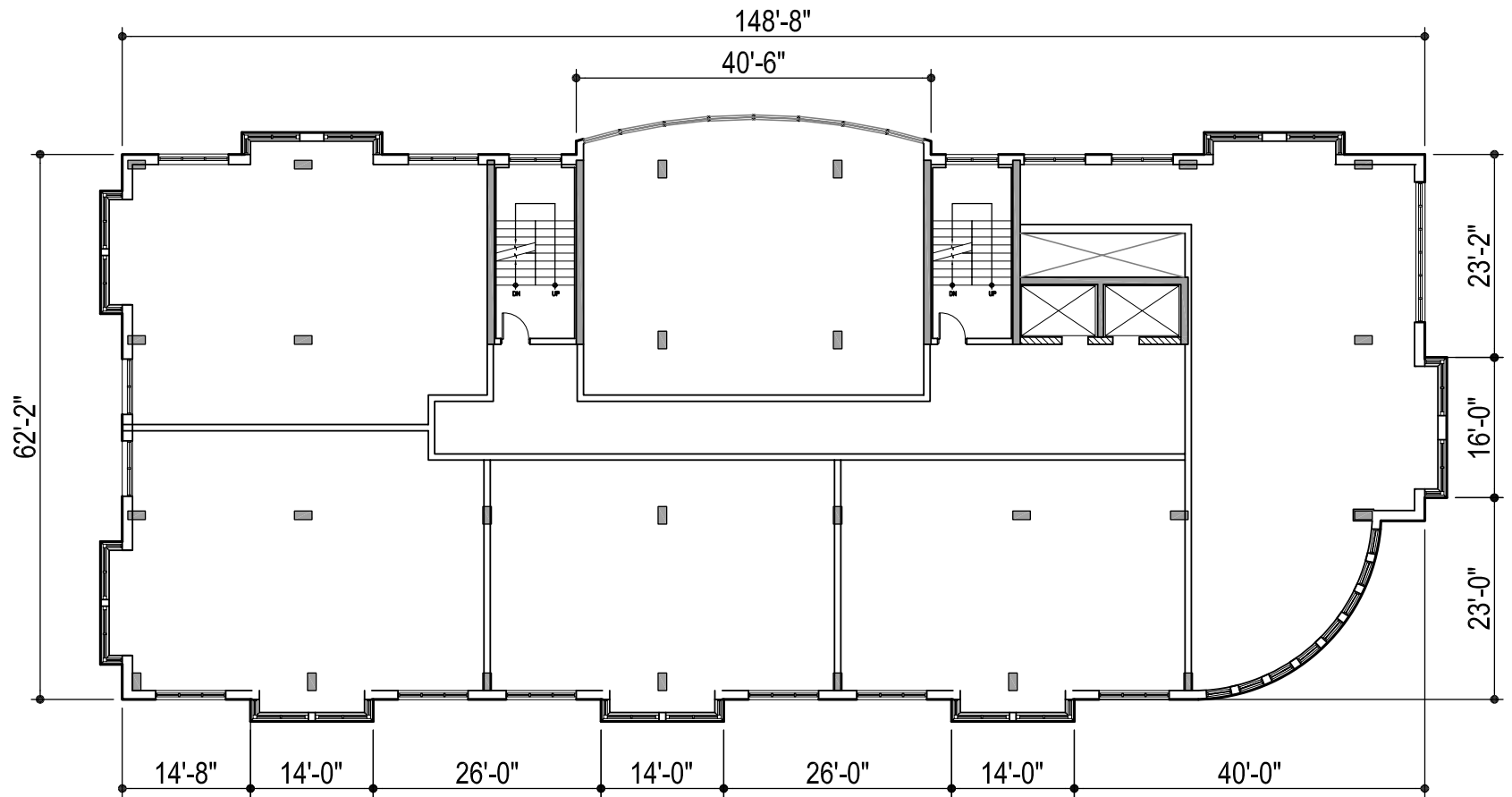




LEVEL 500 TO 700

schedule: P

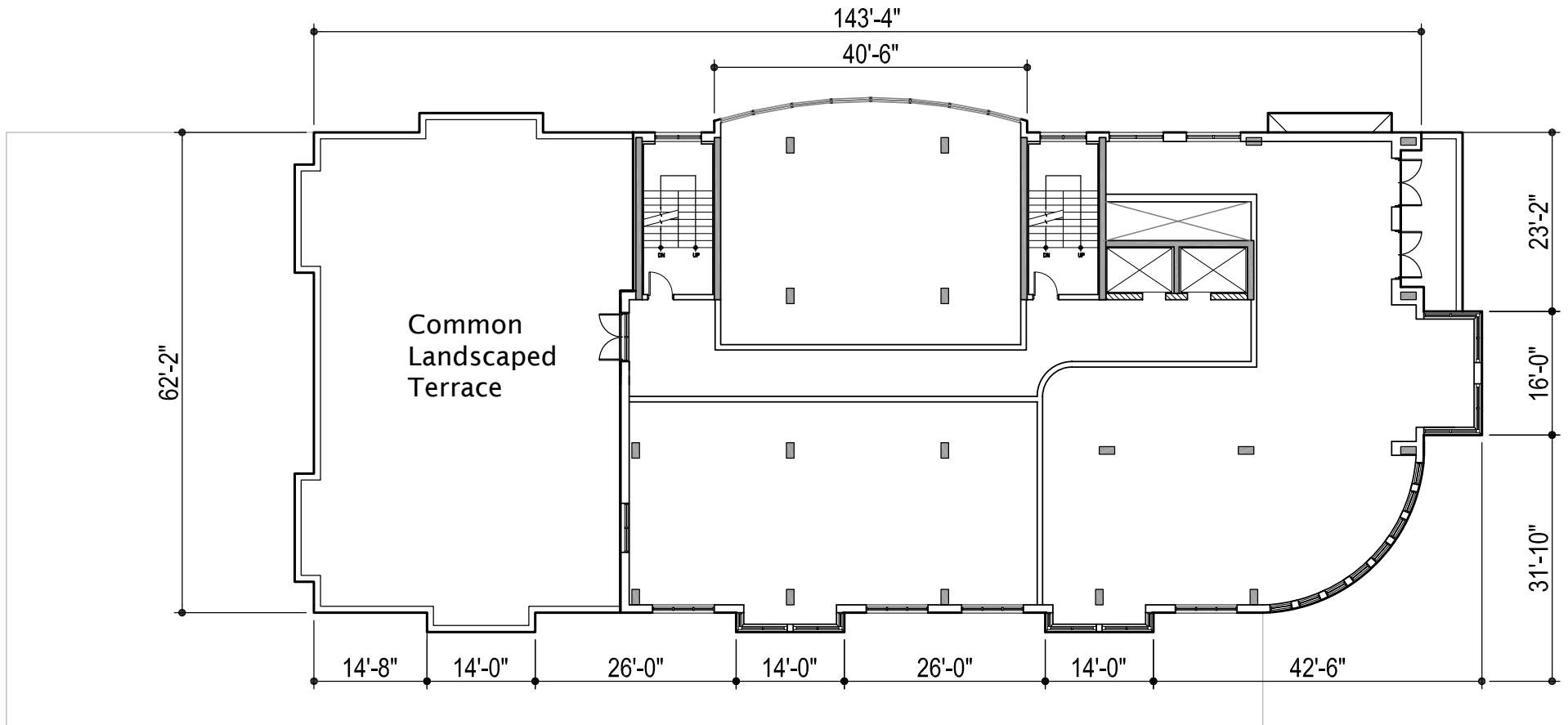
WM FARES  
GROUP



LEVEL 800 TO 1300

schedule: Q

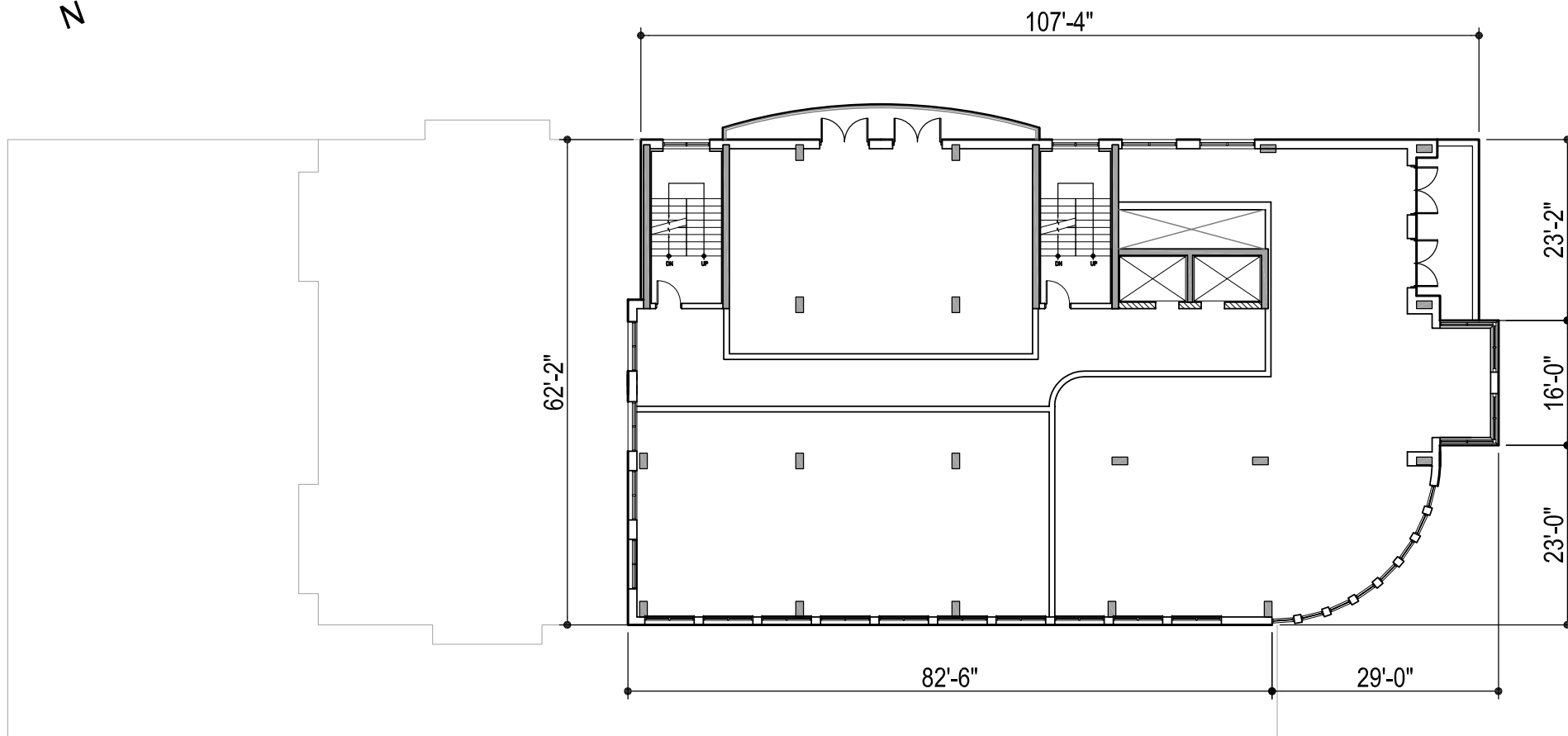
WM FARES  
GROUP



LEVEL 1400

schedule: R

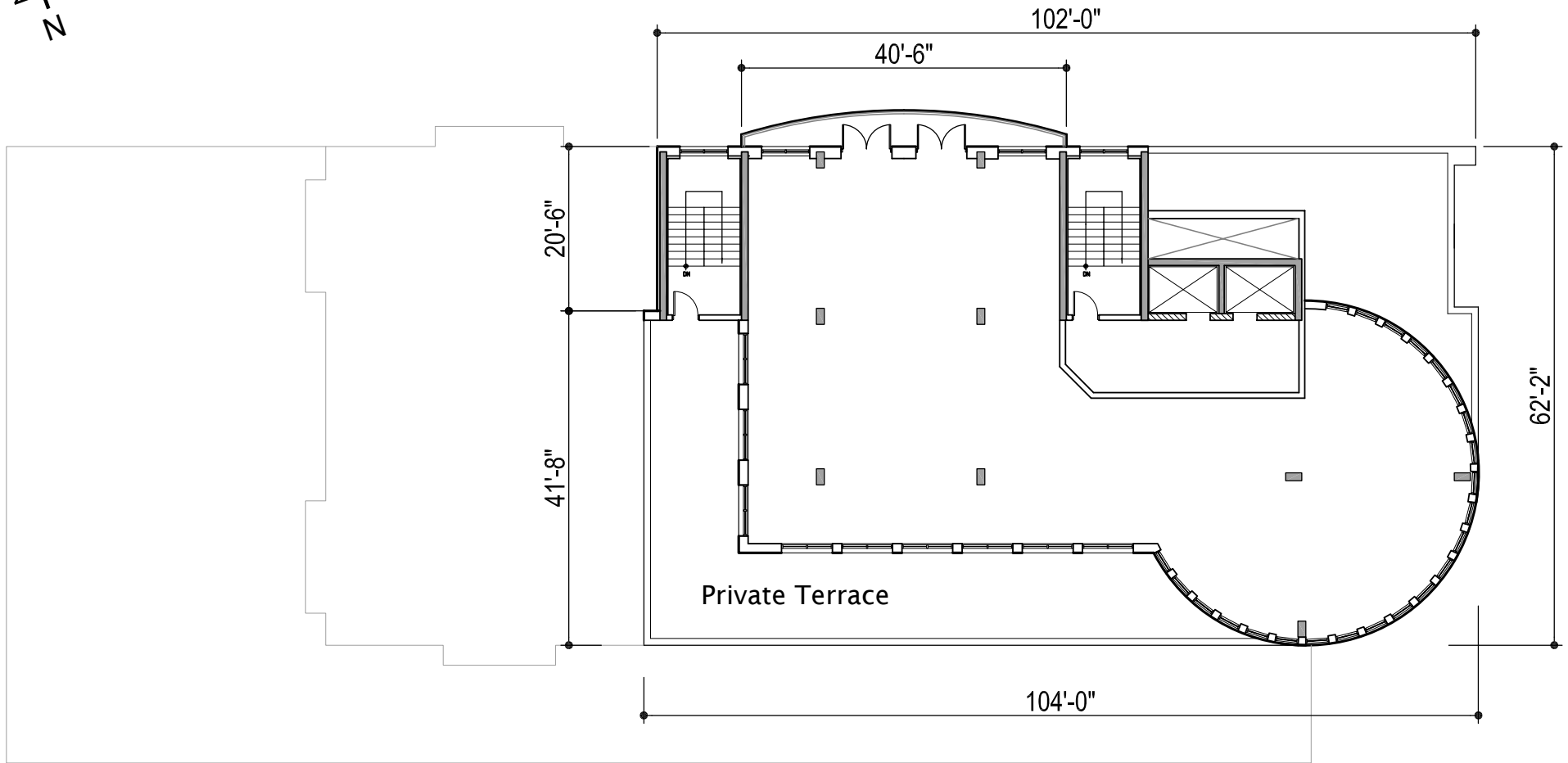
WM FARES  
GROUP



LEVEL 1500 TO 1800

schedule: S

WM FARES  
GROUP



PENTHOUSE

schedule: T

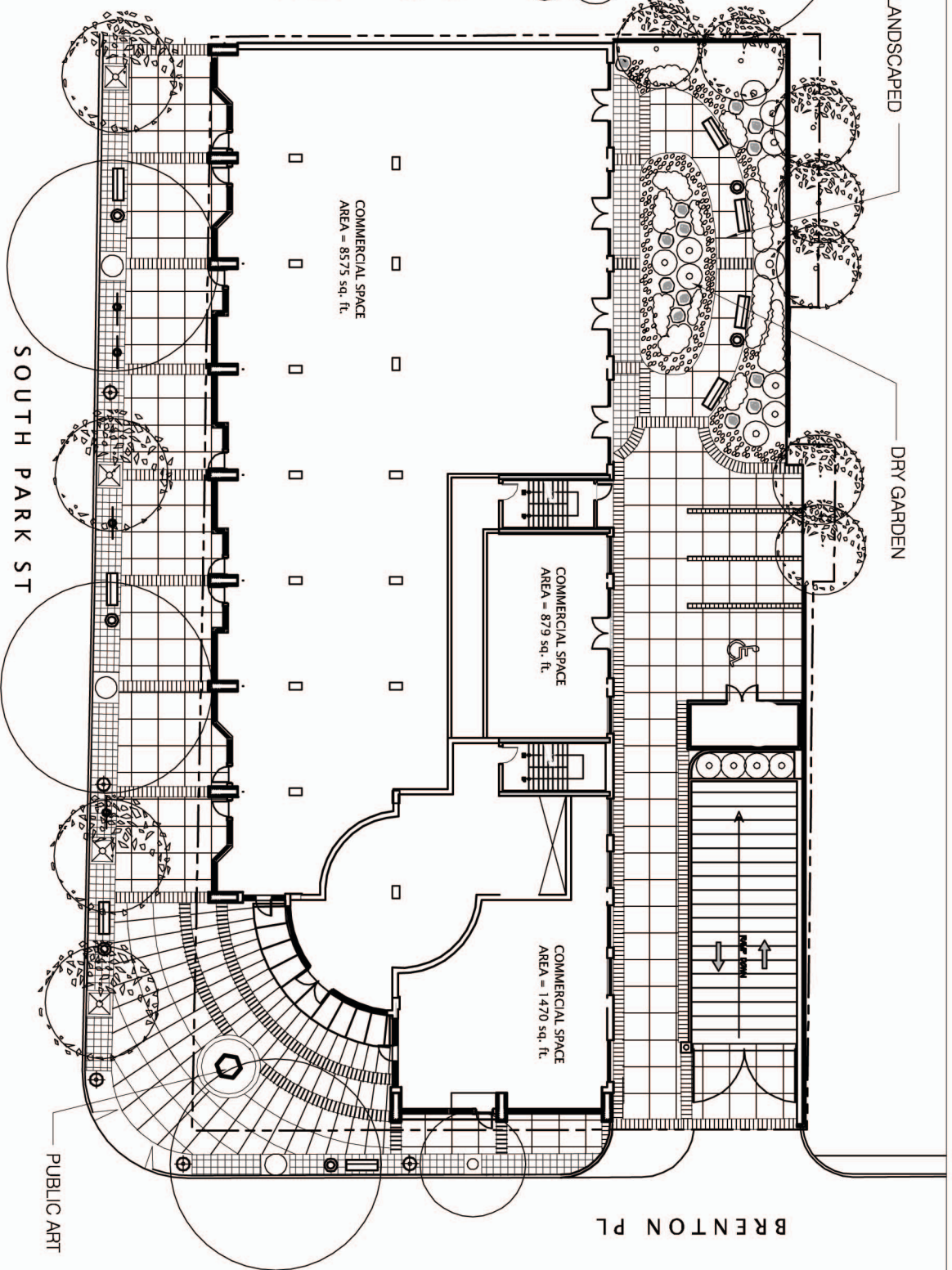
WM FARES  
GROUP

# LEGEND

- EXISTING TREE
- NEW TREE
- SHRUB
- PERENNIALS AND VINES
- PROPOSED RIVER ROCK
- PROPOSED GRANITE BOULDER
- TREE GRATE
- BENCH
- LIGHT STANDARD
- TRASH RECEPTACLE
- BIKE RACK

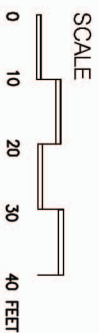
COMMON LANDSCAPED PODIUM

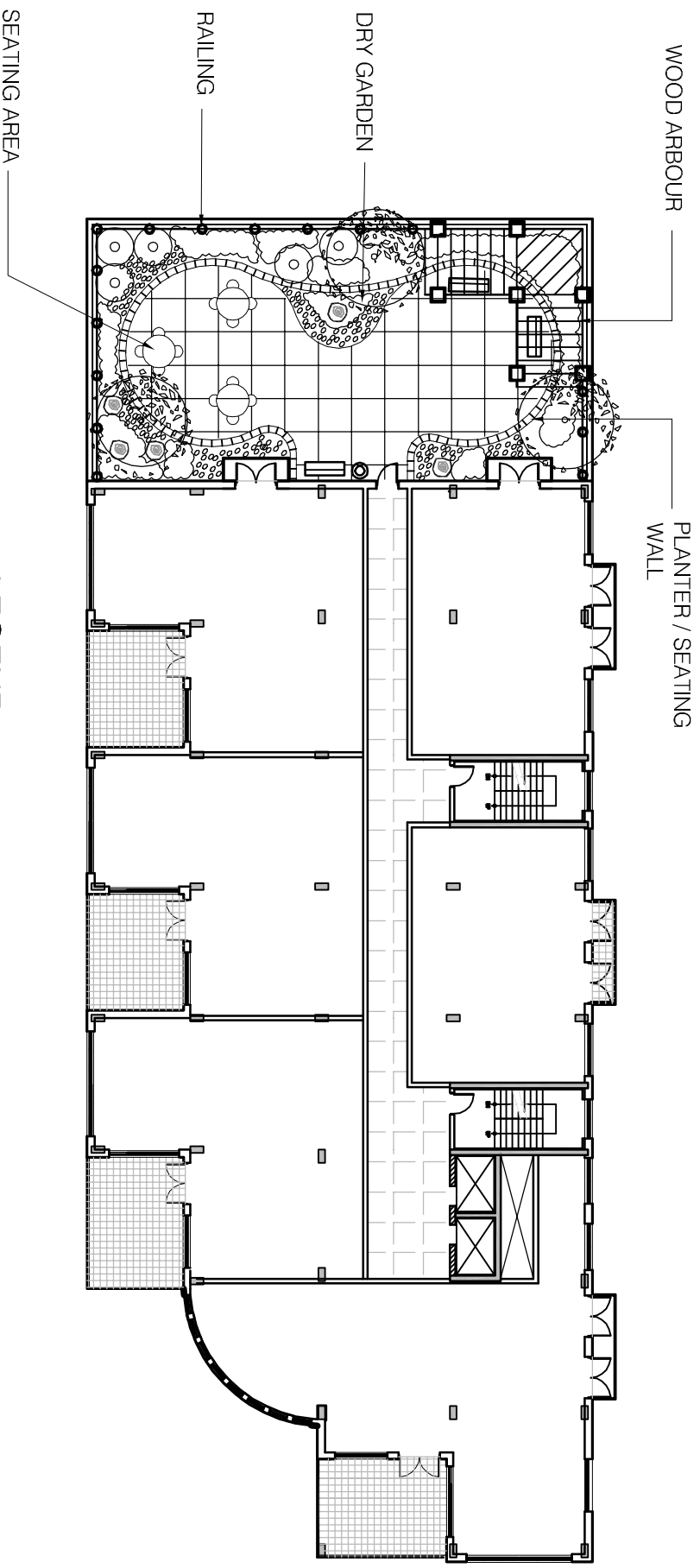
DRY GARDEN



## SOUTH PARK STREET MIXED USE BUILDING SITE PLAN - STREET LEVEL

Schedule: U



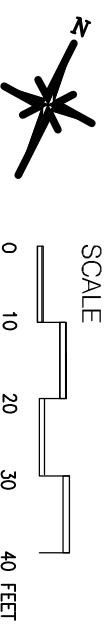


## LEGEND

NEW TREE		RIVER ROCK		TRASH RECEPTACLE	
SHRUB		GRANITE BOULDER		RAILING	
PERENNIALS & VINES		BENCH		PATIO TABLE AND CHAIRS	

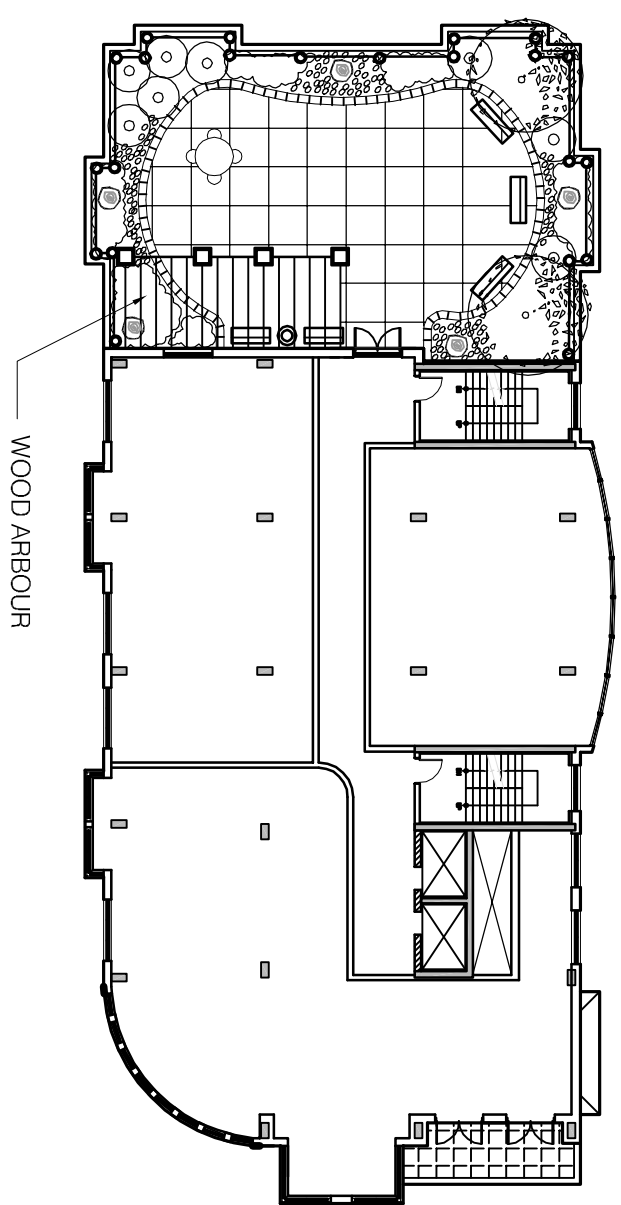
## SOUTH PARK STREET MIXED USE BUILDING COMMON LANDSCAPE PODIUM - LEVEL 300

Schedule: V



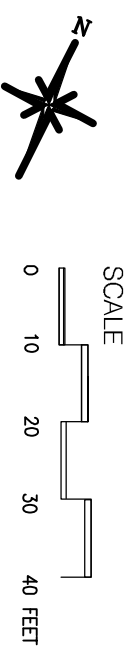
# LEGEND

- NEW TREE 
- SHRUB 
- PERENNIALS AND VINES 
- RIVER ROCK 
- GRANITE BOULDER 
- BENCH 
- TRASH RECEPTACLE 
- RAILING 
- PATIO TABLE AND CHAIRS 

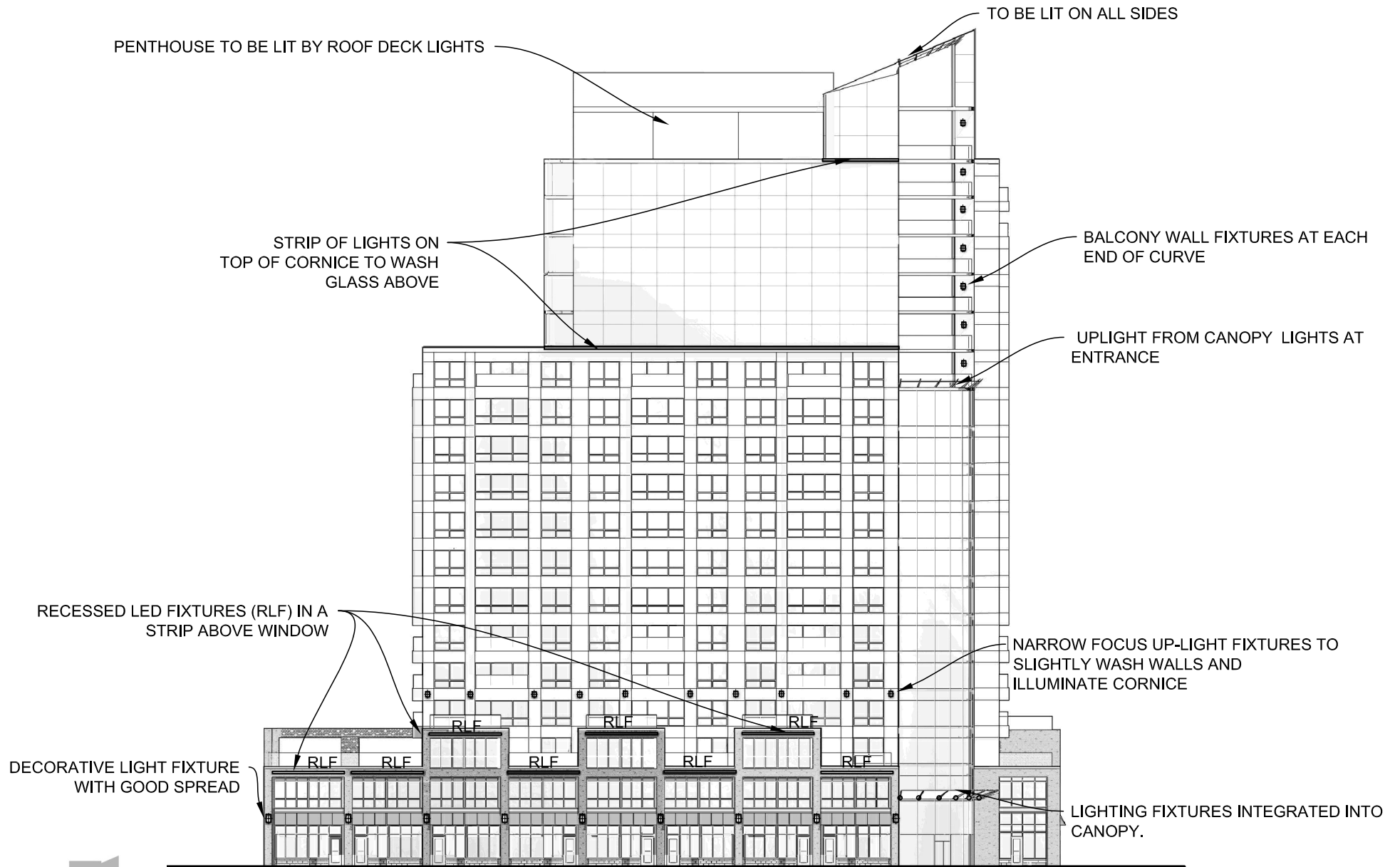


## SOUTH PARK STREET MIXED USE BUILDING COMMON LANDSCAPE PODIUM - LEVEL 1400

Schedule: W



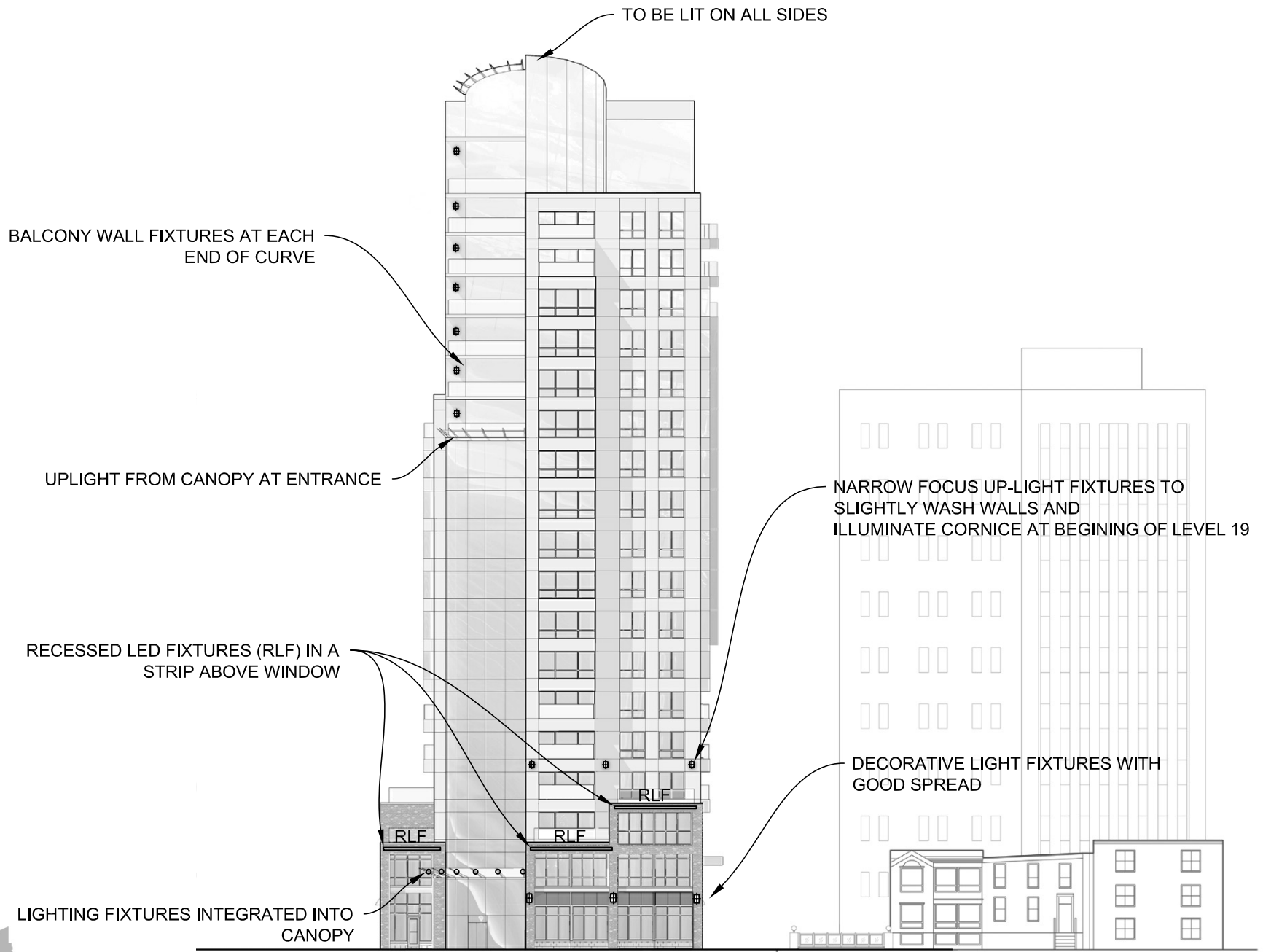




SOUTH PARK PRELIMINARY LIGHTING SCHEME

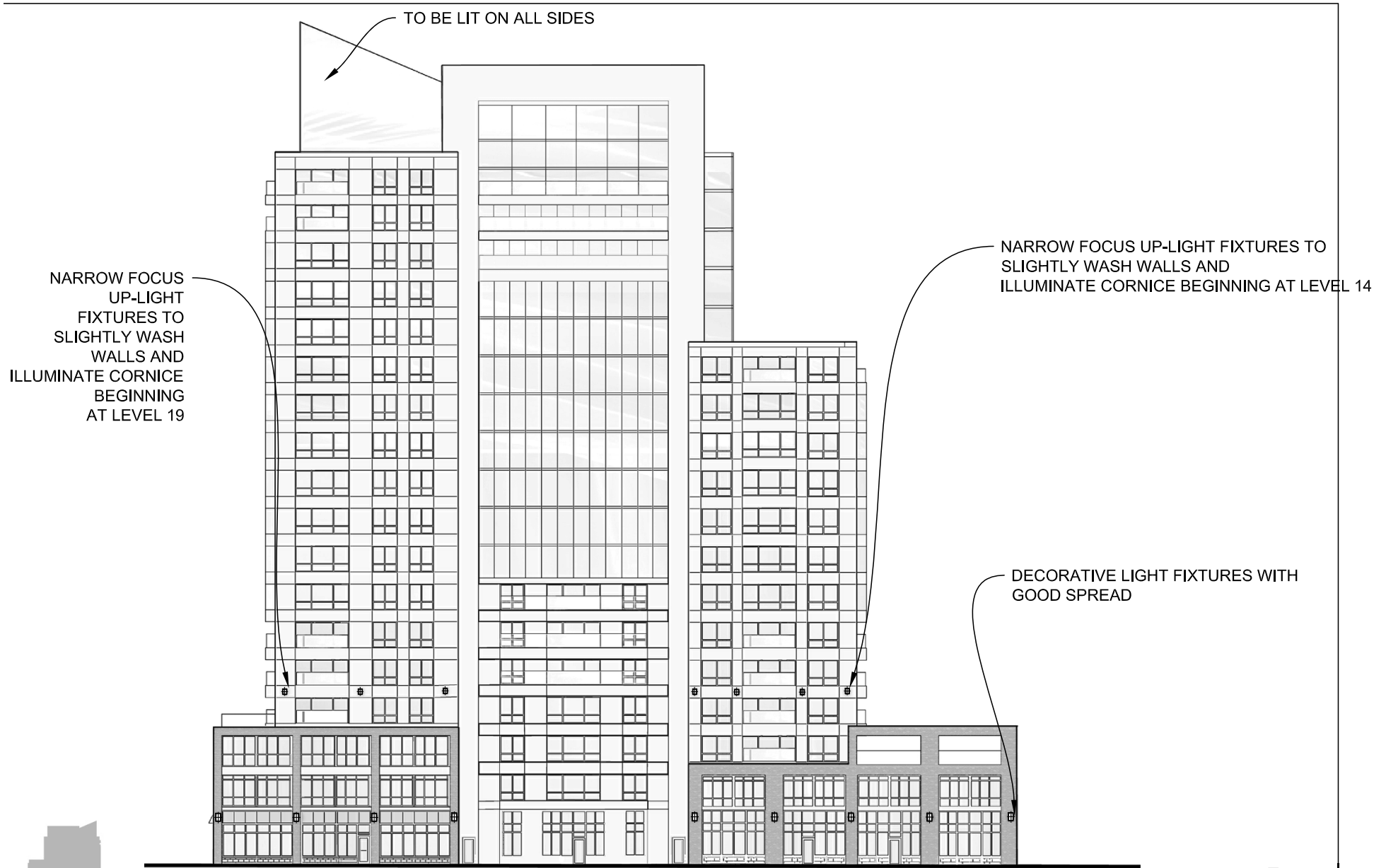
# PRELIMINARY LIGHTING - SOUTH PARK ELEV

schedule: X



# PRELIMINARY LIGHTING - Brenton Pl.

schedule: Y

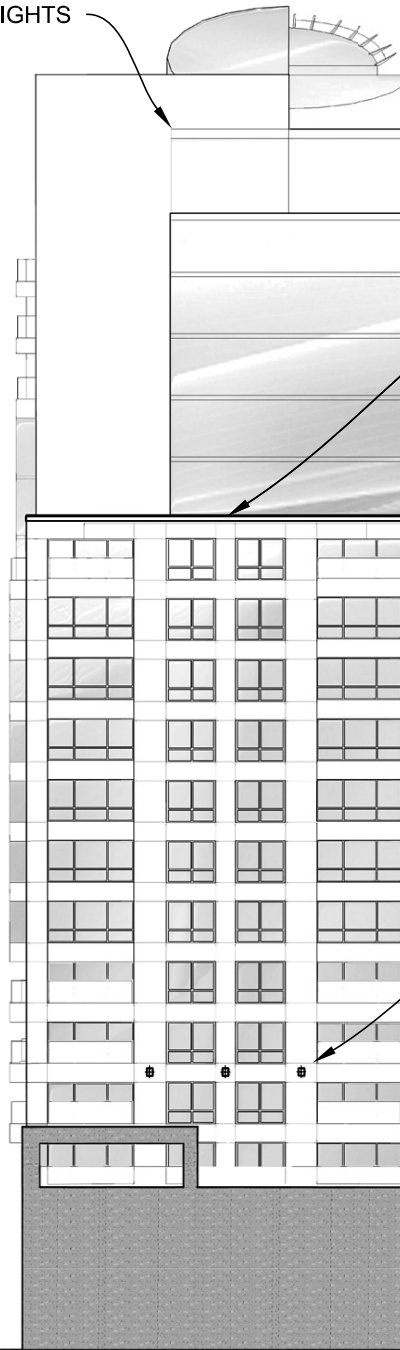


PRELIMINARY LIGHTING - Brenton St.

schedule: Z

WM FARES  
GROUP

PENTHOUSE TO BE LIT BY ROOF DECK LIGHTS



DECK ON LEVEL 3 AND LEVEL 14 WILL HAVE EXTERIOR LIGHTING INTEGRATED W/LANDSCAPE ELEMENTS.

NARROW FOCUS UP-LIGHT FIXTURES TO SLIGHTLY WASH WALLS AND ILLUMINATE CORNICE AT BEGINNING OF LEVEL 14

PRELIMINARY LIGHTING - Spring Garden Rd.

schedule: AA

WM FARES  
GROUP