

THIS AGREEMENT made this 26
28 day of July
JUNE, 1979

BETWEEN:

THE CITY OF EDMONTON,
a Municipal corporation,
(hereinafter called "the City")

- and -

MIDWEST ESTATES LTD.

(hereinafter called "the Developer")

WHEREAS the Developer is the registered owner, or
entitled to become the registered owner of the following land
located in the City of Edmonton, namely:

Lots One (1) to Five (5) inclusive, and the South
One-half of Lot Six (6), all in Block Nine (9),
Plan B.

(hereinafter called "the Development site");

AND WHEREAS the Developer has made application to the
City of Edmonton to delete the said development site from the Land
Use Classification Guide of the City as R-6 High Density
Residential District and include the development site under the
Zoning Bylaw of the City as CD-1 Comprehensive Development District
and;

CITY OF EDMONTON
PLAN 178388

WHEREAS Council at its meeting of May 8th, 1979, gave first and second reading to Bylaw 5696, being a bylaw to delete the development site from the Land Use Classification Guide of the City as R-6 High Density Residential District and include the development site under the Zoning Bylaw of the City as CD-1 Comprehensive Development District; and

WHEREAS section 35 of the Zoning Bylaw, being bylaw number 2135, requires the Developer to enter into a legal agreement with the City;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto agree as follows:

1. DEVELOPMENT OF THE SITE

1.1 The Developer shall develop the development site substantially in accordance with plans submitted to and approved by the General Manager of the Planning Department of the City, acting reasonably, and attached hereto as Schedule "A".

1.2 Without restricting the generality of article 1.1, the use of the development site shall be restricted to an office and commercial tower and an apartment tower type of development, as shown on Schedule "A" attached hereto.

1.3 The Developer hereby agrees that no change shall be permitted to the plans attached as Schedule "A", except as follows:

1.3.1 Minor revisions which may be required by the City for the express purpose of complying with any existing statutes, bylaws, regulations or City policies, which would be unintentionally violated by the strict interpretation of the plans attached hereto as Schedule "A", and which have been consented to by the Developer;

1.3.2 Minor revisions which may be required by the Building Inspection Branch of the Bylaw Enforcement Department of the City to ensure conformity to the Building Code, and which have been consented to by the Developer.

Provided however that for the purposes of article 1.3.1 and 1.3.2 hereof, the General Manager of the Planning Department of the City shall be the sole judge as to what constitutes a minor revision, subject to the consent provisions set out above.

1.4 The Developer shall obtain a Development Permit for the construction of the development upon the development site within One (1) year of the date of third reading of Bylaw 5696, and shall commence construction of the development upon the development site

4.

within one (1) year after the date of issuance of the Development Permit to the Developer, or such extended period of time as the City in its sole and unfettered discretion may in writing agree to in accordance with its bylaws and policies and shall thereafter proceed diligently to complete the construction of the said development. For the purposes of this article 1.4, the commencement of construction shall mean the installation of footings and foundations.

1.5 The Developer agrees that any and all conditions legally attached to the issuance of the Development Permit shall have the same effect as if they were enumerated herein, and set out as part of this agreement.

1.6 The Developer agrees that:

- a) the commercial component of the project shall be restricted to a maximum of 110,000 square feet of the net leaseable area;
- b) the apartment tower shall include a minimum of two three-bedroom units;
- c) the parking provisions shall meet the requirements contained in Bylaw No. 2135, being the Zoning Bylaw of the City.

1.7 The Developer shall further provide detailed plans, to the satisfaction of the Planning Department of the City, showing support systems for the excavation to be carried out upon the development site, and if such support systems encroach in any way upon a City right-of-way, and provided that the proposed support systems are acceptable to the City, acting reasonably, the developer shall execute all necessary documentation required by the City to properly record and govern such encroachments.

2. LANDSCAPING

2.1 Prior to the issuance of a Development Permit for the development site, or within thirty (30) days of the execution of this agreement, whichever first occurs, the Developer shall submit detailed plans and specifications of the landscaping to be carried out upon the development site, including, but not restricted to, proposed buffering and screening, all of which plans shall be to the satisfaction of the General Manager of the Planning Department of the City, acting reasonably, and upon approval thereof by the said General Manager, shall be attached to and form part of this agreement, and shall be marked as Schedule "B" hereto.

2.2 Upon approval of the said plans and specifications by the said General Manager, the Developer shall provide to the City an estimate of the total landscaping costs, such estimate to be

prepared by an independent professional agency, skilled and experienced in the provision of landscaping services.

2.3 Prior to the issuance of any building permit for the development site, and to ensure compliance with the landscaping plans submitted and approved pursuant to article 2.1 hereof, the Developer shall provide to the City a performance bond, or such other security satisfactory to the City Solicitor, in a form satisfactory to the City Solicitor acting reasonably, in the amount of One Hundred (100%) per cent of the estimated cost of the landscaping of the entire development site, or such lesser percentage as the City may in writing agree to.

2.4 The City shall hold the performance bond or other security given under article 2.3 hereof, in the amount described in article 2.3 hereof or in such less amount as the City may in writing agree to, for a period of two (2) years following the completion of landscaping upon the entire development site.

2.5 The Developer shall landscape and maintain all boulevard areas adjacent to the development site, to the standards contained in Bylaw No. 2107 being the Boulevards Bylaw of the City, and to the satisfaction of the Parks & Recreation Department of the City, acting reasonably. In the event the developer fails to landscape or maintain to the satisfaction of the Parks and Recreation Department, the City may landscape or maintain as the case may be,

and shall at its sole option recover such costs from the Developer by realizing upon the security provided to it pursuant to article 2.3 hereof, or in the same manner and to the same extent as recovery of taxes.

2.6 At no time shall the Developer allow a cover over the waterline existing within the boulevard, in excess of 9 1/2 feet, or less than 8 feet.

3. LAND REQUIREMENTS

3.1 The Developer shall dedicate to the City, a corner cut from the southeast corner of Lot 1, being an area 3 metres by 3 metres in size, as shown outlined in yellow on Schedule "C" attached hereto. ✓

3.2 The Developer shall further dedicate to the City, a corner cut from the southwest corner of Lot 1, being an area 4.5 metres by 4.5 metres in size, as shown outlined in yellow on Schedule "C" attached hereto. ✓

3.3 The City, as an exchange, shall transfer to the Developer, in consideration of the covenant of the Developer set forth in paragraph 3.4 hereto, that portion of land shown outlined in orange on Schedule "C" attached hereto for, inter alia, the construction of housing accommodation. ✓

3.4 The Developer, as an exchange, shall transfer to the City, in consideration of the covenant of the City set forth in paragraph 3.3 hereof, that area outlined in red on Schedule "C" attached hereto. ✓

3.5 The Developer shall lease from the City, for a term of Fifty (50) years, the subsurface only of that area outlined in green on Schedule "C" attached hereto, and described as that piece of property being Ten (10) feet in width and extending between the west property line of 110 Street and the east property line of the lane east of 110 Street, at an annual rental which shall be equal to Two and One Half (2 1/2%) per cent of the market value of the lands as at the date of execution of this agreement, together with the annual municipal taxes levied against the development site. ✓
The parties agree that the market value of the lands to be leased hereunder shall be adjusted every ten years after the date of execution of this agreement in order to conform to the then-current market value.

3.6 In the event the parties hereto are unable to agree as to the market value of the land required pursuant to article 3.6 hereof, the market value shall be determined by arbitration in accordance with article 7 hereof, such market value to be the price the land to be leased would realize in an open market sale by a willing vendor to a willing purchaser.

3.7 The Developer agrees to register at the Land Titles Office for the North Alberta Land Registration District, at its

own expense, a plan consolidating that portion of the lane to be closed, excluding those lands required by the City pursuant to this Agreement, together with the balance of the lands within the development site.

4. UTILITIES

4.1 The Developer shall be responsible for the costs of relocating any utilities or services, which is made necessary due to the closure of the lane within the development site.

4.2 The Developer agrees to obtain or prepare an estimate of the costs of any of the work required pursuant to article 4.1, and shall pay such estimated costs to the City within Thirty (30) days after execution of this agreement, and the parties agree that after completion of the work required to be carried out pursuant to article 4.1 hereof, there shall be an accounting between the parties for any deficiency or excess of funds provided by the Developer to the City.

4.3 The Developer covenants and agrees to provide, at its sole cost and expense, a catch basin or basin at the intersection of the new lane and the existing lane east of 110 Street, upon the following terms:

4.3.1 The estimated cost of construction, being agreed upon by the parties as \$15,000.00, shall be paid by the developer to the City within thirty (30) days after execution of this agreement, and upon completion of the catch basin, or basins, the City shall either invoice or credit the Developer, in accordance with the actual costs of construction of the catch basin, or basins.

4.3.2 The City Water & Sanitation Department shall promptly and diligently carry out the construction of the catch basin, or basins, upon thirty (30) days notice in writing from the Developer to the City.

4.3.3 The Parties hereto agree that the construction of the catch basin or basins shall be carried out prior to any excavation being carried out the Developer for any development upon the development site.

4.3.4 The developer agrees to pre-grade and clear the lane area prior to the Water & Sanitation Department of the City commencing the construction of the catch basin or basins.

4.3.5 The parties hereto agree that the lead from the catch basin or basins shall follow an alignment along the north half of the new lane between 110 Street and the lane east of 110 Street.

5. ROADWAY MODIFICATIONS

5.1 The Developer shall pay the cost of all roadway modifications, extensions, alterations, and construction required by or occasioned specifically by the development to be constructed upon the development site pursuant to the terms of this agreement, including, but not restricted to, filling in of unutilized curb crossings, and the repair or replacement of sidewalks, curbs and gutters adjacent to the development site, all to the satisfaction of the City Engineer. Such costs may, at the sole option of the City, be billed directly to the developer, or may be recoverable in the same manner and to the same extent as property taxes levied against the land pursuant to the provisions of the Municipal Taxation Act.

5.2 In addition to those costs specified in article 5.1 hereof, the Developer shall:

5.2.1 pay only and all costs for a new curb crossing and apron at the intersection of the new lane and 110 Street, including the cost of relocation of boulevard trees, valves, and hydrants;

5.2.2 pay any and all costs of standard lane paving in the new lane north of 97 avenue between 110 Street and lane east of 110 Street;

5.2.3 after completion of the paving described in article 5.2.2 above, repair any cracks, breaks and subsidence which can be attributed to the existence of the parking structure underneath. If the Developer does not repair as aforesaid the City may repair such deficiencies and recover the costs from the Developer, either directly, or in the same manner and to the extent as the recovery of taxes.

5.3 In the event the City, at some future date, proposes a closure bylaw for any or all of the existing lane east of 110 Street immediately north of the development site;

5.3.1 the Developer agrees not to register any opposition to such road closure bylaw, and

5.3.2 the City, should it in future decide to dispose of those lands outlined in purple on Schedule "C" attached hereto, agrees, at such time, to grant to the Developer the first option to purchase such lands, at and for a purchase price equal to the market value of such lands as at the date of the City giving 3rd reading to a bylaw closing such lands.

5.4 The parties hereto agree that there shall be no vehicular access to the development site from 97 Avenue.

5.5 The parties hereto agree that when the City does, in the future, construct the new lane north of 97 Avenue between 110 Street and the lane east of 110 Street, as shown on Schedule "C" attached hereto, then such new lane shall be constructed to the City's usual specification, and the developer shall not expect the City to take unusual or extraordinary precautions during construction due to the fact of the garage encroachment existing underneath such new lane.

6. LOCAL IMPROVEMENT CHARGES

The Developer agrees to commute all existing local improvements charges presently on the tax rolls of the lands within the development site.

7. ARBITRATION

7.1 In the event of a dispute arising between the parties hereto as to the interpretation, application, operation or alleged violation of this agreement or any of the provisions hereof, such dispute shall be determined by arbitration in accordance with the following terms and conditions:

7.1.1 The party desiring to refer the dispute for arbitration shall notify the other party in writing of the nature and extent of the dispute;

7.1.2 Within seven (7) days of receipt of such notice, the opposite party shall by written notice advise the party so desiring to refer the dispute to arbitration of all matters referred to in the initial notice which he disputes, except those for which he admits

responsibility and proposes to take remedial action, and he shall then take such remedial action;

7.1.3 The terms of reference for arbitration shall be those areas of dispute referred to in the initial notice with respect to which the second party has not admitted or proposed to take remedial action;

7.1.4 The City and the Developer shall, within seven (7) days of the establishment of the terms of reference pursuant to article 7.1.3 above, each appoint an Arbitrator and the two Arbitrators shall within seven (7) days of their appointment, appoint a third member to the Arbitration Committee to be known as the Chairman, provided further that, if either party fails to appoint an Arbitrator, then the other party may apply to a Justice of the Supreme Court to have such Arbitrator appointed, and provided further that if the two arbitrators fail to appoint a Chairman then both parties or either of them may apply to a Justice of the Supreme Court of Alberta to have the Chairman appointed.

7.1.5 Within thirty (30) days of the establishment of the Arbitration Committee, or such further period as may be agreed upon by the parties, the Arbitration Committee shall resolve all matters and disputes accorded in the terms of reference therefore;

7.1.6 The decision of the majority of the Arbitration Committee shall be the decision of the Committee, provided that if no majority decision is reached, the decision of the Chairman shall be the decision of the Committee;

7.1.7 The decision of the Committee shall be binding and final upon the parties hereto;

7.1.8 Except as hereby modified, the provisions of the Arbitration Act of Alberta shall apply to the arbitration procedure.

8. INSURANCE

The Developer shall at its sole expense, maintain

public liability insurance against claims for personal injury, death and property damage occurring upon or within the Development site except claims which arise by reason of any default of the City in respect of any responsibility of the City under this agreement, and such insurance shall provide protection in an amount not less than two million (\$2,000,000.00) dollars with respect to public liability and/or property damage for any one accident. The insurance required pursuant to this paragraph shall be undertaken by an insurer registered to carry on business in Alberta and the Developer shall deliver to the comptroller of the City such certificates or other evidences of coverage as the comptroller may from time to time reasonably require.

9. GENERAL

9.1 This agreement is not intended to nullify, replace, circumvent, or modify any existing statutes, bylaws, permit conditions, or general requirements which govern development or construction within the City.

9.2 Nothing herein contained is intended to, or does obligate the City, to rezone any or all portions of the development site, or to pass Bylaw No. 5695, or any other zoning amendment bylaw, provided however, it is understood and agreed that this agreement is conditional upon such rezoning, and in the event that

the development site is not rezoned to permit the development of the said site in accordance with the terms of this agreement, this agreement shall be at an end and shall be of no force and effect.

9.3 The parties hereto agree that each and every article of this agreement is a necessary and integral part of the agreement, and the due performance of each and every provision is essential to the validity hereof, and in the event that one or more articles contained herein is for any reason declared invalid or unenforceable, such articles, unless the City shall otherwise in writing agree to the contrary, shall not be severable from the whole agreement, but rather, the whole agreement, at the option of the City, shall be invalid and at an end, and provided further, should the agreement be rendered unenforceable hereunder or should the Developer fail to observe or perform the covenants herein contained on its part to be observed and performed, the Council of the City shall be at liberty to repeal any zoning of the development site undertaken by the City to permit the development hereunder, if being understood and agreed that any rezoning hereunder passed by the Council of the City is conditional upon the due observance and performance of each and every article herein contained on the part of the Developer to be observed and performed.

9.4 The Developer acknowledges and agrees that the terms and conditions of this agreement are covenants running with the lands located within the development site, and are binding upon the Developer, his successors and assigns. The Developer shall extract

the same covenants as hereincontained from any person it may in any way convey all or a portion of the development site, so that the covenants shall run with the Lands within the development site. The City may enforce the terms, conditions and provisions of this agreement in the same manner and to the same extent as any other restrictive covenant filed by way of caveat, and the City may file a caveat to protect its interest herein, provided however, that the said caveat shall cease and determine when all conditions herein have been satisfied and, provided further, that the City shall absolutely postpone such caveat in favour of a mortgage or mortgages registered in the North Alberta Land Titles Office for the purpose of financing any construction or development upon the development site in accordance with the provisions of this agreement.

9.5 Whenever the singular or masculine is used throughout this agreement, the same shall be construed as meaning the plural or feminine or body corporate where the context or parties hereto require.

9.6 It is agreed that everything hereing contained shall enure to the benefit of and be binding upon the parties hereto, their administrators, successors and assigns respectively.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their hand and seal at the City of Edmonton, in the Province of Alberta, the day and year first above written.

The City of Edmonton

[Signature]

FOR PAYOR
F. Greenhalgh

CITY CLERK

MIDWEST ESTATES LTD.

[Large blue scribbled signature]

APPROVED

As to Form... *E. Caccas*
City Solicitor
As to Contents... *[Signature]*
Development Director
[Signature]
Department Manager
As to Principle...
City Commissioners

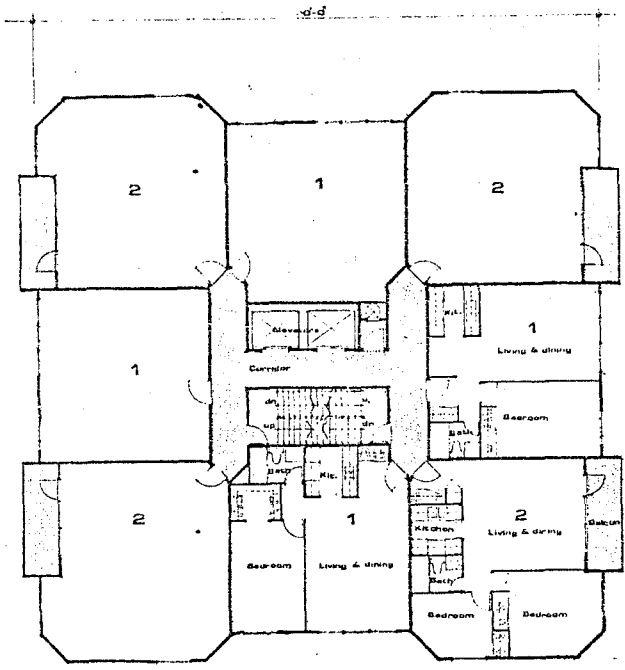
LAND DEVELOPMENT COORDINATION

Engineering Section Approval

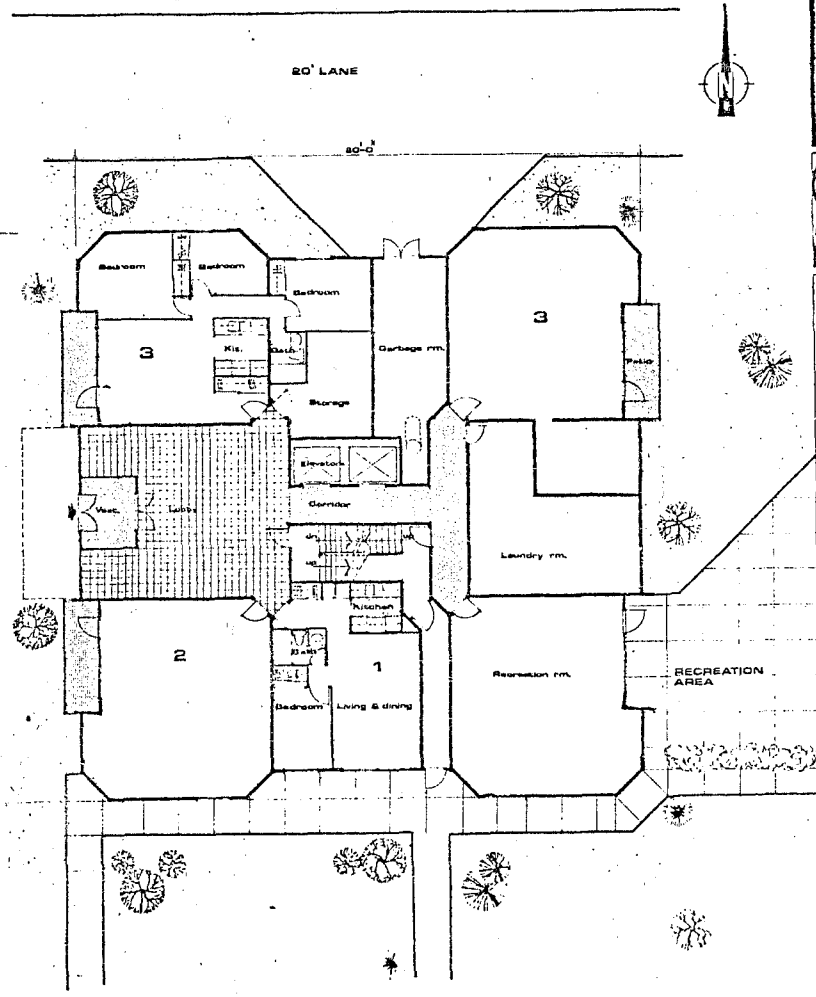
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Financial Section Approval

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TYP. FLOOR PLAN



aboveland
architectural and engineering



Sheet
APT FLOOR PLANS

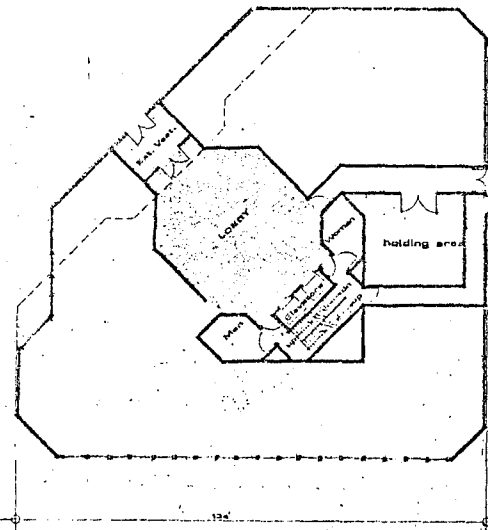
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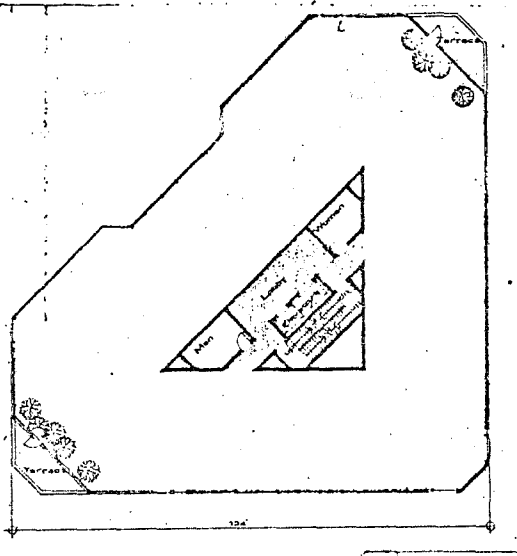
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Scheme number

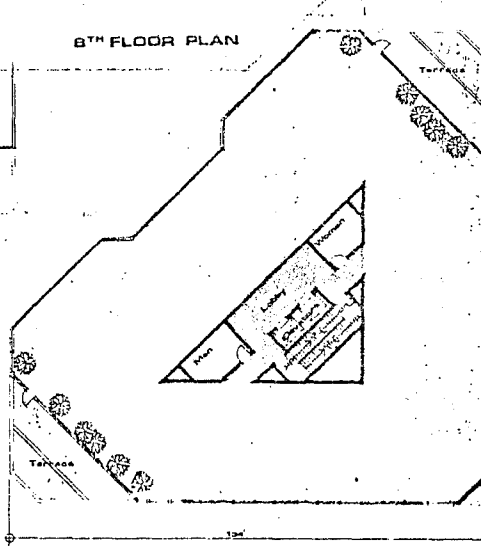
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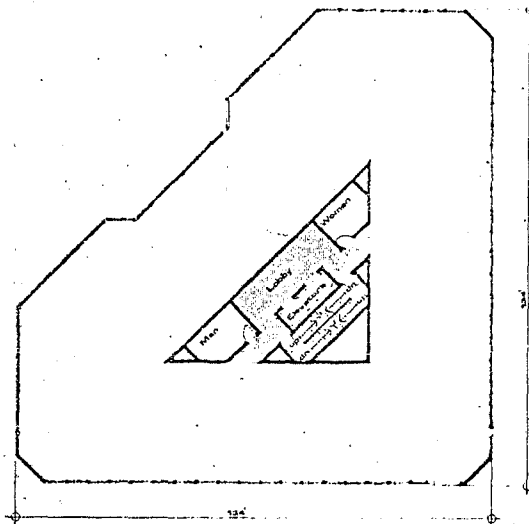
GROUND FLOOR PLAN



8TH FLOOR PLAN



PENTHOUSE FLOOR PLAN



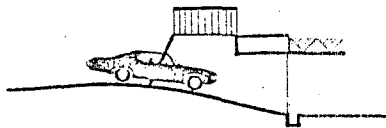
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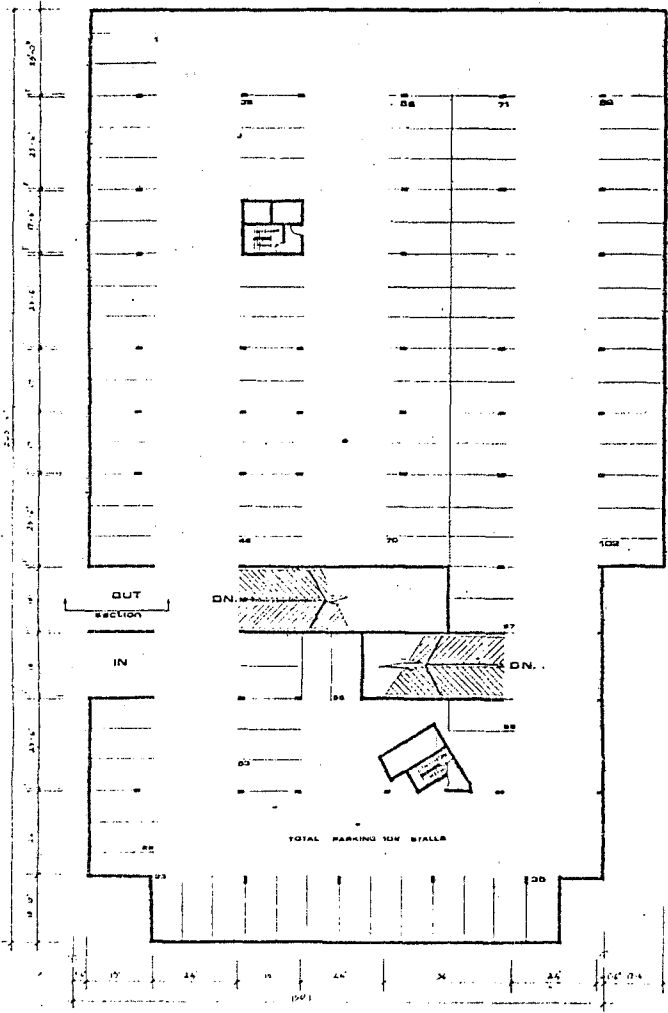
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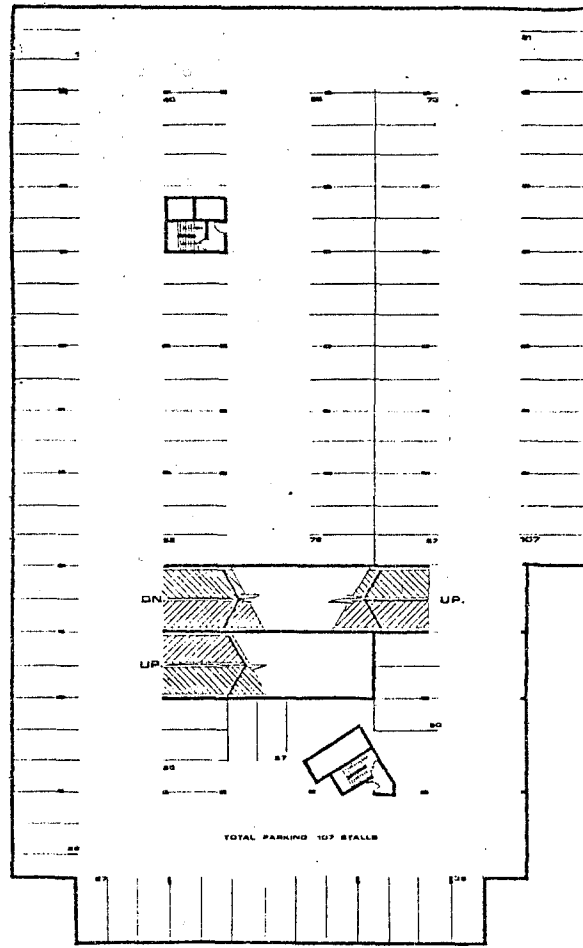
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SECTION
SCALE 1/8\"/>



1st LEVEL PARKING



2nd LEVEL PARKING

abogoy and sutherland
engineers and architects inc.



1st & 2nd PARKING

PLAZA 97

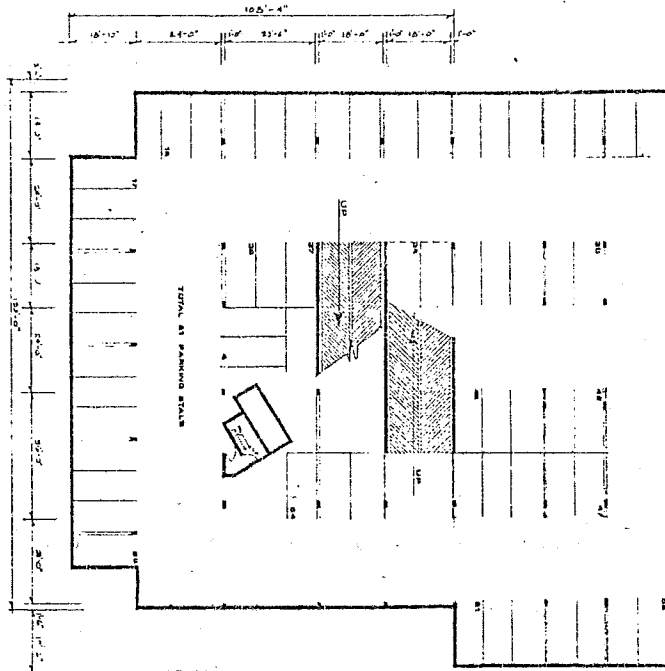
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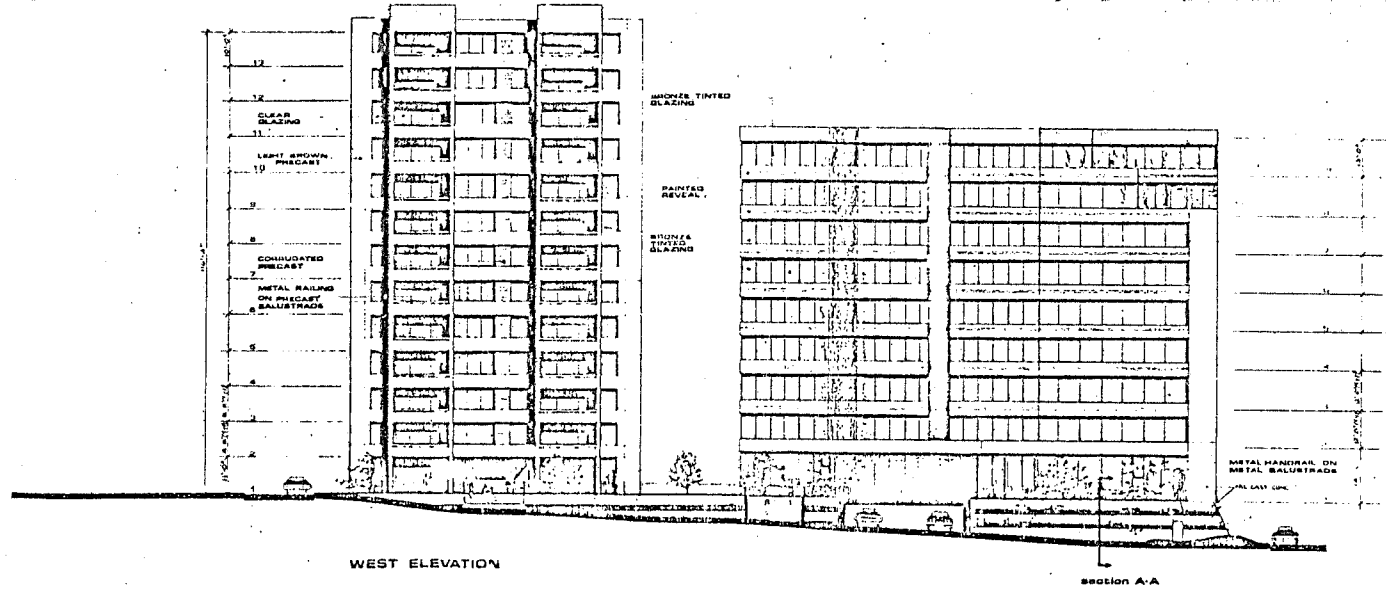
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Drawing 4

3rd LEVEL PARKING



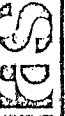
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WEST ELEVATION

Section A-A

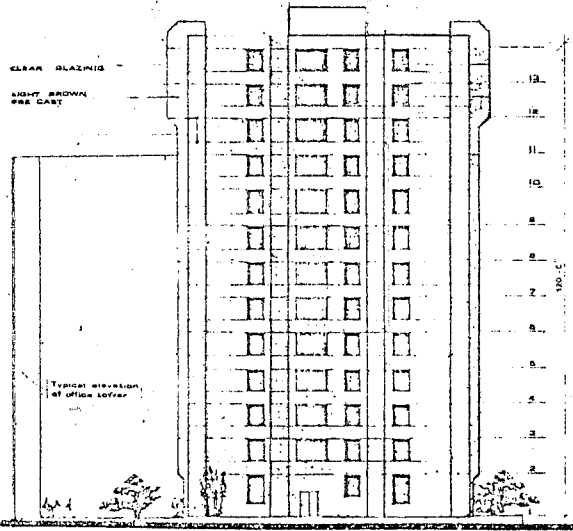
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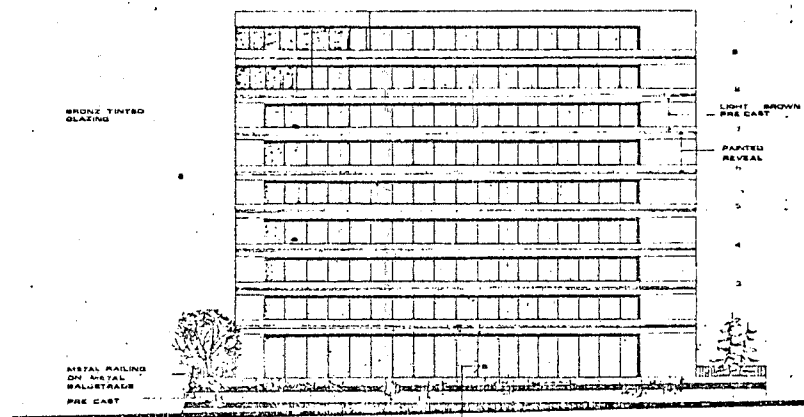
ELEVATIONS

PLAZA 97

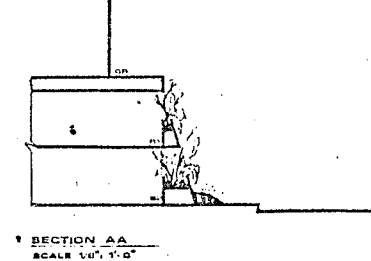
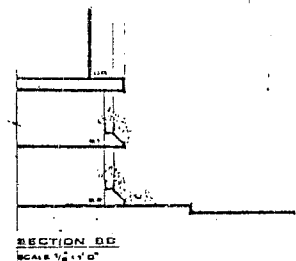
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NORTH ELEVATION

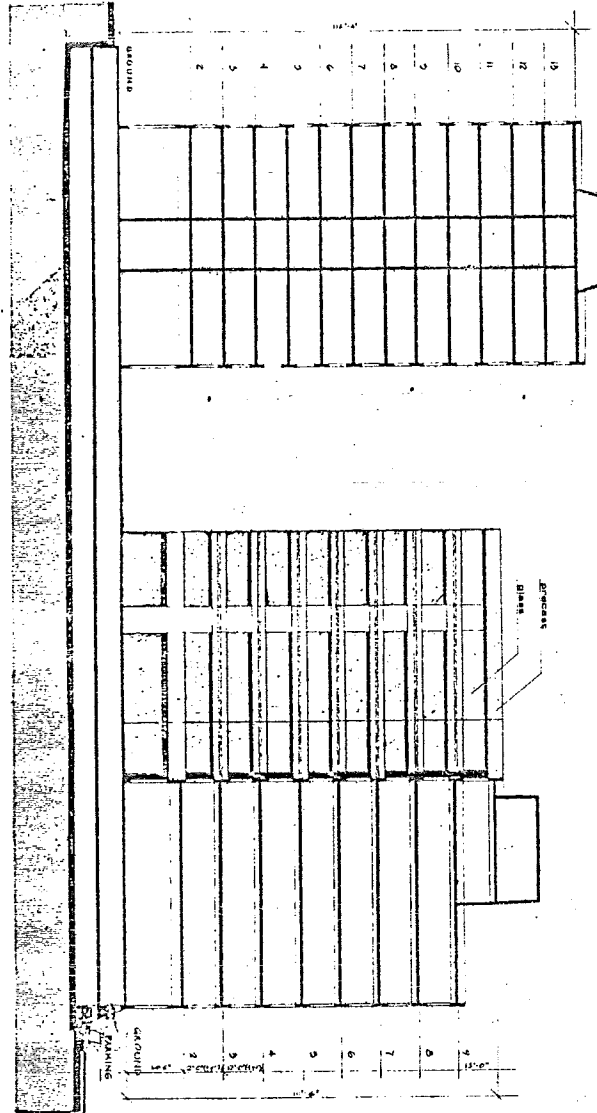


SOUTH ELEVATION

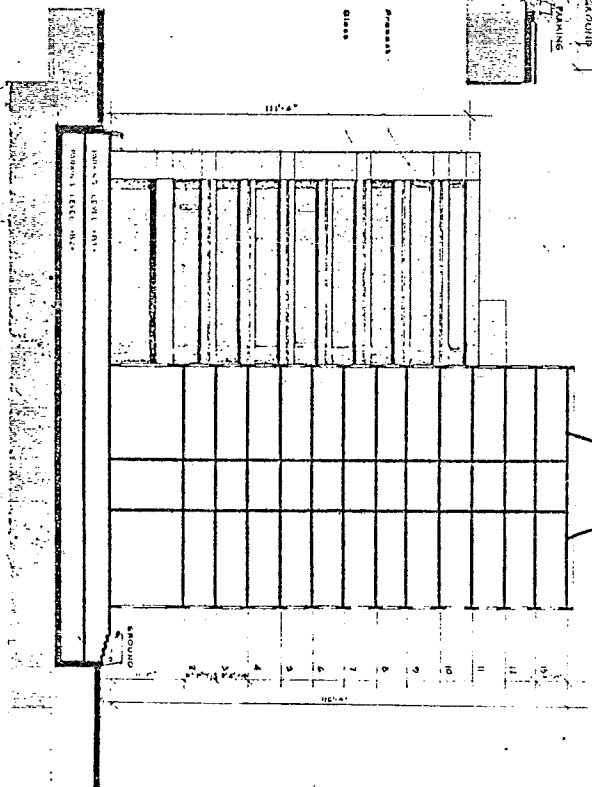


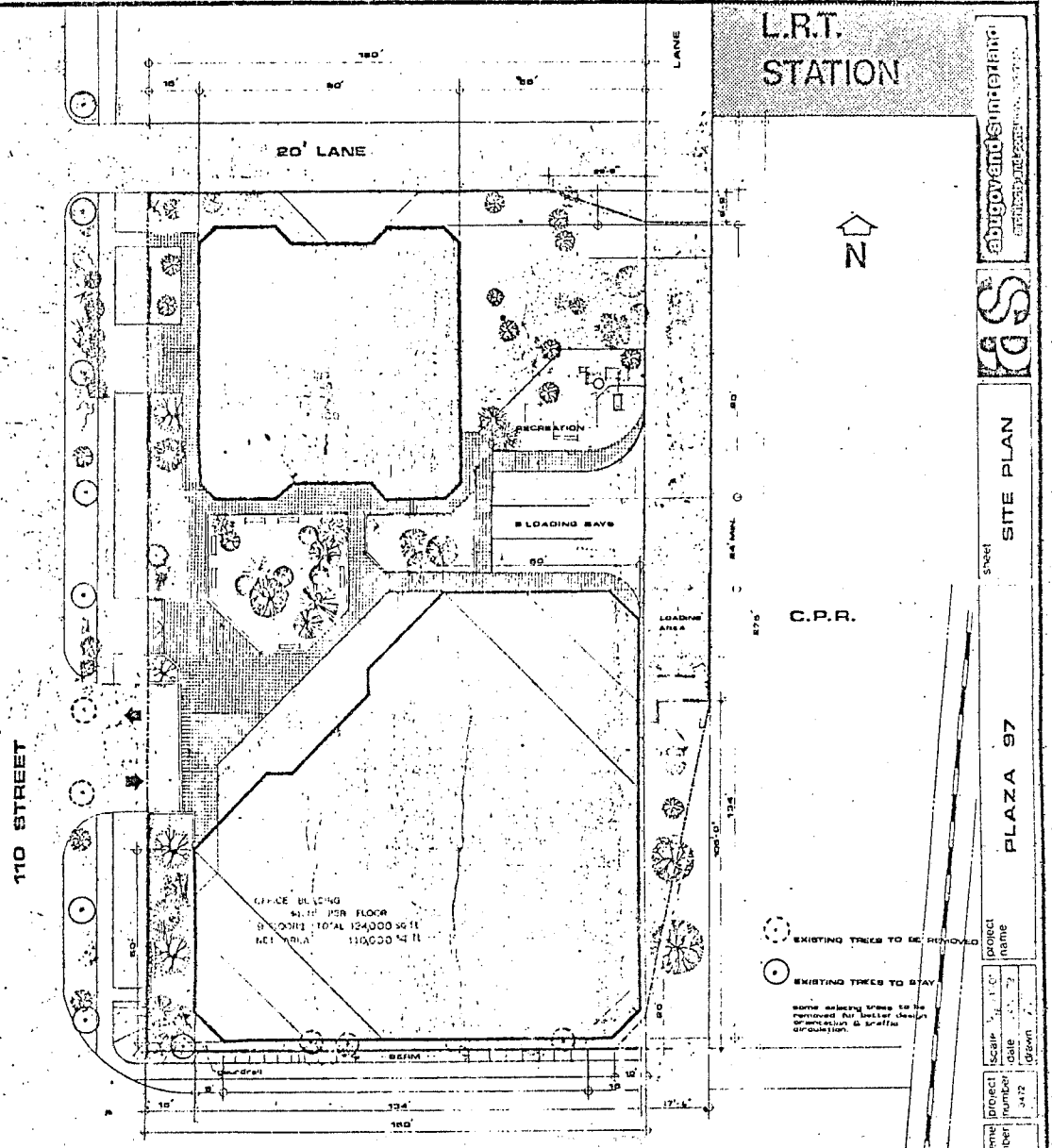
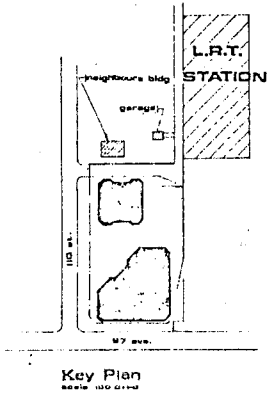
abigovandunderland
 ARCHITECTS AND ENGINEERS
 70 S
 Sheet ELEVATIONS
 PLAZA 97
 Drawing, Scheme, Project, Scale, Title, No. of Sheets, Date, Drawn by, Checked by, Number, Date
 7 3472
 Drawn by S. O.

SECTION A-A



SECTION B-B





87 AVENUE

Schedule 'B'

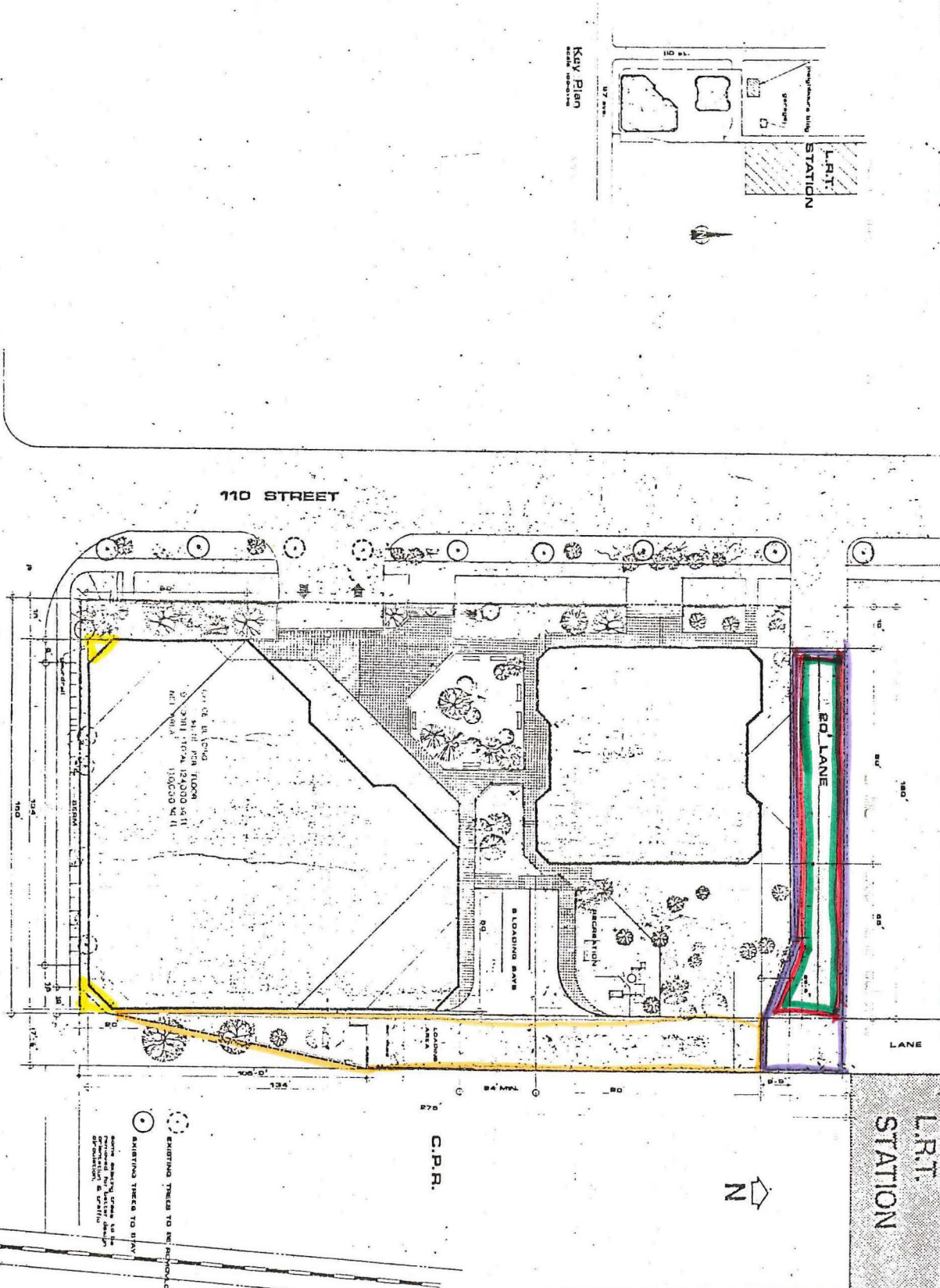
abgovandsonincorpn
ARCHITECTS AND ENGINEERS

AS

Sheet SITE PLAN

PLAZA 97

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scale	1/8" = 1'-0"
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project name	PLAZA 97



Schedule C

drawing	scheme number	project number	scale	date	drawn	project name
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sheet SITE PLAN



abugovand sunderland
architects and interior designers