

**MILWAUKEE COUNTY WAR MEMORIAL  
LEASE AGREEMENT**

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This Lease Agreement (“Lease”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2013, by and between MILWAUKEE COUNTY WAR MEMORIAL, INC., a Wisconsin corporation (hereinafter referred to as “WMC”), and MILWAUKEE COUNTY, a governmental subdivision of the State of Wisconsin (“County”).

**RECITALS**

WHEREAS, by resolution file no. 13594, passed March 17, 1953, County approved designation of an area within Juneau Park as the location for a war memorial project.

WHEREAS, County and Milwaukee County War Memorial Center, Inc. (“WMC”) entered into that certain Contract dated January 7, 1954 (the “1954 Lease”), which provided for the construction, maintenance and operation of a memorial to the men and women who have served in the defense of our country at the Juneau Park site (referred to herein as the “Saarinen Building”).

WHEREAS, pursuant to the 1954 Lease, WMC was installed as prime tenant and manager of the Saarinen Building, which was intended to provide: (i) meeting rooms, halls and offices and other facilities for Veterans’, Civic and Patriotic organizations, (ii) space for an Art Center in order to provide permanent, temporary and traveling art exhibits, and facilities for art instruction, study and research, (iii) music halls, and (iv) auxiliary facilities such as administration and parking.

WHEREAS, WMC as prime tenant and manager entered into an Agreement dated July 18, 1955 with the Milwaukee Art Institute and the Layton Art Gallery, as amended by an Addendum to Agreement dated September 10, 1956, all of which provided a sublease to the Milwaukee Art Institute of portions of the Saarinen Building and use of space by the Layton Art Gallery (together, the “1955 Sublease”). The Museum succeeded to the interests of the Milwaukee Art Institute under the 1955 Sublease.

WHEREAS, as successor to the interests of the Milwaukee Art Institute, the Museum has occupied and improved portions of the Saarinen Building for Museum’s use. In 1975, Museum funded and constructed an addition to the Saarinen Building, known as the “Kahler Addition.” Museum subsequently donated the Kahler Addition to the County.

WHEREAS, County, WMC, and Museum entered into that certain Memorandum of Understanding dated May 16, 1996, pursuant to which the County agreed to provide guaranteed funding to Museum for a period of seven years, through WMC, in order to assist in the fundraising effort for the Museum’s Calatrava Addition owned by Museum and located to the south of the Kahler Addition and Saarinen Building, and pursuant to which WMC and Museum

agreed to assume responsibility for certain maintenance and operational expenses associated with the Kahler Addition and Saarinen Building (the “1996 MOU”).

WHEREAS, in 1997 County, WMC, and Museum entered into that certain Lease and Sublease Amendment dated as of October 1, 1997 (the “1997 Lease and Sublease Amendment”), and WMC, Museum, and County entered into that certain Development Agreement dated November 11, 1997 (the “1997 Development Agreement”), both of which were intended to accommodate and facilitate construction of Museum’s Calatrava Addition and related site improvements (the “Calatrava Addition” and “Site Improvements,” respectively).

WHEREAS, in 2001 County, WMC and Museum entered into the following agreements that superseded the 1997 Lease and Sublease Amendment (the “2001 Agreements”):

- Amendment to Lease by and between County and WMC (the “2001 Lease Amendment”), which amended the 1954 Lease. The 1954 Lease, as amended by the 2001 Lease Amendment, is hereinafter referred to as the “Existing WMC Lease”.
- Sublease by and between WMC and Museum (the “2001 Museum Sublease”), which superseded the 1955 Sublease in its entirety.

WHEREAS, pursuant to the terms of the 2001 Agreements, the 1954 Lease, as amended by the 2001 Lease Amendment, and the 2001 Museum Sublease superseded all other prior agreements, amendments, leases or subleases to which County, WMC and Museum were parties relating to the use, possession and occupancy of the subject premises (except for the 1996 MOU and the 1997 Development Agreement, which were not superseded).

WHEREAS, simultaneous with the execution of this Agreement, the parties will execute the following documents that will, together with this Lease, supersede and replace all prior agreements, amendments, leases or subleases to which County, WMC and Museum are parties relating to the use, possession and occupancy of the subject premises:

- County and Museum will execute a Lease Agreement for the lease to Museum of the Kahler Addition, certain portions of the Saarinen Building and other property (the “2013 Museum Lease”).
- WMC and Museum will execute a Sublease Termination Agreement terminating the 2001 Sublease.
- County, Museum, and WMC will enter into a Development Agreement, which provides for the funding and construction of the Planned Capital Improvements and Museum Improvements (as such terms are hereinafter defined) to the Saarinen Building and Kahler Addition (the “Development Agreement”).
- County, Museum and WMC will enter into a North Tract Access, Use and Future Development Agreement addressing ingress, egress, maintenance, utility, future development, and related rights and obligations with respect to the North Tract (the “North Tract Agreement”).

- County, Museum and WMC will enter into a Cooperation Agreement addressing the working relationship between Museum and WMC (the “Cooperation Agreement”).

WHEREAS, the Saarinen Building and the Kahler Addition are in need of certain repairs and improvements as identified in the September 2011 report prepared by the County’s Department of Audit and in other independent reports prepared for Museum and WMC which generally include without limitation: (i) replacement of the HVAC system servicing the Kahler Addition and other HVAC work related to the Saarinen Building; (ii) various structural repairs to the Saarinen Building and Kahler Addition; (iii) various other improvements and building envelop repairs to eliminate water infiltration into the Saarinen Building and the Kahler Addition; (iv) repair/replacement of the deck of the Saarinen Building, known as “Veterans Court”; and (v) repair of the outdoor stairwells, one of which is commonly known as the “Birdcage” (collectively, the “Planned Capital Improvements”).

WHEREAS, Museum intends to perform the following repairs and improvements, some of which are needed to repair deficiencies identified in the September 2011 report prepared by the County’s Department of Audit and in other independent reports prepared for Museum and WMC: (i) enclose the outdoor sculpture court and improve the interior space resulting from such enclosure for use as an art gallery; (ii) construct an east atrium entrance to the Museum on the lakeside of the Kahler Addition (the “East Atrium Addition”) which will serve in part to address existing deficiencies in the lakeside foundation and lakeside façade of the Kahler Addition; (iii) repair/replace the roof and deck of the Kahler Addition, known as “Fitch Plaza”; and (iv) reinstall Museum’s permanent art collection located in the Kahler Addition and in those portions of the Saarinen Building leased to Museum (collectively, the “Museum Improvements”).

WHEREAS, the cost of the Planned Capital Improvements is estimated to be \$10,000,000, which sum shall be funded by County.

WHEREAS, the cost of the Museum Improvements is estimated to be \$15,000,000, which sum shall be raised and contributed by Museum to fund the cost of the Museum Improvements.

WHEREAS, Museum previously funded, constructed, and donated the Kahler Addition to the County. Pursuant to the terms of the Development Agreement, Museum will fund, construct, and donate the East Atrium Addition to the County, County will accept such donation and Museum will thereafter occupy and use the East Atrium Addition and the other Museum Premises for Museum’s use as a tenant under the 2013 Museum Lease, subject to WMC’s right to use the roof of the Kahler Addition and East Atrium Addition as set forth herein.

WHEREAS, the Museum and WMC provide valuable cultural and educational activities, exhibits and educational programs for the public, and the Planned Capital Improvements and Museum Improvements are intended to correct known structural and maintenance deficiencies and to accommodate Museum’s and WMC’s current and future operational needs to enable the Museum and WMC to continue providing such public contributions.

WHEREAS, this Lease, together with the Development Agreement, are necessary to provide a mechanism to ensure timely funding and performance of necessary management, maintenance and repairs of the Premises described herein.

### **AGREEMENT**

In consideration of the foregoing recitals, the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are mutually acknowledged to be true, correct and incorporated into this Lease.

2. Demise of Premises. County hereby demises and leases to WMC and WMC hereby takes and leases from County, the following premises (which shall constitute collectively, the "Premises"):

A. LAND. The land identified on Exhibit A attached hereto (the "North Tract").

B. SAARINEN BUILDING. Those portions of the Saarinen Building identified on the Hybrid Engineering and Space Allocation Model attached as Exhibit B, together with the roof of the Saarinen Building.

C. UNDERBRIDGE AREA. The space located under the Mason Street Bridge identified on Exhibit C attached hereto (the "Underbridge Area").

3. Access and Use Rights. County warrants WMC shall have the right to use Fitch Plaza and the roof of the East Atrium Addition for weddings, receptions, parties, events and other bookings in accordance with the terms of the Cooperation Agreement during the Term of this Lease.

4. Rights Reserved by County for Benefit of Museum. County reserves for the benefit of Museum the following access, use and future development rights during the term of the 2013 Museum Lease:

A. Access in, through and to those portions of the Saarinen Building and Underbridge Area leased to WMC identified as "Mutual Access" on the Hybrid Engineering and Space Allocation Model attached as Exhibit B (the "Space Allocation Model"); and

B. The access, use and future development rights with respect to the North Tract set forth in the North Tract Agreement.

5. Other Rights Reserved by County. The Premises are being leased to WMC subject to the following reservations:

A. UTILITIES. This Lease is subject to the County's right to maintain, repair and replace certain underground gas, electricity, steam water, sewer and other utilities and

services in their current locations identified on sheet 13 of the Space Allocation Model (including, without limitation, Lincoln Memorial Drive traffic signals, conduits, wires and controllers) and future locations in the Premises. County shall provide notice to WMC of County's intent to maintain, repair or replace any such utilities. Any surface improvements owned by WMC shall be dismantled, removed or replaced (if replacement is so desired) by WMC prior to County's performance of the work or, in the alternative, WMC shall pay the additional cost for the County to work around, under or over such surface improvements. As to any new permanent structures to be developed on the Premises by WMC, WMC shall bear all costs for relocation of any affected County utilities as may be reasonably required by County.

B. **SEA WALL & SHORELINE.** This Lease is subject to the rights of the public to use the shoreline and seawall on the eastern edge of the North Tract in the location as exists from time to time (the "Shoreline Area"). The Shoreline Area may be relocated or otherwise modified from time to time upon the written agreement of County and WMC. The current Shoreline Area is identified on Exhibit D, which includes a seawall structure (including revetment and cantilevered lakewalk/walkway), flood control structures, heat tracing system, and drainage outfall(s). All improvements located in the Shoreline Area are owned and maintained by County.

C. **LAKEWALK.** This Lease is subject to the rights of the public to use the sidewalk along the eastern edge of the North Tract (the "Lakewalk"). The location of the currently existing Lakewalk is shown on Exhibit D. The Lakewalk is owned and maintained by County.

D. **PUBLIC TRUST.** This Lease is subject to County's reservation of the right for all unenclosed portions of the North Tract to be used by the public for the uses allowed by the public trust doctrine and the lake bed grants, as further described in Section 12.B. herein.

6. **Ownership of Improvements.** The Saarinen Building, Kahler Addition, Museum Improvements (once constructed) and all existing improvements in the Shoreline Area and Lakewalk shall continue to be owned by the County, subject to the rights of Museum and WMC pursuant to their respective leases with the County to use such improvements; provided however, WMC shall have an ownership interest in its leasehold improvements located upon or within the Premises. Ownership of any additional improvements constructed by WMC upon the Premises shall be determined by mutual agreement of County and WMC at the time WMC seeks County approval for construction.

7. **Term.**

A. The initial term of this Lease shall commence on the date hereof (the "Commencement Date") and continue through 11:59 p.m. on September 30, 2022 (the "Initial Term"). The Initial Term shall automatically extend for three (3) additional successive periods of twenty-five (25) years each (each an "Extension Term"), unless WMC gives County written notice of termination of this Lease not less than six (6) months prior to the expiration of the then current term, in which case this Lease shall terminate upon the expiration date of the then current term. The initial term and any subsequent extensions are referred to herein as the "Term."

B. In the event that WMC (i) is adjudicated bankrupt, (ii) makes an assignment for the benefit of creditors, (iii) files a petition in bankruptcy which is not dismissed within ninety (90) days, or (iv) is dissolved either voluntarily or involuntarily, and in any of such events, WMC has abandoned or ceased business operation in the Premises for a period of one hundred eighty (180) days, then County may, at County's election, terminate this Lease by written notice to WMC.

8. Termination of Existing WMC Lease. On the Commencement Date, the Existing WMC Lease shall automatically be deemed terminated and cancelled without further agreement between County and WMC.

9. Consideration.

A. In addition to the recitals and the mutual covenants and promises set forth in this Lease: (a) County acknowledges that it is receiving a substantial benefit from WMC's lease of the Premises, WMC's cultural contributions and promotion of activities, exhibits and educational programs for the public; (b) County acknowledges it and the public have received a substantial benefit from WMC's fundraising and significant financial investment in connection with the construction of the Saarinen Building and improvements; (c) County acknowledges that the public is receiving an additional substantial benefit from WMC's contributions pursuant to the Cooperation Agreement; (d) there shall be no rent payable by WMC pursuant to this Lease; and (e) WMC acknowledges that it is receiving a substantial benefit from County through County's grant of rights to WMC under this Lease and pledge of support for WMC's activities as described herein and as described in the Development Agreement and the Cooperation Agreement. The parties hereto agree that the foregoing constitutes good, valuable and sufficient consideration and waive any contrary arguments or defenses.

B. For calendar years 2014 to 2023, inclusive, County agrees to provide funding to WMC in the total annual amount of no less than \$486,000.00, payable on a quarterly basis. For subsequent calendar years, WMC will submit requests for funding to County as part of County's budget process, and County shall provide funding to WMC in an amount determined in such budget process. For calendar year 2013, WMC and County will agree on a transition date for routine maintenance and repair of the Premises to be used for reallocating previously appropriated funds in a manner that recognizes the responsibility of WMC under the Hybrid Engineering and Space Allocation Model.

10. Condition of Premises. Except as otherwise expressly provided herein, WMC takes the Premises, as existing as of the date of this Lease, in their "AS-IS, WHERE-IS" condition and acknowledges that County has made no representations or warranties of any kind or nature relating to the present physical condition or environmental condition of the Premises or any improvements or systems on the Premises or the suitability of the Premises for the operations to be conducted by WMC, as existing as of the date of this Lease. County does, however, represent and warrant that all improvements, additions, repairs, or replacements performed by or on behalf of County to the Premises after the date of this Lease, including those contemplated in the Development Agreement, shall be performed in a good and workmanlike manner, in accordance with all applicable governmental rules, ordinances and regulations, as well as sound engineering practices, and shall be suitable in all respects for the conduct of

WMC's operations at the Premises, in a manner consistent with the expectations of Milwaukee County residents.

11. Payment of Utilities. Subject to County providing the funding required pursuant to Section 9.B above, WMC shall be responsible for all charges for gas, electricity, steam, water and sewer used or consumed on the Premises. Beginning January 1, 2024, WMC shall be responsible for all charges for gas, electricity, steam, water and sewer used or consumed on the Premises in accordance with an agreement to be determined between WMC and Museum for allocation of such charges where jointly metered.

12. Permitted Use.

A. **PERMITTED USES.** The Premises shall be used and occupied for lawful purposes consistent with furthering the mission of WMC, promoting educational programs and exhibitions for the benefit of the public which honor the memory of veterans, and providing for the enjoyment of visitors and the citizens of Milwaukee County, including the operation of parking facilities on the North Tract and Underbridge Area consistent with present uses. The uses stated above have been determined by the parties to be recreational uses which enhance the enjoyment of the natural scenic beauty of the lakefront by the general public. WMC's facilities shall be open to the public, subject to such reasonable rules and regulations as WMC may prescribe from time to time. WMC agrees to operate WMC's facilities in the Premises, including any restaurant, in compliance with the public trust doctrine. WMC further agrees to supply to County, upon demand, evidence of the hours of operation, fees, eligible users, and other usage conditions of any restaurant in the Premises to confirm that they comply with the public trust doctrine. WMC agrees to operate any restaurant in the Premises consistent with the Wisconsin Department of Natural Resources' Guidelines for Food Service in Lakebed Areas existing on the Commencement Date of this Lease or such other guidelines which the WDNR shall put in writing for the Premises and deliver to WMC.

B. **PUBLIC TRUST.** Use of the Premises is subject to the County's reservation of the right for all unenclosed portions of the Premises to be used by the public for the uses allowed by the public trust doctrine and the lake bed grants, and subject to reasonable rules and regulations of WMC. Notwithstanding the foregoing, WMC shall have the right to exclude the public from the unenclosed portions of the Premises no more than twenty (20) days per year for limited special events, upon notice reasonably provided to County, and during such periods when, and only when, construction activity would pose a risk to the public, and for other special events, upon securing a permit from the County, except that the bike path and Lakewalk must remain open at all times to the public. The County may by permit grant WMC more days per year to exclude the public for special events. All such public uses shall be subject to reasonable rules and regulations and shall be in addition to the rights of the public to use and enjoy facilities located on the Premises at such times as those facilities are open for business, during announced special events, for publicly available tours, for special classes and educational events made available to County and area residents, for public dining in any restaurant which will be part of the Premises, for public access to the scenery of the lakefront during inclement weather, for access to the lakefront by those with physical disabilities, and similar purposes, and which access rights are subject to reasonable rules and regulations of WMC, to protect the safety of visitors to the Premises.

13. Management, Maintenance, and Repair. Responsibility for the management, maintenance, and repair of improvements and facilities located on or about the Premises shall be allocated as follows:

A. COUNTY MAINTENANCE. County shall be responsible for maintenance and repair of the Saarinen Building (including its foundation, load-bearing walls, windows, roof and structural and mechanical components) to the extent the foregoing are of a capital nature as opposed to routine maintenance and repair. County shall also provide maintenance and repair of the grounds, sidewalks, driveways, parking areas and structural elements of the North Tract and the Underbridge Area. County shall continue to provide maintenance and repair of the improvements in, on and under the Shoreline Area (including, without limitation, the associated Lakewalk and seawall) to the extent needed to prevent and forestall loss of land as a result of erosion, wave action or other natural forces, and shall restore all loss of such land and repair all damage in the Shoreline Area that may be caused by such forces. In addition, County shall be responsible for the implementation, maintenance and repair of the Planned Capital Improvements. The foregoing maintenance and repair work shall be conducted in a good and workmanlike manner to ensure compliance with applicable codes and ordinances as well as the quiet enjoyment and safety of WMC and its invitees.

The County expressly disclaims any responsibility for the following maintenance and repair matters: litter and debris collection from the Premises; removal and re-installation of WMC's equipment or site improvements to allow County to perform major maintenance or repair when scheduled; maintenance of vegetation on the Premises; and snow removal on the Premises.

B. WMC MAINTENANCE. Subject to County providing the funding required pursuant to Section 9.B above, WMC shall be responsible for all routine maintenance and repair of the Premises for calendar years 2014-2023, except for the County's maintenance and repair responsibilities in Section 13.A above. WMC's obligations shall specifically include the provision of janitorial, routine maintenance and other normal building services for the portions of the Premises within the Saarinen Building consistent with its past practices, and the maintenance of vegetation and snow removal on the North Tract. Beginning January 1, 2024, WMC shall be responsible for all routine maintenance and repair of the Premises except for County's maintenance and repair responsibilities in Section 13.A above.

C. In the event that County engages a third party to manage the obligation of County under this Section 13, such third party shall be subject to the approval of WMC which shall not be unreasonably withheld.

14. Alterations.

A. GENERAL. WMC may, from time to time and at its expense make such non-structural alterations or improvements to the Premises as may be necessary or proper for the conduct of its operations provided such alterations or improvements will not jeopardize the structural integrity or soundness of the Kahler Addition or Saarinen Building or materially interfere with the use and enjoyment of the Saarinen Building by Museum. WMC shall provide

County with all plans and specifications for such work and reasonable notice and opportunity to comment on the plans and specifications prior to commencement of the work.

B. UNDERBRIDGE AREA. If WMC desires to undertake any improvements in the Underbridge Area, then provisions must be made to ensure that the County has access to maintain and repair the Mason Street Bridge structure (including Lincoln Memorial Drive) and that the County is released from liability for its good faith provision of any such maintenance and repair work and from liability for conditions resulting from normal use and operation of the bridge for its intended purposes.

15. County's Access. County or its agents shall have reasonable access to the Premises to make alterations, repairs, or improvements and to inspect the condition of the Premises. County shall provide reasonable advance notice of any such access except in the event of an emergency.

16. Sublease and Assignment. WMC shall not assign this Lease or in any manner transfer this Lease without County's consent. WMC shall not sublet the Premises or any part thereof or permit the use or occupancy of the Premises or any part thereof by any person or entity other than WMC without County's consent; provided, however, WMC may enter into subleases or other use agreements for vending contracts, antennas and other telecommunications services, equipment and facilities, exhibits, education, research, special events (such as, without limitation, weddings and receptions), restaurant operations, gift shop, offices and similar secondary uses within the Premises without the County's consent. Notwithstanding the foregoing, County's consent shall be required for any new subleases or use agreements entered into by WMC for the installation of new antennas, cell towers or other equipment on the roof of the Saarinen Building or other exterior portions of the Premises, but such consent shall not be required in connection with the repair, upgrading (without an increase in physical dimensions) or relocation of any antennas, cell towers or equipment existing on the Premises as of the date hereof. Any assignment or subletting, even with the consent of County, shall not relieve WMC from the obligation to perform and be bound by the terms, conditions and covenants of this Lease. An assignment for the benefit of creditors or by operation of law shall not be effective to transfer any rights to assignee without the consent of County first having been obtained. WMC and County may not assign to any other party its responsibilities hereunder, without the prior consent of the other party.

17. Liens and Encumbrances. WMC warrants that it has not encumbered and will not encumber County's right, title or interest in and to the Premises or any improvements located thereon nor has WMC pledged in a manner as security its right, title or interest in any portion of the Premises or any improvements constructed thereon, except equipment and leasehold improvements owned by WMC. Any claim to, or lien upon, the Premises (or any part thereof) arising from any act or omission of WMC shall accrue only against the leasehold estate of WMC and shall be subject and subordinate to the paramount title and rights of County in and to the Premises. WMC must remove any lien placed upon County interests, arising out of WMC actions. County represents and warrants that as of the date of this Lease, (i) there is no mortgage or ground lease upon or effecting the Premises or the land on which the Premises are located; and (ii) title to the Premises is free and clear of all liens and encumbrances except for municipal and zoning ordinances, the reservations referenced in this Lease and the lake bed grants.

18. Insurance/Limitation of Liability.

A. **LIMITATION OF LIABILITY.** County's liability shall be limited in accordance with Wisconsin Statutes Section 345.05(3), Municipal Liability for Motor Vehicle Accidents, Wisconsin Statutes Section 893.80(3) and 893.80(4), Claims Against Governmental Bodies or Officers, Agents or Employees; Notice of Injury; Limitation of Damages and Suits, and Section 895.04(4), Plaintiff in Wrongful Death Action.

B. **WMC INSURANCE.** WMC shall purchase and maintain at all times during the Term of this Lease policies with the following coverages and minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers Compensation	Statutory (with waiver of subrogation)
Commercial General Liability	
General Aggregate	\$2,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Personal Injury	\$1,000,000 per occurrence
Contractual Liability	\$1,000,000 per occurrence
Automobile Liability	
Bodily Injury & Property Damage	\$1,000,000 per occurrence
All Autos – hired and non-owned	Per WI requirements

The insurance specified above shall be placed with an insurer approved to do business in the State of Wisconsin with at least an A-VIII rating from Best's Rating Guide or any successor thereto. All liability policies shall name County as an additional insured. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any such endorsement will not be acceptable without the approval of the County Director of Risk Management and Insurance (the "Risk Manager"). WMC shall submit a Certificate of Insurance to the Risk Manager for each successive period of coverage for the duration of this Lease.

C. **COUNTY INSURANCE.** County shall purchase and maintain policies of insurance to cover liabilities and costs as may arise from claims of torts, statutes and benefits under Workers' Compensation laws, as respects damage to persons or property, and providing all-risks, fire and extended coverage on the Premises, Saarinen Building, Kahler Addition, East Atrium Addition, and all other improvements owned by County. Such coverage shall be in an amount equal to the full replacement value of all such improvements. A thirty (30) day written notice of cancellation, non-renewal or material change shall be afforded to WMC. The insurance shall be placed with an A-rated carrier per Best's Rating Guide approved to do business in the State of Wisconsin. Any deviations or waiver of required coverages or minimums shall be submitted in writing approved by WMC. A certificate of insurance shall be submitted for review on request to WMC for each successive period of coverage for the duration of this Lease.

19. Environmental Compliance and Obligations.

A. **NO LIABILITY FOR PREEXISTING ENVIRONMENTAL CONDITIONS.** Notwithstanding anything contained in this Lease to the contrary, WMC shall not be liable for any investigation or remediation, or orders relating to the same, for any hazardous substances, pollutants or other environmental condition existing on, over or beneath the Premises as of November 11, 1997 ("Pre-existing Environmental Conditions"). County shall fully comply, or cause compliance by any responsible party, with all Environmental Laws (as defined in Section 19.B below) with respect to the Premises. County hereby indemnifies WMC against any damages, loss, expense and liability suffered by WMC and arising out of Pre-existing Environmental Conditions or the existence or discharge of pollutants or hazardous substances on, over, or beneath the Premises not caused by WMC. WMC shall not be obligated to undertake any actions with respect to the discharge of such pollutants or hazardous substances not caused by WMC.

B. **COMPLIANCE WITH ENVIRONMENTAL LAWS.** WMC shall fully comply with all federal, state and local laws including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or hazardous substances ("Environmental Laws"), subject to the limitations contained herein. WMC shall, at its sole cost and expense, promptly take all actions to investigate and remediate any discharge of pollutants or hazardous substances caused by WMC on the Premises as may be required by any federal, state or local governmental agency or political subdivision. WMC hereby indemnifies County against any damages, loss, expense and liability suffered by County and arising out of a violation of this Section 19.B. by WMC.

C. **INVESTIGATION/REMEDICATION.** WMC shall require no investigation, remediation, or excavation of the Premises by County except and to the extent such Pre-existing Environmental Conditions (i) materially interfere with WMC's operations on the Premises, including materially increasing the costs of operating the WMC, (ii) WMC is under order from a governmental agency or court to perform such investigation or remediation in the absence of County's doing so, or (iii) such investigation, remediation or excavation is reasonably necessary in connection with construction of the East Atrium Addition. Any investigation or remediation activity conducted by County must be accomplished in a manner and at times which disturb, to the least extent possible, the activities of WMC on the Premises. WMC will not undertake activities that will involve excavation of soils on the Premises without the County's prior written consent, which consent will not be unreasonably withheld. With regard to any such activities, any materials excavated by WMC will be managed in accordance with applicable law and the Development Agreement at County's expense.

20. Indemnification. To the extent permitted by law, WMC and County shall each be liable for their own negligent acts and omissions, and each agrees to indemnify and hold the other harmless for any losses, damages, costs and expenses resulting therefrom. Without limiting the foregoing, WMC shall indemnify County for, and hold it harmless from, all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever (including workers' compensation claims) which arise out of or are in any manner connected with the performance of this Lease, based on any injury, damage or loss being caused

by the negligence of the WMC, its contractors, subcontractors, agents, invitees or employees. County shall indemnify WMC for, and hold it harmless from, all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever (including workers' compensation claims) which arise out of or are in any manner connected with the performance of this Lease, based on any injury, damage or loss being caused by the negligence of the County, its contractors, subcontractors, agents, invitees or employees, or on account of any Pre-existing Environmental Conditions. Notwithstanding the above, because the County has reserved certain rights for the public to have access to the Premises, WMC shall not be responsible for policing or monitoring the acts of the public, nor shall WMC be liable for the acts of the public on or about the Premises.

21. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if delivered or mailed, by registered or certified mail, first-class postage paid, return receipt requested, or any other delivery service with proof of delivery:

If to the County: Milwaukee County Department of Public Works  
Attn: Director  
901 North Ninth Street  
Courthouse, Room 303  
Milwaukee, WI 53233

With a copy to: Milwaukee County  
Office of the Corporation Counsel  
Attn: Corporation Counsel  
901 North Ninth Street  
Courthouse, Room 303  
Milwaukee, WI 53233

If to WMC: Executive Director  
Milwaukee County War Memorial, Inc.  
750 North Lincoln Memorial Drive  
Milwaukee, WI 53202

and to: Chairperson  
Milwaukee County War Memorial, Inc.  
750 North Lincoln Memorial Drive  
Milwaukee, WI 53202

Any party may change the person or address to whom or which notices are given hereunder; provided, however, that any such modification shall be deemed to have been given hereunder only when actually received by the party to which it is addressed. Each party shall be entitled to rely on all communications which purport to be given on behalf of any other party hereto and purport to be signed by an authorized signatory of such party or their attorneys.

22. Damage or Destruction. If the Premises are damaged or destroyed in whole or in part by fire or any other cause whatsoever during the term of this Lease, this Lease shall continue

in full force and effect and County shall take all insurance proceeds and, with all reasonable dispatch and diligence, rebuild, restore and/or repair the Premises to substantially the same condition that existed just prior to its damage or destruction; provided, however, the County's obligation to rebuild, restore and/or repair the Premises shall be limited by the insurance proceeds available to County as a result of such fire, casualty or other cause. If the costs to rebuild, restore and/or repair the Premises exceed insurance proceeds available to County, then County and WMC will negotiate in good faith regarding the manner in which the balance of such costs will be funded.

23. Condemnation. If all or part of the Premises, or other areas to which WMC is granted rights pursuant to this Lease or the North Tract Agreement shall be condemned by any governmental agency or political subdivision, then all proceeds of the award shall be allocated as follows: (a) all proceeds attributable to the land shall belong to County; (b) all proceeds relating to the Saarinen Building, Kahler Addition and East Atrium Addition shall belong to the County other than proceeds allocable to leasehold improvements made by WMC which shall belong to WMC; and (c) all proceeds allocable to WMC's leasehold interest shall belong to WMC. County agrees it will not cause or endorse the condemnation of the Premises in whole or in part.

24. Default. The failure of either party to perform any of its material obligations hereunder shall constitute a default if such material failure continues for more than one hundred twenty (120) days after written notice from the non-defaulting party describing the material failure. If either party fails to perform any of its material obligations hereunder and such material failure continues for a period of one hundred twenty (120) days after receipt of written notice from the non-defaulting party (provided, however, such one hundred twenty (120) day period shall be extended for such additional time as may be necessary (not to exceed one hundred twenty (120) days) so long as the defaulting party is diligently pursuing the cure of the default in good faith), the non-defaulting party may elect to (a) cure the default, in which case the defaulting party shall reimburse the non-defaulting party all costs and expenses incurred in doing so within thirty (30) days after demand therefor, (b) terminate this Lease by providing written notice to the defaulting party, or (c) pursue any other remedy available at law or in equity. Any act or thing done by either party pursuant to the provisions of this Section shall not be construed as a waiver of any covenant, term or condition contained in this Lease.

25. Financial Reporting and Record Keeping.

A. BOOK OF ACCOUNTS. WMC, in the conduct of its responsibilities to County hereunder, shall maintain adequate books and records for the Premises, the entries of which shall be supported by sufficient documentation to ascertain that said entries are properly and accurately recorded. Accounting records for the Premises shall be maintained based upon WMC's fiscal year. Upon request of County, WMC shall provide to County financial statements prepared in accordance with generally accepted accounting principles.

B. ANNUAL REPORTS. On an annual basis, WMC shall provide County with a copy of WMC's most recent annual audit and, if requested, underlying documentation necessary to support the annual audit, including financial statements prepared in accordance with generally accepted accounting principles.

C. QUARTERLY FINANCIALS. Within sixty (60) days following the close of each fiscal quarter of WMC, WMC shall provide to County unaudited statements of revenues, expenses, cash flows and a balance sheet of WMC for such quarter, certified by the chief financial officer of WMC, subject to annual audit adjustments, to be true, correct and in accordance with generally accepted accounting principles.

D. COUNTY'S RIGHT TO AUDIT. Upon reasonable notice to WMC, County reserves the right for County's employees, or other appointed by County, to conduct an examination and make copies of the books and records maintained by WMC with respect to maintenance and repairs of the Premises. Should County's employees or appointees discover (i) weaknesses in internal control, (ii) errors in recordkeeping or (iii) errors in payments, WMC shall correct such discrepancies promptly upon discovery. WMC shall inform County in writing of any action taken to correct such audit discrepancies. Any and all such audits conducted either by County's employees or appointees will be at the sole expense of County

26. Force Majeure. If either party hereto is prevented from performing an obligation imposed upon it hereunder within the time specified, and such delay is for reasons which were not such party's fault or which were beyond such party's reasonable control, including, but not limited to, acts of God, war, insurrection, weather, strikes, or civil disturbances, but expressly excluding delays resulting from failure to appropriate or expend funding necessary for the performance of an obligation, then the time within which such party was to perform shall be extended for a period equal to the delay.

27. Provisions Severable. If any provision of this Lease shall be held or declared to be invalid, illegal, or unenforceable under any law applicable thereto, such provision shall be deemed deleted from this Lease without impairing or prejudicing the validity, legality, and enforceability of the remaining provisions hereof.

28. Applicable Law. This Lease shall be governed by and construed under the laws of the State of Wisconsin.

29. Independent Review/Neutral Construction. Each party has had the opportunity to consult independent counsel regarding this Lease. The language used in this Lease shall be deemed to be the language chosen by all of the parties to express their mutual intent and no rule of strict construction shall apply against any party by virtue of their role in drafting the documentation.

30. Captions. The section headings in this Lease are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provision of this Lease.

31. No Waiver of Rights. The failure of any party to insist, in any one or more instances, upon performance of the terms or conditions of this Lease shall not be construed as a waiver or relinquishment of any right granted hereunder or of the future performance of any such term, covenant or condition.

32. Entire Agreement. This Lease constitutes the entire agreement of the parties with respect to the subject matter hereof and any and all prior negotiations and/or understandings are

superseded hereby, and the terms of this Lease are contractually binding upon all parties, their successors and assigns.

33. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

34. Authorization. Each party to this Lease represents and warrants to the other party hereto that the execution and delivery of this Lease by the signatory signing below has been duly authorized by all appropriate action and is sufficient to legally bind the signing party without joinder or approval on any other party.

35. Right of First Negotiation. Upon expiration of this Lease, WMC shall have a right of first negotiation to enter into a new lease of the Premises with the County which right shall survive expiration of this Lease. County shall conduct these lease negotiations exclusively with WMC in good faith for a period of eighteen (18) months prior to expiration or twelve (12) months after expiration of this Lease, as applicable, or such lesser period as is needed to finalize agreement (the "Exclusive Period"), during which WMC and its subtenants shall be entitled to continued occupancy and possession of the Premises on the same terms and conditions as contained herein. If the parties fail to substantially agree upon a new lease within the Exclusive Period, County may commence negotiations with third parties for the lease of the Premises; however, WMC shall have a right of first refusal to match the terms of any such lease which right shall survive expiration of this Lease. County shall furnish WMC with a written copy of the third party lease which County intends to enter, and WMC shall have ninety (90) days from receipt in which to exercise the right of first refusal and match its terms.

36. County Appointments. County acknowledges and agrees that its appointments to the War Memorial Board of Trustees and Membership is reduced in number from eight (8) to two (2) appointments. As of the Commencement Date of this Lease, County shall maintain two (2) representatives on the War Memorial Board and Membership, which representatives shall be appointed by the County Executive and approved by the County Board.

37. Amendments. This Lease may not be amended, changed, altered or modified except in writing signed by all of the parties.

38. Recordation. The parties hereto agree that a memorandum of this document shall be recorded with the Register of Deeds for Milwaukee County, State of Wisconsin.

[Signatures on next page]

This Lease has been executed by the parties as of the date first written above.

**COUNTY:**

MILWAUKEE COUNTY

**WMC:**

MILWAUKEE COUNTY WAR MEMORIAL,  
INC.

By: \_\_\_\_\_  
Chris Abele, County Executive

By: \_\_\_\_\_  
Michael M. Berzowski, Chairman  
War Memorial Center Facilities Board

Approved for execution:

By: \_\_\_\_\_  
Kimberly Walker, Corporation Counsel

By: \_\_\_\_\_  
George Gaspar, Chairman  
War Memorial Corporation Board

EXHIBIT A

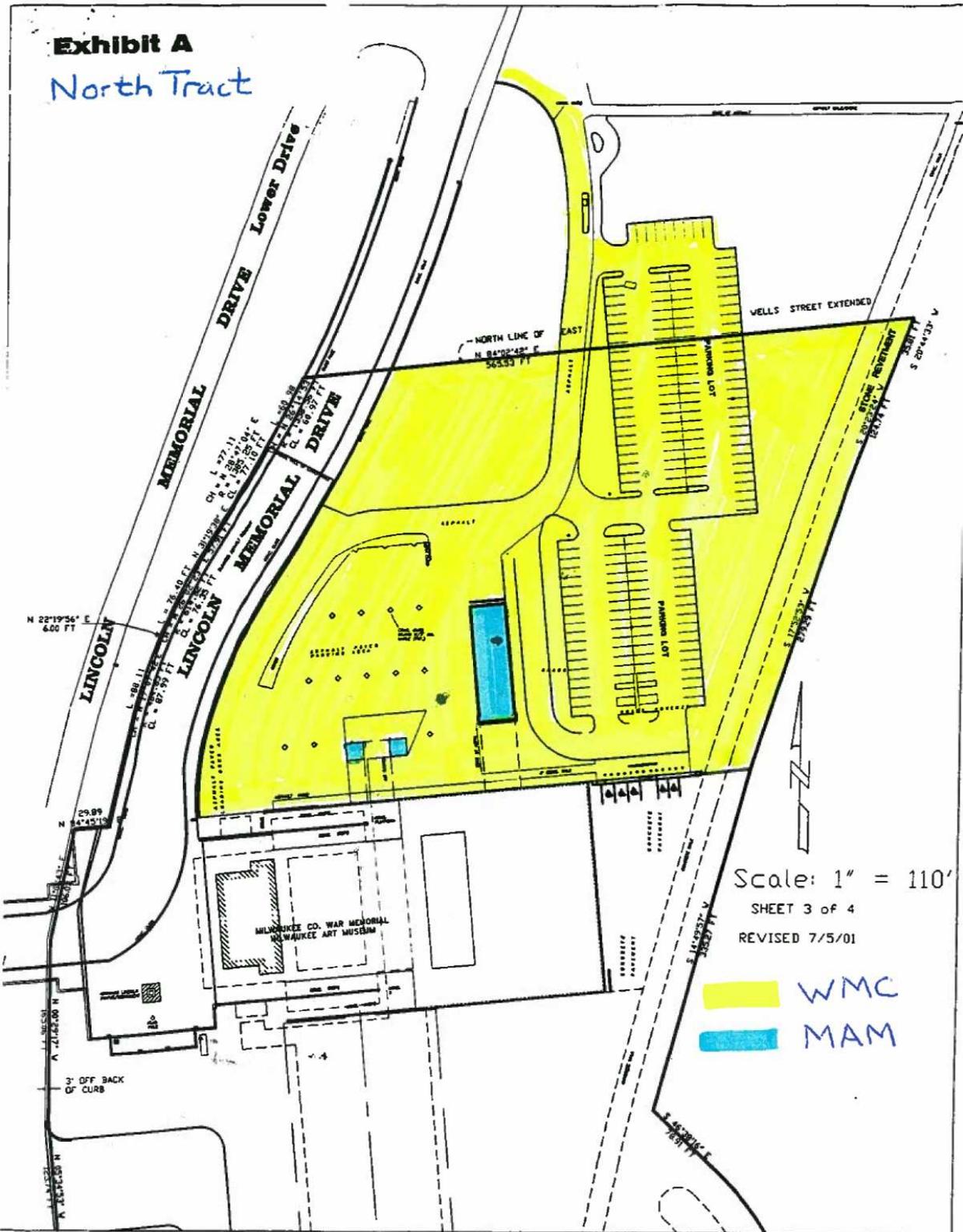


EXHIBIT B

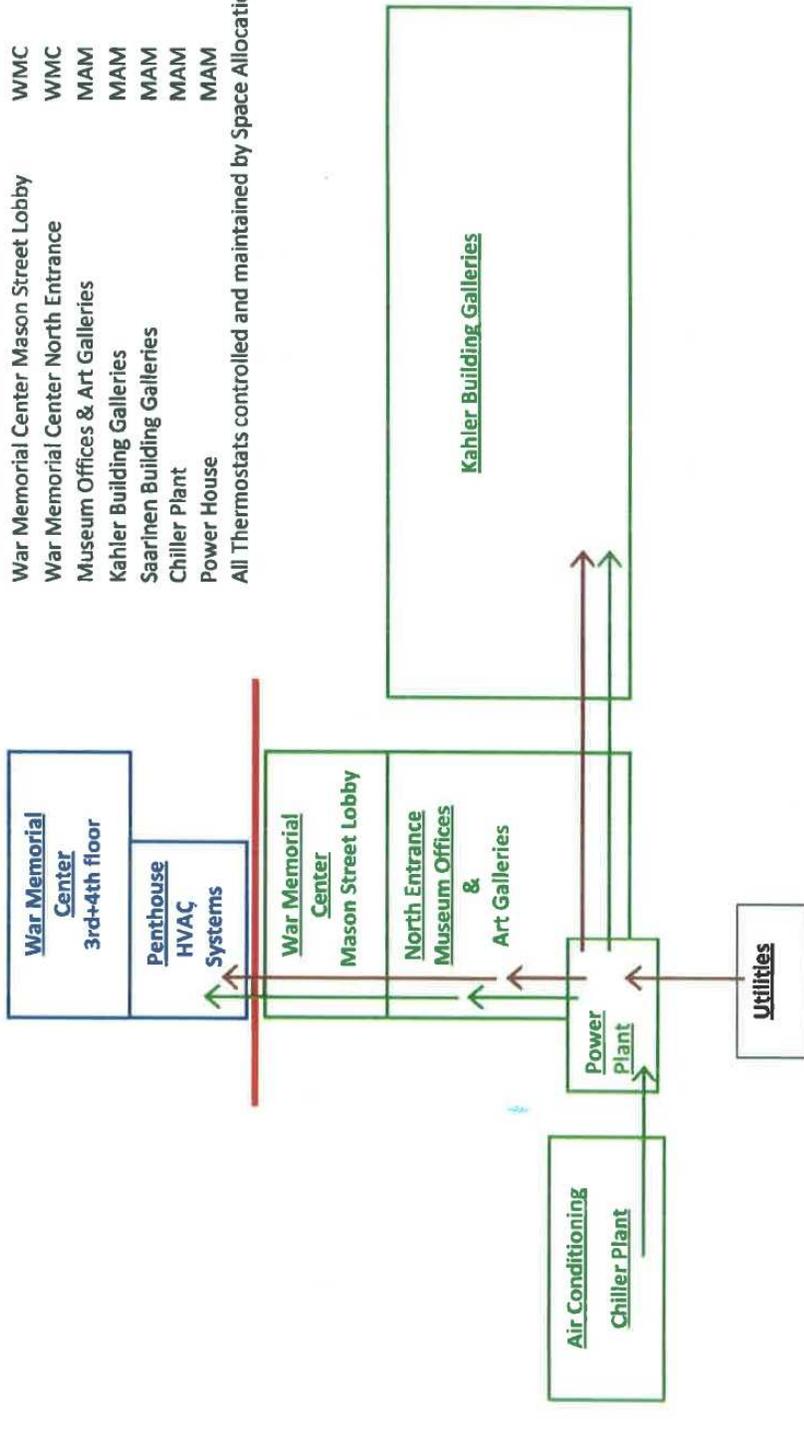
HYBRID ENGINEERING AND SPACE ALLOCATION MODEL

[See attached]

Building Complex Sharing

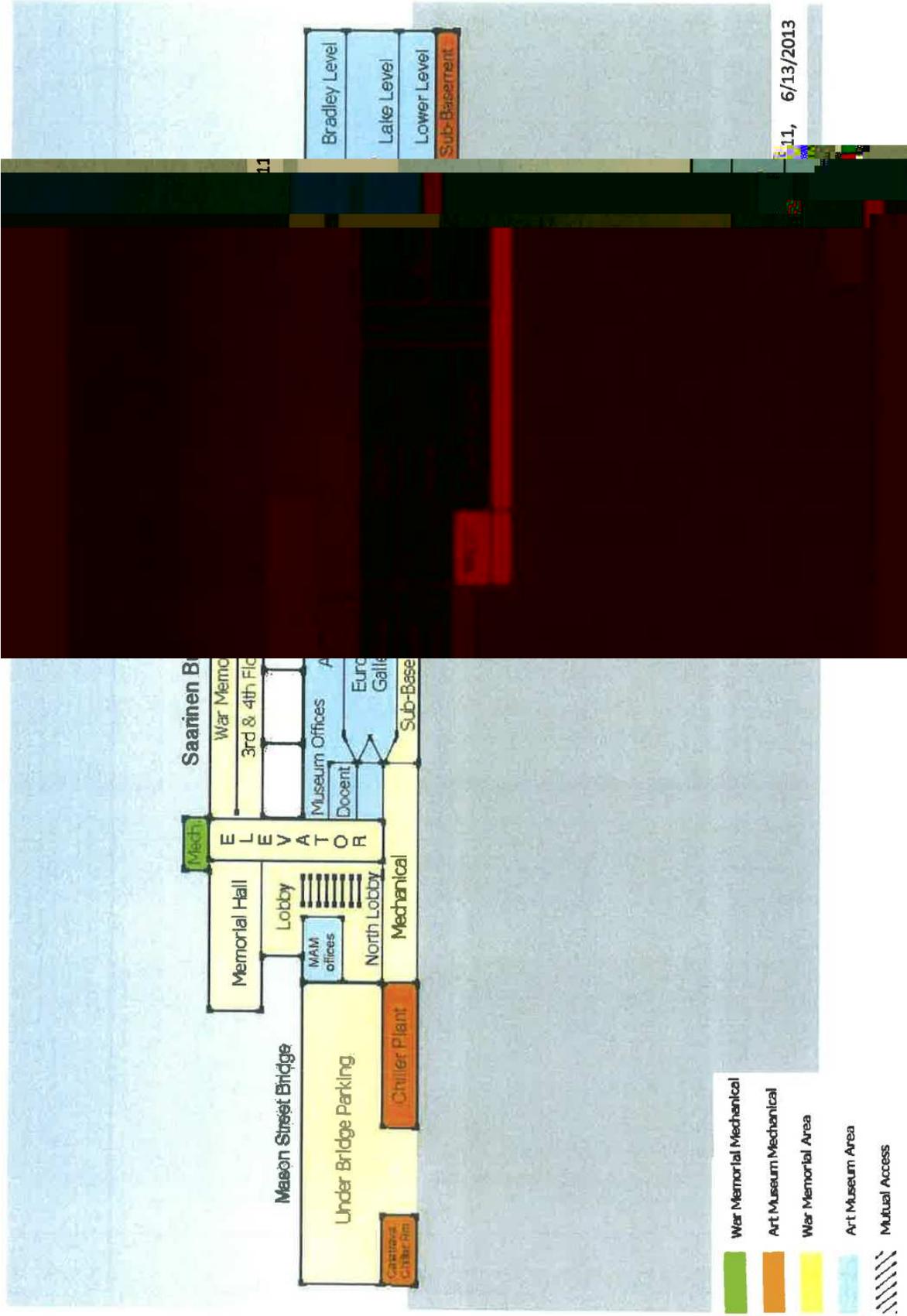
Area	Cleaning, Repair and Environmental Control	Mechanical Systems Operation
War Memorial Center Penthouse	WMC	WMC
War Memorial Center 3 <sup>rd</sup> & 4 <sup>th</sup> Floor	WMC	WMC
War Memorial Center Mason Street Lobby	WMC	MAM
War Memorial Center North Entrance	WMC	MAM
Museum Offices & Art Galleries	MAM	MAM
Kahler Building Galleries	MAM	MAM
Saarinen Building Galleries	MAM	MAM
Chiller Plant	MAM	MAM
Power House	MAM	MAM

All Thermostats controlled and maintained by Space Allocation



— Air Conditioning

— Steam, Water systems, Electricity



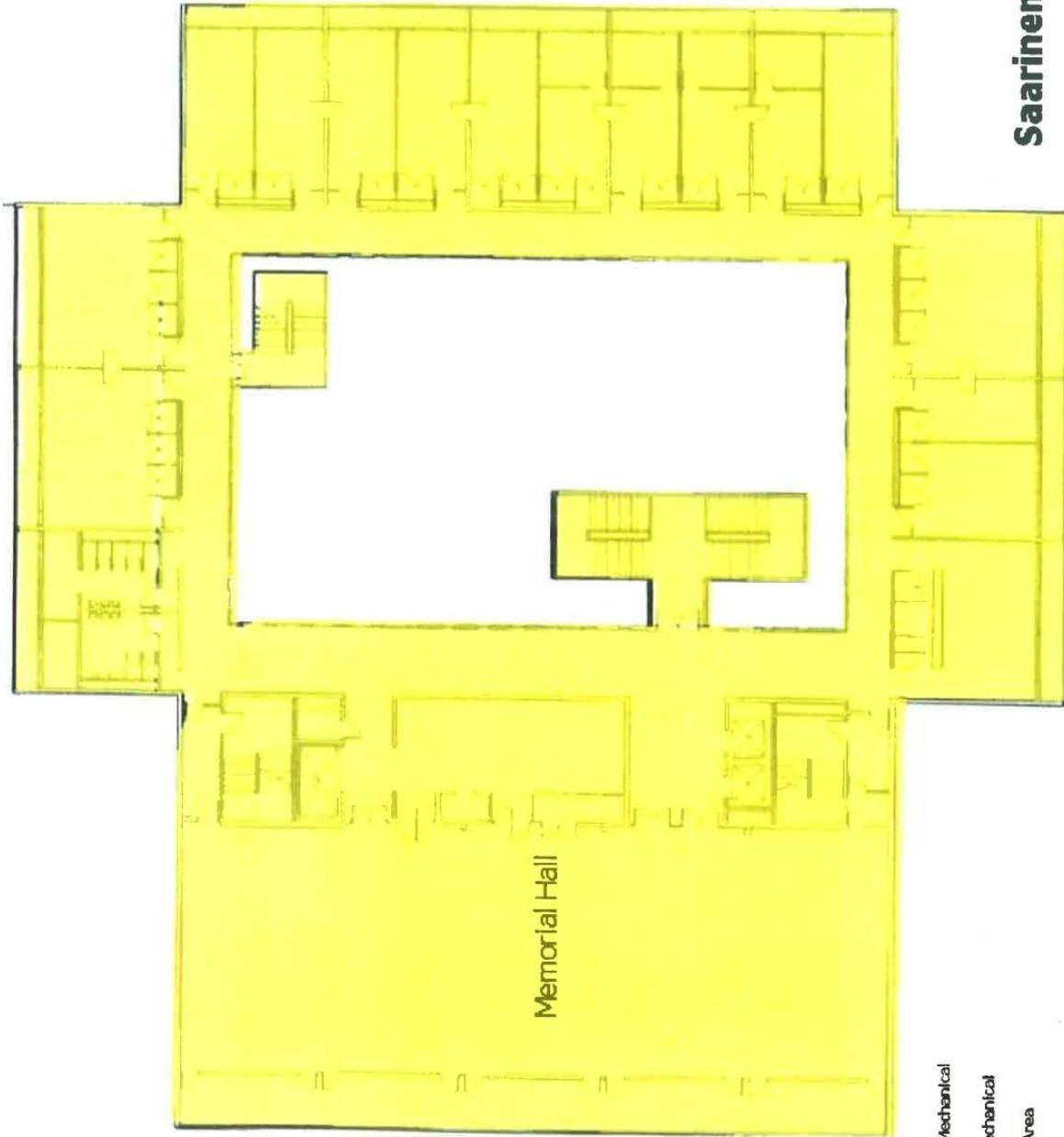
11, 6/13/2013





# Saarinen 4th Floor

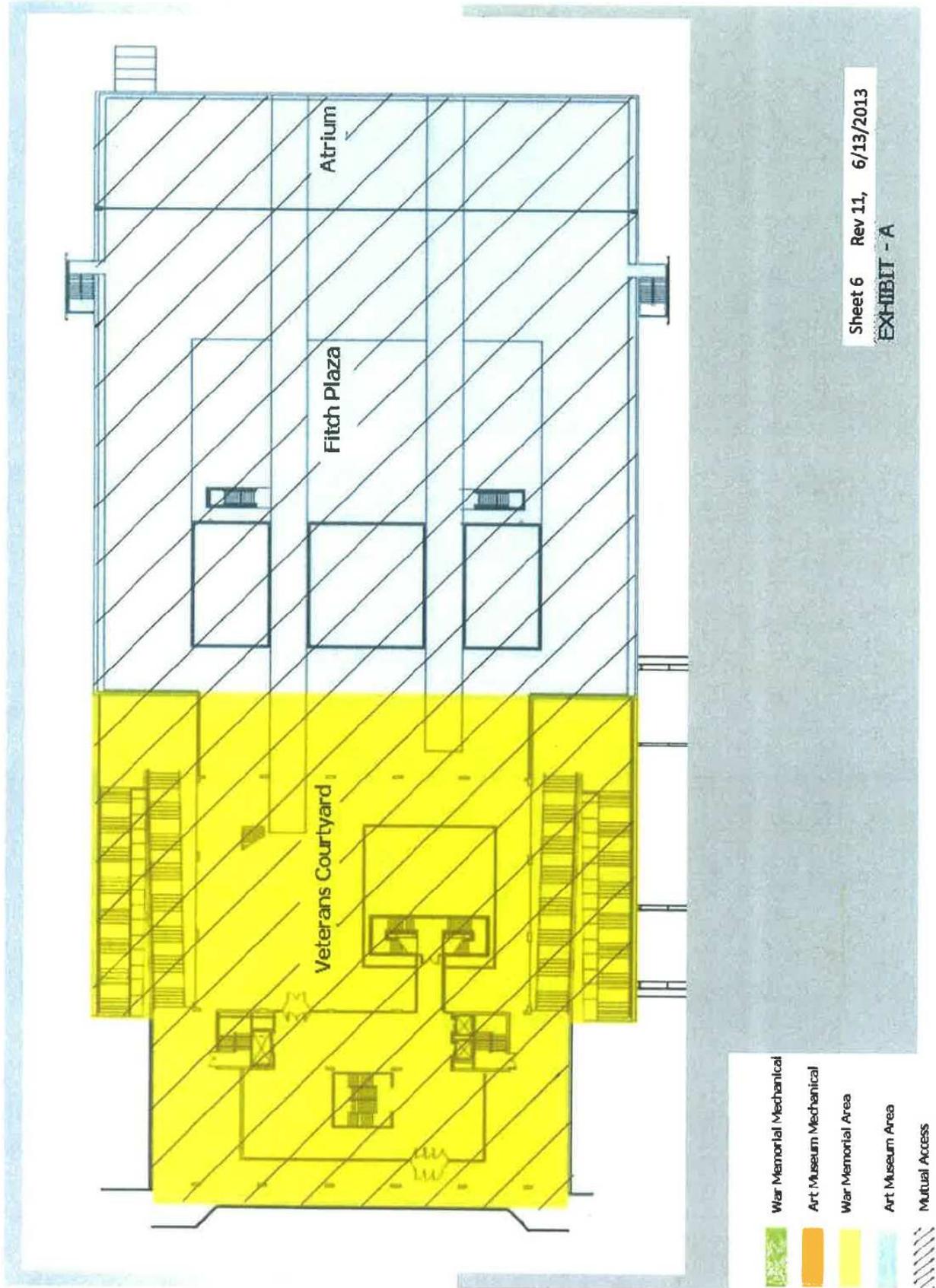
Sheet 4 Rev 11, 6/13/2013

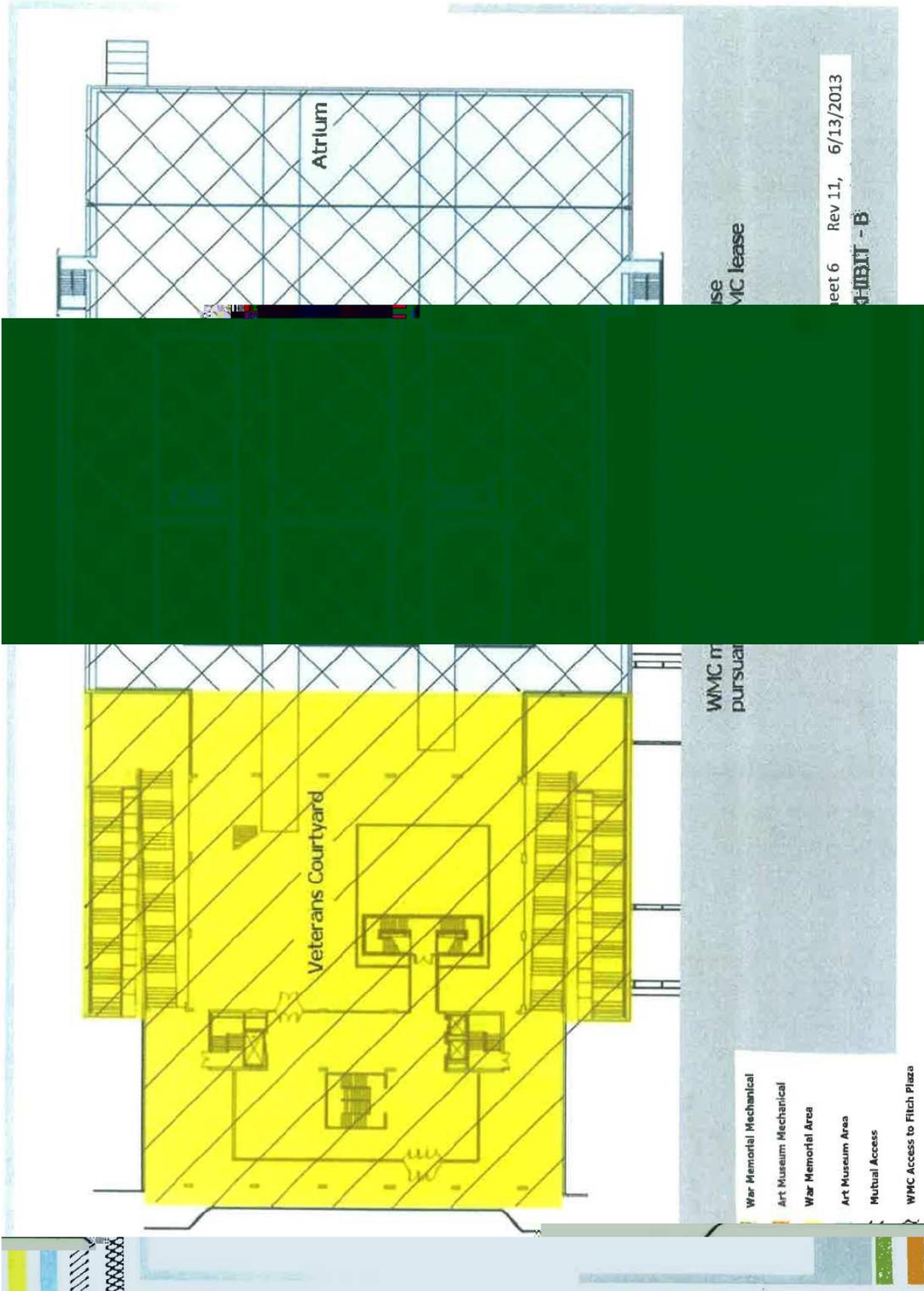


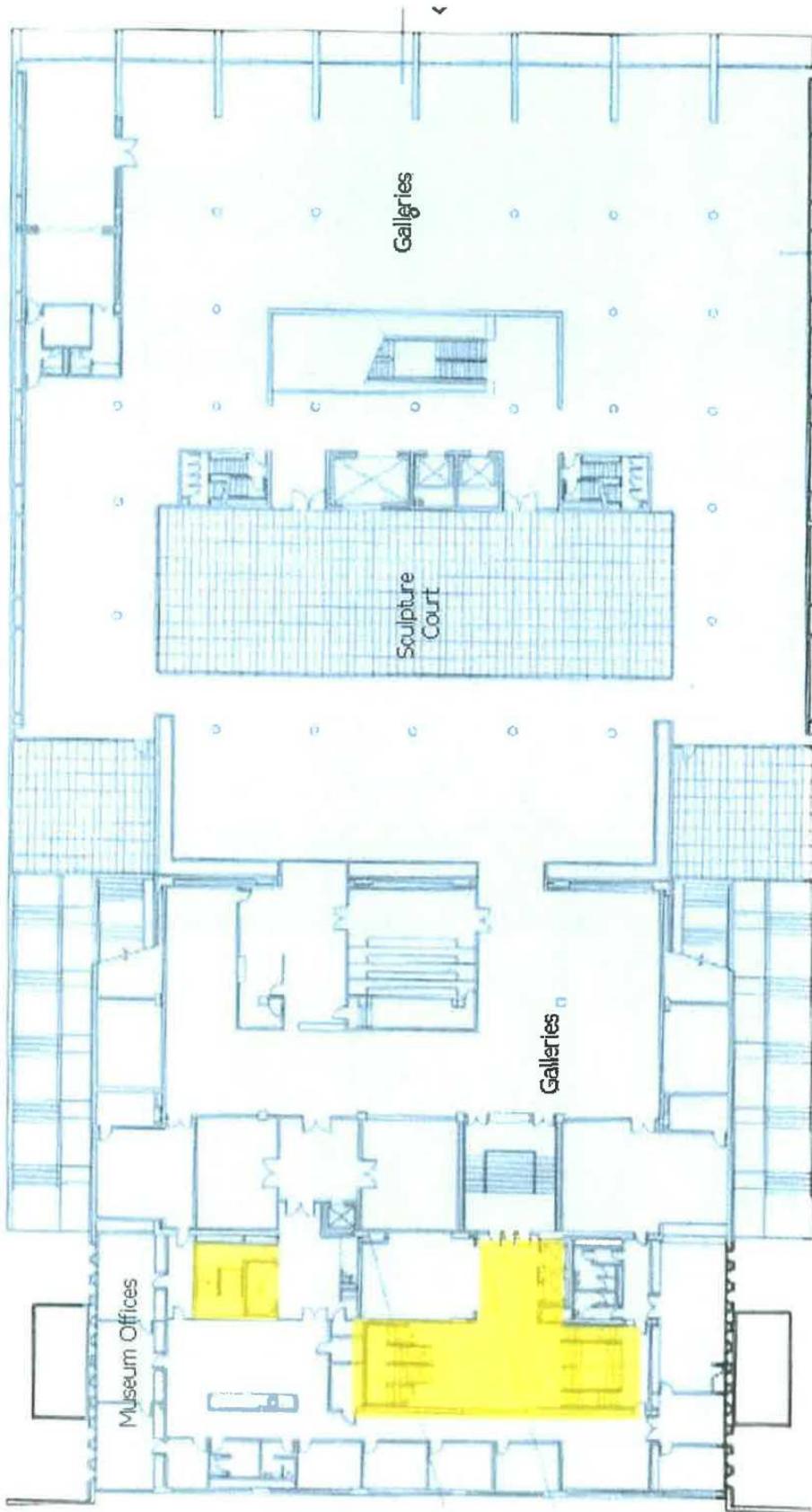
# Saarinen 3rd Floor

Sheet 5 Rev 11, 6/13/2013

- War Memorial Mechanical
- Art Museum Mechanical
- War Memorial Area
- Art Museum Area
- Mutual Access



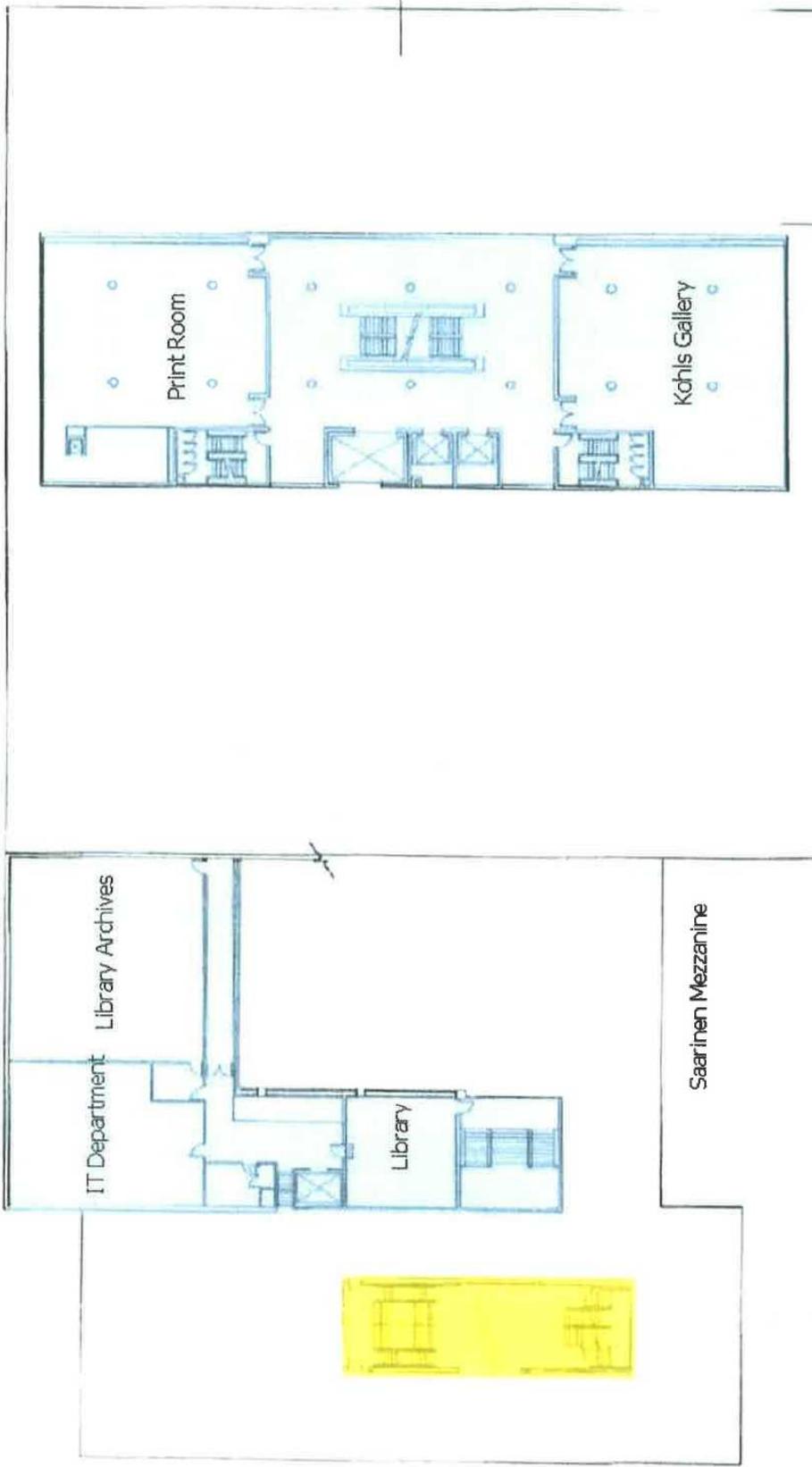




### Bradley Level

-  War Memorial Mechanical
-  Art Museum Mechanical
-  War Memorial Area
-  Art Museum Area
-  Mutual Access

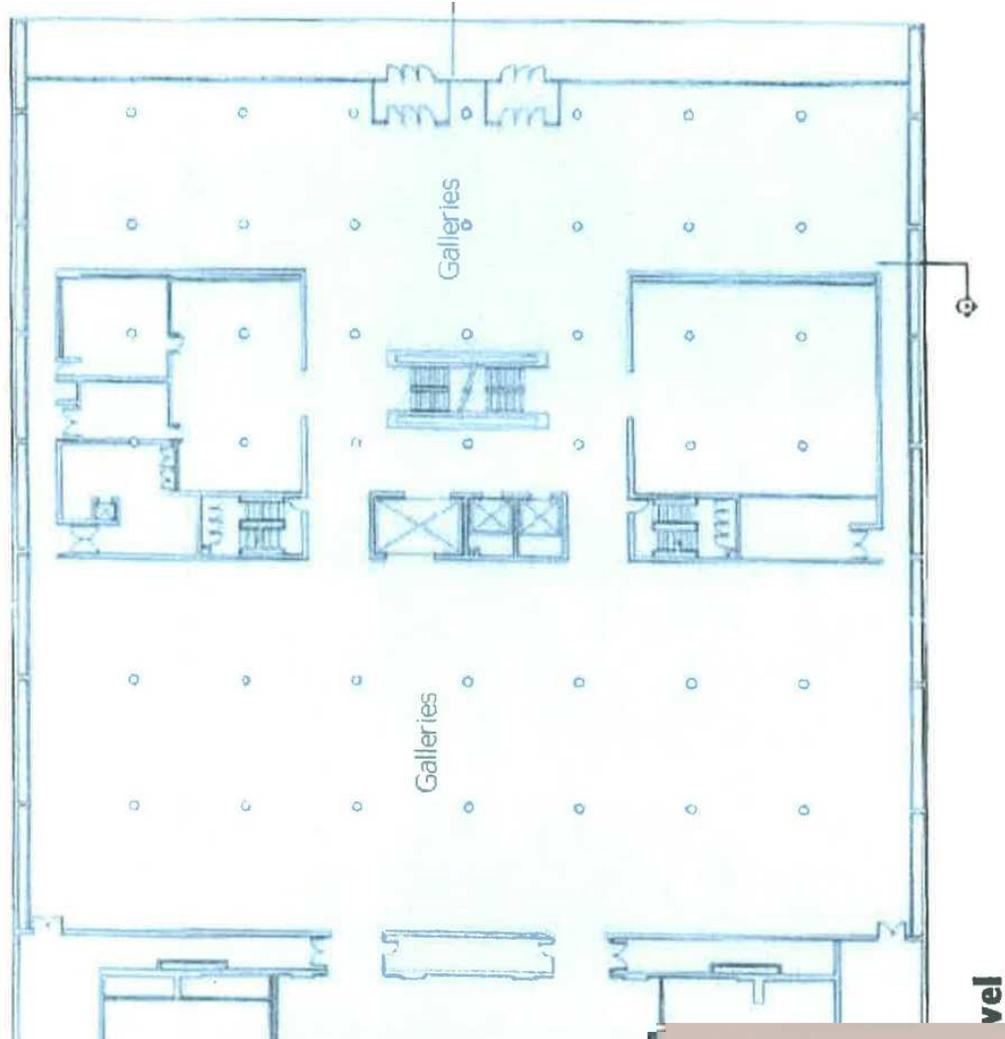
Sheet 7 Rev 11, 6/13/2013



- War Memorial Mechanical
- Art Museum Mechanical
- War Memorial Area
- Art Museum Area
- Mutual Access

Kahler Mezzanine

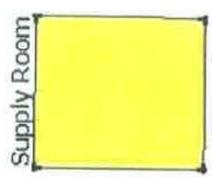
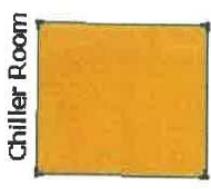
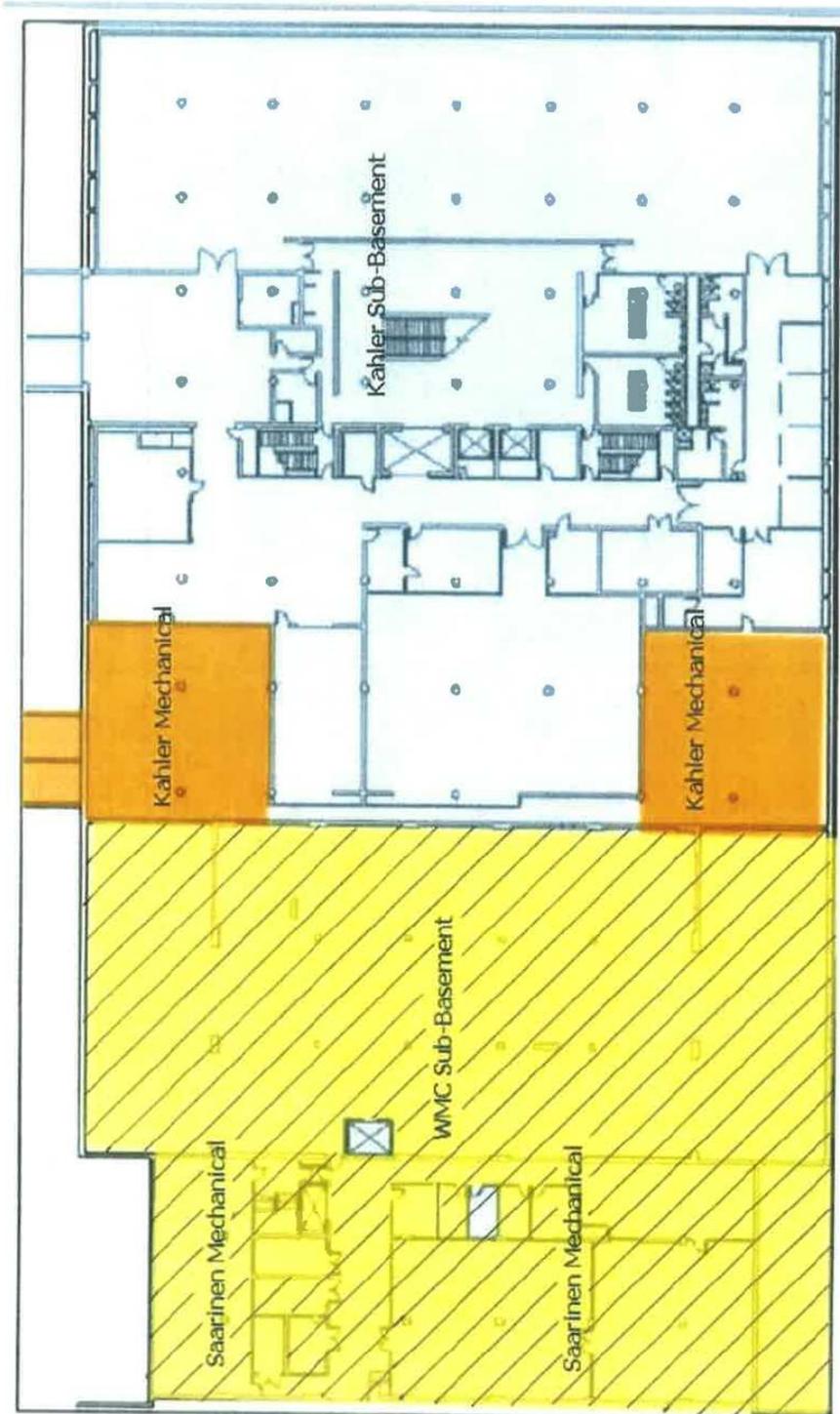
Sheet 8 Rev 11, 6/13/2013



Level

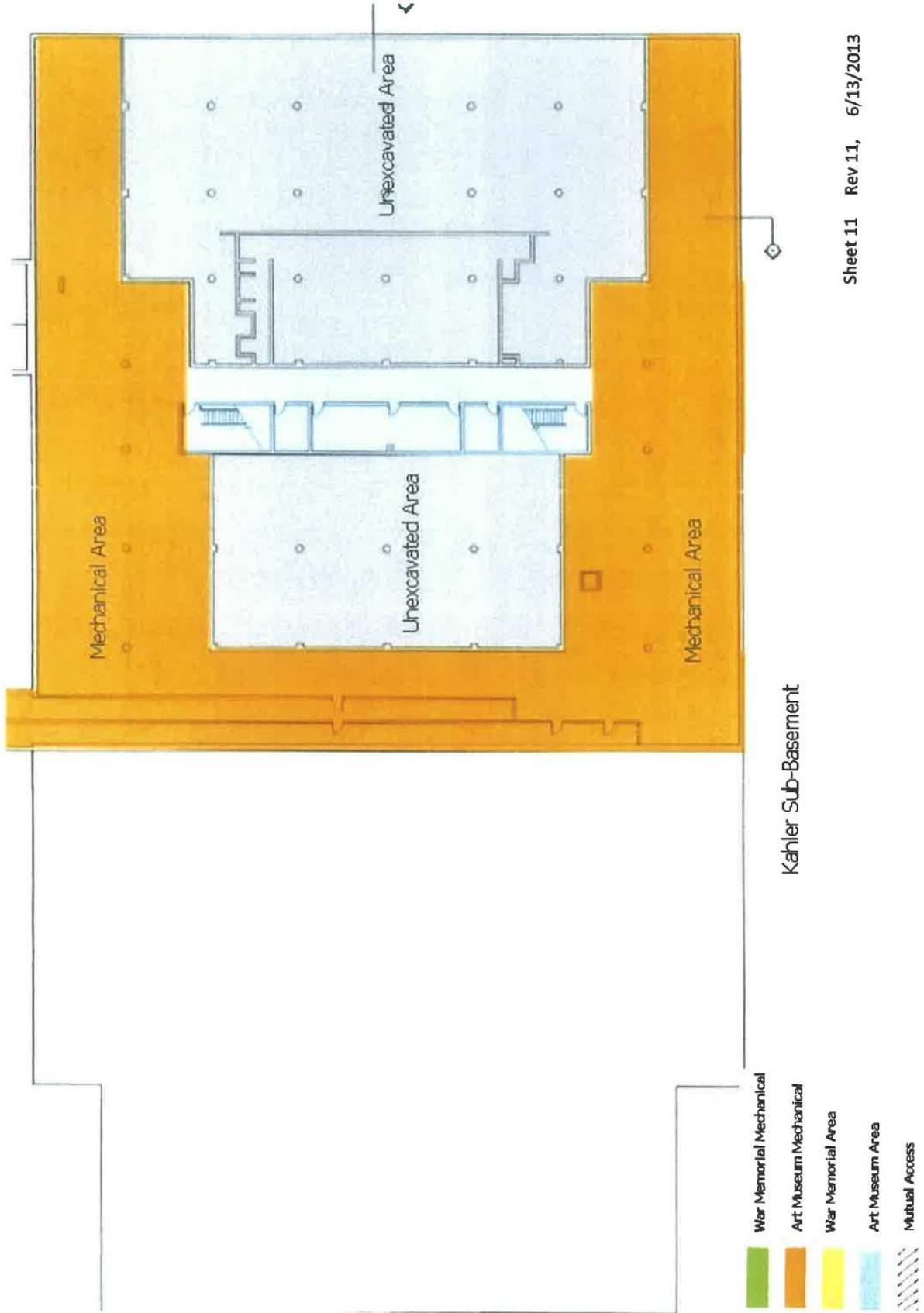
Sheet 9 Rev 11, 6/13/2013



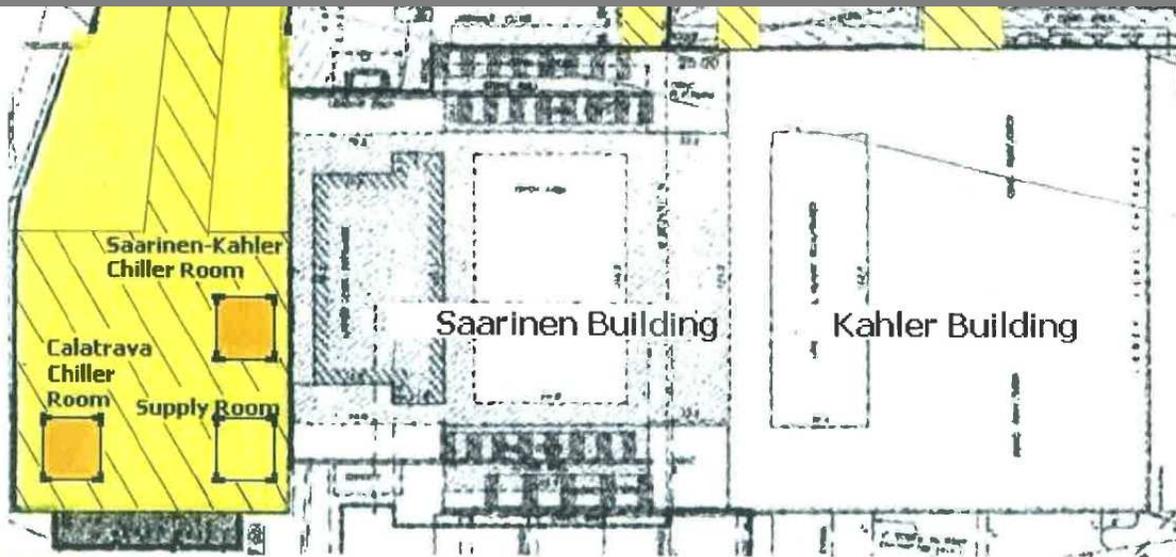


-  War Memorial Mechanical
-  Art Museum Mechanical
-  War Memorial Area
-  Art Museum Area
-  Mutual Access

**Lower Level**



Sheet 11 Rev 11, 6/13/2013



-  War Memorial Mechanical
-  Art Museum Mechanical
-  War Memorial Area
-  Art Museum Area
-  Mutual Access

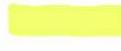
### Mason Street Lower Level

Sheet 12 Rev 11, 6/13/2013



EXHIBIT C

Exhibit C  
Underbridge Area.

 WMC

 MAM  
Mechanical

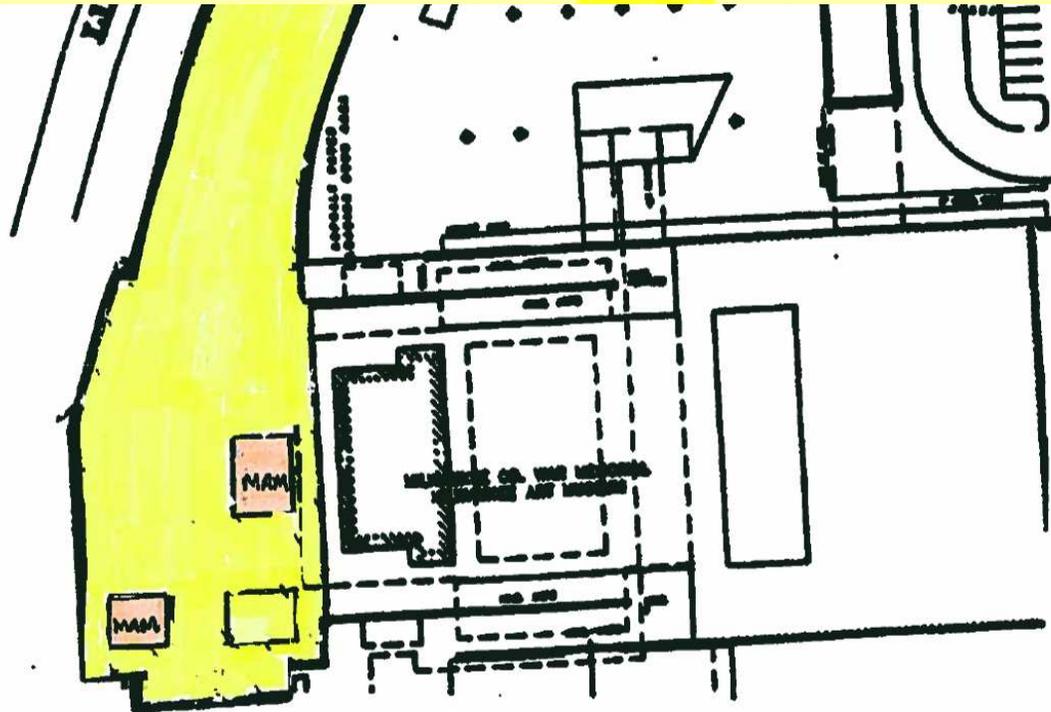
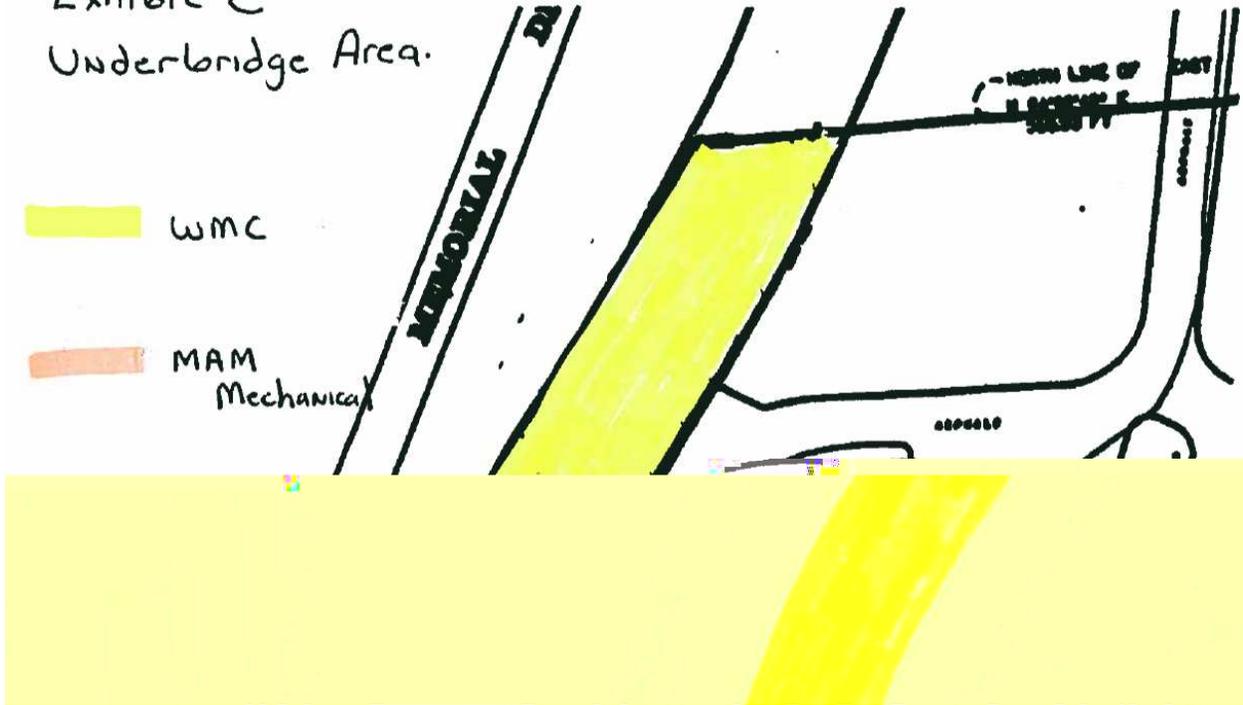
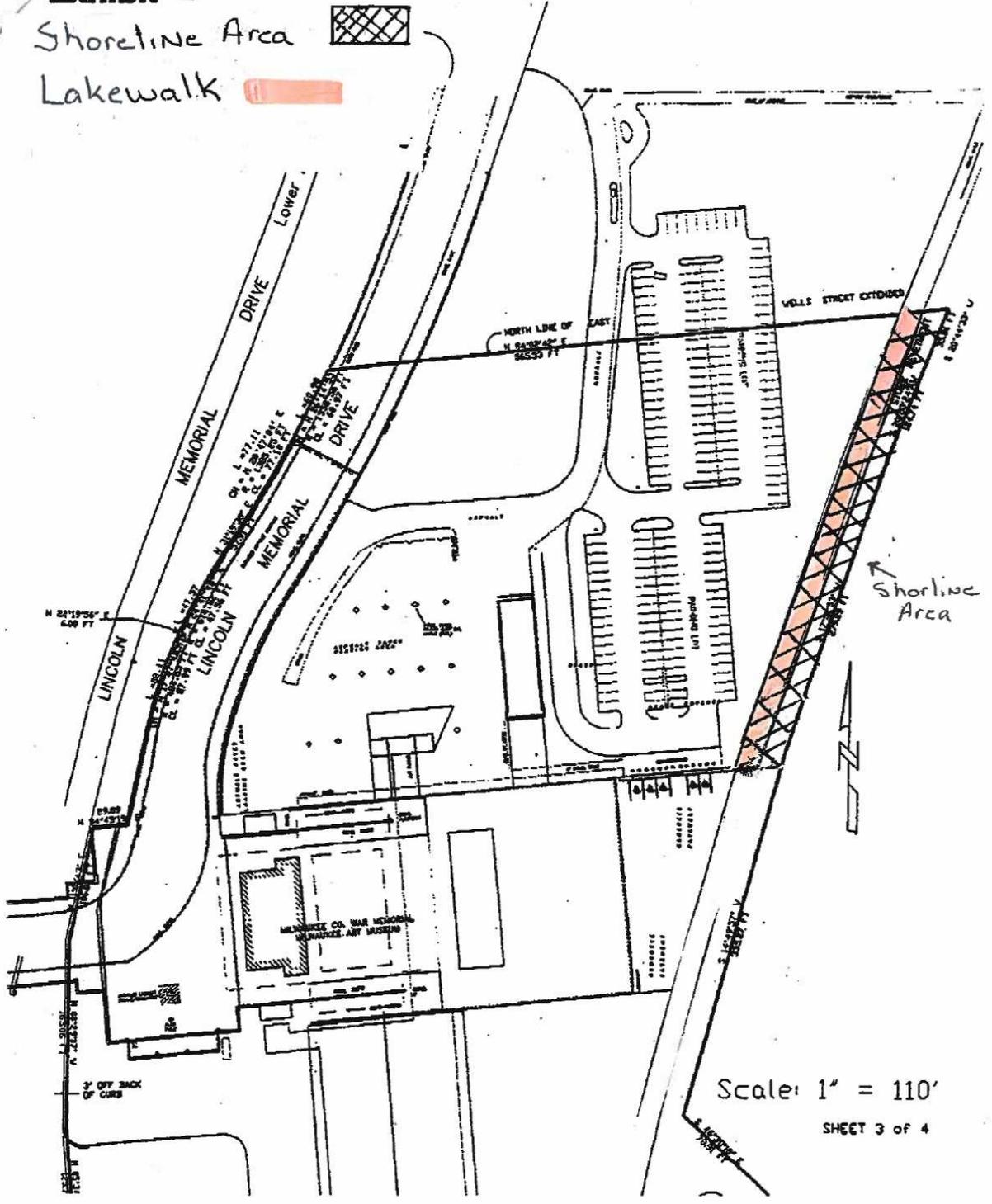


EXHIBIT D

Exhibit D  
Shoreline Area   
Lakewalk 



Scale: 1" = 110'  
SHEET 3 of 4