

**NORTH TRACT ACCESS, USE, AND
FUTURE DEVELOPMENT AGREEMENT**

THIS NORTH TRACT ACCESS, USE AND FUTURE DEVELOPMENT AGREEMENT (“Agreement”) is made as of the ___ day of _____, 2013, by and between MILWAUKEE COUNTY, a governmental subdivision of the State of Wisconsin (“County”), the MILWAUKEE ART MUSEUM, INC. (“Museum”), and the MILWAUKEE COUNTY WAR MEMORIAL, INC. (“WMC”) (hereinafter referred individually as a “Party” or collectively as the “Parties”).

RECITALS

WHEREAS, County is the owner of property shown on Exhibit A, attached hereto and incorporated herein (the “North Tract”).

WHEREAS, On even date herewith, County and WMC have entered into that certain lease agreement (“the WMC Lease”) pursuant to which County leases certain real property and improvements, including the North Tract, to WMC.

WHEREAS, On even date herewith, County and Museum have entered into that certain lease agreement (the “Museum Lease”) pursuant to which County leases certain real property and improvements to Museum (the “Museum Leased Premises”).

WHEREAS, On even date herewith, County, Museum, and WMC will enter into a Development Agreement (the “Development Agreement”), which provides for the funding and construction of the Planned Capital Improvements and Museum Improvements (as such terms are defined in the Development Agreement) to the Saarinen Building and Kahler Addition (the Planned Capital Improvements and Museum Improvements are, collectively, the “Project”).

WHEREAS, On even date herewith, County, WMC and Museum will enter into a Cooperation Agreement addressing the working relationship between Museum and WMC (the “Cooperation Agreement”).

WHEREAS, This Agreement is entered into for the purpose of addressing ingress, egress, maintenance, utility, future development, and related rights and obligations with respect to the North Tract.

AGREEMENT

NOW THEREFORE, In consideration of the 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 above recitals are true and correct and form a material part of this Agreement upon which the Parties have relied.

2. TERM OF AGREEMENT. This Agreement, and the rights, benefits, and obligations conferred and undertaken hereunder, shall commence on the date hereof and remain in effect for the term of the Museum Lease, as amended, renewed or extended.

3. GRANT OF MUSEUM ACCESS RIGHTS. County as owner, and WMC as tenant, hereby grant and convey to Museum, its officers, agents, employees, invitees, guests, contractors, sublessees, licensees, successors and assigns and members of the public (collectively, the “Museum Beneficiaries”), a nonexclusive right of access on, over, under, and across that portion of the North Tract shown on Exhibit B attached hereto and incorporated herein by this reference (such area being the “Access Area”) for (i) pedestrian and vehicular access between the Lincoln Memorial Drive right-of-way and the Museum Leased Premises (including use of Museum’s loading dock and passageway and access to the underbridge area), (ii) pedestrian and vehicular access between different parts of the Museum Leased Premises, (iii) pedestrian and vehicular access between the Lakewalk (and other publicly owned property) to the Museum Leased Premises, and (iv) for parking purposes on an as available basis, at then existing rates, as such parking areas exist now or in the future. The Access Area shall be made available to Museum and Museum Beneficiaries on all days and at all times, subject to temporary interruptions reasonably necessary for security emergencies, and for maintenance, repair, replacements and alterations of the Access Area. Neither County nor WMC may exclude Museum from the Access Area, it being the agreement of the parties that the Access Areas will be available to WMC and Museum, both, on a non-exclusive basis. It is acknowledged that the Access Area may be relocated or reconfigured to accommodate future development of the North Tract pursuant to Section 9 of this Agreement.

4. CONSTRUCTION ACCESS RIGHTS.

(a) During the period of construction of the Project, County as owner reserves, and WMC as tenant acknowledges, a temporary construction right of access for County and Museum on, over and across that portion of the North Tract identified on Exhibit C attached hereto and incorporated herein by this reference (such area being the “Construction Area”) for the purpose of transporting and staging equipment and materials in connection with the construction of the Project. The construction access reserved by County for County and Museum pursuant to this Section 4 shall expire upon completion of construction of the Project.

(b) The Parties anticipate that construction activities associated with construction of the East Atrium Addition (as defined in the Development Agreement) may interfere with the use of portions of the WMC’s facilities and cause those facilities to be unusable for a temporary period until construction is complete. Museum will reimburse WMC for reasonable event and parking revenues lost, if any, by the WMC as a result of Museum’s use of the Construction Area for the construction of the East Atrium Addition. With respect to loss of parking revenue, if any, the amount of such loss shall be determined by the then prevailing monthly per spot rate (for the first six months and the daily per spot rate thereafter) for each parking space shown to be normally in use that is not usable as a result of Museum’s use of the Construction Area for the construction of the East Atrium Addition. With respect to loss of event revenue, if any, the amount of such loss shall be determined by the average net revenue generated by WMC for the same time period during the prior two (2) years that such an event loss is claimed as a result of Museum’s use of the Construction Area for the construction of the

East Atrium Addition. For purposes of clarification, Museum shall have no liability to WMC or County for revenues lost as a result of the construction or implementation of those components of the Project other than the East Atrium Addition, or for costs or expenses (if any) related to staging areas outside of the Construction Area that may be required for use during the construction of the Project.

(c) County and Museum will use commercially reasonable efforts to minimize the impact of construction and staging activities on the WMC's operations, including, without limitation, the WMC's parking facilities on the North Tract and the ingress / egress of traffic and pedestrians. Any physical damages to the North Tract in connection with construction of the Project (including landscaping restoration) will be repaired and paid for by County or Museum in accordance with the allocation of responsibility set forth in the Construction Budget exhibit to the Development Agreement.

5. UTILITY ACCESS RIGHTS. County as owner reserves, and WMC as tenant acknowledges, the right of County to install such underground utility infrastructure (including without limitation, gas, electricity, steam, water, and sewer) on, over, across and under the North Tract in the area of the existing utility corridors shown on Exhibit D, attached hereto and made a part hereof, as may be desired by County in connection with the Project. If additional utility infrastructure areas are required outside of such existing utility corridor areas, such additional utility infrastructure areas shall be made available to County without cost or expense to County or Museum and subject to WMC approval, which shall not be unreasonably withheld, conditioned, or delayed. All utility infrastructure existing on the North Tract, whether on or after the date of this Agreement, shall be the responsibility of County pursuant to Section 7, below.

6. MAINTENANCE OF NORTH TRACT ACCESS ROADS AND WALKWAYS.

County and WMC shall be responsible for the maintenance, repair and replacement of the access roads, parking lots, and walkways located within the Access Area (the "Access Roads and Walkways") to keep the same in good condition and repair, and WMC shall be responsible for keeping the Access Roads and Walkways free of snow, mud, ice, refuse, garbage, holes and breaks in pavement (any such work being the "Access Area Maintenance Work") in accordance with the allocation of such responsibilities between County and WMC set forth in the WMC Lease. All Access Area Maintenance Work shall be done in a good and workmanlike manner. All such work shall be conducted to ensure compliance with applicable codes and ordinances as well as the quiet enjoyment and safety of WMC, Museum, and their respective invitees.

7. MAINTENANCE OF NORTH TRACT UTILITIES.

(a) County shall be solely responsible for maintaining, repairing, replacing, and/or relocating the utility infrastructure located on the North Tract, whether on or after the date of this Agreement, in good condition and repair, in accordance with all applicable governmental rules, ordinances and regulations, as well as sound engineering practices ("Utility Maintenance Work").

(b) In the event County fails to perform any Utility Maintenance Work of a non-emergency nature for which it is responsible pursuant to subparagraph (a) above, which

failure continues for more than thirty (30) days after County's receipt of written notice thereof from either WMC or Museum, such notifying Party shall have the right, but not the obligation, to: (i) perform such obligations as are necessary to restore the subject utilities to good condition and repair; (ii) perform any Utility Maintenance Work; (iii) expend such funds as are reasonably necessary for any Utility Maintenance Work; and (iv) submit an itemized invoice (an "Invoice") to County for the cost of the reasonably expended funds in connection with any such Utility Maintenance Work performed by such Party as aforesaid, and County shall pay the same. Notwithstanding the foregoing, if in the reasonable judgment of the notifying Party, an emergency which threatens imminent loss of life or damage to the leasehold premises and/or property of the notifying Party, the notifying Party shall use reasonable efforts to contact County to advise of such emergency, and if County fails to commence the cure of such emergency within a reasonable time under the circumstances, then the notifying Party may promptly cure such emergency, and County shall pay the reasonable costs thereof

8. ALTERATIONS AND IMPROVEMENTS. Subject to the terms of this Agreement and the Cooperation Agreement, WMC and Museum shall make no alterations to the location or configuration of the Access Roads and Walkways without the prior written approval of the Parties hereto, which approval shall not be unreasonably withheld, conditioned or delayed.

9. FUTURE DEVELOPMENT OF THE NORTH TRACT.

(a) Any future development on the North Tract by WMC (except for the Planned Capital Improvements and Museum Improvements, which are subject to the Development Agreement) will be subject to the prior written approval of the County, Museum, and all other approvals to the extent required by law. If any WMC development on the North Tract results in a loss of parking spaces and/or access to Museum, WMC shall grant Museum rights to equivalent replacement parking and access. Any proposed development by WMC which is approved by Museum and County may be subject to such reasonable conditions as Museum and the County may require, including but not limited to, compensation for lost revenue and rights relinquished, expenses incurred and/or equivalent parking spaces for Museum as a result of access and/or parking spaces lost. WMC shall be responsible for the costs of relocating or reconfiguring the Access Area or Utility Area necessitated by any future development of the North Tract proposed by WMC.

(b) Any future development on the North Tract by the Museum (except for the Planned Capital Improvements and Museum Improvements, which are subject to the Development Agreement) will be subject to the prior written approval of the County, WMC, and all other approvals to the extent required by law. If any Museum development on the North Tract results in a loss of parking spaces and/or access to WMC, Museum shall grant WMC rights to equivalent replacement parking and access. Any proposed development by Museum which is approved by WMC and County may be subject to such reasonable conditions as WMC and the County may require, including but not limited to, compensation for lost revenue and rights relinquished, expenses incurred and/or equivalent parking spaces for WMC as a result of access and/or parking spaces lost. Museum shall be responsible for the costs of relocating or reconfiguring the Access Area or Utility Area necessitated by any future development of the North Tract proposed by Museum.

10. 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) County Insurance. County shall purchase and maintain policies of insurance to cover liabilities and costs as may arise from tort, statutory and worker's compensation claims in connection with this Agreement, and for all risks to utilities or other improvements owned by County which are located on the North Tract. Such coverage shall be in an amount equal to the full replacement value of all such improvements. WMC and Museum shall be named as additional insureds on the policies. A thirty (30) day written notice of cancellation, non-renewal or material change shall be afforded to Museum and 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 and approved by Museum and WMC. A certificate of insurance shall be submitted for review on request to Museum and WMC for each successive period of coverage for the duration of this Agreement.

(c) WMC and Museum Insurance. WMC and Museum shall separately purchase and maintain policies of insurance to cover liabilities and costs as may arise from tort, statutory and worker's compensation claims as required under the WMC Lease or the Museum Lease, as the case may be. WMC and Museum shall name each other and County as an additional insureds on any commercial general liability policies they may carry. A thirty (30) day written notice of cancellation, non-renewal or material change shall be afforded to the other Parties to this Agreement. The insurance specified above 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 and approved by the County Director of Risk Management and Insurance or such other person as may be appropriate. Waivers may be granted when surplus lines and specialty carriers are used. A certificate of insurance shall be submitted for review on request to the County.

11. DEFAULT; REMEDIES. In the event of any dispute arising under this Agreement (including, without limitation, disputes regarding future development of the North Tract pursuant to Section 9 of this Agreement, any conditions to future development of the North Tract imposed by a Party hereto, compensation for lost revenue and determination of fair market compensation for rights relinquished by a Party to accommodate future development of the North Tract) or if any Party fails to duly and fully observe or perform any covenant, condition, or agreement on its part to be observed or performed pursuant to this Agreement, and such failure continues for thirty (30) days after notice from any Party hereto, the Parties agree to submit the issue to mediation with the Marquette University Law School, or another mutually acceptable mediator. If such mediation fails to result in an amicable resolution within thirty (30) days, the Parties may pursue all remedies available at law or in equity to the extent not otherwise limited in this Agreement.

12. INDEMNITY. Subject to Section 10(a), above, each Party (the “Indemnitor”) agrees to indemnify and hold the other Parties (each of the other Parties an “Indemnified Party”) harmless from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs, and expenses (including, but not limited to, reasonable attorneys’ fees) imposed upon, incurred by, or asserted against each Indemnified Party by a third party to the extent caused by: (i) the failure by the Indemnitor to duly and fully perform or comply with each and all of the terms of this Agreement; or (ii) any negligent act or omission by Indemnitor or any of its agents or contractors in the performance of Indemnitor’s obligations under this Agreement. If any action, suit, or proceeding is brought against an Indemnified Party by reason of any such occurrence, then the Indemnitor, upon request of the Indemnified Party, shall, at the sole cost and expense of the Indemnitor, defend such action, suit, or proceeding.

13. REPRESENTATIONS.

(a) County represents and warrants that it is the owner of the North Tract and has full and complete authority to enter into this Agreement. County further represents and warrants that it has taken all actions necessary as a prerequisite for the execution of this Agreement and that upon the execution of this Agreement, the obligations of the Parties hereunder shall be valid and binding.

(b) Museum and WMC each individually represent and warrant that they have complete authority to enter into this Agreement. Museum and WMC each individually further represent and warrant that they have taken all actions necessary as a prerequisite for the execution of this Agreement and that upon the execution of this Agreement, the obligations of Museum and WMC hereunder shall be valid and binding.

14. NO THIRD PARTY BENEFICIARY. All of the terms, conditions, covenants and other provisions contained in this Agreement, including the benefits and burdens, shall be binding upon and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns. No third Party, other than such successors and assigns, shall be entitled to enforce any or all of the terms of this Agreement or shall have rights hereunder whatsoever.

15. MISCELLANEOUS.

(a) 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 Museum: Director
Milwaukee Art Museum
700 N. Art Museum Drive
Milwaukee, WI 53202

President
Milwaukee Art Museum
700 N. Art Museum Drive
Milwaukee, WI 53202

With a copy to: Raymond R. Krueger, Esq.
Michael Best & Friedrich
100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53201-4108

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

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 above indicated attorneys.

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

(c) Public Trust. Use of the North Tract is subject to County's reservation of the right for all unenclosed portions to be used by the public for the uses allowed by the public trust doctrine and the lake bed grants. 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 North Tract at such times as those facilities are open for business.

(d) No Rights in Public; No Implied Easements. Subject to subparagraph (c) above, nothing contained in this Agreement shall be deemed to constitute a dedication of the North Tract, or any portion or portions thereof, to the general public, or to be construed to create any rights in or for the benefit of any person not a Party to this Agreement or the respective successors and assigns of a Party. No easements shall be implied by this Agreement.

(e) Applicable Law. This Agreement shall be governed by and construed under the laws of the State of Wisconsin.

(f) Independent Review/Neutral Construction. Each Party has had the opportunity to consult independent counsel regarding this Agreement. The language used in this Agreement 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.

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

(h) 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 Agreement 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.

(i) Entire Agreement. This Agreement 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 Agreement are contractually binding upon all Parties, their successors and assigns.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

(k) Authorization. Each Party to this Agreement represents and warrants to the other Party hereto that the execution and delivery of this Agreement 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.

(l) Assignment. This Agreement and all rights hereunder shall not be assignable by any Party without the prior written consent of the other Party(ies).

(m) Amendments. This Agreement may not be amended, changed, altered or modified except in writing signed by all of the Parties.

This Agreement is made as of the date first above written.

COUNTY:
Milwaukee County

Chris Abele, County Executive

Approved for execution:

Kimberly Walker, Corporation Counsel

MUSEUM:
Milwaukee Art Museum

Kenneth C. Krei, President

Daniel Keegan, Director

Raymond R. Krueger, Chairman of the Board of Trustees

WMC:
Milwaukee County War Memorial, Inc.

Michael M. Berzowski, Chairman
War Memorial Center Facilities Board

George Gaspar, Chairman
War Memorial Corporation Board

EXHIBIT A

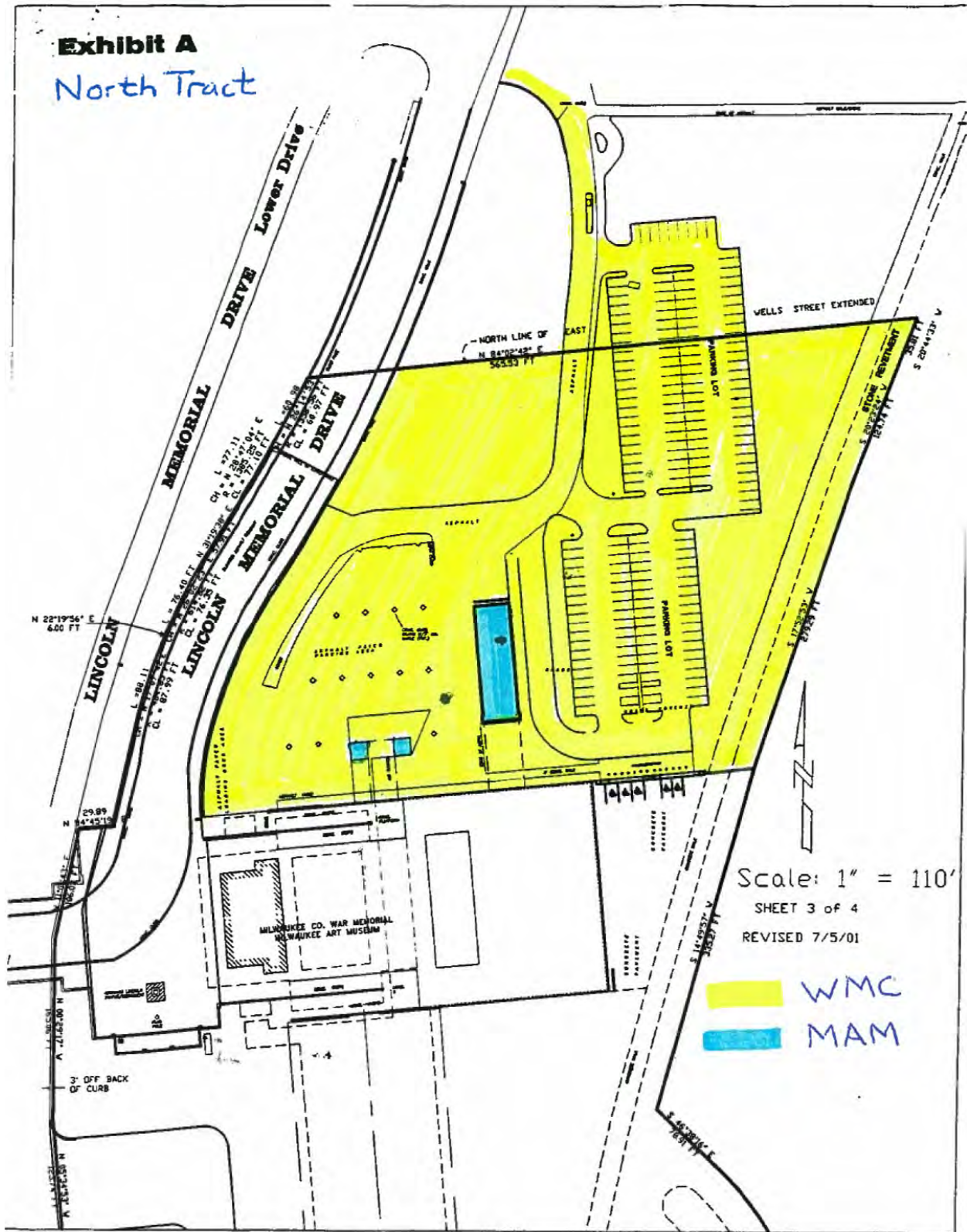


EXHIBIT B

ACCESS AREA

Exhibit B: Access Area

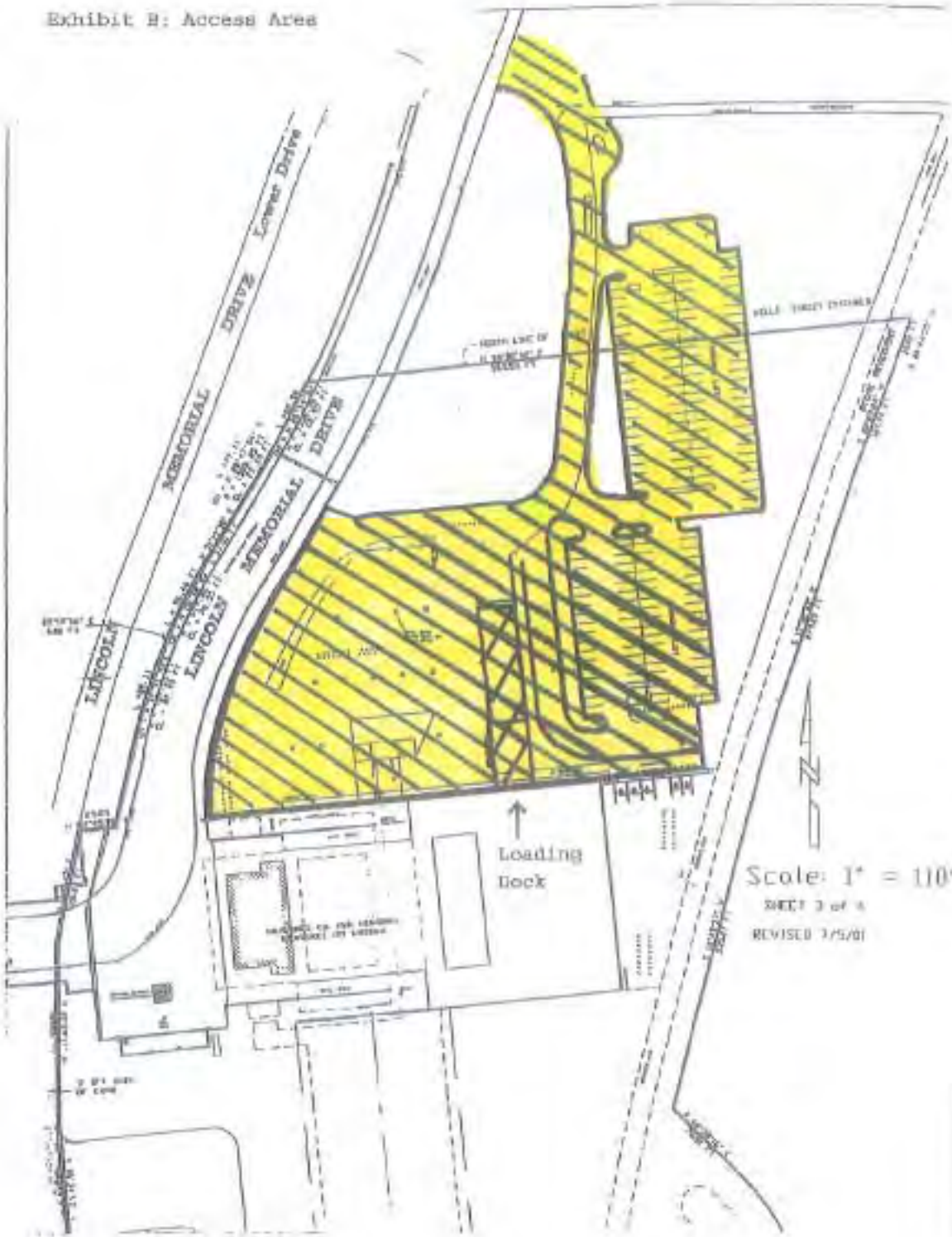


EXHIBIT C
CONSTRUCTION AREA



