

FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR THE  
PIKES PEAK REGIONAL DEVELOPMENT REVIEW CENTER

This FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR THE PIKES PEAK REGIONAL DEVELOPMENT REVIEW CENTER, hereinafter referred to as this “First Amendment to Intergovernmental Agreement”, amending the Intergovernmental Agreement for the Pikes Peak Regional Development Review Center dated April 15, 2003, hereinafter referred to as the “Original Intergovernmental Agreement” or “IGA”, and when referred to together with this First Amendment to Intergovernmental Agreement, the “Agreement”, each made and entered into by and between Pikes Peak Regional Building Department, an intergovernmental facility organized pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, *et seq.*, Colorado Revised Statutes (C.R.S.), as amended, hereinafter referred to as “Regional Building Department”, El Paso County, a political subdivision duly organized and existing under the constitution and laws of the State of Colorado, hereinafter referred to as the “County”, and the City of Colorado Springs, a home rule city and Colorado municipal corporation, hereinafter referred to as the “City” for itself, and for Colorado Springs Utilities, a part of the City and an enterprise, as defined by the City Charter and the Colorado Constitution, hereinafter referred to as the “Utilities”. Regional Building Department, the County, and the City may hereinafter be individually referred to as a “Party” or collectively referred to as the “Parties”.

WHEREAS, in the Original Intergovernmental Agreement, the Parties agreed to finance acquisition and construction of a centralized facility (defined below) by the issuance of Certificates of Participation (“COPs”) pursuant to that Mortgage and Indenture of Trust between the El Paso County Facilities Corporation as Lessor and U.S. Bank National Association as Trustee, dated April 15, 2003, and recorded at Reception No. 203106381 of the records of the El Paso County Clerk and Recorder; in 2012, the Parties agreed to refinance the COPs pursuant to a Mortgage and Indenture of Trust between the El Paso County Facilities Corporation as Lessor and U.S. Bank National Association as Trustee, dated December 15, 2012, and recorded at Reception No. 212156209 of the records of the El Paso County Clerk and Recorder; and

WHEREAS, El Paso County Facilities Corporation, U.S. Bank National Association, the County, and Regional Building Department have executed that certain Termination and Release dated as of May 31, 2024, to be recorded, documenting that the refinanced COPs, Series 2012, had matured and were paid in full as of December 1, 2023; and

WHEREAS, since 2003, the Parties have provided for one centralized facility, known as the “Pikes Peak Regional Development Review Center” (together with the “Property,” as defined below, the “Center”), a joint facility for service(s) organized and operated as permitted under the authorization of Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, *et seq.*, C.R.S., as amended; and

WHEREAS, the parcel on which the Center is located is known as Lot 2 in Printers Park Filing No. 10 in the City of Colorado Springs, El Paso County, Colorado, including those easements created by Declaration of Easements and Covenants, recorded January 16, 1986 in book

5115 at page 1029, and such amendments thereto, recorded August 27, 1986 in book 5225 at page 1314 and January 6, 1989 in book 5593 at page 1129 (the “Property”); and

WHEREAS, since 2003, subject to the consent of the other Parties, Regional Building Department has planned, designed, constructed, and operated the Center, located at 2880 International Circle, Colorado Springs, Colorado 80910, in which the Parties have located the various governmental agencies that conduct the land development, inspection, and building processes and resulting services, and other general administrative services; and

WHEREAS, the function of the Center has been to house personnel employed by the Parties to the Original Intergovernmental Agreement essential to their respective development review processes and/or the administration and enforcement of the building codes, thereby enhancing service levels to the public, and other general administrative services; and

WHEREAS, the Center has been governed by a CAM Board and the responsibility for operating the Center has been that of Regional Building Department, further as the final decision maker regarding the use of the Center and cost allocation(s), subject to the consent of the other Parties; and

WHEREAS, the responsibilities described in the Original Intergovernmental Agreement were further documented in certain other agreements, including, but not limited to that certain Lease Purchase Agreement by and between El Paso County Facilities Corporation and El Paso County, Colorado dated as of December 15, 2012, recorded at Reception No. 212156210 of the records of the El Paso County Clerk and Recorder (the “Lease Purchase Agreement”); that certain Sublease Purchase Agreement by and between El Paso County, Colorado and Pikes Peak Regional Building Department, amended by that certain First Amendment to Sublease Purchase Agreement dated as of December 15, 2012, recorded at Reception No. 212156211 of the records of the El Paso County Clerk and Recorder (the “Sublease Purchase Agreement”); and that certain Sub-Sub Lease Agreement for the Pikes Peak Regional Development Review Center, dated June 17, 2004 (not recorded) (the “Original Sub-Sub Lease Agreement”), as amended by that certain First Amendment to Sub-Sub Lease Agreement for the Pikes Peak Regional Development Review Center, dated April 10, 2013 (not recorded) (the “First Amendment to Sub-Sub Lease Agreement”, and when referred to together, the “Sub-Sub Lease Agreement”); and

WHEREAS, the Sub-Sub Lease Agreement states that upon retirement of the COPs, as defined in the Original Sub-Sub Lease Agreement, and upon the creation of each Party’s ownership interest as tenants in common as set forth in the Sub-Sub Lease Agreement, the Sub-Sub Lease Agreement shall survive merger, and all paragraphs of the Sub-Sub Lease Agreement shall become covenants running with the land, binding upon the Parties’ respective heirs, successors, and assigns, and any references to a landlord-tenant relationship in those paragraphs shall be deemed without having any further force and effect; and

WHEREAS, the Lease Purchase Agreement provides for a deed and a bill of sale to be held in escrow by the Trustee, U.S. Bank National Association, that would convey the Property and personal property from the El Paso County Facilities Corporation to the County, and the Sublease

Purchase Agreement provides for a deed and a bill of sale to be held in escrow by U.S. Bank National Association that would convey the Property and personal property from the County to Regional Building Department, and the two deeds and bills of sale (collectively, the “Escrow Deeds”) shall be recorded upon retirement of the COPs; and

WHEREAS, the Escrow Deeds that were to have been deposited with U.S. Bank National Association have not been located after diligent search; therefore, El Paso County Facilities Corporation, the County, and Regional Building Department agreed to the creation of replacement deeds and bills of sale (collectively, the “Replacement Deeds”) to convey their respective interests in the Property and personal property referenced above; and

WHEREAS, it is in the best interests of each Party and the public to continue the operation of the Center; and

WHEREAS, capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Original Intergovernmental Agreement. This First Amendment to Intergovernmental Agreement forms an integral part of the Original Intergovernmental Agreement. In the event this First Amendment to Intergovernmental Agreement conflicts with, varies from, or modifies the terms and provisions of the Original Intergovernmental Agreement, then, in such event, the terms and provisions hereof shall control and govern.

**IT IS THEREFORE AGREED:**

1. Within a reasonable time after obtaining a commitment for title insurance that is mutually acceptable to the Parties, the Parties shall hold a real estate closing at a place and time to be agreed upon. The Parties shall cause the Replacement Deeds to be recorded as provided for in the Lease Purchase Agreement and the Sublease Purchase Agreement. Immediately thereafter, Regional Building Department shall execute and deliver a bargain and sale deed or deeds to Pikes Peak Regional SE Facilities, LLC, a Colorado limited liability company, or another separately organized, closely affiliated entity with Regional Building Department, as its sole member, unless Regional Building Department decides to retain title in its undivided percentage interest; the City; and the County, in a form to be agreed upon prior to closing, such that ownership of the Center is held as tenants in common with the following undivided percentage interests:

Pikes Peak Regional Building Department, or Pikes Peak Regional SE Facilities, LLC, a Colorado limited liability company, or another separately organized, closely affiliated entity with Pikes Peak Regional Building Department, as its sole member	48%
El Paso County	31%
City of Colorado Springs	21%

The costs of the closing and title insurance shall be divided among the Parties according to their undivided percentage interests. With the payoff of the COPs and the conveyance of the Center in fee to the Parties, the former Landlord/Tenant and Lessor/Lessee relationships will no longer exist, relevant provisions of the Sub-Sub Lease Agreement are included herein, and the purposes of the Sub-Sub Lease Agreement have been fulfilled. Therefore, the Parties hereby terminate the Sub-Sub Lease Agreement, and the ongoing operation of the Center shall be pursuant to the Agreement.

Regardless of how title is held by Regional Building Department in its undivided percentage interest, whether in the name of Regional Building Department, Pikes Peak Regional SE Facilities, LLC, or another separately organized, closely affiliated entity with Regional Building Department, as its sole member, the County and the City may hold Regional Building Department, as a Party to the Agreement, responsible to the agreed upon terms thereof.

2. CONTINUED OPERATIONS OF THE CENTER: The Center shall continue to be governed by a CAM Board and operated by a “Property Manager,” under the direction of the CAM Board. The initial Property Manager shall be Regional Building Department for so long as Regional Building Department is willing to provide the services or until a new Property Manager is designated by the CAM Board. The responsibilities, functions, and powers of the Property Manager shall be to provide for maintenance, leasing, space allocation, budget management, and other functions related to the operation of the Common Areas of the Center, subject to direction and oversight of the CAM Board.

(a) *CAM Board.* The CAM Board shall be composed of three (3) voting representatives, one appointed each by the City, the County<sup>1</sup>, and Regional Building Department, each appointed pursuant to the respective internal governing rules of the appointing Party.

(b) *Authority of the CAM Board.* The CAM Board shall have the powers set forth in this First Amendment to Intergovernmental Agreement and shall provide direction to and oversight of the Property Manager. The CAM Board may adopt rules or bylaws for its own internal governance and may appoint a new Property Manager by nomination and unanimous vote by the CAM Board, subject to compliance with the rules established by this First Amendment to Intergovernmental Agreement.

3. ALLOCATED INTEREST(S): Upon the creation of each Party’s ownership interest as tenants in common, each Party shall further obtain a possessory interest in a portion of the Center, referred to as a “Unit”. The horizontal and vertical boundaries of each Unit are as

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<sup>1</sup> For approvals required of the County, by agreeing to this First Amendment to Intergovernmental Agreement, El Paso County Board of County Commissioners (“BoCC”) hereby delegates such approval to the County Administrator of El Paso County for all administrative-type approvals, but retains authority for all approvals requiring County budget-related approvals. The County Administrator has the discretion to seek BoCC direction and/or approval of administrative-type approvals as the County Administrator may deem appropriate.

follows: (a) the upper horizontal boundary of each Unit is the unfinished ceiling as shown on Exhibit B, such that the drywall, concrete or other structural material comprising the ceiling is a part of the Common Areas and the finished surface over such drywall, concrete or other structural material is a part of the Unit; (b) the lower horizontal boundary of each Unit is the unfinished floor as shown on Exhibit B, such that the concrete or other structural material comprising the floor is a part of the Common Areas and the finished surface over such concrete or other structural material is a part of the Unit; and (c) the vertical boundary of each Unit is the unfinished wall bounding each Unit on all sides as shown on Exhibit B ("Exterior Wall"), such that the drywall, concrete or other structural material comprising such wall is a part of the Common Areas and the finished surface over such drywall, concrete or other structural material is a part of the Unit. The Allocated Interest(s) shall mean the interest in the Common Charges and Common Areas allocated to each Unit, and the voting rights of each Unit. The formulas used to calculate the Allocated Interest(s) are as follows:

(a) *Interests in Common Charges and Common Areas.* The Allocated Interest of each Unit in the Common Charges and Common Areas is as follows: 48% for Regional Building Department, 31% for the County, and 21% for the City, unless otherwise agreed to in writing by the Parties. For purposes of determining the Allocated Interest(s) of each Unit in the Common Charges and Common Areas, the attached **Exhibit A** shall be final and determinative for all purposes.

(b) *Votes.* Each Party shall be entitled to one vote for a total of three votes. If an original Unit is subdivided, the one vote allocated to that original Unit shall be divided among all subdivided Units, but in no event shall the total number of votes allocated to all such subdivided Units exceed one. In no event shall the subdivision of an original Unit (or subsequent combination of an original Unit) increase the total number of votes allocated to that original Unit beyond one or the total number of votes beyond three. A Unit not being subdivided or combined shall not have its vote diluted because of another Party undertaking such actions. The Utilities shall not have a vote separate from the City's.

4. **COMMON AREAS:** The Common Areas of the Center are those parts of the Center intended for the common use and benefit of all entities that occupy space in the Center, which areas include, but are not limited to, the parking lots, the water quality detention ponds, the lobby, elevators, stairways, the car wash, sidewalks, landscaping, curbs, driveways, certain drinking fountains, certain hallways, public toilets, certain lobbies, certain hearing rooms, balconies, the locker room(s), the exercise room, certain break room(s), and the solar array. The Common Areas specifically include all utilities that are located within the Center as of the date hereof. The Common Areas mean all portions of the Center except the Units. The Common Areas are owned or otherwise held in common by the Parties in undivided interests according to the Allocated Interest(s) set forth pursuant to Paragraph 1 above. The Parties and their respective employees, retirees, clients, customers, sub-lessees, concessionaires, invitees, and licensees shall have the nonexclusive right to use the Common Areas, except that only the Parties and their respective employees, whose primary job functions are performed in the Center, shall have the right to use the water quality detention ponds, the car wash, certain drinking fountains, certain hallways, certain lobbies, certain hearing rooms, balconies, the locker

room(s), the exercise room, the break room(s), and the solar array. All such use of the Common Areas shall be in common with the Parties and all other persons entitled to use the same. The use shall be subject to such reasonable rules and regulations governing the use of the same as the Property Manager, at the direction of the CAM Board, may from time to time prescribe. The Property Manager shall be responsible for the daily operations of the Center including the designation of specific areas in which the Parties' automobiles and those of their respective employees, clients, customers, sub-lessees, concessionaires, invitees, and licensees shall be parked. No Party shall take any action that interferes with the rights of others expressly authorized to use any particular portion of the Common Areas. In addition, the Property Manager may temporarily close any part of the Common Areas for such periods of time as may be necessary to perform maintenance, janitorial service, and repairs thereon. The Property Manager shall be responsible for the operation, maintenance, janitorial service, and repair of the Common Areas. Further, the Common Areas shall consist of General Common Areas and Limited Common Areas.

(a) *General Common Areas.* General Common Areas shall mean all tangible physical properties of, and other appurtenant interests associated with the Center, except the Limited Common Areas and the Units. General Common Areas specifically include the light poles and fire hydrants located within the Center.

(b) *Limited Common Areas.* Limited Common Areas shall mean those interests in the Common Areas which are either limited to or reserved herein, on the attached **Exhibit B**, or by written consent of the Parties, for the exclusive use of one or more, but fewer than all, Units.

5. OPERATION OF THE CENTER AND THE COMMON AREAS: Except as otherwise provided herein, each Party shall maintain and keep in repair their Unit and its appurtenant Limited Common Areas and any utility conduits, pipes and other facilities, components and/or meters servicing solely the Unit if located in or upon the other Unit or another Unit's Limited Common Areas. A Party is not required to obtain the prior approval of the Property Manager prior to doing any act or work within the Party's Unit; however, a Party shall do no act or work that will impair the structural soundness or integrity of the Center or another Unit or impair any third-party interest in the Center. If a Unit is damaged or destroyed by an event of casualty, the Party of such Unit shall take reasonable measures to diligently pursue the repair and reconstruction of the Unit. At the request of the Property Manager, the CAM Board may assign additional maintenance and repair responsibilities to the Parties, as applicable, as special assessments, within adopted rules and regulations or otherwise, and to clarify the maintenance responsibilities set forth herein, and the Parties are obligated to accept said maintenance responsibilities, provided said assignment is done in a uniform and non-discriminatory manner and in compliance with the requirements of Paragraph 12 below. The Property Manager shall be responsible for providing all operations, maintenance, janitorial service, and repair to the General Common Areas, including the car wash, and certain Limited Common Areas. The term "operation" as used in this First Amendment to Intergovernmental Agreement may include, but shall not be limited to, the providing of receptionist services for the mutual use

and benefit of Regional Building Department, the County, and the City; security services; janitorial services; insurance coverage; accounting; bookkeeping; auditing services; utilities; snow and ice removal services; landscape; lawn and sprinkler services; maintenance, repair, cleaning, and removal of sediment and debris from the three (3) water quality detention ponds located on the Center; maintenance services; repair services; property management services; architectural services; and engineering services. Any such person or entity may be an employee, agent, or contractor of the Property Manager. The costs of such operations, maintenance, janitorial service, and repair shall be allocated among the Parties as set forth below.

6. COMMON AREAS MAINTENANCE CHARGES: Each of the Parties hereto shall pay to the Property Manager a quarterly Common Areas Maintenance Charge, which may be referred to herein as the CAM or the CAM Charge. To the extent that the Property Manager deposits any such installment of CAM, including the CAM Charge for the car wash, into an interest-bearing account, the Property Manager shall pay the interest thereon into the CAM account as set forth herein for the mutual benefit of all Parties hereto. Each quarterly installment of CAM shall consist of two components. The first component of CAM, hereinafter referred to as the General CAM or General CAM Charge, shall be the charges for the operation of the Center, and shall be exclusive of the car wash. The second component of the CAM shall be solely and exclusively composed of any and all charges for the car wash, and shall be hereinafter referred to as the Car Wash CAM or the Car Wash CAM Charge. Except as provided in Paragraph 7 below, each quarterly installment of CAM shall be payable in advance, and not in arrears, on the first day of each quarter. The first day of a quarter shall be defined as follows: January 1 for the first quarter, April 1 for the second quarter, July 1 for the third quarter, and October 1 for the fourth quarter. Each installment of the General CAM Charge shall be due and payable without notice.

7. CAR WASH CAM: Any and all CAM Charge(s) attributable to the car wash shall be based solely and exclusively on each Party's actual use of the facility, which actual use shall be based on the actual number of vehicles washed by an entity. The Car Wash CAM Charge for the year 2024 shall not exceed \$12.00 per vehicle, and the per-vehicle charge shall be the same for Regional Building Department, the County, and the City. The Property Manager shall bill each Party in arrears for their respective per vehicle use, which bill the Property Manager shall send on a quarterly basis. Each Party shall pay such bill for the car wash no later than thirty (30) days after receipt, and the obligation to pay such bill shall be regarded as Additional CAM Charge. The Property Manager shall annually adjust the per vehicle charge by the same method for changing the General CAM Charge. The CAM Charge attributable to the car wash shall be used solely and exclusively for the operation, maintenance, and repair of the car wash. Under no circumstances shall any part of the General CAM Charge, including the CAM Reserve Fund, be used for the operation, maintenance, and repair of the car wash without the approval of the CAM Board. To the extent that funds available in the Car Wash CAM are not sufficient to cover any operation, maintenance, or repair of the car wash, then such obligation shall be deferred until the Parties' approval thereof and availability of funds thereto. To the extent that the CAM Charges for the car wash exceed the amounts needed for the operation, maintenance, and repair of the car wash, any such excess

funds shall be used to reduce the amount of the CAM Charge for the car wash or for transfer into the General CAM account or the Reserve CAM Fund for the mutual benefit of all Parties hereto. For purposes of determining an accurate per vehicle charge, the Property Manager shall maintain sufficient devices to measure the amount of water, supplies, and other utilities used by the car wash, as well as an electronic monitoring system sufficient to track the number of vehicles washed on a per-entity basis. Only Regional Building Department, the County, and the City, and their respective employees, whose primary job functions are performed in the Center, shall be permitted to use the car wash facility, and under no circumstances shall they grant permission to any other person or entity to use the car wash facility.

8. BUDGET: The CAM Board shall review and approve an annual budget no later than October 1 of each current year of this First Amendment to Intergovernmental Agreement. The approval of the CAM budget shall be by unanimous vote by the CAM Board, thereafter conditional upon the approval(s) of Regional Building Department, the County, and the City as part of the annual budget approval processes of each of the Parties, of a line item amount or other accounting procedure to provide a budget for the Center's operating expenses and reserves, to be confirmed in writing by each Party no later than December 31 of each current year of this First Amendment to Intergovernmental Agreement. Annual assessments made for CAM Charges shall be payable in quarterly installments on a prorated basis and shall be due after the budget is adopted, except for the first year of this First Amendment to Intergovernmental Agreement (year 2024).

9. ANNUAL ASSESSMENTS: Unless otherwise agreed to in writing, the annual assessments made for CAM Charges required in the first year of this First Amendment to Intergovernmental Agreement (year 2024) shall be \$937,306.00 for Regional Building Department, \$608,947.00 for the County, and \$412,622.00 total for the City. Unless otherwise agreed to in writing, each Party shall pay the annual assessments in four (4) equal installments, which equal installments shall be one-quarter (1/4) of the total annual assessments for the year. Accordingly, in the first year of the annual assessments, each Party's one-quarter installment of the total annual assessments obligations for that year shall be \$234,326.00 for Regional Building Department, \$152,237.00 for the County, and \$103,156.00 total for the City. The annual assessments may not be increased during the year 2024 without the written authorization from all Parties hereto. To the extent that there are not sufficient funds in the current year's CAM account to cover a charge or expense that is authorized under this First Amendment to Intergovernmental Agreement, the Property Manager may pay the charge from the CAM Reserve Fund, which fund is maintained pursuant to Paragraph 13 below. The General CAM and the CAM Reserve Fund do not include the car wash as set forth in Paragraph 7 above.

Each Party shall submit their respective payments of annual assessments to the Property Manager. Each payment of annual assessments shall be made and payable to the Property Manager, and the Property Manager shall not recognize any such installments of annual assessments as revenue to the Property Manager. Specific to the annual assessments, the sole and exclusive function of the Property Manager shall be to collect and hold the payments of annual assessments for the operating expenses of the Center. The failure of a



Party to pay an installment of annual assessments when due and payable shall be an event of default. In the event that the calendar date for the payment of an installment of annual assessments falls due on any day that the Property Manager is not open for business, including, but not limited to, Saturdays, Sundays, or legal holidays, the installment of annual assessments shall be due and payable on or before the last day that the Property Manager is open for business immediately preceding the calendar day on which the payment is due.

10. CAM CHARGES FOR SUBSEQUENT YEARS OF THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT: With the exception of year 2024, no later than July 1 of each current year of this First Amendment to Intergovernmental Agreement, the Property Manager shall provide to the CAM Board an estimate of the CAM annual installments for the following year and an estimate of the amount, if any, that shall be required to maintain the CAM Reserve Fund at its required level, which CAM Reserve Fund is created in Paragraph 13 below. Before informing the CAM Board of any increase in CAM annual installments and the amount needed to maintain the CAM Reserve Fund at its required level for the following year, the Property Manager shall consult with the CAM Board concerning the need and justification for the requested amounts. The amount of such increase in the CAM annual installments and the amount needed to maintain the CAM Reserve Fund shall be approved by the CAM Board, conditional upon the approval(s) of Regional Building Department, the County, and the City, as part of their budget approval processes, of a line item amount or other accounting procedure to provide for the annual assessments for the CAM Charges.

11. APPORTIONMENT OF ANNUAL ASSESSMENTS: Except as provided in Paragraph 6 above, the Common Charges shall be allocated among the Units on the basis of the Allocated Interests for Common Charges in effect on the date of annual assessments; *provided, however,* that (a) any common expense associated with the maintenance, repair, or replacement of a Limited Common Area shall be assessed against the Unit(s) to which that Limited Common Area is assigned, equally; (b) any Common Charge or portion thereof benefiting fewer than all of the Units shall be assessed exclusively against the Unit(s) benefited; and (c) the costs of shared utilities shall be assessed in proportion to usage as determined by the Property Manager.

12. SPECIAL ASSESSMENTS: In addition to the annual assessments, the CAM Board may levy in any calendar year one or more special assessments, payable over such a period as the CAM Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the General Common Areas, or for any other expense incurred or to be incurred as provided in this First Amendment to Intergovernmental Agreement. Special assessments shall be payable in such manner and at such times as determined by the CAM Board, and may be payable in installments extending beyond the calendar year in which the special assessment is approved. The CAM Board shall have the right to require that special assessments be paid in advance of the provision of the subject services or improvements. Special assessments are conditional upon the approval(s) of Regional Building Department, the County, and the City, as part of their budget approval processes, of a line-item amount or other accounting procedure to provide for the special assessments.

13. CAM RESERVE FUND: The Property Manager shall continue to maintain a CAM Reserve Fund, which fund shall be a wholly separate account. The Property Manager shall continue to maintain the CAM Reserve Fund in an interest-bearing account, and the Property Manager shall pay the interest thereon into the CAM Reserve Fund account and for the mutual benefit of all Parties hereto. The Property Manager may use up to but not to exceed \$2.20 per square foot per year, or \$0.55 per square foot per quarter, of the General CAM Charge for the maintenance, if needed, of the CAM Reserve Fund. The Property Manager shall be entitled to maintain a CAM Reserve Fund in an amount up to, but not to exceed, one (1) quarter of the General CAM annual installments. The Property Manager may throughout the year transfer funds to and from the General CAM account and the CAM Reserve Fund in order to maintain this Fund.

14. ACCOUNTING, AUDITING, AND INSPECTION OF BOOKS AND RECORDS: The Property Manager shall keep and maintain books and records pertaining to its obligations under this First Amendment to Intergovernmental Agreement. The books and records shall be kept, maintained, and organized so that matters pertaining to the Center and the grounds, the hearing room, the solar array, the locker room(s) and exercise room, and the car wash are separate and apart and readily identifiable on a per-facility basis with the Center for revenue and expenses tracking purposes; and the grounds counting as a separate facility, the hearing room as a separate facility, the solar array as a separate facility, the locker room(s) and exercise room as a separate facility, and the car wash as a separate facility. The Property Manager shall not destroy or in any way dispose of any of these books and records without first obtaining the written permission of the CAM Board. All such books and records shall be open for inspection and copying by members of the CAM Board, Regional Building Department, the County, and the City at reasonable times and upon reasonable notice. With respect to all monetary accounts kept and maintained pursuant to this First Amendment to Intergovernmental Agreement, the Property Manager shall provide unaudited accountings and financial statements thereof to the CAM Board at least once every three (3) months. At least once per year, the Property Manager shall cause to be prepared and presented to the CAM Board an audit of the financial statements and the books and records pertaining to the Center, including a copy of the auditor's management letter. If applicable, the audit shall be conducted and prepared by an independent accountant or accounting firm, and such audit shall be prepared according to generally accepted auditing standards promulgated by the American Institute of Certified Public Accountants (AICPA) and *Government Auditing Standards* issued by the Comptroller General of the United States and Office of the Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*. The Audit shall provide reasonable, but not absolute, assurance that the financial statements and the books and records are free of material misstatement, whether caused by error or fraud. The Property Manager may pay for the cost of the annual audit and the cost of providing the quarterly unaudited accountings and financial statements from the General CAM or the CAM Reserve Fund.

15. ANNUAL APPROPRIATIONS OF FUNDS; NO MULTIPLE FISCAL YEAR OBLIGATIONS: Regional Building Department, the County, and the City shall each have the

right and authority to terminate the First Amendment to Intergovernmental Agreement without penalty and without liability for payment of damages to any other Party by not appropriating for the First Amendment to Intergovernmental Agreement in any subsequent fiscal year, regardless of whether any Party's participation in the First Amendment to Intergovernmental Agreement is classified as or determined to be a governmental or proprietary activity. Regional Building Department, the County, and the City shall be conclusively determined to have appropriated by duly enacting an ordinance or resolution for the ensuing fiscal year that includes by a specific line-item or other accounting procedure a reference to sufficient amounts authorized and directed to be used to pay the annual assessments as are estimated to become due under this First Amendment to Intergovernmental Agreement. No provision herein shall be construed or interpreted as a delegation of governmental powers or as creating indebtedness or a multiple-fiscal year direct or indirect debt or any financial obligation whatsoever on Regional Building Department, the County, or the City within the meaning of any constitutional or statutory debt limitation(s), including without limitation Art. XI, Sections 1, 2 and 6, and Art. X, Section 20, of the Colorado Constitution. This First Amendment to Intergovernmental Agreement shall not obligate Regional Building Department, the County, or the City to make any payments beyond the funds legally available, as appropriated, to Regional Building Department, the County, or the City, respectively, for their then current fiscal year. Any failure to annually appropriate adequate monies to finance Regional Building Department's, the County's, or the City's obligations under this First Amendment to Intergovernmental Agreement shall terminate the First Amendment to Intergovernmental Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to the other Parties of any failure or intended failure to appropriate such adequate monies.

16. IMMUNITY: No term or condition of this First Amendment to Intergovernmental Agreement, or any amendments thereto hereafter, shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et. seq.*, of the Colorado Revised Statutes (C.R.S.), or the Federal Tort Claims Act, 28 U.S.C. 2671, *et. seq.*, as applicable, as now or hereafter amended.

17. TAXES: The Center is fully exempt from all property taxes under Colorado law. To the extent that any Party to this First Amendment to Intergovernmental Agreement causes any part of the Center, including any possessory interest thereon, to become subject to property taxation, the full amount of the tax liability shall become the obligation of the responsible Party, and the responsible Party shall not suffer or permit any such tax obligation to become delinquent.

18. ACCESS: In general, Regional Building Department, the County, and the City shall only request access to the Center, including, but not limited to the car wash, the locker room(s), the exercise room, and the break room for those employees whose primary job functions are performed in the Center.

19. ALLOCATION OF PARKING: The Property Manager has allocated parking spaces to each Unit, as depicted on Exhibit B, so that Regional Building Department, the City, and the County may assign parking space(s) to their employees, whose primary job functions are performed in the Center. These spaces shall be marked so that they are readily identifiable from the parking spaces available to the public, and there shall be sufficient signs installed at the Center to inform the general public that they may not park in these spaces.

20. UTILITIES: The Property Manager shall provide all utilities to the Center for the use and benefit of the Parties. The Parties shall pay their share of the utilities according to the CAM Charge provisions as set forth herein.

21. FIRE AND CASUALTY RESTORATION OF THE CENTER AND CONDEMNATION: Unless the Parties hereto agree otherwise, the proceeds of insurance shall be used to restore the Center to substantially the same condition as existing prior to the occurrence of a casualty. In all other circumstances involving the lawful exercise of the power of eminent domain by a state or the federal government, the Parties shall adjust the ownership percentages, amount of possessed space, and CAM charges on a *pro rata* basis in relation to the amount of property available for use and possession after the exercise of said power, unless otherwise agreed to in writing.

22. CASUALTY AND PROPERTY INSURANCE: The Property Manager shall carry and maintain casualty and property insurance, including personal property for any personal property purchased from the proceeds of the above-referenced COPs, in an amount equal to the replacement cost of the Center and personal property. The Property Manager may insure the Center or any portion thereof, under blanket insurance policies which insure not only the Center, but other property as well, so long as such blanket insurance policies comply with the requirements of this First Amendment to Intergovernmental Agreement, and so long as full payment of insurance proceeds up to the policy dollar limits in connection with damage to the Center shall not be contingent on the degree of damage sustained to other properties owned or managed by the Property Manager. Any property damage insurance policy shall be written to cover standard 'all risk' perils, including fire, earthquake, flood, boiler, and machinery; be so written or endorsed as to waive any co-insurance penalty; and shall be written to show the Center, Regional Building Department<sup>2</sup>, the County, and the City as insured(s), loss payee(s), and/or as additional insureds, as applicable, and to make losses exceeding the deductible or self-insured retention, if any, payable to the Parties, as their respective interests may appear. Each such insurance policy may have a deductible clause or self-insurance retention in an amount determined by the Property Manager and with the approval of the CAM Board

23. GENERAL LIABILITY INSURANCE AND PREMISES LIABILITY INSURANCE: The Property Manager shall carry and maintain public liability insurance, also referred to as commercial general liability insurance, including blanket contractual liability or

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<sup>2</sup> Pikes Peak Regional SE Facilities, LLC, a Colorado limited liability company, or another separately organized, closely affiliated entity with Pikes Peak Regional Building Department, as its sole member.

specific contractual liability insurance for this First Amendment to Intergovernmental Agreement and public officials errors and omissions coverage, to be carried and maintained with respect to the activities to be undertaken in connection with the use and possession of the Center. All such policies shall show the Center and all officers and employees thereof, Regional Building Department<sup>3</sup> and all officers and employees thereof, the County and all officers and employees thereof, and the City and all officers and employees thereof as insured(s) or additional insureds, as applicable. Such coverage shall be in amounts not less than the limits of liability per occurrence set by the Colorado Governmental Immunity Act as the same may from time to time be amended, to a \$2,000,000 annual aggregate, for claims to which the defense of sovereign immunity applies. Each such insurance policy may have a deductible clause or self-insurance retention in amount determined by the Property Manager and with the approval of the CAM Board. The public liability insurance required by this First Amendment to Intergovernmental Agreement may be by blanket insurance policy or policies. The above-stated provisions shall be implemented as set forth below.

(a) *Minimum Limits: Commercial General Liability.* The Property Manager shall maintain commercial general liability insurance covering all operations by or on behalf of the Property Manager on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance will have these minimum limits and coverage: \$1,000,000 each occurrence (as set by the Colorado Governmental Immunity Act or as may be amended), \$2,000,000 general aggregate, and \$2,000,000 products and completed operations aggregate.

(b) *Coverages.*

- i. ISO commercial general liability form (occurrence form) or equivalent
- ii. Products and completed operations
- iii. Blanket contractual liability (included in ISO form)
- iv. Broad form property damage (included in ISO form)
- v. Severability of interest (included in ISO form)
- vi. Underground explosion and collapse coverage, if available (included in 2003 ISO form or equivalent)
- vii. Personal injury
- viii. Premises liability coverage
- ix. Specific waiver of subrogation (included in CG 24 04 12 19 ISO form or equivalent)
- x. Additional insured endorsement on behalf of Regional Building Department<sup>4</sup> and all officers and employees thereof, the County and all officers and employees thereof, and the City and all officers and employees thereof (included in CG 20 10 04 13, Ongoing Operations; CG 20 37 04 13,

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<sup>3</sup> Pikes Peak Regional SE Facilities, LLC, a Colorado limited liability company, or another separately organized, closely affiliated entity with Pikes Peak Regional Building Department, as its sole member.

<sup>4</sup> Pikes Peak Regional SE Facilities, LLC, a Colorado limited liability company, or another separately organized, closely affiliated entity with Pikes Peak Regional Building Department, as its sole member.

Completed Operations ISO forms or equivalent).

(c) *Public Officials Errors and Omissions Liability.* The Property Manager shall maintain public officials' errors and omissions liability insurance with respect to the activities undertaken with the use and possession of the property in an amount of not less than \$2,000,000 per claim and annual aggregate. If coverage is purchased on a "Claims Made" form, coverage will be maintained for three years after the termination of this First Amendment to Intergovernmental Agreement, or the Property Manager will purchase a three-year extended reporting period.

24. **WORKERS' COMPENSATION.** The Property Manager shall, at its own expense, cause workers' compensation insurance to be procured and maintained covering the Property Manager's employees working in or on the Center. Such insurance, if issued by an insurance carrier licensed or approved to do business in the State of Colorado, shall contain a provision that such coverage shall not be cancelled without thirty (30) days prior written notice to the CAM Board, Regional Building Department<sup>5</sup>, the County, and the City. A certificate issued by the Colorado State Insurance Fund or a private carrier evidencing such coverage shall be provided by the Property Manager to the CAM Board, Regional Building Department<sup>6</sup>, the County, and the City. Each such insurance policy may have a deductible clause or self-insured retentions in an amount determined by the Property Manager and with the approval of the CAM Board. The workers' compensation insurance required by this First Amendment to Intergovernmental Agreement may be by blanket insurance policy or policies. Except as set forth in Paragraph 25 below, the Property Manager may not recover its costs of providing workers' compensation insurance to its employees under the CAM charge provisions of this First Amendment to Intergovernmental Agreement.

25. **GENERAL PROVISIONS PERTAINING TO INSURANCE.** All property and public liability insurance required by this First Amendment to Intergovernmental Agreement shall be provided by a commercial insurer rated at least A+ by A.M. Best or in the two highest rating categories by S&P and Moody's. If the Property Manager shall insure against similar risks by self-insurance, the Property Manager and in accordance with the standards of the State relating thereto, may in lieu of obtaining policies for casualty and/or property, public liability, and workers' compensation insurance coverage as required by this First Amendment to Intergovernmental Agreement provide one or more such coverages by an actuarially established self-insurance fund so long as the Property Manager provides an annual certification to the CAM Board and the insurer that the reserves therein are adequate as determined by, in the case of public liability and workers' compensation coverage, the Parties' insurance consultant or actuary, and in the case of casualty and/or property insurance, an independent insurance consultant or actuary; and that the CAM Board receives the prior

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<sup>5</sup> Pikes Peak Regional SE Facilities, LLC, a Colorado limited liability company, or another separately organized, closely affiliated entity with Pikes Peak Regional Building Department, as its sole member.

<sup>6</sup> Pikes Peak Regional SE Facilities, LLC, a Colorado limited liability company, or another separately organized, closely affiliated entity with Pikes Peak Regional Building Department, as its sole member.

written consent of the insurer for such insurance with respect to casualty and/or property and public liability coverage.

Each property and liability insurance policy provided for in this First Amendment to Intergovernmental Agreement shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interests of the Parties without first giving written notice thereof to the CAM Board, Regional Building Department<sup>7</sup>, the County, the City, and the insurer at least thirty (30) days in advance of such cancellation or modification. In the event that the Property Manager receives such notice of cancellation or modification, it shall promptly furnish to the Parties a new insurance policy or certificate evidencing such policy replacing the cancelled or modified policy and effective on or before the effective date of such cancellation or modification.

The Property Manager annually shall provide certificates of insurance with appropriate endorsements attached evidencing that the Parties have been named as loss payees and/or additional insureds and that the 30-day notice of cancellation provision is in effect. No agent or employee of Regional Building Department<sup>8</sup>, the County, the City, or the Property Manager shall have the power to adjust or settle any loss in excess of \$10,000.00 with respect to the Center, whether or not covered by insurance, without the prior written consent of the Parties. The consent of the Utilities shall not be required for any such adjustment or settlement.

All such policies of insurance, including any self-insurance, as required by this First Amendment to Intergovernmental Agreement, shall contain a waiver of subrogation on behalf of the Property Manager, the Center, Regional Building Department<sup>9</sup>, the County, and the City, and their respective officers and employees thereof.

This First Amendment to Intergovernmental Agreement shall not prohibit the Property Manager from acquiring additional policies and coverages as may be agreed upon in writing by and between the Parties, and shall not prohibit the Property Manager from collecting the costs for any such additional policies and coverages in the General CAM Charge.

26. PARTIES' INSURANCE. Each Party shall carry commercial general liability insurance insuring against claims and liabilities arising within the Units and Limited Common Areas serving the Party's Unit. Such insurance shall provide coverage of at least \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate, with respect to bodily injury, personal injury, and property damage. In addition, the Parties shall carry property coverage on any finished interior

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<sup>7</sup> Pikes Peak Regional SE Facilities, LLC, a Colorado limited liability company, or another separately organized, closely affiliated entity with Pikes Peak Regional Building Department, as its sole member.

<sup>8</sup> Pikes Peak Regional SE Facilities, LLC, a Colorado limited liability company, or another separately organized, closely affiliated entity with Pikes Peak Regional Building Department, as its sole member.

<sup>9</sup> Pikes Peak Regional SE Facilities, LLC, a Colorado limited liability company, or another separately organized, closely affiliated entity with Pikes Peak Regional Building Department, as its sole member.

surfaces of the walls, floors, and ceilings of the Units and any improvements and betterments installed by the Parties or former Parties. All policies obtained by the Parties shall waive the right to subrogation against the Center and its insurance carriers.

27. OTHER MAINTENANCE. This First Amendment to Intergovernmental Agreement provides for the operation, maintenance, and repair of all items of real and personal property purchased from the proceeds of the COPs and of all fixtures on the Center, the costs of which are provided for in the CAM charges. Each Party at their respective expense shall be responsible for the operation, maintenance, and repair within their respective areas of exclusive possession of all items of personal property not purchased from the proceeds of the COPs.

28. PERSONNEL. No Party to this First Amendment to Intergovernmental Agreement shall be required to pay any compensation of whatsoever kind or nature to any other Party or to any other Party's personnel for services rendered hereunder. Nothing in this First Amendment to Intergovernmental Agreement shall be interpreted or construed to place the personnel of any Party under the control or employment of any other Party. Each Party remains responsible for all pay, entitlement, benefits, employment decisions, and workers' compensation matters and liabilities, for its own personnel. Accordingly, any and all personnel hired by the Property Manager in order to fulfil their obligations hereunder shall solely and exclusively be employees of the Property Manager. To the extent that the Property Manager is entitled to reimbursement for its costs and expenses incurred in compensating and funding benefits for any such employee, the sole and exclusive method for the Property Manager to recover its *pro rata* share of these costs and expenses is through the CAM Charge process as set forth above.

29. CENTER USE FEES. The Property Manager may charge fees to other persons or entities, which persons or entities shall only be non-profit or not-for-profit persons or entities, inclusive of other governmental entities, for the occasional and intermittent use of the Common Areas for meeting purposes only, including the hearing room, of the Center. Under no circumstances shall the Property Manager structure any such matter to express or imply the creation of a real estate interest in the Center. Any such matter shall be structured as a purely contractual matter, and any and all such contracts shall be by and between the Property Manager and the person or entity so desiring to use the Common Areas. The Property Manager shall require proof of general liability insurance from the person or the entity as a condition precedent to the use of the Common Areas. Under no circumstances shall the Property Manager suffer or permit said person or entity to have liquor on the Center without first obtaining the necessary applicable liquor licensing or permitting of the appropriate local government and written permission of the CAM Board. The Property Manager shall keep and maintain any and all such fees and other revenues generated from such use in the above-referenced CAM Reserve Fund.

30. CONCESSIONAIRES: The Property Manager may enter into agreements with persons or entities for the operation of concession businesses, including vending services, that primarily provide food and beverage services. Under no circumstances shall the Property



Manager structure any such matter to express or imply the creation of a real estate interest in the Center. Any such agreement shall be structured as a purely contractual matter, and any and all such contracts shall be by and between the Property Manager and the person or entity so desiring to establish such a concession business. The Property Manager shall require any such concessionaire to have commercial general liability insurance of the type and in the amounts of coverage as consistent with the insurance provisions of this First Amendment to Intergovernmental Agreement, and naming the Property Manager, the CAM Board, Regional Building Department<sup>10</sup>, the County, and the City as additional insureds and/or loss payees. Under no circumstances shall the Property Manager suffer or permit said person or entity to have liquor on the Center without first obtaining the necessary applicable liquor licensing or permitting of the appropriate local government and written permission of the CAM Board. The Property Manager shall keep and maintain any and all such fees and other revenues generated from such concession businesses in the above-referenced CAM Reserve Fund.

31. TRANSFER. No Party to this First Amendment to Intergovernmental Agreement, including the Property Manager, may transfer, sell, alienate, assign, sublet, or otherwise dispose of all or part of the Center during the term of this First Amendment to Intergovernmental Agreement without the prior written consent of all the Parties hereto, and such transfer, sale, alienation, lease, assignment, sublease, or other conveyance shall only be to another governmental entity and not to a nonprofit or for-profit entity. In considering whether to approve the transfer, sale, alienation, assignment, subletting, or otherwise of the Center, the Parties shall determine whether or not such approval would impair certain rights, protections, duties, or responsibilities as afforded specifically to local governments and/or public properties or buildings only. Each Unit and its appurtenant interest in the Common Areas shall comprise one Unit, shall be inseparable, and may be transferred, sold, alienated, assigned, sublet, or otherwise disposed of only as one Unit, unless the transferee(s) is/are the remaining Parties in accordance with Paragraph 34 below. Any attempted transfer of a Unit's appurtenant interest in the Common Areas shall be void unless the Unit to which that interest is allocated is also transferred.

32. SUBDIVISION AND COMBINATION OF UNITS.

(a) *Subdivision of Units.* Only Parties have the ability to subdivide their Unit. This subdivision provision does not apply to sale of a Unit, and thus, the Right of First Refusal in Paragraph 34 below does not apply. So long as a Party has complied with the provisions of sub-Paragraph 32(c) below and Paragraph 33 below, it shall have the right to subdivide all or any portion of their Unit to create additional Units and/or Common Areas. The costs incurred for legal, architectural, and engineering fees and all other costs related to the creation of additional Units and/or Common Areas shall be solely the obligation of the Party undertaking such action. Upon the subdivision, creation, or expansion of any Unit, the Allocated Interest(s) shall be reallocated in accordance with Paragraph 3 above. As set forth in Paragraph 3 above, in no event shall such actions dilute the vote of a Party not undertaking the subdivision.

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<sup>10</sup> Pikes Peak Regional SE Facilities, LLC, a Colorado limited liability company, or another separately organized, closely affiliated entity with Pikes Peak Regional Building Department, as its sole member.

(b) *Combination of Units.* So long as a Party has complied with the provisions of sub-Paragraph 32(c) below and Paragraph 33 below, it shall have the right to physically combine all or any portion of their Unit with that of another Unit. The costs incurred for legal, architectural, and engineering fees and all other costs related to the combination of Units shall be borne by the Party undertaking such action. Upon the combination of any Units, the Allocated Interest(s) shall be reallocated in accordance with Paragraph 3 above. As set forth in Paragraph 3 above, in no event shall such actions dilute the vote of a Party not undertaking the combination.

(c) *Procedure for Combination or Subdivision of Unit(s).* In order to combine or subdivide Units, a Party shall provide written notice to all other Parties (collectively, “Reviewing Parties”), which shall include: (a) evidence sufficient to the Reviewing Parties that the proposed combination or subdivision has complied with all local rules and ordinances to the extent applicable; (b) the proposed reallocation or recalculation of the Allocated Interest(s) (as set forth in Paragraph 3 above, in no event shall such actions dilute the vote of a Party not undertaking the subdivision or combination); (c) the proposed form of amendments to this First Amendment to Intergovernmental Agreement, if any, and Exhibit B, as may be necessary to show the Unit(s) and/or Common Areas that are created and their dimensions and identifying numbers; and (d) such other information or documentation reasonably requested by the Reviewing Parties or the CAM Board including as set forth in Paragraph 33 below. The Reviewing Parties shall have the right to disapprove a request for the combination or subdivision if the Reviewing Parties reasonably demonstrate that such action will materially and adversely affect any of their rights herein or that such action will materially and adversely affect the Center. If the Reviewing Parties fail to respond to a request for the combination, subdivision, creation, or expansion within sixty (60) days after submittal, then the request shall be deemed approved by the Reviewing Parties.

33. ALTERATIONS AND REQUIREMENT FOR APPROVAL. Except as otherwise provided in this First Amendment to Intergovernmental Agreement, no alterations to the Common Areas, the structural components of a Unit, or to the exterior of any Unit or its allocated Limited Common Areas shall be made unless first approved in writing by the CAM Board, collectively “Reviewable Improvements”.

(a) *Requirement for Approval.* No Reviewable Improvements shall be commenced or undertaken until plans and specifications with respect thereto satisfactory to the Property Manager and the CAM Board, showing the proposed Reviewable Improvements, site location of such Reviewable Improvements, complete building plans and material specifications, and all exterior elevations, materials and colors, grading, drainage, erosion control, easements and utilities, and such other information as may be reasonably requested by the CAM Board have been submitted to and approved in writing by the CAM Board. All Reviewable Improvements shall be constructed only in accordance with approved plans by licensed and/or registered contractors. If the CAM Board has not responded to a request for approval within thirty (30) days of submission of all information

requested by the Party, then the Party's request shall be deemed approved. Non-structural improvements and other alterations that are completely within an existing Unit may be undertaken without such approval, by and at the cost of the Party. All such improvements shall be insured by and at the cost of the Party.

(b) *No Liability.* If any Party shall cause any material to be furnished to their Unit or their Limited Common Areas, or any labor to be performed therein or thereon, no Party of any other Unit, nor the Center, nor any Limited Common Areas shall under any circumstances be liable for or encumbered with the obligation for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Party causing it to be done, and such Party shall be solely responsible to contractors, laborers, materialmen, and other persons furnishing labor or materials.

#### 34. SALE OF UNIT.

(a) *Right of First Refusal.* This right of first refusal applies only to the sale of a Unit or partial Unit and not to subdivision of a Unit. No Party may transfer, sell, alienate, lease, assign, or otherwise dispose of all or any part of their interest in their Unit to another Party or Parties or to another governmental entity not a Party to this First Amendment to Intergovernmental Agreement whether voluntarily, involuntarily, or by operation of law, or at judicial sale or otherwise, without first offering in writing the same to the remaining Parties.

(i) Within sixty (60) days after the receipt of a written offer, the remaining Parties may, in writing, approve or reject as a right of first refusal for themselves such offer. If any of the Parties accept such offer as a right of first refusal, they shall acquire either the entire interest offered or a portion of the offered interest and close thereon no later than one-hundred twenty (120) days after acceptance.

(ii) Any portion of the selling Party's interest not so purchased shall be re-offered proportionately to those other Parties who purchased during the first offer and they shall have thirty (30) days to accept, and this procedure shall be repeated until the entire offer is accepted or until no Party accepts during an offer.

(iii) All such offers of right of first refusal shall be at a price and upon terms no less favorable than those which the selling Party would receive from such sale, assignment, or other disposition. Such price and terms and the name of the proposed transferee shall be set forth in a written offer of right of first refusal signed by the selling Party and delivered to the other Parties.

(iv) Such offer of right of first refusal and notice of acceptance of the same shall be deemed to constitute a valid and enforceable Purchase and Sale Agreement of the ownership interest. Accepting Parties, in their proportionate amount, shall consummate the

purchase and sale of such interest at the price and on the terms of said offer with the selling Party no later than one hundred twenty (120) days after acceptance.

(v)The selling Party may, at any time within sixty (60) days from the expiration of the sixty (60) day right of first refusal period, dispose of any unaccepted interest to the proposed transferee at a price and on terms not less favorable to the selling Party than those set forth in the offer to the other Parties, and if the interest is not so disposed of within said period, it shall again become subject to the provisions of this Paragraph.

(vi)In the event the entire interest offered for sale as a right of first refusal is not purchased by the remaining Parties as provided above, then, in such event, and notwithstanding the provisions of this Paragraph to the contrary, the selling Party, rather than fractionalizing their interest, may withdraw the offer of right of first refusal and proceed to sell their entire interest to the proposed other governmental entity not a Party to this First Amendment to Intergovernmental Agreement transferee provided written notice thereof is given within fifteen (15) days following the final re-offer to the other Parties as provided above, and provided said sale is consummated within sixty (60) days after the giving of such notice at a price and on terms no less favorable to the selling Party than those set forth in the offer to the other Parties.

(vii)The foregoing provisions of this Paragraph shall also apply to a transfer of an ownership interest taking effect at a dissolution.

(b) *Non-Acceptance of Transferee.* In the event the non-selling Parties refuse to buy the selling Party's interest in the Unit hereinabove provided, the other governmental entity purchaser of such interest, shall either agree to an amendment of this First Amendment to Intergovernmental Agreement and be added as a Party or shall agree in writing to be bound by the terms of this First Amendment to Intergovernmental Agreement as may be determined and approved by the Parties.

35. ACCESS TO AND ALTERATIONS OF THE CENTER. The Property Manager shall have the right, at reasonable mutually agreed times, and upon prior notice and approval of the Party or Parties, except in the case of an emergency in which case no prior notice shall be required, to enter the Center to examine and inspect the same, or to make such repairs, additions, or alterations as it may deem necessary or proper for the safety, improvements, or preservation thereof, and the Property Manager shall at all times have the right, with the Parties' written consent, to make such alterations or changes to other portions of the Center as it may from time to time deem necessary or desirable.

36. NO WAIVER. The failure of the Property Manager or the Parties to insist upon the strict performance of any provision of this First Amendment to Intergovernmental Agreement, or the failure of the Property Manager or the Parties to exercise any right, option or remedy reserved, shall not be construed as a waiver for the future exercise of any such provision, right, option or remedy, or as a waiver for the subsequent breach thereof. The consent or approval by the Property Manager or the CAM Board of any act by the Parties

requiring the Property Manager's or the CAM Board's consent or approval shall not be construed to waive or render unnecessary the requirement for the Property Manager's or the CAM Board's consent or approval of any subsequent similar act by the Parties. The receipt by the Property Manager of any charges with knowledge of a breach of any provision of this First Amendment to Intergovernmental Agreement shall not be deemed to have been waived unless such waiver shall be in writing signed by both Parties.

37. **DEFAULT AND REMEDIES.** In the event of any default by the Property Manager or the Parties of any terms, covenants, or agreements contained in this First Amendment to Intergovernmental Agreement, the party declaring default shall notify the defaulting party, in writing, specifying the default; and the defaulting party shall have ten (10) calendar days after receipt of written notice in which to remedy the default. If the default is a condition or situation which cannot be cured within a ten (10) calendar day period, the parties may agree to an extension of time during which the party in default shall diligently proceed with the correction thereof. If any default by the Property Manager or the Parties is not remedied within the above stated time limit, or a mutually agreed extension of the above stated time limit, the Party not in default may declare this First Amendment to Intergovernmental Agreement terminated and/or may pursue any and all remedies and causes of action available at law or in equity, including, but not limited to, the right to sue for damages.

38. **AMENDMENT OR MODIFICATION.** The Property Manager and the Parties acknowledge and agree that neither has relied upon any statements, representations, agreements or warranties, except such as are expressed herein, and that no amendment or modifications of this First Amendment to Intergovernmental Agreement shall be valid or binding unless expressed in writing and executed by all of the Parties hereto in the same manner as the execution of this First Amendment to Intergovernmental Agreement.

39. **ADDITIONAL AGREEMENT(S):** As soon as practicable after the execution of this First Amendment to Intergovernmental Agreement by the Parties, the Parties shall mutually cooperate with each other in the development in the form of further agreements, as may be necessary, which should substantially incorporate the terms and conditions of this First Amendment to Intergovernmental Agreement. Upon written agreement of the Parties, the Center may be condominiumized to reflect the ownership interests of the Parties. Should the Parties reach such an agreement, they shall mutually cooperate with each other in the development of a condominium declaration and other supporting documents and local land use approvals that are similar to a standard condominiumization suitable for public entities.

40. **BINDING EFFECT:** It is agreed that this First Amendment to Intergovernmental Agreement shall be binding upon the heirs, successors interests, and/or assigns to the Parties hereto.

41. **DECLARATION; SUBMISSION:** The Parties hereby declare that the Center shall be held, sold, and conveyed subject to the covenants, restrictions, and easements, if any, contained

herein which shall run with the land and be binding on all parties and heirs, successors, and assigns of parties having any right, title, or interest in all or any part of the Center.

42. RELATIONSHIP OF PARTIES. Nothing contained in this First Amendment to Intergovernmental Agreement shall be deemed to constitute or be construed or implied to create the relationship of principal and agent, partnership, or joint venture.

43. NOTICE(S): Any notice, request, demand, or statement required or permitted herein, or subsequent agreement(s), shall be in writing and shall be construed to have been duly given when sent by registered or certified mail (provided that invoices may be sent by first-class mail or e-mail), addressed as follows, unless another address has been designated, in writing, by the party entitled to receive the same. In the event of hand-delivery, notice must be given, as follows:

Regional Building Department<sup>11</sup>: Pikes Peak Regional Building Department  
Attn: Regional Building Official  
2880 International Circle  
Colorado Springs, Colorado 80910

With a copy to: Pikes Peak Regional Building Department  
Attn: Legal Department  
2880 International Circle  
Colorado Springs, Colorado 80910

If to the Finance Department: Pikes Peak Regional Building Department  
Attn: Finance Department  
2880 International Circle  
Colorado Springs, Colorado 80910  
E-mail: ap@pprbd.org

County: El Paso County  
Attn: County Administrator  
200 South Cascade Avenue  
Colorado Springs, Colorado 80903

With a copy to: El Paso County  
Attn: County Attorney  
200 South Cascade Avenue  
Colorado Springs, Colorado 80903

If to the Finance Department: El Paso County  
Attn: El Paso County Financial Services

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<sup>11</sup> Also, c/o Pikes Peak Regional SE Facilities, LLC, a Colorado limited liability company, or another separately organized, closely affiliated entity with Pikes Peak Regional Building Department, as its sole member, if applicable.

200 South Cascade Avenue  
Colorado Springs, Colorado 80903  
E-mail: [NikkiSimmons@elpasoco.com](mailto:NikkiSimmons@elpasoco.com)

City: City of Colorado Springs  
Attn: City Clerk  
City Administration Building  
30 S. Nevada Avenue, Suite 101  
P.O. Box 1575 Mail Code \_\_\_\_\_  
Colorado Springs, Colorado 80901-1575

With copies to: Deputy Chief of Staff, Operations  
City of Colorado Springs  
City Administration Building  
30 S. Nevada Avenue, Suite 604  
Colorado Springs, Colorado 80903

Office of the City Attorney  
City of Colorado Springs  
City Administration Building  
30 S. Nevada Avenue, Suite 501  
P.O. Box 1575 Mail Code 510  
Colorado Springs, Colorado 80901-1575

If to the Finance Department: Finance Department  
City of Colorado Springs  
City Administration Building  
30 S. Nevada Avenue, Suite 202  
Colorado Springs, Colorado 80903  
E-mail: [Tracy.Peters@ColoradoSprings.Gov](mailto:Tracy.Peters@ColoradoSprings.Gov)

44. SEVERABILITY AND CAPTIONS: The Parties hereto agree that if any provision of this First Amendment to Intergovernmental Agreement should contravene or be held illegal, invalid, or unenforceable under the laws of the State of Colorado, such contravention, illegality, invalidity, or unenforceability shall not invalidate the whole First Amendment to Intergovernmental Agreement or its subsequent agreements or amendments, but it shall be construed as though not containing that particular provision, and the right and obligations of the Parties shall be construed and in force accordingly. The caption(s) of each paragraph hereto are added as a matter of convenience and shall be considered to be of no effect in the construction of any provision or provisions of this First Amendment to Intergovernmental Agreement.

45. GOVERNING LAW; JURISDICTION: This First Amendment to Intergovernmental Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Each Party expressly and irrevocably agrees and consents that any suit, action,

or proceeding arising out of or relating to this First Amendment to Intergovernmental Agreement and the transactions contemplated therein may be instated by any Party hereto in any State court sitting in El Paso County, State of Colorado, or, if federal jurisdiction exists, in the Federal Court sitting in the City and County of Denver, State of Colorado, and by the execution and delivery hereto, expressly waives any objection which it may have now or hereafter to the laying of the venue of any suit, action, or proceeding.

46. COUNTERPARTS: This First Amendment to Intergovernmental Agreement may be executed in several counterparts, each of which shall be considered an original, but all of which together constitute one and the same instrument.

47. INTENT OF AGREEMENT: This First Amendment to Intergovernmental Agreement is intended to describe the rights and responsibilities of and among the Parties and is not intended to, and shall not be deemed to, confer any rights upon any persons or entities not named as parties, nor to limit in any way the powers and responsibilities of the Parties or any other party not a party thereto.

48. ASSIGNABILITY: The Parties agree that no Party shall have the right to assign or transfer any of the rights and obligations of this First Amendment to Intergovernmental Agreement, or any ownership share eventually determined, without the prior written consent of the other Parties AND IN ACCORDANCE WITH THE REQUIREMENTS OF Paragraph 34 above, as applicable. In the event that such consent is granted, this First Amendment to Intergovernmental Agreement and the rights and obligations created thereby shall be binding upon and inure to the benefit of the assigning Party's respective heirs, successors, and assigns.

49. ENTIRE AGREEMENT: This First Amendment to Intergovernmental Agreement, including any Exhibits, sets forth the entire agreement between the Parties with respect to the Center.

50. REPRESENTATIONS AND WARRANTIES: Each Party to this First Amendment to Intergovernmental Agreement represents and warrants to the other Parties that (a) it has all requisite power(s) and authority to enter into and perform the obligations under this First Amendment to Intergovernmental Agreement, and (b) it has had the opportunity to fully review this First Amendment to Intergovernmental Agreement with its legal counsel.

51. RECORDING: The Original Intergovernmental Agreement and this First Amendment to Intergovernmental Agreement shall be recorded in the records of the El Paso County Clerk and Recorder's Office.

[THIS SPACE INTENTIONALLY LEFT BLANK:

CONTINUED ON FOLLOWING PAGES]



IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to Intergovernmental Agreement to be executed in their names and their seals affixed, all by the proper officers duly authorized as of the date last written below, but actual execution having been completed on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

PIKES PEAK REGIONAL BUILDING  
DEPARTMENT

By: \_\_\_\_\_

Chair of the Regional Building Commission

Name:

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Executive Administrative Assistant/  
Secretary of Regional Building Commission

APPROVED AS TO FORM:

\_\_\_\_\_  
Regional Building Attorney

AGREED AND CONSENTED TO:

PIKES REGIONAL BUILDING SE FACILITIES, LLC,  
A Colorado limited liability company

By: \_\_\_\_\_

Manager

Name:

Dated: \_\_\_\_\_

THE BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY,  
COLORADO

By: \_\_\_\_\_  
Chair  
Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Deputy County Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney

CITY OF COLORADO SPRINGS

By: \_\_\_\_\_

Mayor

Name: Yemi Mobolade

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**EXHIBIT A  
TO  
FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT**

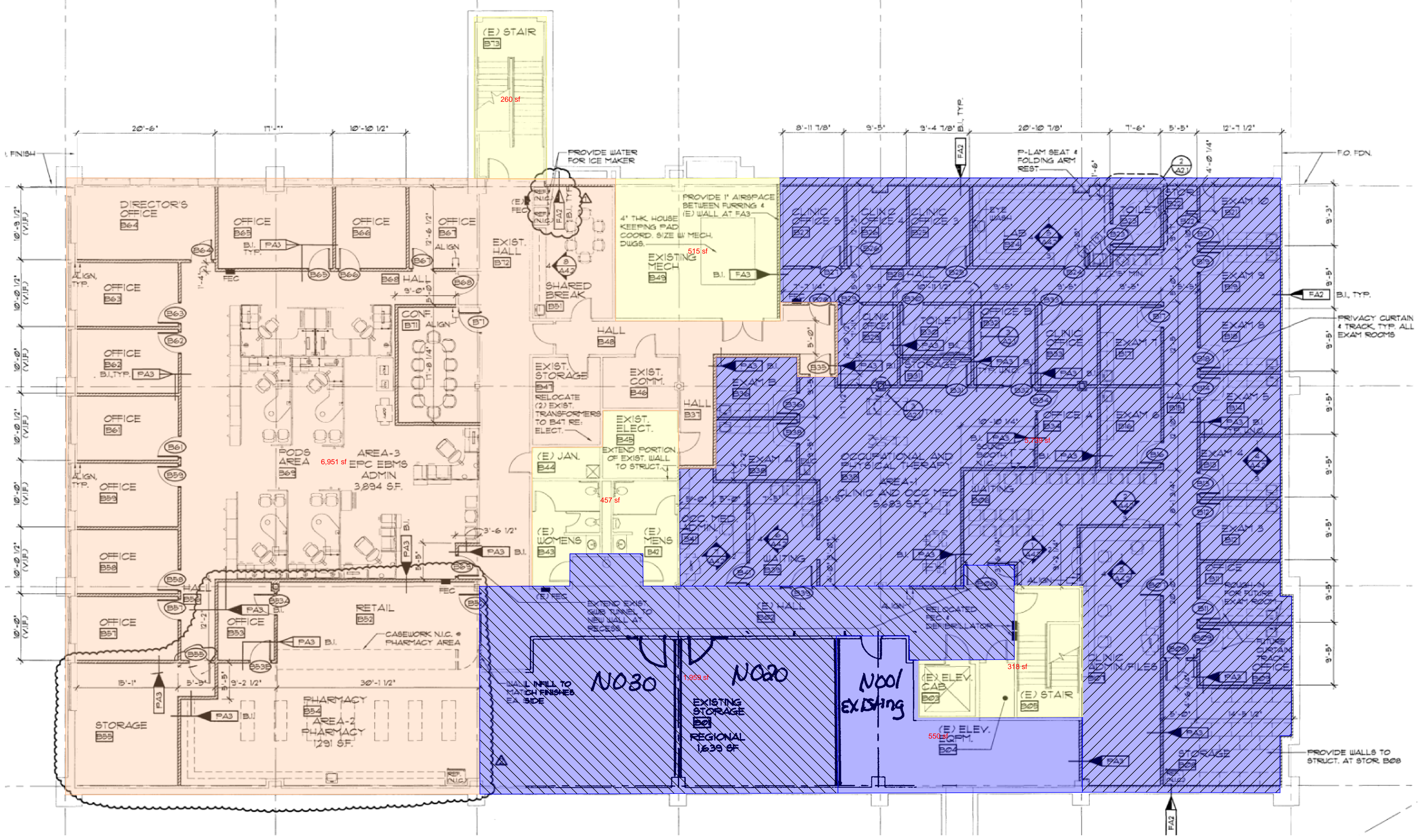
(Allocated Interests in Common Charges and Common Areas)

Unit #	Interior Square Footage of Unit	Allocated Interest in Common Expenses and Common Areas
1	53,230 square feet	48%
2	34,914 square feet	31%
3	23,615 square feet	21%
Total:		100%

NOTE: The above square footage may differ from the square footage as measured for sales or taxation purposes.

**EXHIBIT B**  
**TO**  
**FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT**

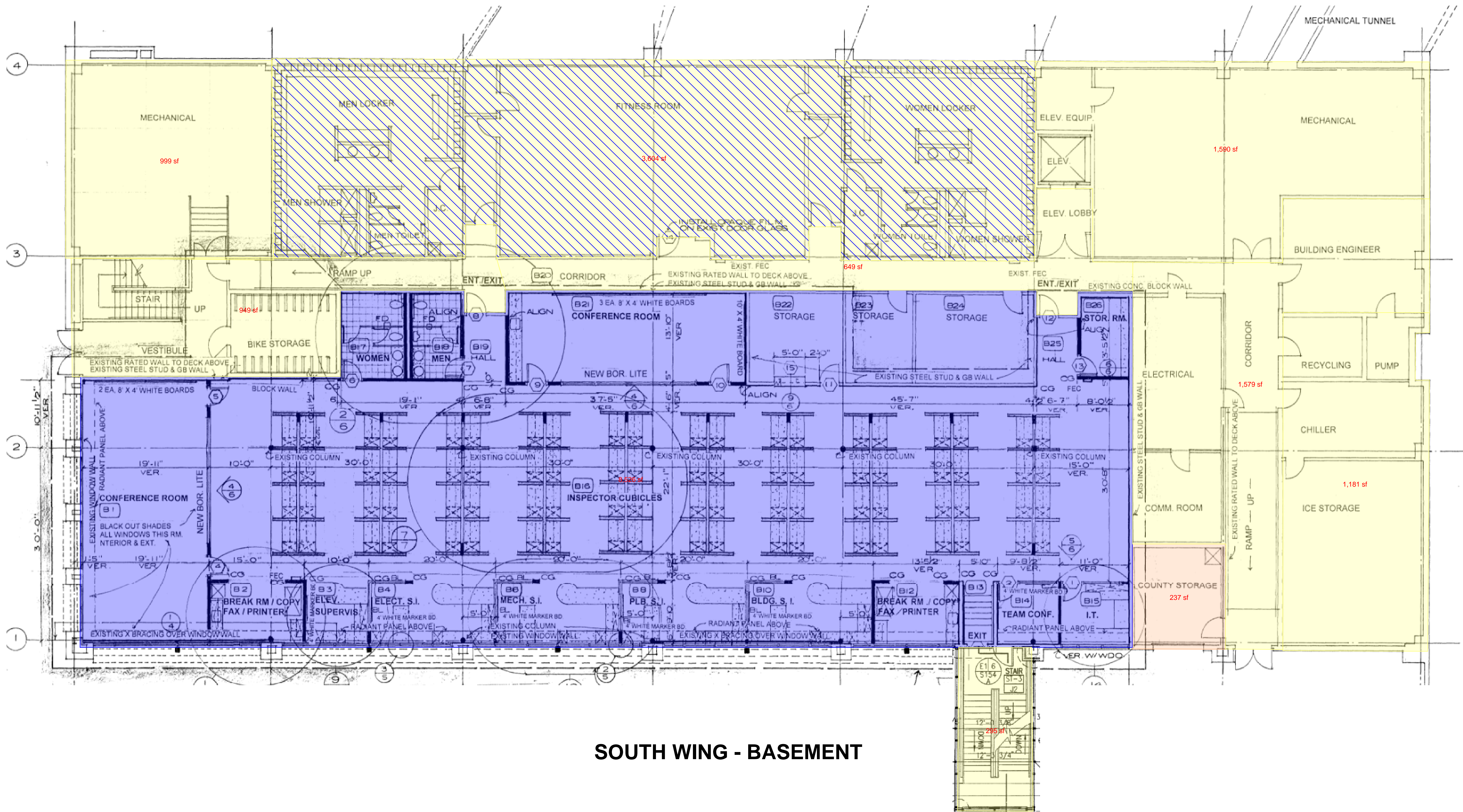
(Common Areas: General Common Areas and Limited Common Areas)



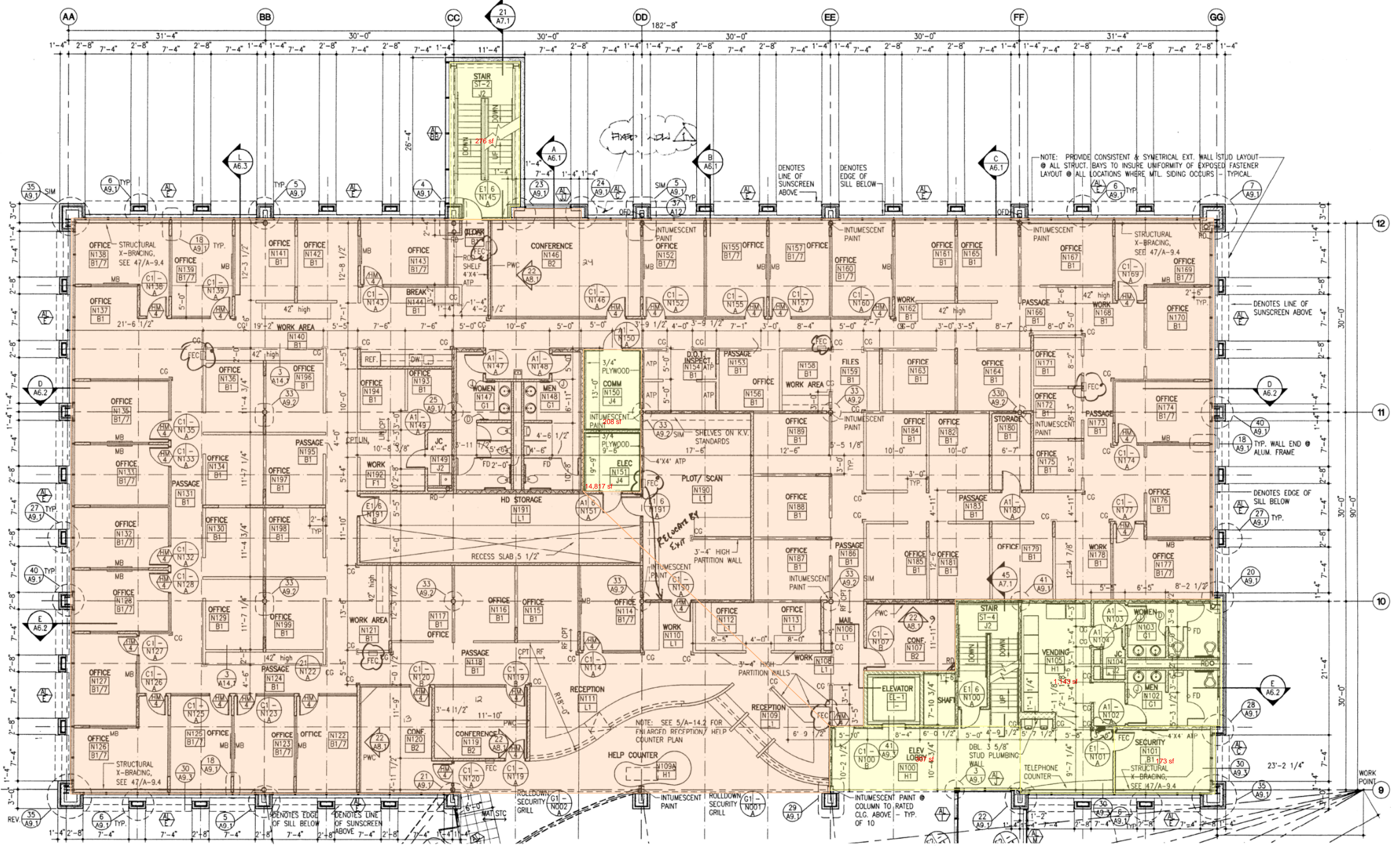
**NORTH WING - BASEMENT**

**LEGEND**

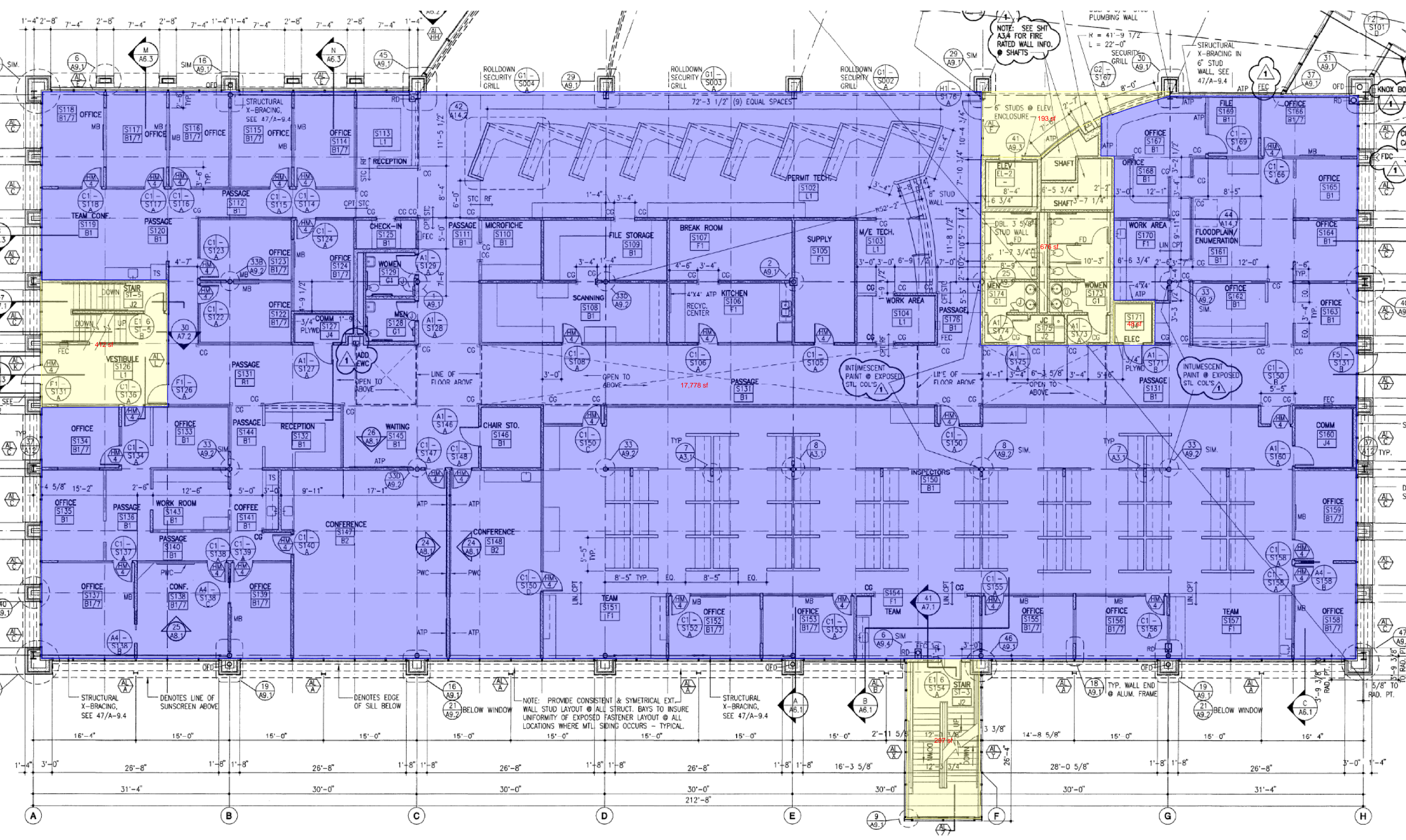
PIKES PEAK REGIONAL BUILDING DEPARTMENT
EL PASO COUNTY
CITY OF COLORADO SPRINGS and COLORADO SPRINGS UTILITIES
SHARED COMMON AREA



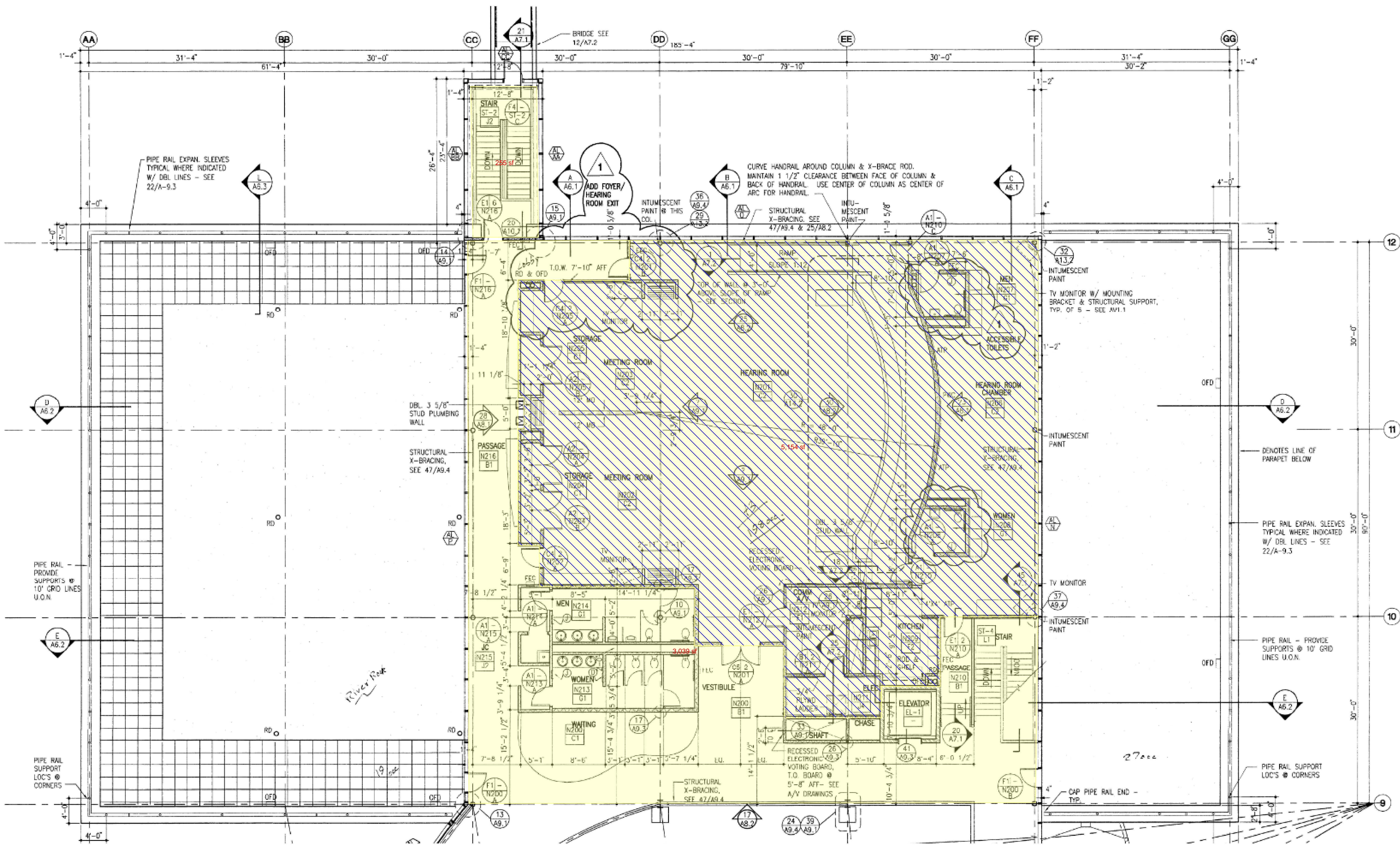
**SOUTH WING - BASEMENT**



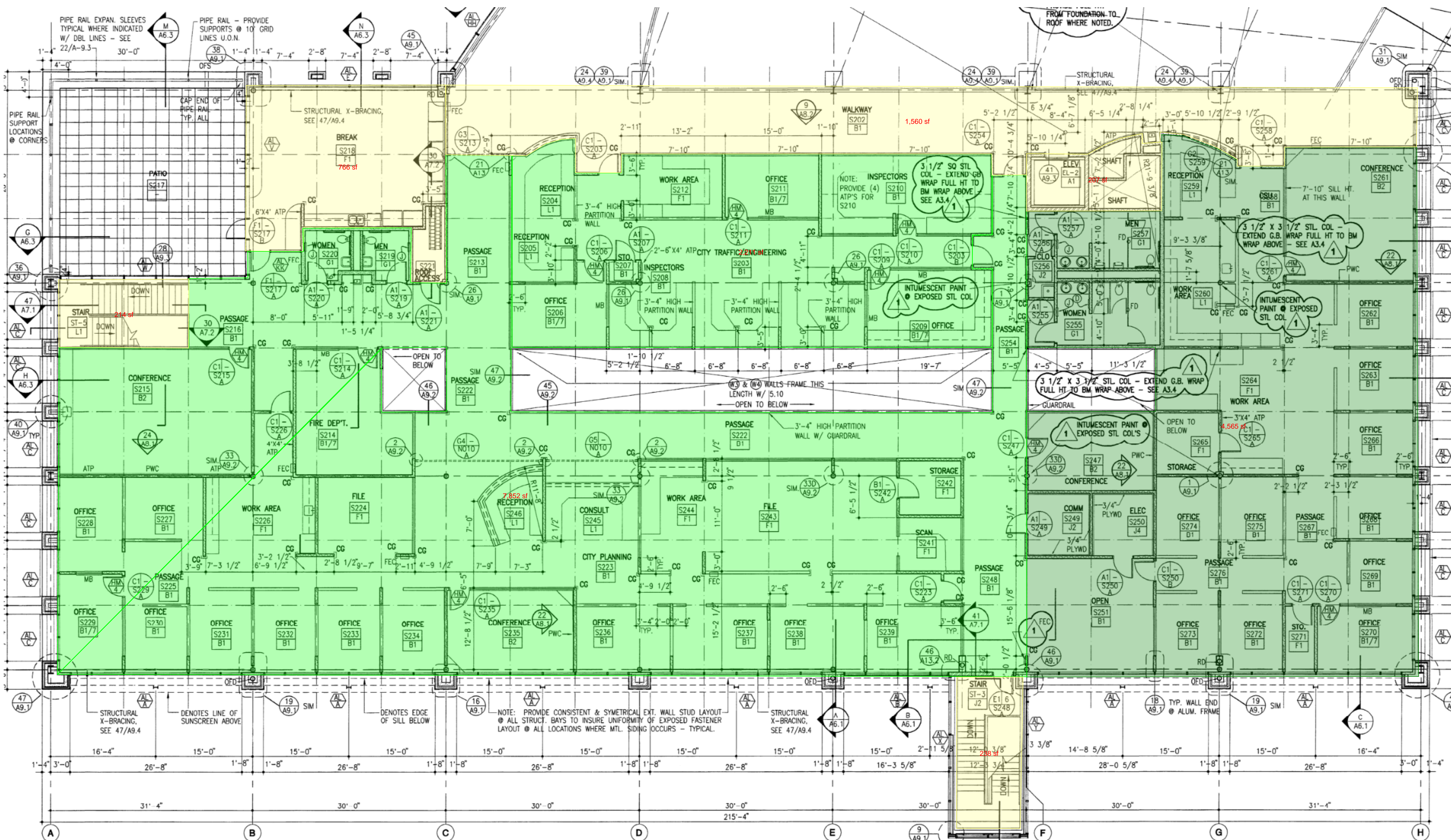
**NORTH WING - GRADE LEVEL**



**SOUTH WING - GRADE LEVEL**

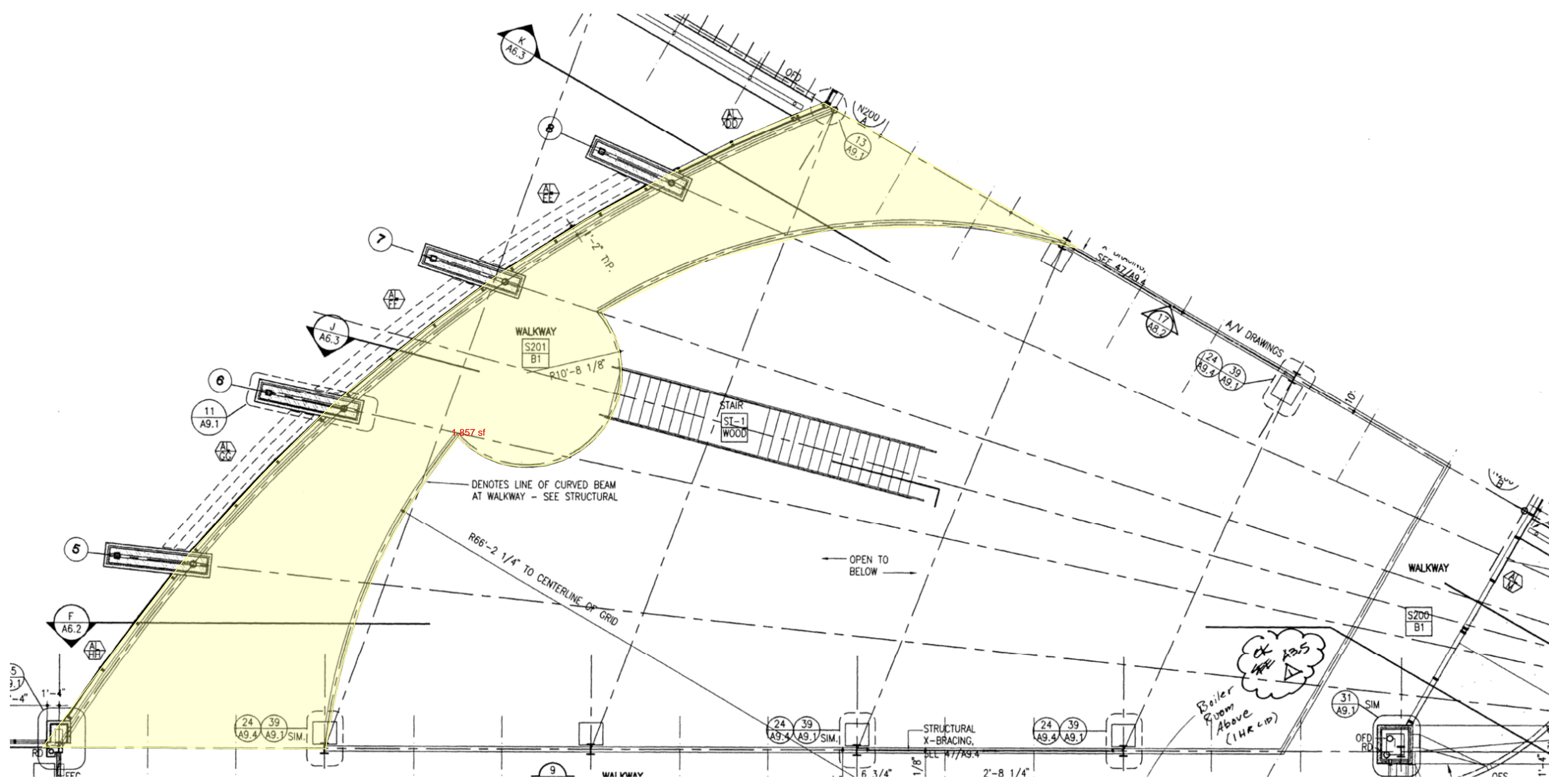


**NORTH WING - UPPER LEVEL**

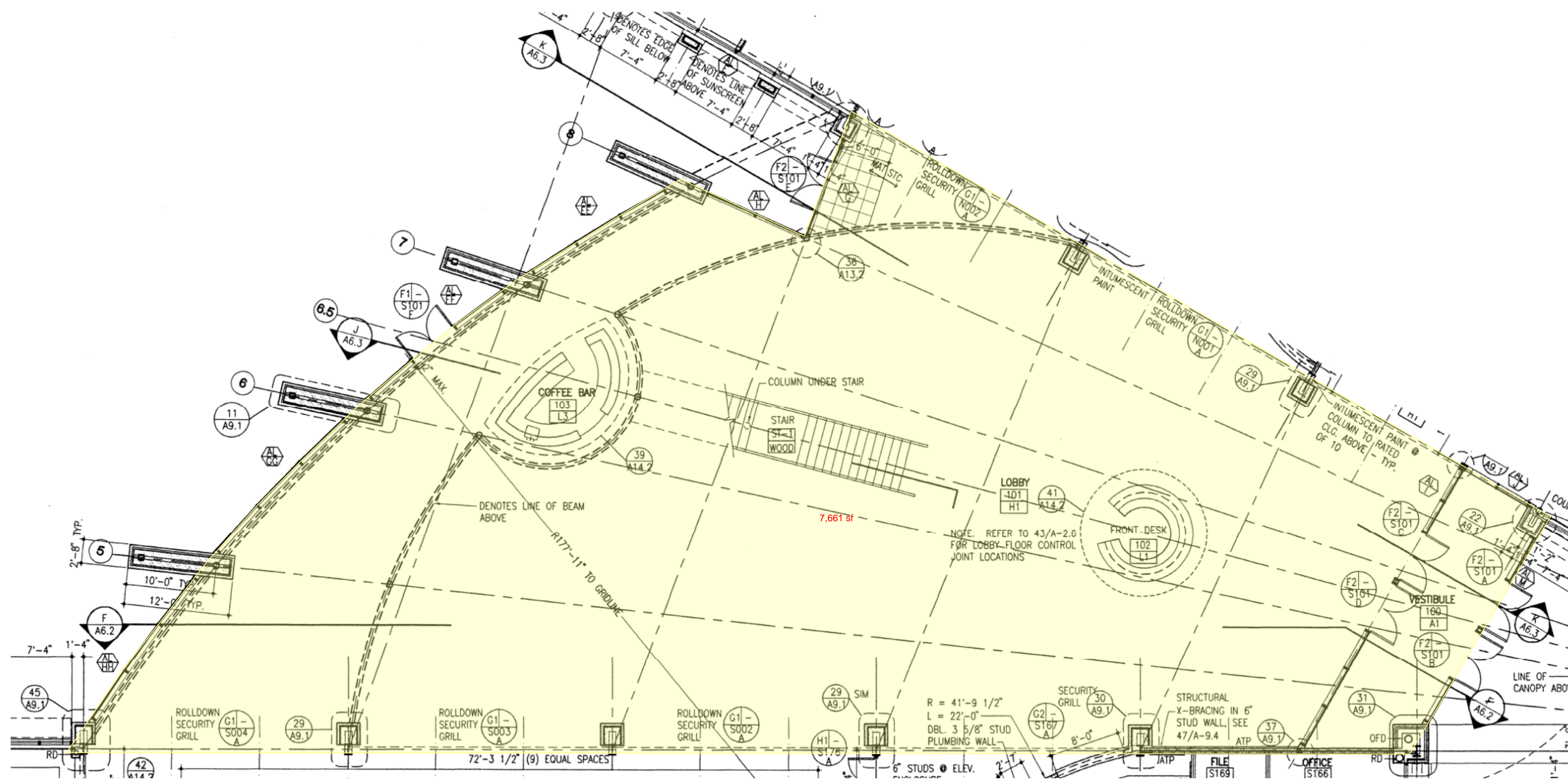


**SOUTH WING - UPPER LEVEL**

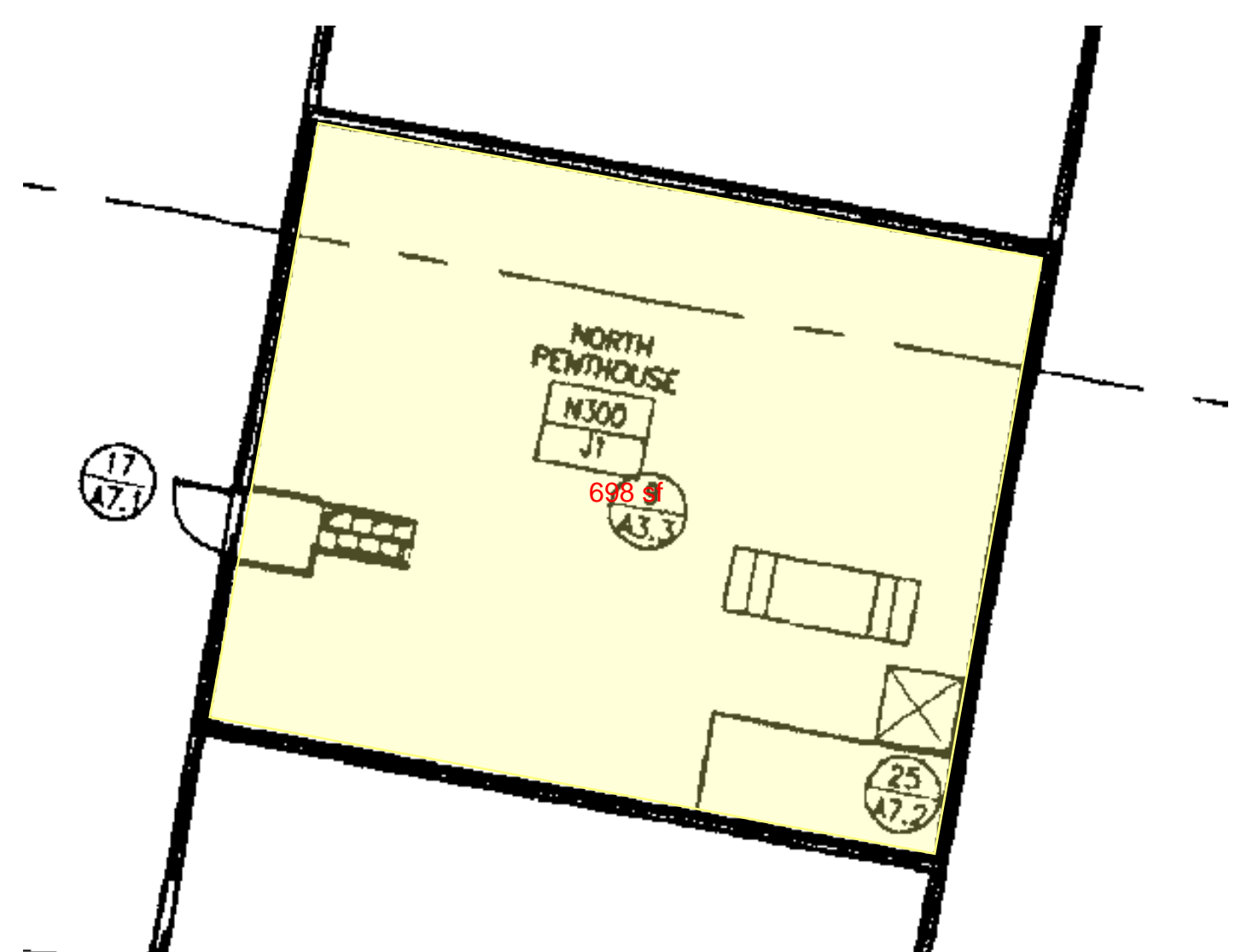




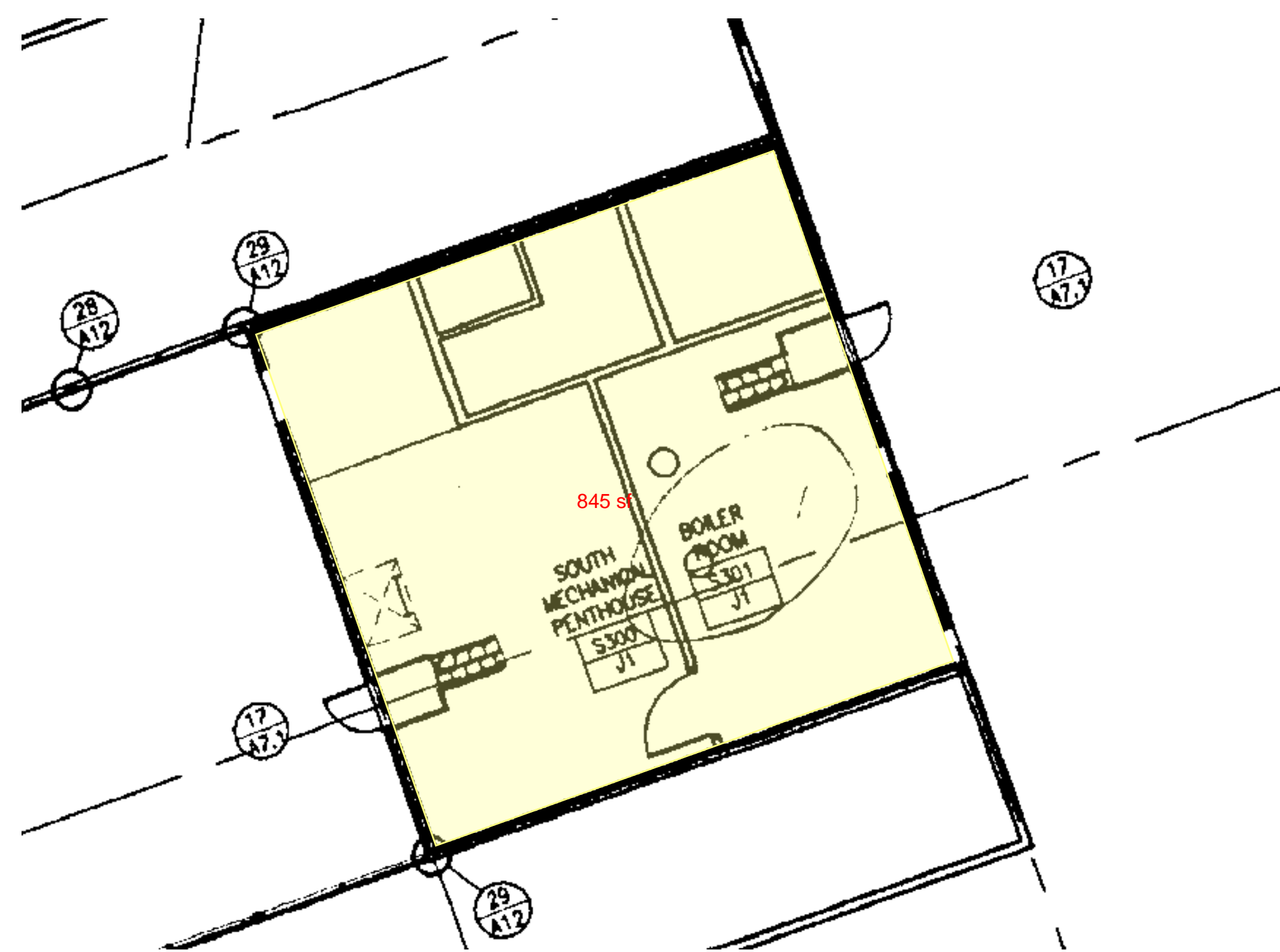
**ATRIUM - UPPER LEVEL**



**ATRIUM - MAIN LEVEL**

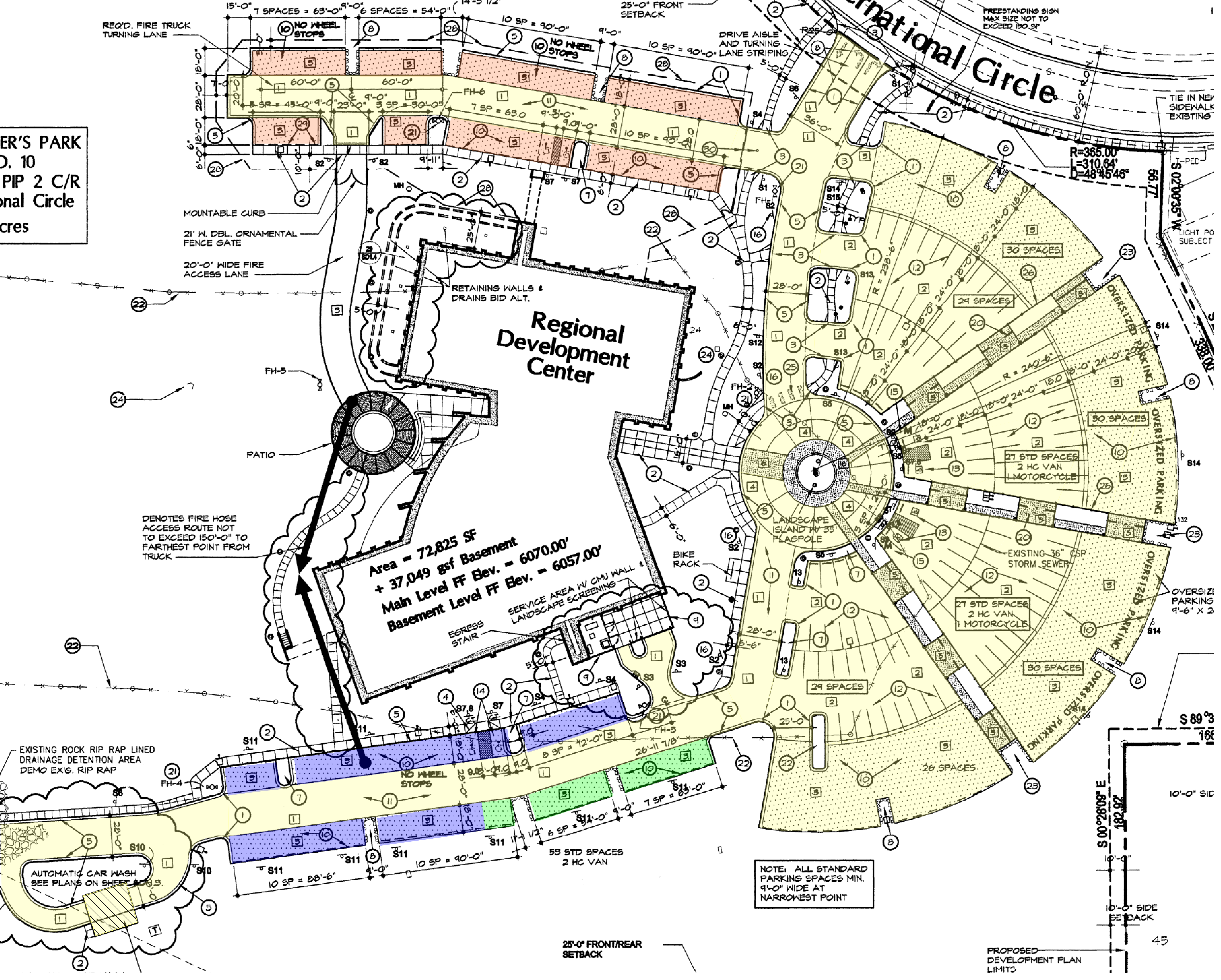


**NORTH PENTHOUSE**



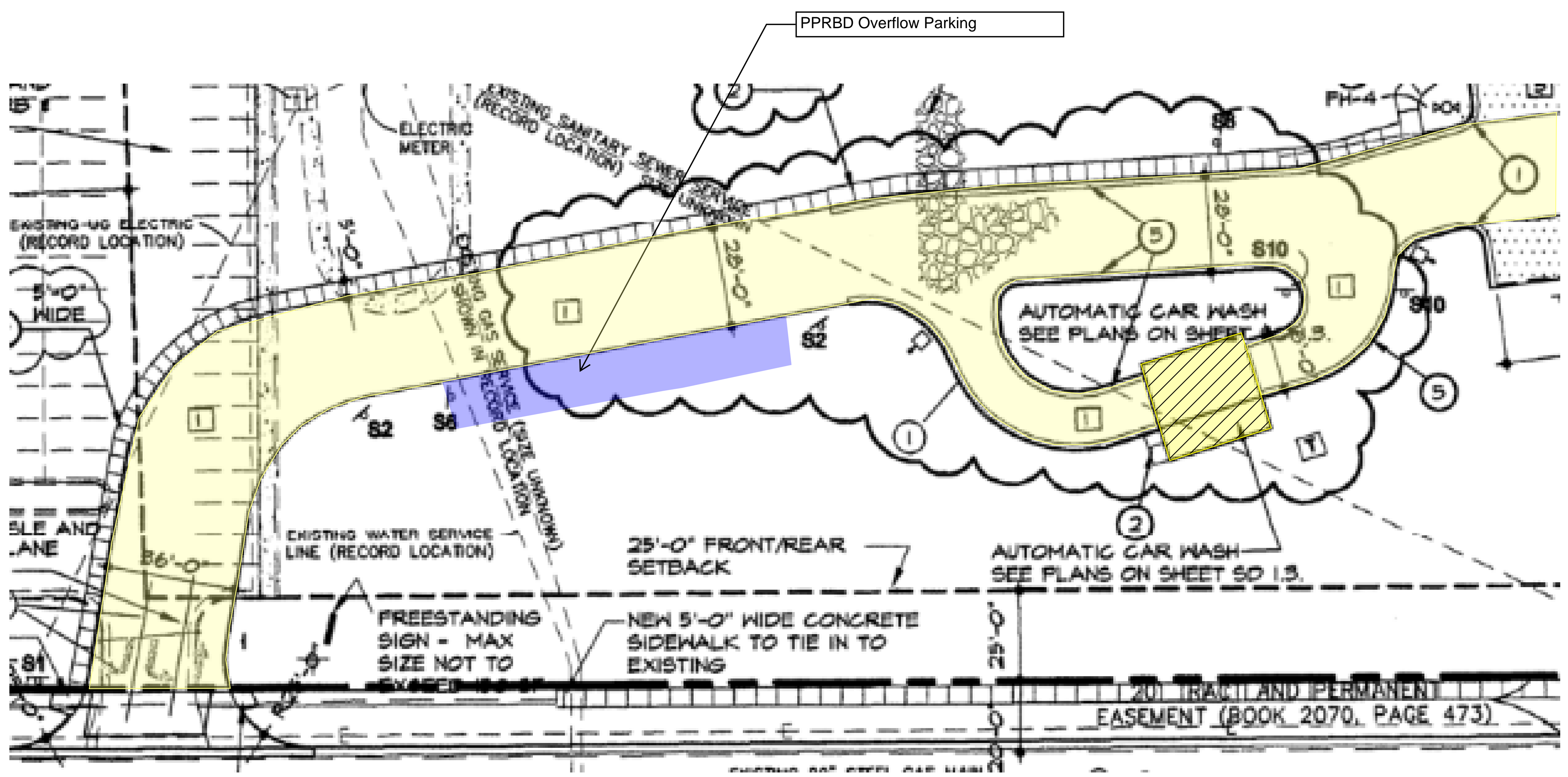
**SOUTH PENTHOUSE**

ER'S PARK  
 D. 10  
 PIP 2 C/R  
 nal Circle  
 cres



**LEGEND**

- PIKES PEAK REGIONAL BUILDING DEPARTMENT
- EL PASO COUNTY
- CITY OF COLORADO SPRINGS and COLORADO SPRINGS UTILITIES
- SHARED COMMON AREA



**Pikes Peak Regional Development Review Center Area Summary**

**Common Areas & Occupancy Total**

Agency	Wing	Level	Calc'd S.F.	Exhibit B	Difference	% Difference
Pikes Peak Regional Building	North	Basement	8,248	8,420	-172	-2.1%
	South	Basement	8,526	8,557	-31	-0.4%
	North	Main Level	0	0	0	0.0%
	South	Main Level	17,778	17,778	0	0.0%
	North	Upper Level	0	0	0	0.0%
	South	Upper Level	0	0	0	0.0%
<b>TOTAL Pikes Peak Regional Building</b>			<b>34,552.00</b>	<b>34,755.00</b>	<b>-203.00</b>	<b>-0.6%</b>

Percentage Occupancy per Sub-Sub Lease	Resulting % Occupied				
Pikes Peak Regional Building	47.63%	48%			
El Paso County	31.24%	31%			
City of Colorado Springs	21.13%	21%			
<b>Comman Area Total less Hearing Room</b>		<b>Calc'd S.F.</b>	<b>Exhibit B</b>	<b>Difference</b>	<b>% Difference</b>
		33,468	34,686	-1,218	-3.6%

Agency	Wing	Level	Calc'd S.F.	Exhibit B	Difference	% Difference
El Paso County	North	Basement	6,951	7,321	-370	-5.2%
	South	Basement	237	240	-3	-1.3%
	North	Main Level	14,817	14,837	-20	-0.1%
	South	Main Level	0	0	0	0.0%
	North	Upper Level	0	0	0	0.0%
	South	Upper Level	0	0	0	0.0%
<b>TOTAL El Paso County</b>			<b>22,005.00</b>	<b>22,398.00</b>	<b>-393.00</b>	<b>-1.8%</b>

Pikes Peak Regional Building	Calc'd S.F.	Exhibit B	Difference	% Difference
Total	34,552	34,755	-203	-0.6%
Common Area	15,941	16,760		
Hearing Room	1,718	1,715	3	0.2%
<b>TOTAL Pikes Peak Regional Building</b>	<b>52,211</b>	<b>53,230</b>	<b>-1019</b>	<b>-1.9%</b>

Agency	Wing	Level	Calc'd S.F.	Exhibit B	Difference	% Difference
City of Colorado Springs	North	Basement	0	0	0	0.0%
	South	Basement	0	0	0	0.0%
	North	Main Level	0	0	0	0.0%
	South	Main Level	0	0	0	0.0%
	North	Upper Level	0	0	0	0.0%
	South	Upper Level	10,063	-	-	-

El Paso County	Calc'd S.F.	Exhibit B	Difference	% Difference
Total	22,005	22,398	-393	-1.8%
Common Area	10,455	10,801	-345.5968	-3.3%
Hearing Room	1,718	1,715	3	0.2%
<b>TOTAL El Paso County</b>	<b>34,178</b>	<b>34,914</b>	<b>-736</b>	<b>-2.1%</b>

Agency	Wing	Level	Calc'd S.F.	Exhibit B	Difference	% Difference
Colorado Springs Utilities	North	Basement	0	0	0	0.0%
	South	Basement	0	0	0	0.0%
	North	Main Level	0	0	0	0.0%
	South	Main Level	0	0	0	0.0%
	North	Upper Level	0	0	0	0.0%
	South	Upper Level	4,565	-	-	-
<b>TOTAL City of Colorado Springs</b>			<b>14,628.00</b>	<b>14,775.00</b>	<b>-147.00</b>	<b>-1.0%</b>

City of Colorado Springs	Calc'd S.F.	Exhibit B	Difference	% Difference
Total	14,628	14,775	-147	-1.0%
Common Area	7,072	7,125	-53.2116	-0.7%
Hearing Room	1,718	1,715	3	0.2%
<b>TOTAL City of Colorado Springs</b>	<b>23,418</b>	<b>23,615</b>	<b>-197</b>	<b>-0.8%</b>

**Pikes Peak Regional Development Center Parking Allocation**

	Location	Number of Spaces
Pikes Peak Regional Building	South Lot	44
El Paso County	North Lot	58
City of Colorado Springs	South Lot	9