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September 14, 2023

VIA EMAIL

Mayor Olivia Chow and Members of City Council
Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Catherine Regan, Toronto and East York Community Council
(teycc@toronto.ca)

Dear Sirs/Mesdames:

**RE: 399-405 Yonge Street – Zoning By-law Amendment Application – Decision Report
– Approval
(City File No. 22 162248 STE 13 OZ)
Item 2023 TE7.7**

We are the lawyers for Jencel 407 Yonge Street Inc. (“**Jencel**”), the owner of the property at 407 Yonge Street (“**Jencel Site**”), located immediately north of the property at 399-405 Yonge Street that is the subject of the above-noted application (the “**399 Yonge Property**”).

Jencel has participated actively in the consideration of the proposed development of the 399 Yonge Property, including through submissions to the City and as a party to the various Ontario Land Tribunal appeals that form part of the history of this proposal. Jencel has consistently raised a concern with the siting of the proposed tower on the 399 Yonge Property at a “0-m setback” and the “zero lot line windows condition”. As proposed, the zero lot line windows condition does not take into account the as-of-right development permissions of the Jencel Site.

Coupled with the current proposal to include potential residential spaces for Covenant House’s social housing use on the lower levels of the building, the zero lot line window condition and the possibility of residential windows in this location create an inappropriate interface condition between the 399 Yonge Property and the Jencel Site.

We wish to make it clear that there are no agreements between our client and the applicant for the 399 Yonge Property that would facilitate residential windows on the property line where they would conflict with our client’s as-of-right development permissions.

Accordingly, we are writing to reiterate our client’s concerns with respect to the development proposed by 399Y Corporation and with the implementing Zoning By-law Amendment. We set out below the reasons for **Jencel’s concerns and our client’s specific request for changes to the proposal and the implementing Zoning By-law Amendment.**

Jencel's Interface Issues and Withdrawal of 399Y Corporation's Appeal

Jencel submitted correspondence to the Toronto East York Community Council on January 24, 2023, in respect of a previous iteration of the proposal, expressing concerns generally related to the 0-metre setback and the zero lot line windows condition.

Jencel was a party to the Ontario Land Tribunal (“**OLT**”) appeals of 399Y Corporation’s Zoning By-law Amendment Application by the owner of the 399 Yonge Property (“**399Y Corporation**”), and was also a party to the Official Plan Amendment Application, filed by 415 Yonge Holding Ltd. (OLT 22-002502). Jencel identified issues on the OLT’s Issues List/Procedural Order related to the interface condition between the properties, the 0-metre setback, and zero lot line windows condition.

We note that through the course of the OLT proceedings, 399Y Corporation withdrew the appeal of its Zoning By-law Amendment Application, so as to permit a Zoning By-law Amendment to be enacted by the City pursuant to s. 453(1) of the *City of Toronto Act* in order to secure a social housing facility within the development. This withdrawal of the OLT appeal left Jencel’s issues regarding the interface unresolved. 399Y Corporation maintained its appellant status with respect to the Official Plan Amendment, which was approved by the OLT and ultimately allowed for a mixed-use tall building on the 399 Yonge Property, with a maximum height of 249.8 metres and a 5.5 metre minimum setbacks from the eastern property line, as well as the inclusion of a social housing program within the building.

The OLT’s decision on the Official Plan Amendment, however, did not make any determinations or finding as to the appropriateness of the proposed interface with the Jencel Site, the 0-metre setback to the property line, or the proposed zero lot line windows condition.

Jencel's As-of-Right Permissions vs. 399Y Corporation's Proposed Windows on the Property Line

Based on current zoning, the Jencel Site may develop to a height of 20 metres as-of-right. This would accommodate the potential for the Jencel Property to redevelop as a small medical or other office building type, up to a height of 20 metres, or approximately 6 storeys. Such a building could be built to the south property line with a blank wall without the need for other mitigation measures to accommodate the 0-metre lot line relationship to the 399 Yonge Property.

Throughout the hearing process, and in its issues list, Jencel expressed concerns with respect to protecting for an appropriate relationship between the 399 Yonge Property and the Jencel Property. Given the 0-metre lot line condition of 399Y Corporation’s proposed development, Jencel expected that windows would be eliminated on the northern lot line at least below a height of 20 metres. However, the current building plans show numerous windows north-facing windows at these heights, including windows associated with the Covenant House social housing facility.

We note that earlier iterations of the development plans presented in connection with the OLT hearing seemed to show that windows had been removed or at least limited in this area.

We further note that in considering the development to the *north* of the Jencel Property at 415 Yonge Street, the OLT heard and accepted evidence in the proceedings referred to above that there should be no south-facing windows in the podium of that development where it abuts the Jencel Site with a zero lot line condition.

Concerns with 399Y Corporation's Revised Plans

We have had an opportunity to review the architectural plans, prepared by Teeple Architects, dated June 14, 2023 which are available on the City's Application Information Centre. In particular, Drawings A205, A206, A206A, A207, A402, and A412 (the latter two illustrating the North Elevation) depict window glazing on the 2nd – 5th floor levels (17.7 metres), noted as GL-2F being clear insulated vision glass, and black painted spandrel glass at level 6 (22.2 metres). The plans for Level 2 and Level 3 show these floors as being the floors proposed for the Covenant House social housing facility.

Included as **Attachment 1** to this letter are annotations of the drawings showing the location of the windows in question and identifying the area of interference with the Jencel Site's as-of-right development permissions.

It is important to understand these drawings in the context of the relationship between the 399 Yonge Property and the Jencel Site, in that the proposed windows will be set at a zero lot line condition to the north. If the Jencel Site were to develop to its as-of-right permission of 20 metres in height, any north facing windows of the proposed development would be covered over by the wall of our client's building. Thus, it would be inappropriate for any residential windows, and particularly any residential windows associated with the Covenant House social housing facility to be provided in these locations. We note that the East Elevation, as shown on the Enlarged Elevation on Drawing A411 shows an exposed concrete treatment for the interface with the Covenant House Property to the east.

Requested Revision to the Zoning By-law Amendment

It is our submission that the plans should be revised to remove any of these windows in the north elevation below the 20-metre as-of-right height and the proposed Zoning By-law Amendment should be updated to protect for the as-of-right permissions and future development of the Jencel Site by adding a provision prohibiting windows on the northern property line. Our proposed wording is as follows:

“No windows are permitted on the north elevation of the building at or below a height of 20 metres above grade, unless the windows are setback a minimum of 5.5 metres from the north property line.”

At the time of writing this letter, the Draft Zoning By-law Amendment for consideration at the TEYCC meeting has not yet been uploaded to the Community Council Meeting Agenda Item. Based on a version accessible on the Application Information Centre, dated July 7, 2023, we

are suggesting that this addition could be added as a section (J)(iii). We reserve our right to supplement our submissions in writing, or through a deputation to provide further comments on the proposed Zoning By-law Amendment.

For the reasons above, we request that the recommendations of City Staff be amended to account for the inclusion of wording that speaks to the inclusion of a prohibition on windows on the northern property line below a height of 20 metres.

We have made these concerns known on a number of occasions to the representatives of 399Y Corporation, Covenant House, and City Legal. Each will be provided with a copy of this correspondence.

We intend to make a deputation at the September 19, 2023 TEYCC Meeting in support of our client's request.

Should you have any questions or require any further information, please do not hesitate to contact the undersigned, or in his absence, Natalie Ast (nast@overlandllp.ca).

Yours truly,

Overland LLP



Per: Christopher J. Tanzola
Partner

- c. Cllr. B. Bradford
- Cllr. A. Bravo
- Cllr. P. Fletcher
- Cllr. A. Malik (Vice-Chair)
- Cllr. J. Matlow
- Cllr. C. Moise (Chair)
- Cllr. G. Perks
- Cllr. D. Saxe
- Mayor O. Chow

ATTACHMENT 1

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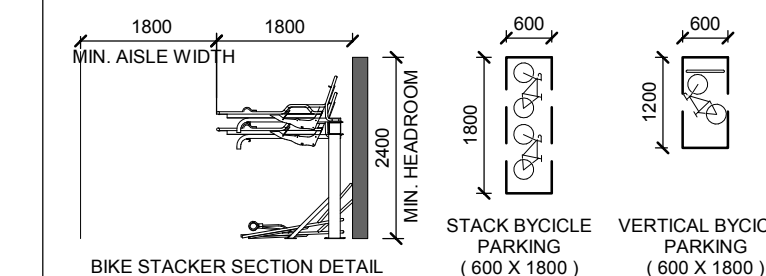
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Teepie Architects Inc.

399 YONGE ST

399 Yonge Street
Toronto ON

BICYCLE PARKING REQUIREMENT



BICYCLE PARKING SUMMARY PER LEVEL

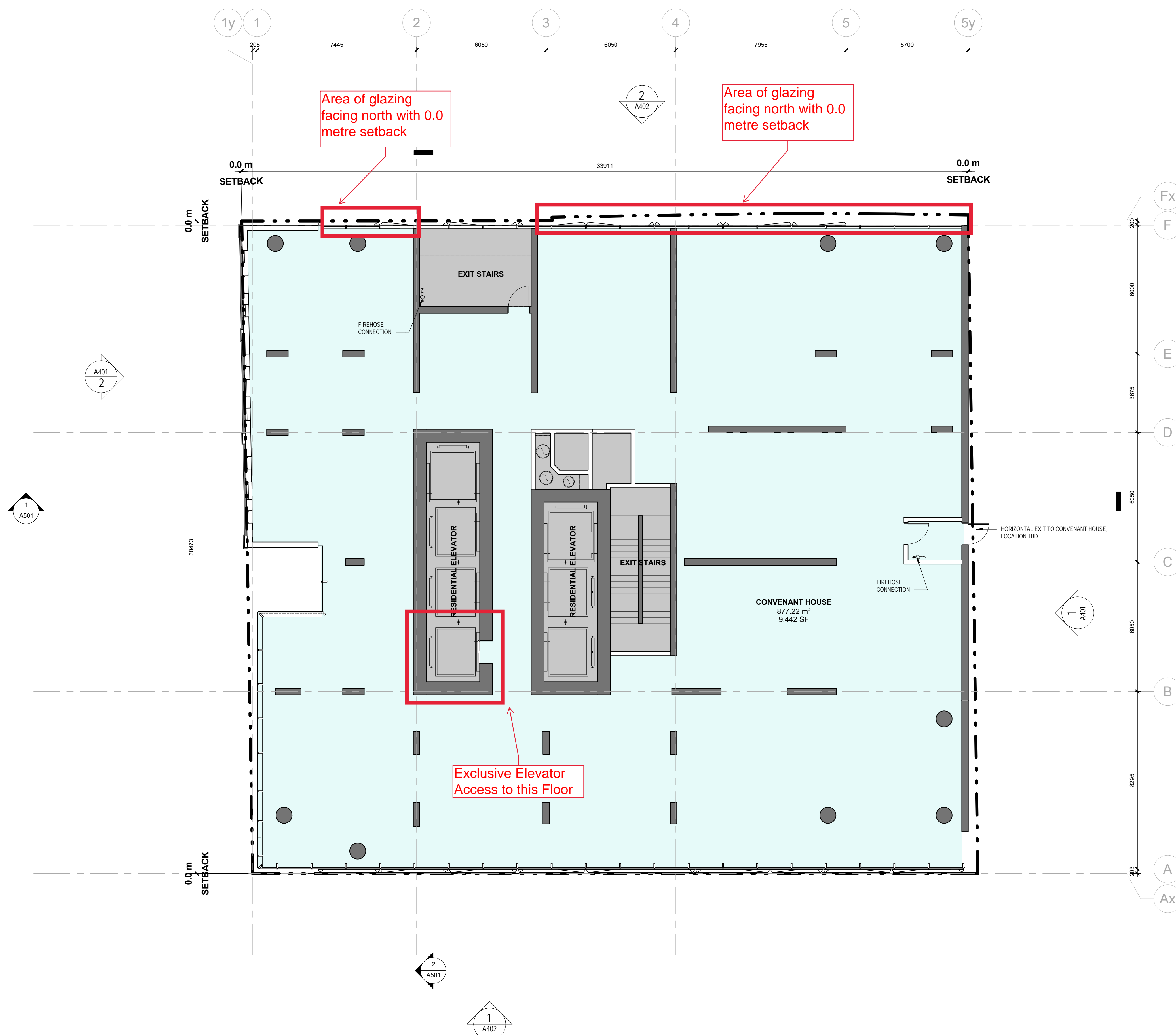
LONG-TERM	
SHORT-TERM	
(ENERGIZED OUTLET)	

NOTES FOR LOADING; GARBAGE STORAGE; DRIVEWAY AND OPERATIONS:

- NOTE 1 CHUTES EQUIPPED WITH SORTER FOR GARBAGE (G), COMPOST (C), AND RECYCLING (R). GARBAGE STREAM ATTACHED TO COMPACTOR.
- NOTE 2 A TRAINED ON-SITE STAFF MEMBER WILL BE AVAILABLE TO MANEUVER BINS FOR THE COLLECTION DRIVER AND ALSO ACT AS A FLAGMAN WHEN THE TRUCK IS REVERSING.
- NOTE 3 ALL ACCESS DRIVEWAYS TO BE USED BY THE COLLECTION VEHICLE WILL BE LEVEL (+/-0%) AND HAVE A MINIMUM VERTICAL CLEARANCE OF 4.4 METERS THROUGHOUT.
- NOTE 4 LOADING SPACE IS LEVEL (+/-2%), AND IS CONSTRUCTED OF A MINIMUM OF 200 MM REINFORCED CONCRETE.
- NOTE 5 STAGING PAD ABUTTING THE FRONT OF THE TYPE G LOADING SPACE HAS AN UNENCUMBERED VERTICAL CLEARANCE OF 6.1 METERS, IS CONSTRUCTED OF 300MM ENFORCED CONCRETE AND HAS A GRADE OF NO MORE THAN 2%.
- NOTE 6 DENOTED FLASHING WARNING LIGHTS AND SIGNAGE INDICATING WHEN LOADING OPERATIONS ARE OCCURRING AT A VISIBLE LOCATION FOR MOTORISTS USING THE DRIVEWAY.
- NOTE 7 SIGNAGE TO BE POSTED AT DOOR, VISIBLE TO LOADING AREA OCCUPANTS AND TRUCK DRIVERS, STATING THAT THE DOOR MUST REMAIN UNOBSTRUCTED AT ALL TIMES.
- NOTE 8 A HATCHED / PAINTED PATH OF TRAVEL TO BE PROVIDED ON THE FLOOR FROM ONE DOOR TO THE OTHER, WITH A NOTICE (POSTED AND / OR ON THE FLOOR SURFACE) THAT THE PATH OF TRAVEL IS NOT PERMITTED TO BE OBSTRUCTED BY PARKED VEHICLES, MATERIALS OR EQUIPMENT.
- NOTE 9 CONVEX MIRRORS TO BE INSTALLED WITHIN DRIVEWAY AND LOADING AREA AT ALL RIGHT-ANGLE TURNS TO BE NEGOTIATED BY TWO-WAY TRAFFIC, POSITIONED IN SUCH A MANNER TO PROVIDE DRIVERS WITH CLEAR VIEWS OF ON-COMING TRAFFIC. (TYPICAL)

GENERAL NOTES:

- GN 01 ALL DOORS IN PATH OF TRAVEL USED TO ACCESS BICYCLE LOCKERS TO HAVE POWER DOOR OPERATORS CONFORMING TO OBC SECTION 3.8
- GN 02 ALL THE DOORS SERVING AMENITY SPACES ARE REQUIRED TO BE PROVIDED WITH POWER DOOR OPERATOR (PDO).
- GN 03 BUILDING STAFF (CONCIERGE / SECURITY) WILL BE RESPONSIBLE TO MONITORING LOADING DOCK ACTIVITIES, TO ENSURE THAT THE DOORS AND EGRESS PATH ARE KEPT CLEAR. THIS RESPONSIBILITY SHOULD BE LISTED IN THE FIRE SAFETY PLAN FOR THE BUILDING. THIS REQUIREMENT CAN ALSO BE REFLECTED WITHIN THE CONDO ASSOCIATION RULES AND TENANT CONTRACTS.



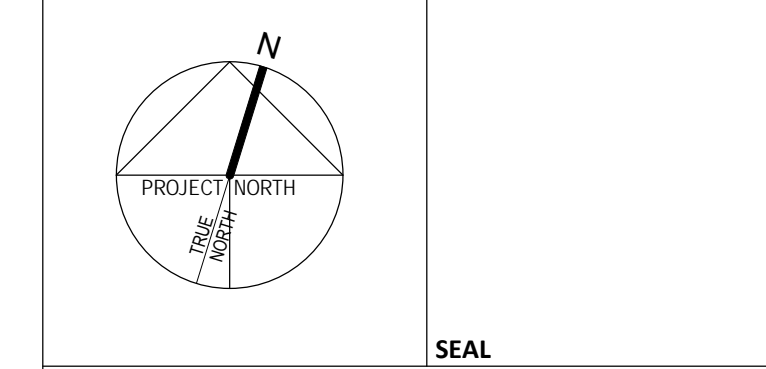
AREA SUMMARY PARKING LEVELS - LEVEL 02

LEVELS	GCA		DEDUCTION		RESIDENTIAL GFA		RETAIL GFA		INDOOR AMENITY		OUTDOOR AMENITY		BIKE PARKING		GFA	
	(SM)	(SF)	(SM)	(SF)	(SM)	(SF)	(SM)	(SF)	(SM)	(SF)	(SM)	(SF)	(SM)	(SF)	(SM)	(SF)
LEVEL 02	989.02 m ²	10,646 SF	111.80 m ²	1,203 SF	0.00 m ²	0 SF	0.00 m ²	0 SF	0.00 m ²	0.00 SF	0.00 m ²	0.00 SF	0.00 m ²	0.00 SF	877.22 m ²	9,442 SF

BIKE PARKING SPACE = 5% OF NET FLOOR AREA

5	14.06.2023	RE-ISSUED FOR ZBA
4	27.04.2023	ISSUED FOR ZBA
1	07.06.2022	ISSUED FOR SPA

REV. NO: DATE: ISSUED FOR:



LEVEL 2 PLAN

Author	Checker
DRAWN BY	CHECKED BY
22-101	1 : 100 ARCH D 2023-06-13
PROJ NO	SCALE FORMAT PLOT DATE

A205

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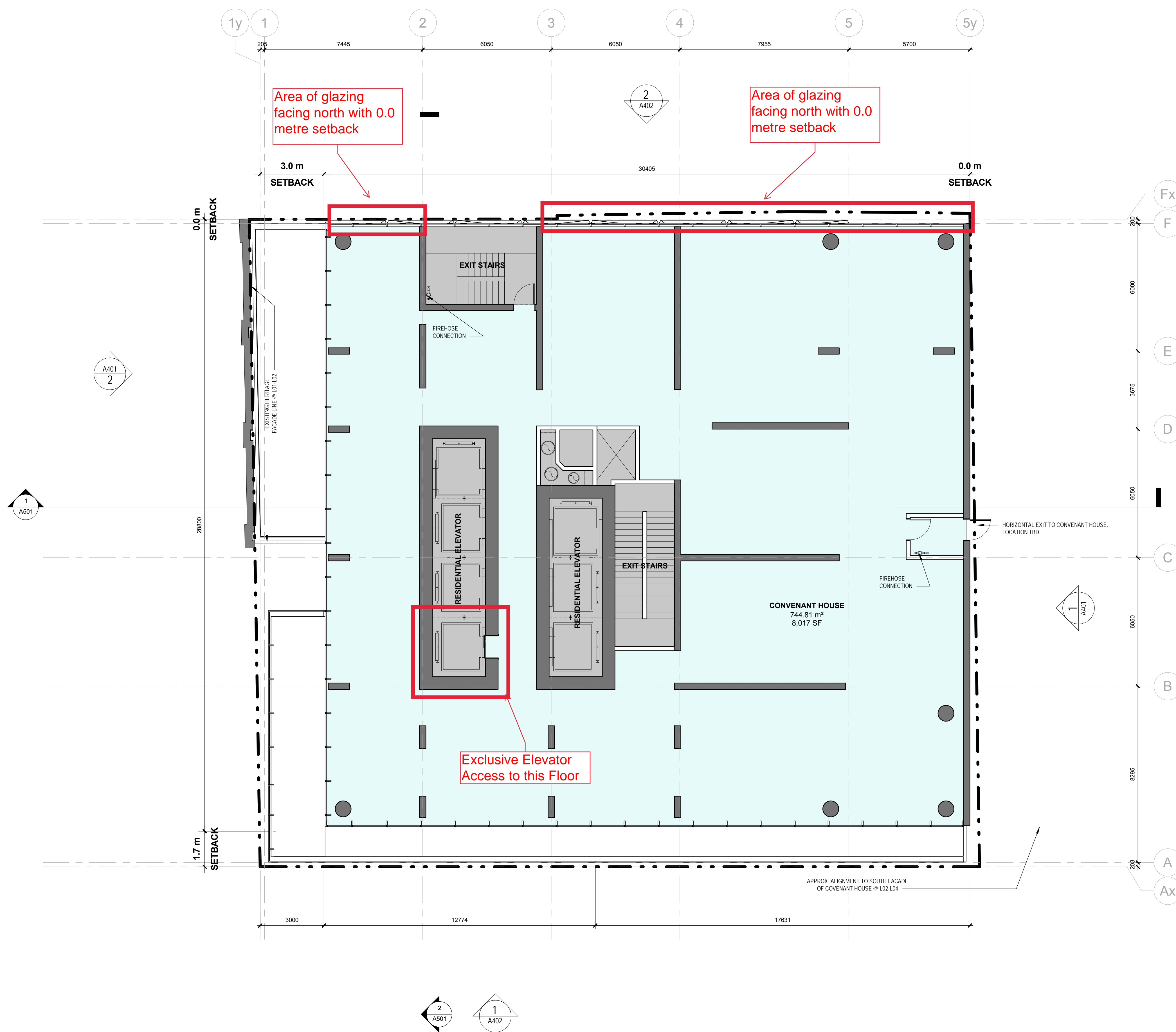
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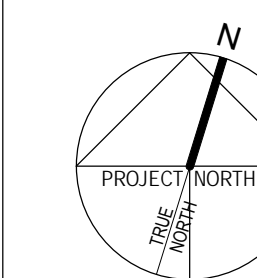
Teeple Architects Inc.

399 YONGE ST

399 Yonge Street
Toronto ON



5	14.06.2023	RE-ISSUED FOR ZBA
4	27.04.2023	ISSUED FOR ZBA
1	07.06.2022	ISSUED FOR SPA
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SEAL

LEVEL 3 PLAN

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22-101	1 : 100 ARCH D 2023-06-09
PROJ NO	SCALE FORMAT PLOT DATE

A206

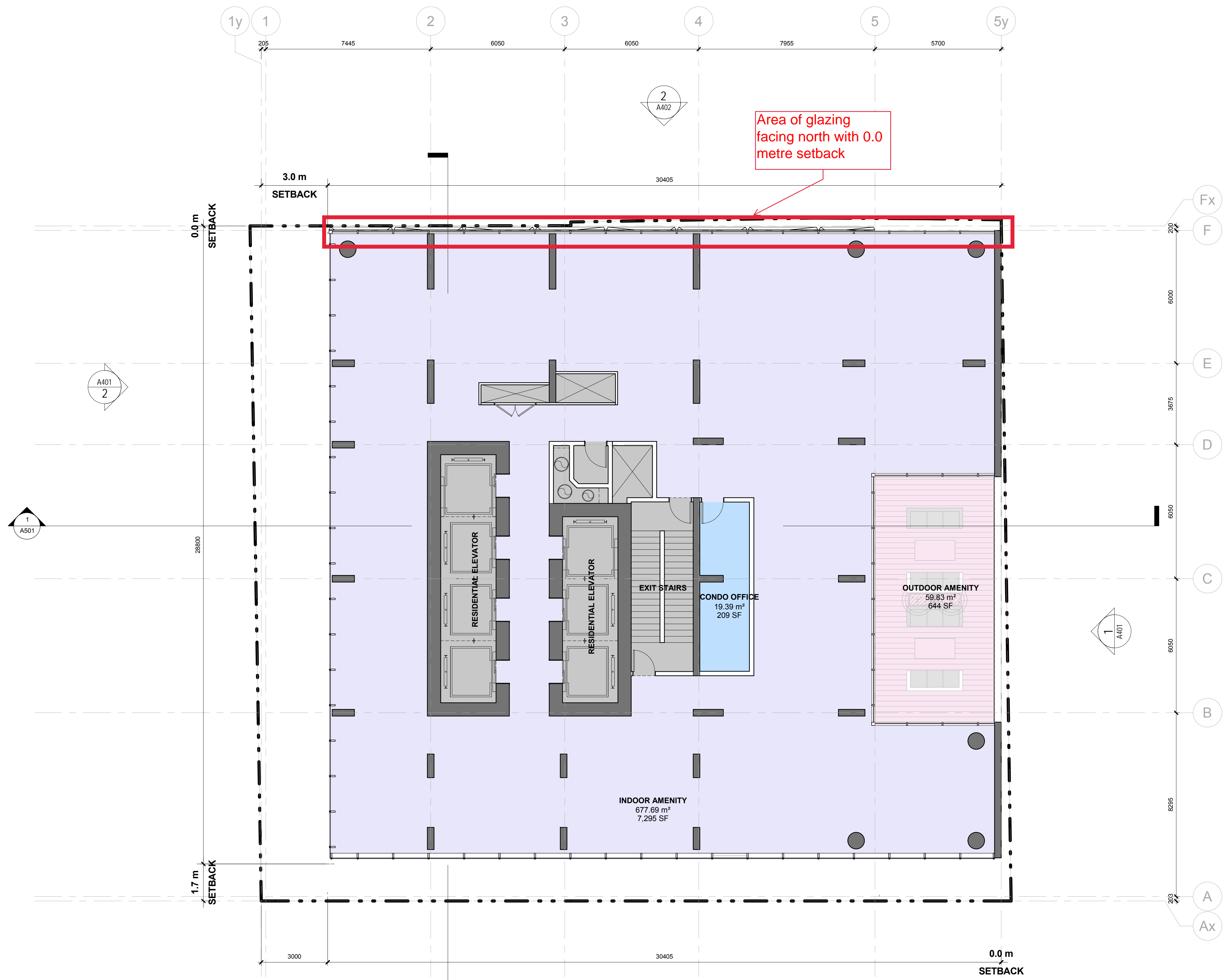
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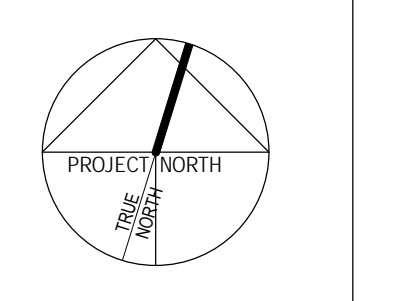
399 YONGE ST

399 Yonge Street
 Toronto ON



Area of glazing facing north with 0.0 metre setback

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4	27.04.2023	ISSUED FOR ZBA
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SEAL

**LEVEL 4 PLAN
 AMENITY**

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A206A

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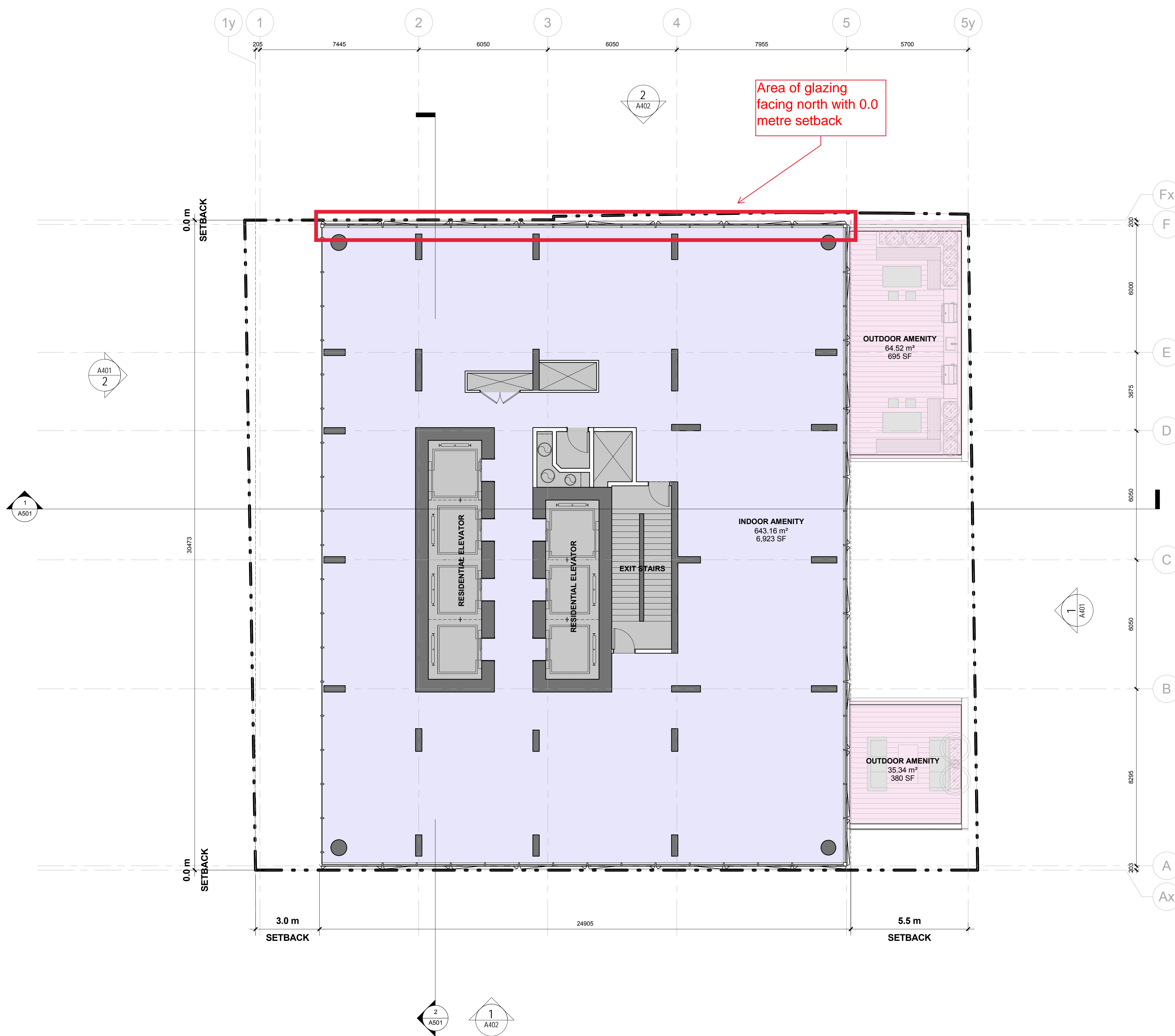
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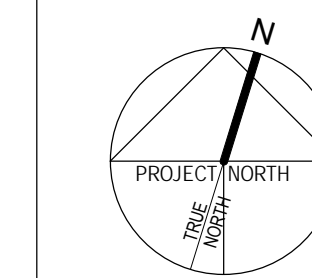
399 YONGE ST

399 Yonge Street
Toronto ON



5	14.06.2023	RE-ISSUED FOR ZBA
4	27.04.2023	ISSUED FOR ZBA
1	07.06.2022	ISSUED FOR SPA

REV. NO: DATE: ISSUED FOR:



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**LEVEL 5 PLAN
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399 YONGE ST

399 Yonge Street
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Bird-Friendly Design Statistics



Elevation First 16m Above Grade						
	North	South	East	West	Total (m ²)	Total (%)
Glazing Area (m ²)	157.7	367.2	79.96	269.2	874.08	94%
Untreated Area (m ²)					53	5%
Treated Area (m ²)	157.7	367.2	79.96	216.2	821.08	
Visual Markers (m ²)	132.0	298.3	68.00	194.3	693.58	
Non-reflective glass (m ²)	24.8	68.9	11.09	21.9	126.68	
Shaded (m ²)					0	

Elevation First 4m Above Rooftop Vegetation*						
	North (Floor #)	South (Floor #)	East (Floor #5, 75)	West (Floor #)	Total (m ²)	Total (%)
Glazing Area (m ²)			130.3		130.3	100%
Untreated Area (m ²)					0	
Treated Area (m ²)			130.3		130.3	
Non-reflective glass (m ²)			7.3		7.3	
Visual Markers (m ²)			123		123	
Shaded (m ²)					0	

*Include this section only when applicable and provide relevant floor numbers for reference.

Building Window : Wall Ratio	40:60
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Refer to the Toronto Green Standard Version 4 Ecology section for details on bird collision deterrence treatment options.

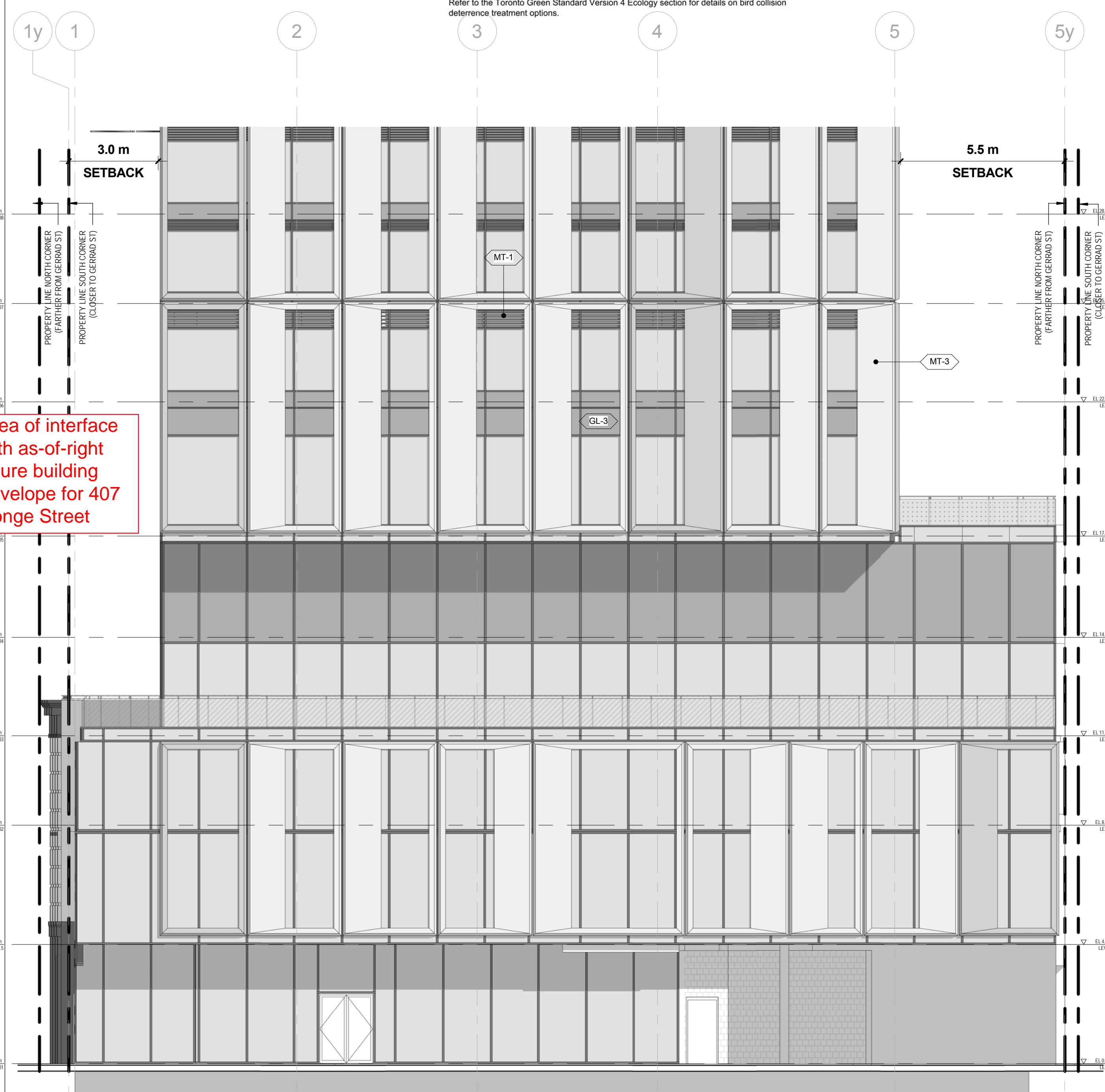
MATERIAL LEGEND

- MT-1 PRE-FINISHED METAL LOUVER PANEL, MULLIONS (COLOUR 1 - PPG UC70149F DARK BRONZE)
- MT-2 LIMESTONE TRAVERTINE CLADDING (SHADE 1)
- MT-3 LIMESTONE TRAVERTINE CLADDING (SHADE 2)
- GL-1 ULTRA CLEAR INSULATED VISION GLASS
- GL-2 CLEAR INSULATED VISION GLASS
- GL-3 BACK PAINTED SPANDREL GLASS
- GL-4 TEMPERED BALCONY GUARD C/W ALUMINUM TOP RAIL (COLOUR 1)
- XX-1 SUFFIX 'T' DENOTES GLAZING WITH 'BIRD FRIENDLY PATTERN' APPLIED TO CITY OF TORONTO STANDARDS (CERAMIC FRIT PATTERN APPLIED TO GLAZING SURFACE #1 WITH A MAXIMUM SPACING OF 30MM X 50MM)
- CONC EXPOSED CIP CONCRETE



2 ENLARGED ELEVATION - NORTH

1:100 REFERENCED FROM 2 / A402



1 ENLARGED ELEVATION - SOUTH

1:100 REFERENCED FROM 1 / A402

5	14.06.2023	RE-ISSUED FOR ZBA
4	27.04.2023	ISSUED FOR ZBA
1	07.06.2022	ISSUED FOR SPA

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SEAL

NORTH & SOUTH ELEVATIONS ENLARGED

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22-101	1:100 ARCH D
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	2023-06-13
	PLOT DATE

A412