

# Memorandum to the City of Markham Committee of Adjustment

January 10, 2020

**File:** A/150/19  
**Address:** 8333 Kennedy Rd – Markham, ON  
**Applicant:** Ming Zhao  
**Agent:** N/A  
**Hearing Date:** Wednesday January 22, 2020

The Central Team provides the following comments. The proposed variance relates to an existing bubble tea café (“the business”) in units 2019, 2020, 2021, and 2022 (the “subject units”), having access to internet and computers, arcade and electronic gaming systems, book reading, television, and board game activities. Therefore, the Applicant requests relief from the following requirement of the “Community Amenity One Zone Exception \*374 (CA1\*374) Zone”, under By-law 177-96, as amended:

**a) Section 7.374, Table A2:**

To permit a Recreational Establishment use, whereas the By-law does not permit a Recreational Establishment use.

## BACKGROUND

### Property Description

The subject lands are located on the east side of Kennedy Road, between Highway 7 East and Helen Avenue (the “subject lands”). The subject units have a cumulative floor area of approximately 193.77 m<sup>2</sup> (2,085.73 ft<sup>2</sup>) and are within the second floor of a residential-commercial, mixed-use building. Staff note that although the subject units are identified in Appendix “B” as units 111 to 114, inclusive, the actual unit numbers are 2019 to 2022.

The subject lands directly abuts the Markham Centre Secondary Plan Area and is in close proximity to a wide range of uses including, commercial, industrial, residential, and parks/open space.

### Proposal

A Restaurant use currently exists within the subject units and is permitted by the Zone. Other existing units within the subject units include: internet, computers & video games, and board game activities. The Applicant is proposing a Recreational Establishment use within the subject units to allow the activities to continue to exist with the Restaurant Use. For clarity, while the Zone permits a Restaurant use, a Recreational Establishment use is not permitted.

### Official Plan and Zoning

Official Plan 2014 (partially approved on Nov 24/17, and updated on April 9/18)

*“Mixed Use Mid Rise”*

The subject lands are designated “Mixed Use Mid Rise”, which provides for a range of uses including, but not limited to, residential, sports and fitness recreation, entertainment, restaurant, office, and retail uses. The intent of mixed-use development is to integrate residential development with a compatible mix of uses, such as retail and service activities where people can shop, live, and work all within close proximity. Section 8.3.3.1 of the Official Plan further outlines that lands designated “Mixed Use Mid Rise” are to be

established as focal points for neighbourhood activities. It is the opinion of staff that the variance is consistent with the general intent of the designation for a mid-rise building.

#### Zoning By-Law 177-96

The subject lands are zoned “Community Amenity One Zone Exception \*374 (CA1\*374) Zone”, under By-law 177-96, as amended, which permits a Restaurant Use and a variety of commercial, residential, institutional, and entertainment (nightclub) uses. However, the Zone does not permit a Recreational Establishment use.

Recreational Establishments are defined as:

*“a use of land, building or structure that has been designed and equipped for the conduct of sports and leisure time activities such as a public hall, billiard or pool room, bowling alley, ice/curling or roller skating rink, miniature golf or driving range, an establishment offering three or more electronic video games for public use and other similar uses, but shall not include a commercial fitness centre, adult entertainment parlour, any use entailing the outdoor operation or racing of animals or motorized vehicles, a casino or any other establishment accommodating or providing gambling or gaming activities, wagering or betting, video lottery or gaming machines, or any other similar type of gambling use, or any other sports or leisure time use otherwise defined in this By-law.”*

Staff recognize the recent trend of combining board games and leisure time activities with restaurant uses and see this as being compatible with the restaurant use. Staff also see this as being generally compatible with the overall intent of a mixed-use site, which permits a range of uses. Having access to video, arcade and electronic gaming software, and internet can be seen as a modern day extension to this trend, which staff do not object. However, staff emphasize that should Committee approve the requested variance, the Applicant recognizes that any gambling activity, including wagering or betting, are strictly prohibited in accordance with the By-law.

#### **Applicant’s Stated Reason for Not Complying with Zoning**

According to the information provided by the applicant, the reason for not complying with Zoning is because, *“a Recreational Establishment is not a permitted use.”*

#### **Zoning Preliminary Review (ZPR) Not Undertaken**

The Applicant confirmed that a ZPR has not been conducted. It is the Applicant’s responsibility to ensure that the application has accurately identified all the variances to the Zoning By-law required for the proposed development. If the variance request in this application contains errors, or if the need for additional variances is identified during the Building Permit review process, further variance application(s) may be required to address the non-compliance.

#### **COMMENTS**

The *Planning Act* states that all four tests must be met in order for a variance to be granted by the Committee of Adjustment:

- a) The variance must be minor in nature;

- b) The variance must be desirable, in the opinion of the Committee of Adjustment, for the appropriate development or use of land, building or structure;
- c) The general intent and purpose of the Zoning By-law must be maintained;
- d) The general intent and purpose of the Official Plan must be maintained.

### **PUBLIC INPUT SUMMARY**

One written submission was received in support of the requested variance as of January 10, 2020 noting that the use is complimentary to other businesses existing within the building.

No written objections have been received as of the date of this memorandum. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide information on this at the meeting.

### **CONCLUSION**

Planning Staff have reviewed the application with respect to Section 45(1) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, and are of the opinion that the variance request meets the four tests of the *Planning Act* and have no objection, provided that any form of gambling activity is strictly prohibited. Staff recommend that the Committee consider public input in reaching a decision.

The onus is ultimately on the Applicant to demonstrate why they should be granted relief from the requirements of the zoning by-law, and how they satisfy the tests of the *Planning Act* required for the granting of minor variances.

### **APPENDICES**

Appendix "A" – Conditions List

Appendix "B" – Plans

PREPARED BY:



Aleks Todorovski, Planner, Zoning and Special Projects

REVIEWED BY:



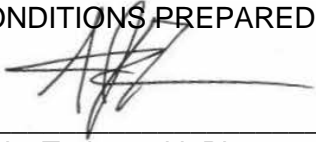
Stephen Lue, Development Manager, Central District

File Path: Amanda\File\ 19 141307 \Documents\District Team Comments Memo

**APPENDIX "A"**  
**CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/150/19**

1. The variances apply only to the proposed development as long as it remains.

CONDITIONS PREPARED BY:

A handwritten signature in black ink, appearing to be 'Aleks Todorovski', written over a horizontal line.

Aleks Todorovski, Planner, Zoning and Special Projects

**APPENDIX “B”**  
**PLANS TO BE ATTACHED TO ANY APPROVAL OF FILE A/150/19**

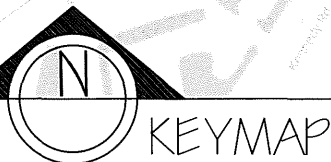
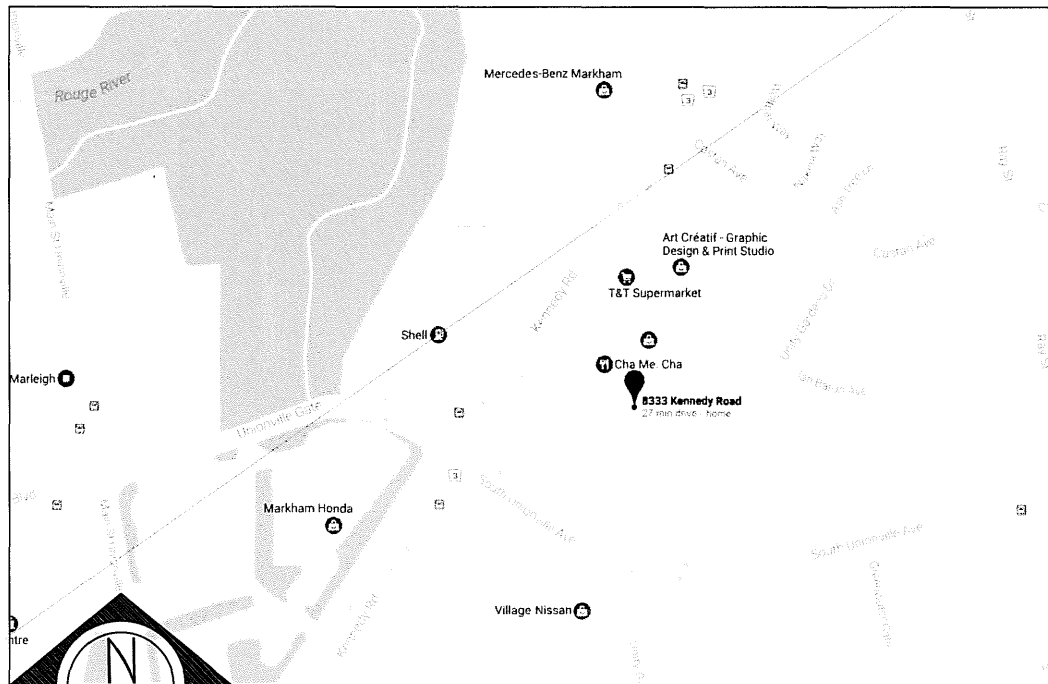
# PROOF 8333 KENNEDY RD, MARKHAM, ON

## SCOPE

## INTERIOR ALTERATIONS

## GENERAL NOTES

1. CONTRACTOR MUST VISIT SITE TO FAMILIARIZE WITH EXISTING CONDITIONS BEFORE QUOTING FOR THE JOB.
2. VERIFY ALL EXISTING MEMBER SIZES, ELEVATIONS, AND DIMENSIONS ON SITE PRIOR TO COMMENCING ANY WORKS. REPORT ANY DISCREPANCIES TO ENGINEER IMMEDIATELY FOR ADVISE.
3. REFER TO NOTES AND SCHEDULES FOR SPECIFICATIONS & GENERAL NOTES.
4. THESE NOTES AND ALL NOTES ARE PART OF THE WHOLE APPLICATION. CONTRACTOR(S) MUST GO THOUGHT NOTES AND TREAT ALL DRAWINGS AS PART OF ONE APPLICATION.



### ONTARIO BUILDING CODE DATA MATRIX [PART-3 OR PART-9]

8333 KENNEDY RD (UNIT 111-114), MARKHAM, ON		OBC REFERENCE								
1. PROJECT DESCRIPTION: EXISTING OFFICE- CONVERT TO NEW OFFICE	<input type="checkbox"/> NEW <input type="checkbox"/> ADDITION <input checked="" type="checkbox"/> ALTERATION <input type="checkbox"/> CHANGE OF USE	<input checked="" type="checkbox"/> PART 3, 1.1.2.(A) <input checked="" type="checkbox"/> PART 11, 11.1 - 11.4	<input checked="" type="checkbox"/> PART 9 1.1.2. [A] & 9.10.1.3							
2. MAJOR OCCUPANCY(S):	Group D (Business Services)	3.1.2.1.(1) 9.10.2								
3. BUILDING AREA:	EXISTING NEW TOTAL 202.18 0 202.18 SQ.M.	1.4.1.2.(A)								
4. GROSS AREA:	EXISTING NEW TOTAL 202.18 0 202.18 SQ.M.	1.4.1.2.(A)								
5. NUMBER OF STOREYS:	ABOVE GRADE 2 BELOW GRADE 1 THE OFFICE EXIST IN 3 STOREY FIRE COMPARTMENT)	1.4.1.2.[A]&3.2.1.1.	1.4.1.2[A] & 9.10.4							
6. NUMBER OF STREETS/FIRE FIGHTER ACCESS:	4	3.2.2.10. & 3.2.5.	9.10.20							
7. BUILDING CLASSIFICATION:	Group D - Any height , Any storey	3.2.2.49	9.10.2							
8. SPRINKLER SYSTEM	<input checked="" type="checkbox"/> ENTIRE BUILDING <input type="checkbox"/> BASEMENT ONLY <input type="checkbox"/> IN LIEU OF ROOF RATING <input type="checkbox"/> NOT REQUIRED (NONE EXISTING)	3.2.2.20-.83 3.2.1.5 3.2.2.17 index	9.10.8.2  index							
9. STANDPIPE REQUIRED:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	3.2.9	N/A							
10. FIRE ALARM REQUIRED:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	3.2.4	9.10.18.							
11. WATER SERVICE/SUPPLY IS ADEQUATE:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	3.2.5.7	N/A							
12. HIGH BUILDING	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	3.2.6	N/A							
13. PERMITTED CONSTRUCTION:	<input type="checkbox"/> COMBUSTIBLE <input checked="" type="checkbox"/> NON-COMBUSTIBLE <input type="checkbox"/> BOTH	3.2.2.20-.83	9.10.6							
ACTUAL CONSTRUCTION:	<input type="checkbox"/> COMBUSTIBLE <input checked="" type="checkbox"/> NON-COMBUSTIBLE <input type="checkbox"/> BOTH									
14. MEZZANINE(S) AREA:	0 SQ.M.	3.2.1.1.(3)-(8)	9.10.4.1.							
15. OCCUPANT LOAD BASED ON:	<input type="checkbox"/> SQ.M./PERSON OCCUPANCY LOAD (IN PERSONS) 3rd FLOOR(unit 111-114) Group D 44 persons	3.1.17	9.9.1.3.							
16. BARRIER-FREE DESIGN:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Explain (Orig. Construction)	3.8	9.5.2.							
17. HAZARDOUS SUBSTANCES:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	3.3.1.2 & 3.3.1.19	9.10.1.3.(4)							
18. REQUIRED FIRE RESISTANCE RATINGS (FRR):	FRR Listed Design (HRS) HORIZONTAL ASSEMBLIES FLOORS 2 hr ROOF sprinklered MEZZANINE 1 hr FRR Listed Design (HRS) or Descrip. SUPPORTING ASSEMBLIES FLOORS 2 hr ROOF sprinklered MEZZANINE 1 hr	3.2.2.20-.83 & 3.2.1.4.	9.10.8. 9.10.9.							
18. SPATIAL SEPARATION- CONSTRUCTION OF EXTERIOR WALL		3.2.3.	9.10.14.							
WALL	Area of EBF (m²)	L.D. (m)	L/H or H/L	Permitted Max. % of Openings	Proposed % of Openings	FRR (Hours)	Listed Design or Description	Comb Const	Comb. Constr. Nonc. Cladding	Non-comb. Constr.
NORTH	EXISTING									
SOUTH										
EAST										
WEST										
NO EXTERIOR ALTERATIONS PROPOSED										
19. PLUMBING FIXTURE REQUIREMENTS	EXISTING SHARED WASHROOMS AT THE CORE									
Male/Female Count @ _50_% / _50_% except as noted otherwise	Occupant load	BC Table number	Fixtures required	Fixtures provided	Building Code reference					
3rd FLOOR(unit 111-114) Occupancy 44 persons					PART 3		PART 9			
					3.7.4.7.					

### ONTARIO BUILDING CODE DATA MATRIX [PART-11 RENOVATION OF EXISTING BUILDING]

		OBC REFERENCE
11.1	EXISTING BUILDING CLASSIFICATION DESCRIBE EXISTING USE <u>GROUP - D</u> CONSTRUCTION INDEX _____ HAZARD INDEX _____ <input type="checkbox"/> NOT APPLICABLE (NO CHANGE OF MAJOR OCCUPANCY)	11.2.1 T 11.2.1.1A T 11.2.1.1B to N
11.2	ALTERATION TO EXISTING BUILDING IS: BASIC RENOVATION <input checked="" type="checkbox"/> EXTENSIVE RENOVATION <input type="checkbox"/>	11.3.3.1 11.3.3.2
11.3	REDUCTION IN PERFORMANCE LEVEL: STRUCTURAL BY INCREASE IN OCCUPANT LOAD <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES BY CHANGE OF MAJOR OCCUPANCY <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES PLUMBING SEWAGE-SYSTEM <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	11.4.2 11.4.2.1 11.4.2.2 11.4.2.3 11.4.2.4 11.4.2.5
11.4	COMPENSATING CONSTRUCTION: STRUCTURAL INCREASE IN OCCUPANT LOAD <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES(EXPLAIN) CHANGE OF MAJOR OCCUPANCY <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES(EXPLAIN) PLUMBING SEWAGE-SYSTEM <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES(EXPLAIN)	11.4.3 11.4.3.2 11.4.3.3 11.4.3.4 11.4.3.5 11.4.3.6
11.5	COMPLIANCE ALTERNATIVES PROPOSED <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES (GIVE NUMBERS)	11.5.1



NORTH

TO ISSUED DATE

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PROJECT

8333 KENNEDY RD (UNIT 111-114), MARKHAM, ON

DRAWING

SITE PLAN

DRAWN I.K. PROJECT NO 2012-07

PLOTTED DATE MAR. 20, 2017 DRAWING NO

SCALE NTS@11"x17" A1.0

CHECKED

PROOF



NORTH

PART/SHEET
PART 1 OF 4 PARTS SHEET 5 OF 7 SHEETS

TO	ISSUED	DATE
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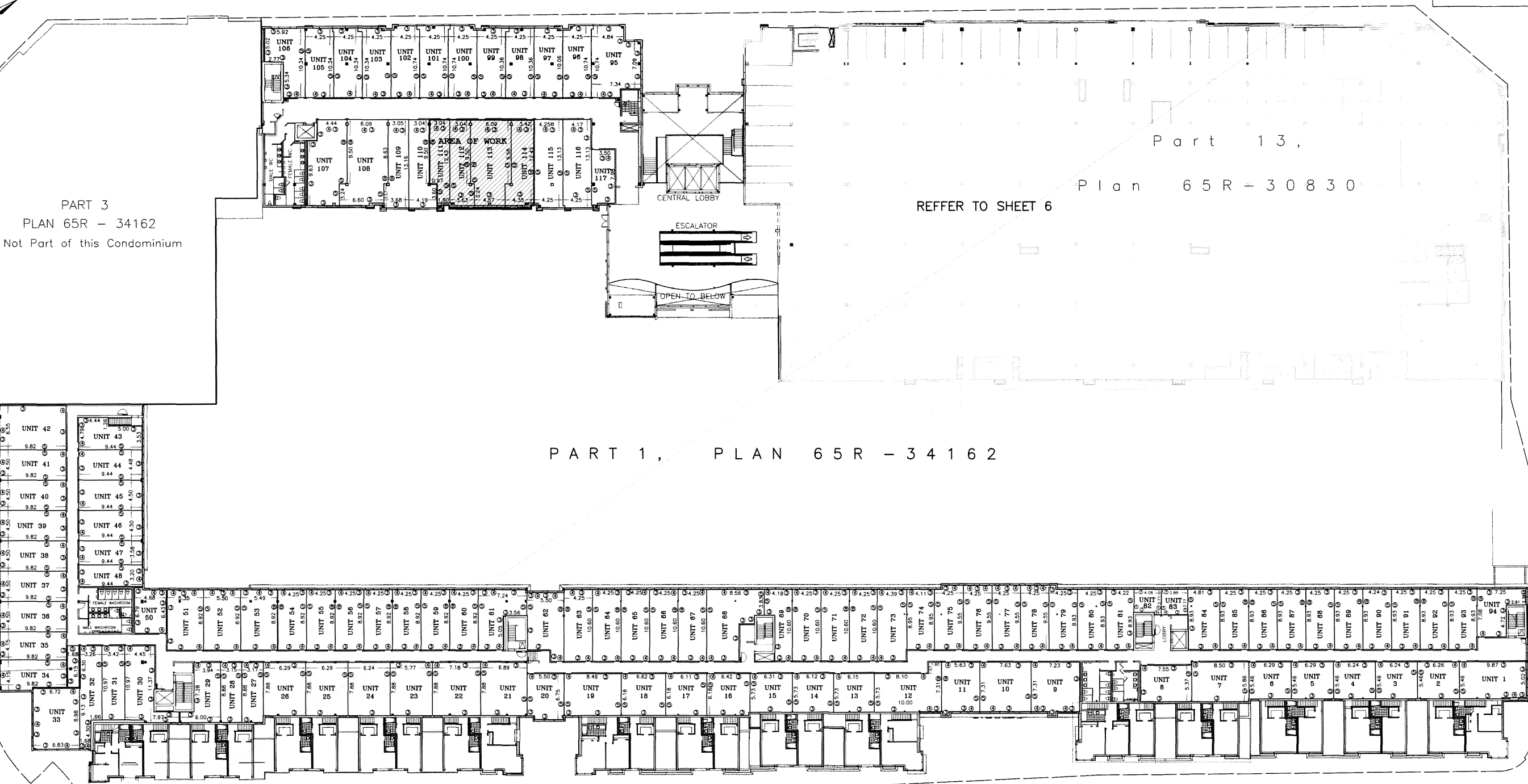
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PROJECT

8333 KENNEDY RD (UNIT 111-114), MARKHAM, ON

DRAWING	
KEYPLAN	
DRAWN I.K.	PROJECT NO 2012-07
PLOTTED DATE MAR 20, 2017	DRAWING NO
SCALE NTS@11"x17"	A1.1
CHECKED	



UNITS 1 to 117, (Incl.)  
LEVEL 2  
SCALE = 1:250



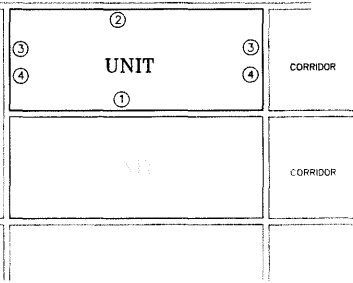
KEYPLAN

ROOF

LEVEL 2

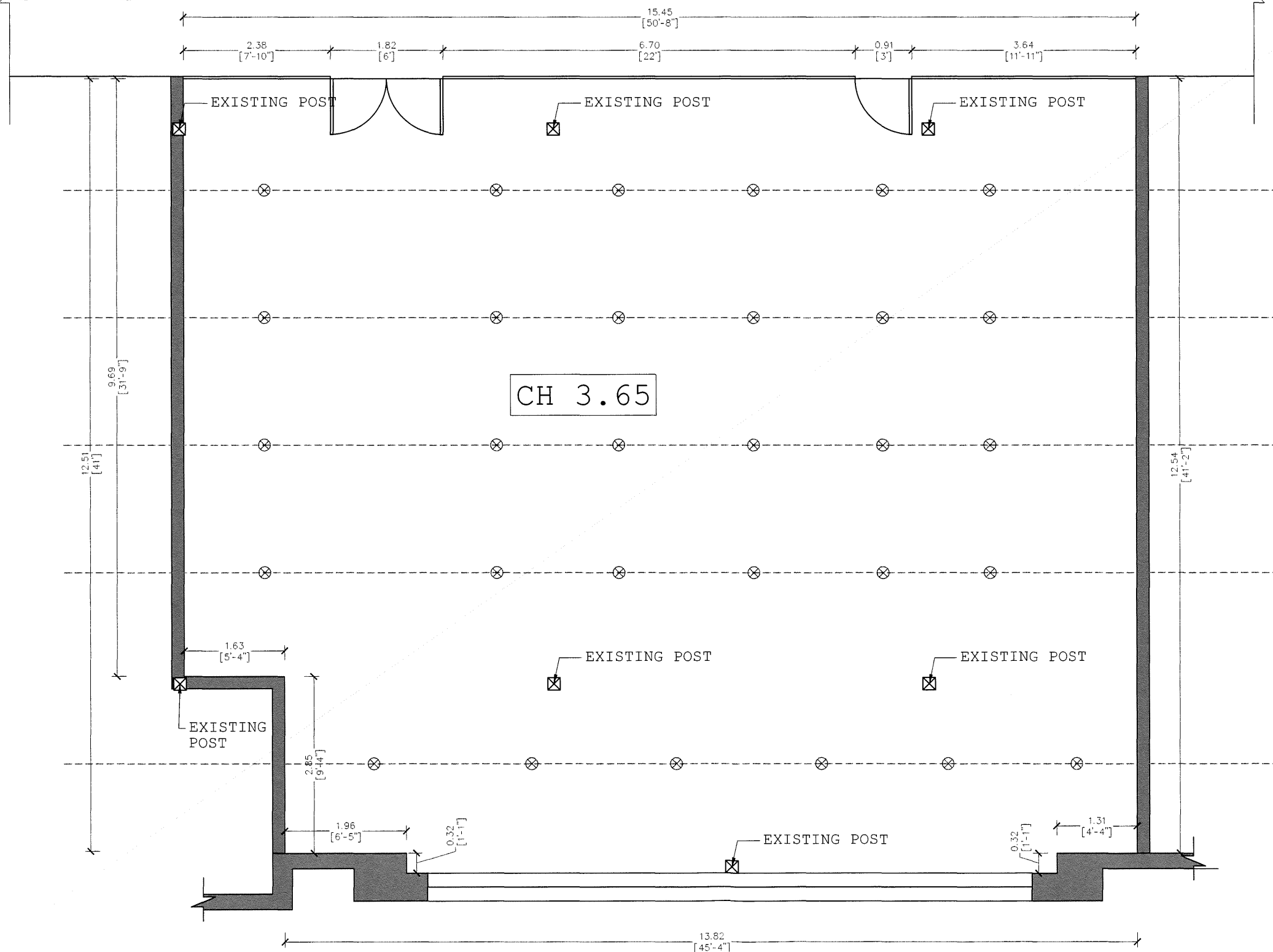
LEVEL 1

LEVEL A





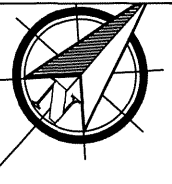
PROOF

## CORRIDOR



## EXISTING LAYOUT

 EXISTING WALL      ⊗ SPRINKLER HEAD  
 NEW WALL

[illegible]

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PROJECT

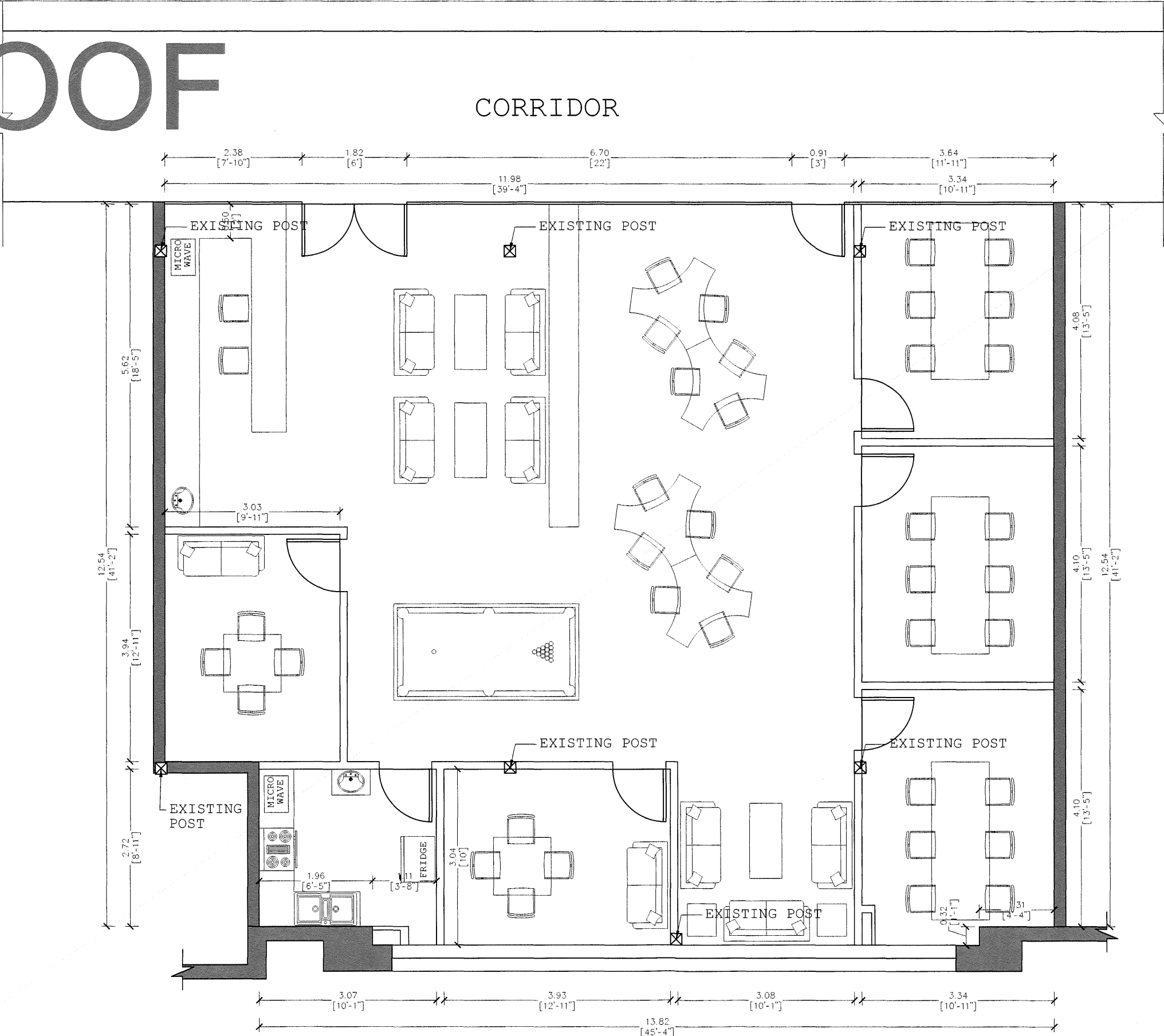
8333 KENNEDY RD (UNIT  
111-114), MARKHAM, ON

DRAWING  
EXISTING LAYOUT

DRAWN I.K.	PROJECT NO 2012-07	
PLOTTED DATE MAR 20, 2017		DRAWING NO  <b>A1.2</b>
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CHECKED		

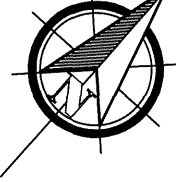


PROOF



PROPOSED LAYOUT

EXISTING WALL  
NEW WALL



TO	ISSUED	DATE

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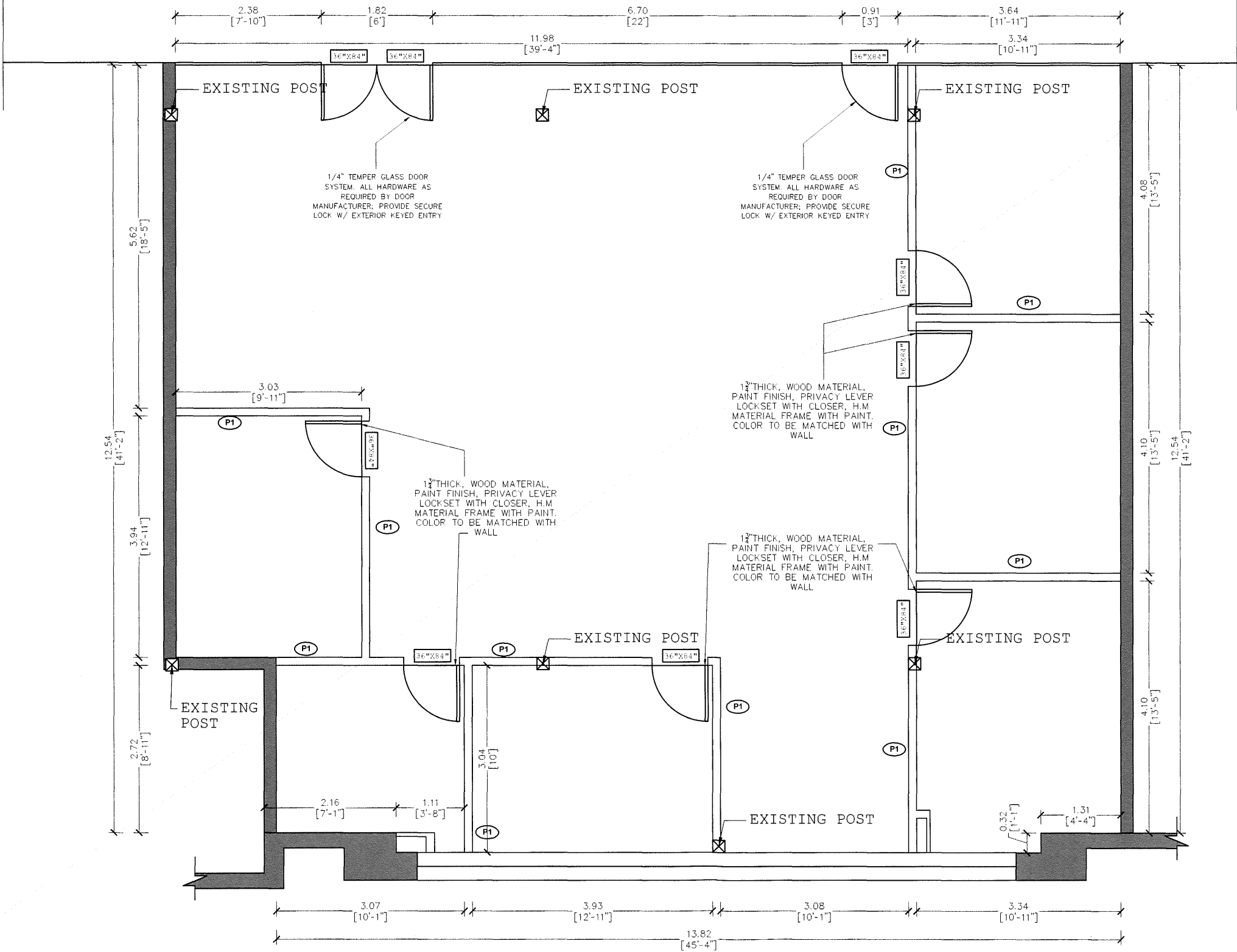
PROJECT

8333 KENNEDY RD (UNIT 111-114), MARKHAM, ON

DRAWING	
PROPOSED LAYOUT	
DRAWN I.K.	PROJECT NO 2012-07
PLOTTED DATE MAR 20, 2017	DRAWING NO
SCALE 1:75@11"x17"	A1.3
CHECKED	

PROOF

CORRIDOR

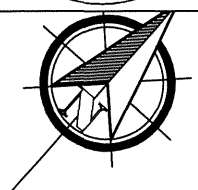


PROPOSED PARTITION WALL

EXISTING WALL  
NEW WALL

NEW DRYWALL PARTITIONS  
31X64mm STEEL STUDS @ 406mm (16") OC FROM FLOOR TO U/S OF T-BAR  
1PLY 1/2" DRYWALL ON BOTH SIDES

LICENSED PROFESSIONAL ENGINEER  
**PROOF**  
2017-03-17  
PROVINCE OF ONTARIO



TO	ISSUED	DATE

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PROJECT

8333 KENNEDY RD (UNIT 111-114), MARKHAM, ON

DRAWING	
PROPOSED LAYOUT	
DRAWN I.K.	PROJECT NO 2012-07
PLOTTED DATE MAR 20, 2017	DRAWING NO
SCALE 1:75@11"x17"	A1.4
CHECKED	

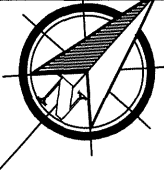
PROOF

CORRIDOR



PROPOSED FURNITURE PLAN

EXISTING WALL  
NEW WALL



TO	ISSUED	DATE

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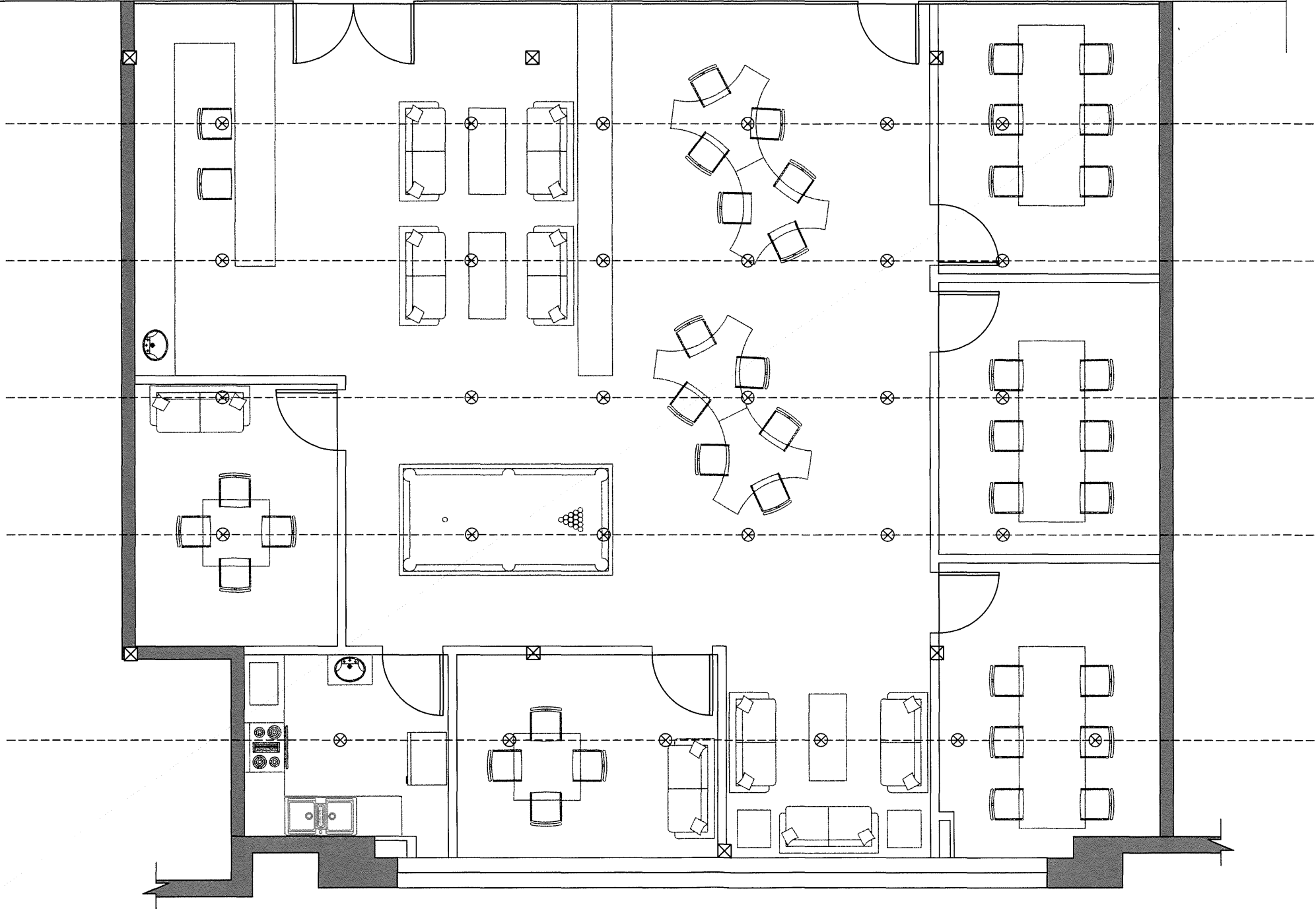
PROJECT

8333 KENNEDY RD (UNIT 111-114), MARKHAM, ON

DRAWING PROPOSED LAYOUT			
DRAWN I.K.	PROJECT NO 2012-07	DRAWING NO <b>A1.5</b>	
PLOTTED DATE MAR 20, 2017	SCALE 1:75@11"x17"		
CHECKED			

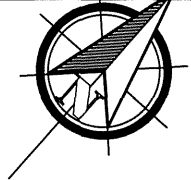
PROOF

CORRIDOR



PROPOSED SPRINKLER LAYOUT (AS IS/NO CHANGES)

EXISTING WALL      SPRINKLER HEAD  
NEW WALL



TO ISSUED DATE

GENERAL NOTES  
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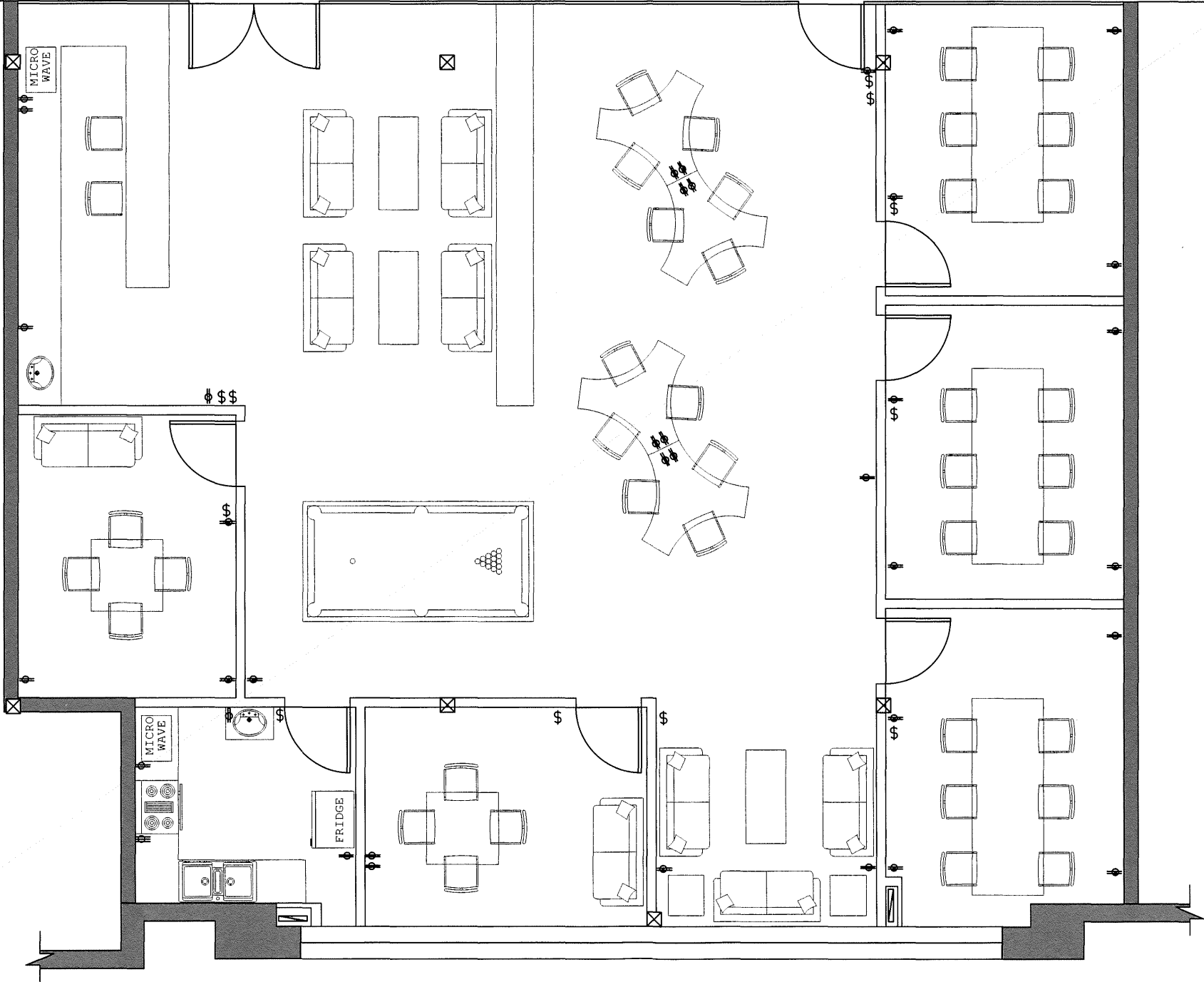
PROJECT  
8333 KENNEDY RD (UNIT 111-114), MARKHAM, ON

DRAWING  
PROPOSED LAYOUT

DRAWN I.K.	PROJECT NO 2012-07
PLOTTED DATE MAR 20, 2017	DRAWING NO
SCALE 1:75@11"x17"	A1.6
CHECKED	

PROOF

CORRIDOR

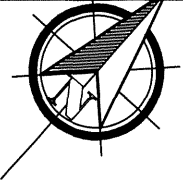
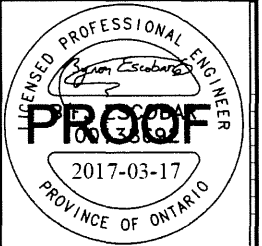


PROPOSED ELECTRICAL RECEPTACLE SWITCH PLAN

EXISTING WALL  
NEW WALL

FOR LIGHTING DETAILS REFER TO ARCHITECTURAL DRAWINGS  
(REFLECTED CEILING PLAN)

120V DUPLEX OUTLET  
220V SINGLE OUTLET  
ELECTRIC PANEL  
3 OR 4 WAY SWITCH  
INSTALL AT 3'-3" AFF  
SPECIFICATION GRADE  
WHITE, WITH WHITE  
COVER PLATE



TO	ISSUED	DATE

GENERAL NOTES

ALL DRAWINGS ARE THE PROPERTY OF KBK STUDIOS AND THEY ARE NOT TO BE REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN CONSENT FROM KBK STUDIOS

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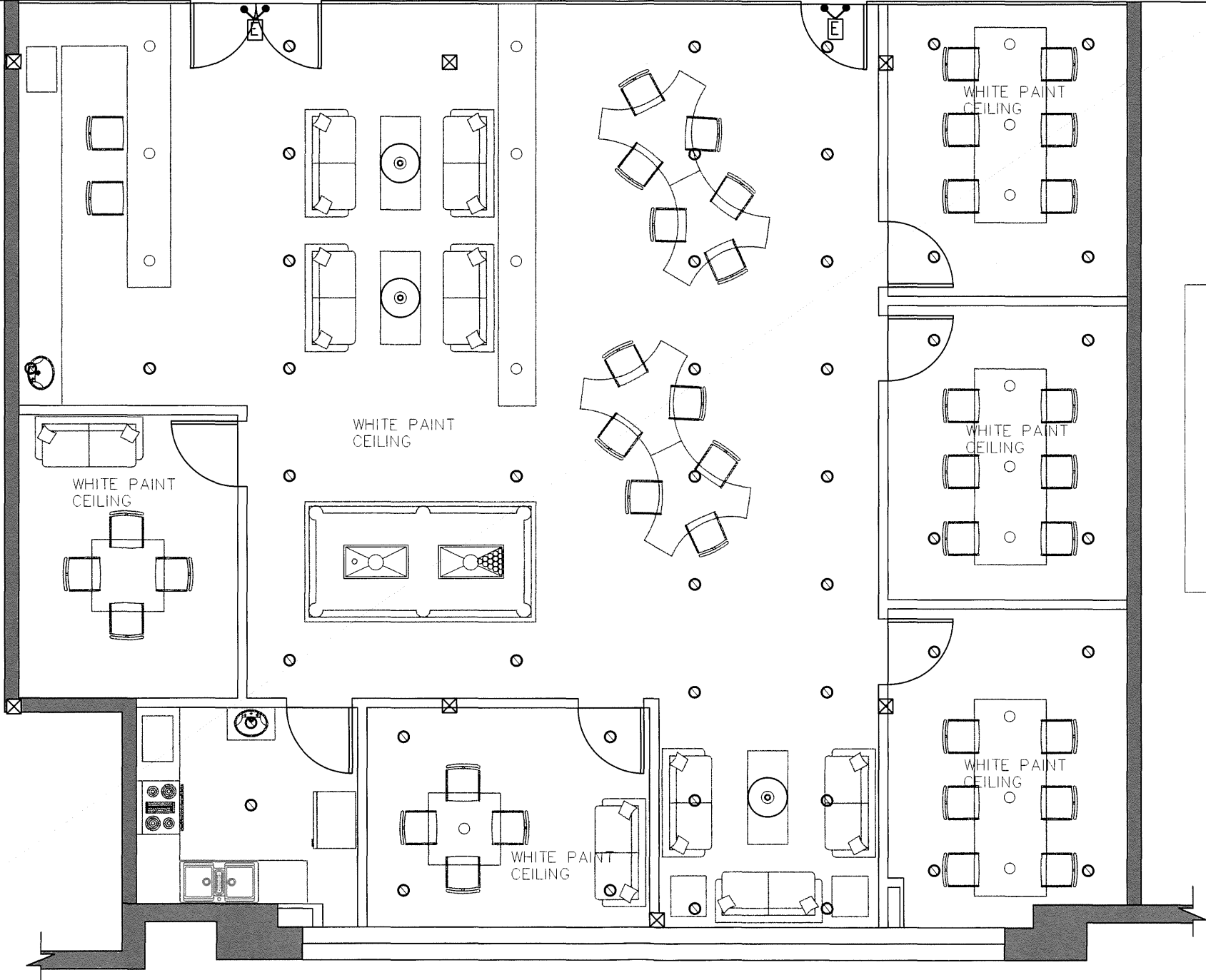
PROJECT

8333 KENNEDY RD (UNIT 111-114), MARKHAM, ON

DRAWING	
PROPOSED LAYOUT	
DRAWN I.K.	PROJECT NO 2012-07
PLOTTED DATE MAR 20, 2017	DRAWING NO
SCALE 1:75@11"x17"	A1.7
CHECKED	

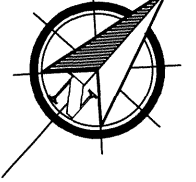
PROOF

CORRIDOR



PROPOSED REFLECTED CEILING PLAN WITH LIGHT FIXTURES

EXISTING WALL  
NEW WALL



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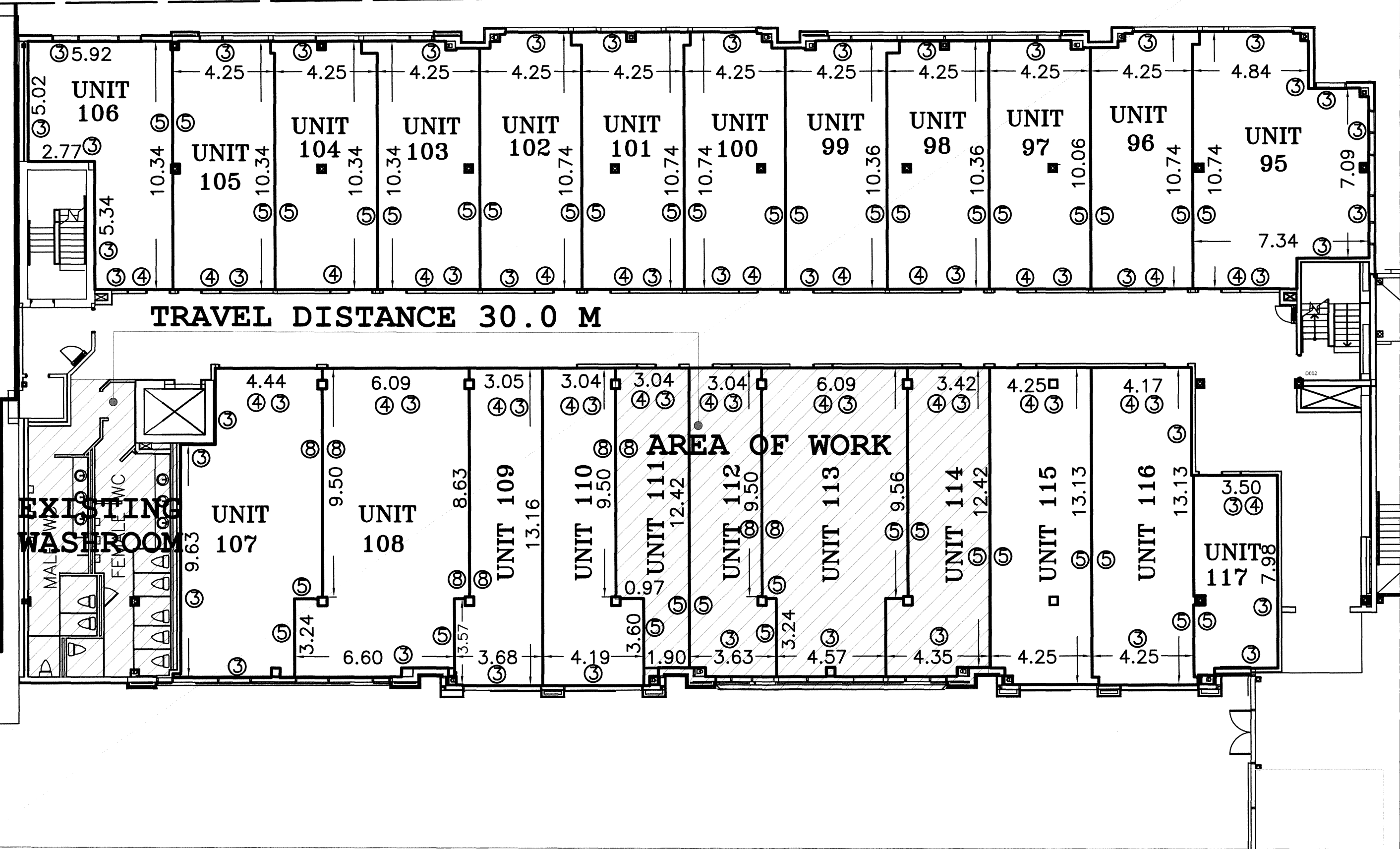
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BY: BE, M.Sc., P.ENG.  
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PROJECT

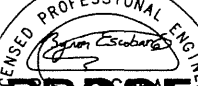
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PLOTTED DATE MAR 20, 2017			
SCALE 1:75@11"x17"			
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# PROOF



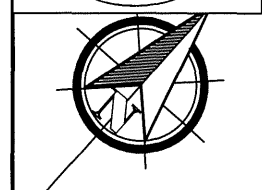
LICENSED PROFESSIONAL ENGINEER



**PROOF**

2017-03-17

PROVINCE OF ONTARIO



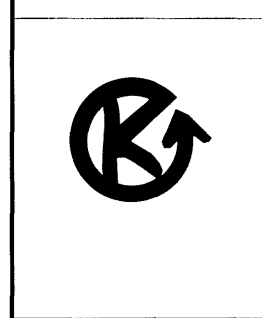
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PROJECT

8333 KENNEDY RD (UNIT 111-114), MARKHAM, ON

DRAWING PROPOSED LAYOUT	
DRAWN I.K.	PROJECT NO 2012-07
PLOTTED DATE MAR 20, 2017	DRAWING NO
SCALE NTS@11"x17"	<b>A1.9</b>
CHECKED	