



CITY OF TROY BOARD OF PARK COMMISSIONERS
SPECIAL MEETING AGENDA
Wednesday, April 19, 2023
4:00 p.m. – Council Chambers

Call to Order: President – Mr. Kappers

I. Roll Call: Mr. Kappers
Mr. Emerick
Mrs. Westfall

II. New Business:

a. Recommendation to Council regarding a Prouty Plaza Ground Lease

b. That the Board provide a recommendation to Council that the requested portion of the DORA Temporary Activation Boundary be activated as requested by the Troy Area Chamber of Commerce for the 2023 Troy Strawberry Festival.

III: Other:

IV: Adjourn:

MEMORANDUM

TO: Board of Park Commissioners

FROM: Tim Davis, Development Director *TD*

DATE: *April 18*
~~March 31~~, 2023

SUBJECT: **PROUTY PLAZA – GROUND LEASE**

BACKGROUND & DISCUSSION:

Providing public restrooms for downtown patrons has been a long-term goal for the City of Troy that has been supported by Troy Main Street, and listed as a recommended improvement in the 2017 Troy Downtown Riverfront Strategic Development Study. With the renovation of the Mayflower building (9 W. Main Street), an opportunity surfaced to create public restrooms in the east side of the Mayflower building, located directly off of Prouty Plaza. In order to provide access to the public restrooms, a ten-foot public access easement along the west side of Prouty Plaza has been accomplished.

As Prouty Plaza is park land, it is requested that the Board of Park Commissioners provide a recommendation to Troy Council regarding the lease of the ground that would then allow the Community Improvement Corporation (CIC) of Troy, Ohio enter into a Building Lease and Ground Lease with Busted Brick Realty Group, LLC (see attached) to establish rental terms, obligations, and other items in the attached document.

REQUESTED ACTION:

It is requested that the Board of Park Commissioners provide a positive recommendation to City Council regarding the Ground Lease.

Encl.

BUILDING LEASE
AND
GROUND LEASE

SECTION 1 – BUILDING LEASE

Busted Brick Realty Group, LLC, an Ohio Limited Liability Company, for itself and its successors and assigns, whose address is 10 Wheatland Dr., Arcanum, Ohio 45304 (hereafter “Busted Brick”), leases to The Community Improvement Corporation of Troy, Ohio, a Community Improvement Corporation formed and operating pursuant to Chapter 1724 of the Ohio Revised Code, whose address is 100 Market St., Troy, Ohio 45373 (hereafter “CIC”), a portion of the real estate located at and commonly known as 9-11 West Main St., Troy, Ohio (the legal description of which is attached hereto as Exhibit “A”), said portion to consist of two rooms comprising approximately 110 square feet to be constructed by Busted Brick in the west side of the building located upon said real estate which is commonly known as the “Mayflower Building” which are accessible from the exterior of the Mayflower Building for CIC’s use as public restrooms. Said two rooms are hereafter referred to as the “Premises” and are further described and depicted upon Exhibits B and C hereto.

I. Term and Renewal of Term

The parties’ obligations under this Building Lease shall commence on _____, 2023, and terminate on _____, 2073 (the “Initial Lease Term”) unless renewed as set forth herein. CIC agrees to pay rent to Busted Brick for the Initial Lease Term as follows:

- A. The sum of One Hundred Forty Thousand Dollars (\$140,000.00) shall be due and payable immediately upon execution of this Building Lease;
- B. The sum of Ten Thousand Fifty Dollars (\$10,050.00) shall be due and payable when Busted Brick obtains a Certificate of Occupancy for the Premises and delivers possession of the Premises to CIC.

The parties acknowledge that the payments described above represent rent (i) reimbursement to Busted Brick in the amount of One Hundred Fifty Thousand Dollars and, (ii) payment of rent, in advance, at the rate of One Dollar (\$1.00) per year for the Initial Lease Term. Except as set forth in Paragraphs A and B above, CIC shall not be required to pay any other rent to Busted Brick during the Initial Lease Term. CIC shall have the right and option to renew this Building Lease for an additional ten (10) year term (the "Renewal Term") upon the same terms and conditions as are herein set forth, but for a fixed rental payment of Ten Dollars (\$10.00) for the entire Renewal Term, which fixed rental payment shall be due and payable in full upon the commencement of the Renewal Term. CIC shall exercise its said right and option to renew this Building Lease, unless it provides written notice of its intention for the lease to lapse to Busted Brick not later than ninety (90) days prior to the expiration of the Initial Lease Term.

II. CIC's Obligations

CIC agrees as follows:

- A. That it shall maintain the Premises, at its sole cost and expense, in as good a condition as the same are in at the time Busted Brick delivers possession thereof to CIC, provided, however, that Busted Brick shall be responsible for all maintenance and repairs covered by any warranty, and any and all maintenance and repairs required due to Busted Brick's failure to properly maintain the Mayflower Building.
- B. That it will occupy the Premises in a safe and proper manner and shall be solely responsible for all trash removal service and expense.
- C. That it will not permit any waste of the premises, nor keep on the Premises any gasoline or other substances which may increase the danger of fire, or which will emit or cause disagreeable odors or violate any insurance provision, or permit any unreasonable smoke, odor, dust, gas or noise that would constitute a nuisance. CIC shall not use the premises for any unlawful purpose. CIC shall not commit waste, or permit any unreasonable odors, smoke, dust, gas, substances, noise or

vibrations to emanate from the Premises, take any action which would constitute a nuisance or take any action which would abrogate any warranties.

- D. That it shall, at its sole expense, promptly comply with all applicable statutes, ordinances, rules, regulations, orders, and requirements of any fire insurance underwriters or rating bureaus, now in effect or which may hereafter come into effect, whether or not they reflect a change in policy from that now existing, during the term or any part of the term. CIC acknowledges that (i) it has satisfied itself by its own independent investigation that the Premises are suitable for its intended use, and that neither Busted Brick nor Busted Brick's agent or agents has made any representation or warranty as to the present or future suitability of the Premises.
- E. That it will permit Busted Brick, or its agents, upon twenty-four hour advance notice to CIC, to enter upon the Premises at all reasonable times to examine the condition of the Premises and make repairs.
- F. That it will use the Premises for use as public restrooms. CIC will not use the Premises for any unlawful purpose and will obey all laws, regulations and orders of all governmental authorities, respecting the premises.
- G. That it will surrender and deliver up the Premises, at the end of the term, in as good order and condition as the premises now are, and all approved additions and improvements, reasonable wear and tear excepted; CIC agrees to pay for any damage done to the property over and above reasonable wear and tear that occurred during the Initial Lease Term and any Renewal Term. CIC will produce photographs of the Premises at the beginning of the lease term and shall make all said photographs available to Busted Brick in a timely fashion upon Busted Brick's request.
- H. The east wall of the Mayflower Building is the location of a mural created by former Troy artist and resident Armenia B. Pereyma which is titled "Sunrise, Sunset, High Noon". In consideration of Busted Brick's agreements with respect to the Sunrise, Sunset, High Noon Mural, as set forth in Paragraph XIV below, CIC agrees, during

the Initial Lease Term and the Renewal Term, if any, to be solely responsible for the ongoing and routine maintenance of the Sunrise, Sunset, High Noon Mural, as well as emergency repairs thereto, provided that such maintenance and repairs are not necessitated by the act, omissions or operations of Busted Brick, or the primary tenant of the Mayflower Building, or the guests, patrons or business invitees of Busted Brick or said primary tenant. For the avoidance of doubt, it is the parties intention that CIC shall be responsible for the maintenance of the Sunrise, Sunset, High Noon mural, and that Busted Brick shall be responsible for the maintenance of the underlying east wall of the Mayflower Building.

III. Surrender

On the last day of the Initial Lease Term, or on any sooner termination, CIC shall surrender the Premises to Busted Brick in the same condition as received, and all approved additions, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices by CIC. CIC shall repair any damage to the Premises. Except as otherwise stated in this Lease, and subject to the terms and conditions of this Lease, CIC shall leave the power panels, electrical distribution systems, lighting fixtures, air conditioning, window coverings, wall coverings, carpets, wall paneling, ceilings and plumbing on the Premises in good operating condition.

IV. Alterations to Premises

CIC shall not, without Busted Brick's prior written consent which shall not be unreasonably withheld or delayed, make any alterations, improvements additions, utility installations or repairs in, on or about the Premises.

Any alterations, improvements, additions other than specified herein, or utility installations in or about the Premises that CIC shall desire to make shall be presented to Busted Brick in written form, with proposed detailed plans. If Busted Brick shall give its consent to CIC's making such alteration, improvement, addition or utility installation, the consent shall be deemed conditioned upon CIC acquiring a permit to do so from the

applicable governmental agencies, furnishing a copy thereof to Busted Brick prior to the commencement of the work, and compliance by CIC with all conditions of said permit in a prompt and expeditious manner.

Except for work performed by Busted Brick, CIC shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for CIC at or for use in the Premises, which claims are or may be secured by any mechanic's or material men's lien against the Premises or any interest therein.

All alterations, improvements, additions and utility Installations (which do not constitute trade fixtures of CIC), which may be made to the Premises by CIC, shall be made and done in a good and workmanlike manner and of good and sufficient quality and materials. CIC's personal property and equipment, other than that which is affixed to the premises so that it cannot be removed without material damage to the Premises or the Building, and other than utility Installations, shall remain the property of CIC.

V. Insurance

CIC shall, at CIC's expense, obtain and keep in force during the term of this Lease a policy of Commercial General Liability insurance with coverage at least as broad as Insurance Services Office Form CG 00 01 in an amount of not less than \$1,000,000.00 per occurrence for bodily injury, property damage, personal & advertising injury. The policy shall cover or be endorsed to cover Busted Brick as an additional insured against liability arising out of the CIC's use, occupancy, or maintenance of the Premises. CIC's coverage shall be primary and non-contributing as respects Busted Brick. Compliance with the above requirement shall not, however, limit the liability of CIC hereunder.

Busted Brick shall maintain property insurance during the duration of CIC's tenancy. Said insurance shall insure against loss to the building and Premises. CIC and Busted Brick each hereby release and relieve the other, and waive their entire right of recovery against the other, for direct or consequential loss or damage arising out of or incident to the perils covered by property insurance carried by such party, whether due to the negligence of Busted Brick or CIC or their agents, employees, contractors and/or invitees. If necessary, all property insurance policies required under this Lease shall be

endorsed to so provide.

VI. Real Property Tax

Busted Brick shall be responsible for all real property tax and assessments assessed during the lease term, provided however, CIC shall be solely responsible for any assessment for a nuisance abatement with respect to the Premises only.

VII. Utility Services and Interruption

Busted Brick shall be solely responsible for the payment of all water, sewer and electrical service charges attributable to CIC's use of the Premises. However, there shall be no abatement of rent and Busted Brick shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service, unless such the inadequacy, stoppage, interruption or discontinuance is caused by the action or inaction of Busted Brick or the tenant of Busted Brick.

VIII. Assignment

CIC shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of CIC's interest in the Lease or in the Premises, without Busted Brick's prior written consent. Busted Brick shall respond to CIC's request for consent hereunder in a timely manner and any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void, and shall constitute a material default and breach of this Lease without the need for notice to CIC.

No assignment or subletting shall release CIC or Busted Brick of their respective obligations hereunder or alter the primary liability of CIC to pay the rent and other sums due Busted Brick hereunder and to perform all other obligations to be performed by the parties hereunder.

IX. Default

The occurrence of any one or more of the following events shall constitute a material default of this Lease by CIC:

(a) The failure by CIC to make any payment of rent or any other payment required to be made by CIC hereunder, as and when due, where such failure shall continue for a period of fifteen (15) days after Busted Brick provides written notice of default to CIC.

(b) The making by CIC of any general arrangement or general assignment for the benefit of creditors; CIC becoming a "debtor" as defined in 11 U.S.C. (S) 101 or any successor statute thereto (unless, in the case of a petition filed against CIC, the same is dismissed within ninety (90) days; the appointment of a trustee or receiver to take possession of substantially all of CIC's assets located at the Premises or of CIC's interest in this Lease, where possession is not restored to CIC within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of CIC's assets located at the Premises or of CIC's interest in this Lease, where such seizure is not discharged within thirty (30) days. In the event that any provision of this paragraph is contrary to any applicable law, such provision shall be of no force or effect.

(c) The failure by CIC to perform any other obligation hereunder which continues for sixty (60) days after Busted Brick provides written notice of such failure to CIC.

X. Termination

In the event of any default by CIC, in addition to any other remedies available to Busted Brick under this Lease, at law or in equity, Busted Brick shall have the option to terminate this Lease provided that Busted Brick provides CIC with written notice of default. CIC shall, after notice, have sixty (60) days to cure any default. In the event that Busted Brick shall elect to so terminate this Lease, then Busted Brick may recover from CIC any unpaid rent which had been earned at the time of such termination.

XI. Eminent Domain

If the Premises or any portion thereof or the premises are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs; provided that if so much of the Premises are taken by such condemnation as would substantially and adversely affect the operation and profitability of CIC's business conducted from the

Premises, CIC shall have the option, to be exercised only in writing within thirty (30) days after Busted Brick shall have given CIC written notice of such taking (or in the absence of such notice, within thirty (30) days after the condemning authority shall have taken possession), to terminate this Lease as of the date the condemning authority takes such possession. If CIC does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area of the Premises taken bears to the total floor area of the Premises. Busted Brick shall have the option in its sole discretion to terminate this Lease as of the taking of possession by the condemning authority, by giving written notice to CIC of such election within thirty (30) days after receipt of notice of a taking by condemnation of any part of the Premises. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Busted Brick and CIC. Busted Brick shall to the extent of severance damages received by Busted Brick in connection with such condemnation, repair any damage to the premises caused by such condemnation except to the extent that CIC has been reimbursed therefore by the condemning authority.

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

XII. Access to Premises

Busted Brick and its agents shall have the right to enter the Premises at reasonable times with 24 hours prior notice, during reasonable business hours (except in case of emergency) for the purpose of inspecting the same, performing any services required of Busted Brick, showing the same to prospective purchasers and lenders, taking such safety measures, erecting such scaffolding or other necessary structures, making such alterations, repairs, improvements or additions to the premises as Busted Brick may reasonably deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other Premises as long as there is no material adverse effect to CICs use of the Premises. Busted Brick may at any time place on or about the Building (but not in the interior of the Premises) any

ordinary "For Sale" signs and Busted Brick may at any time during the last thirty (30) days of the Initial Lease Term, or any Renewal Term, place on or about the Premises any ordinary "For Lease" signs, provided, however that all such signs shall be in compliance with all applicable governmental codes, ordinances and regulations.

All activities of Busted Brick pursuant to this paragraph shall be without abatement of rent, nor shall Busted Brick have any liability to CIC for the same.

Busted Brick shall have the right to retain keys to the Premises and in the case of emergency to enter the premises by any reasonably appropriate means, and any such entry shall not be deemed a forcible or unlawful entry or detainer of the Premises or an eviction.

XIII. Signage

CIC, at its sole cost and expense, shall have right to install signs, in a size and location in compliance with all applicable codes and regulations and to the maximum extent allowed by such codes or regulations or variances thereto, including the placement of a reader board sign if allowed.

XIV. Busted Brick's Obligations

Following the execution of this Lease, Busted Brick shall commence, and diligently pursue to completion, the construction of the Premises in accordance with the specifications and plans described and/or depicted upon Exhibits "B" and "C" hereto in a good and workmanlike fashion utilizing materials of good and sufficient quantity and quality, and shall deliver occupancy of the Premises to CIC not later than June 1, 2025. In the event that Busted Brick should fail to deliver occupancy of the Premises to CIC on or before June 1, 2025, CIC shall then have the right to complete the construction of the Premises in accordance with the specifications and plans described and/or depicted upon Exhibits "B" and "C" hereto.

Busted Brick agrees that CIC shall have quiet use and possession of the Premises during the Initial Lease Term and the Renewal Term, if any, subject to CIC's compliance with the terms and provisions of this Building Lease.

In consideration of CIC's agreements with respect to the Sunrise, Sunset, High Noon Mural, as set forth in Paragraph II (I), and during the Initial Lease Term and the Renewal Term, if any, Busted Brick agrees that the Sunrise, Sunset, High Noon Mural shall be maintained in its current state, "**AS IS-WHERE IS**" without addition or alteration except for ongoing and routine maintenance, and emergency repairs, to be performed by the CIC pursuant to Paragraph II (I) hereof.

SECTION 2 – GROUND LEASE

CIC leases to Busted Brick a strip of land ten (10) feet in width taken by parallel lines off of the westside of the Real Estate described in a certain deed recorded at Volume 539, Page 717 of the Deed Records of Miami County, Ohio, a copy of which is attached hereto as Exhibit "D", for purposes on ingress and egress to and from the Mayflower Building and for use as an enclosed outdoor seating area, subject to the rights of the public to ingress and egress from the Premises described in Section 1 hereof. Said ten (10) foot strip of ground is hereafter referred to as the "Premises" and is depicted upon Exhibit "C" hereto.

II. Term and Renewal of Term

The parties' obligations under this Ground Lease shall commence on _____, 2023, and terminate on _____, 2073 (the "Initial Lease Term") unless renewed as set forth herein. Busted Brick agrees to pay rent to CIC for the Initial Lease Term as follows:

- A. The sum of Fifty Dollars (\$50.00) shall be due and payable immediately upon execution of this Ground Lease and the parties agree that said sum represents the payment of rent, in advance, at the rate of One Dollar (\$1.00) per year, for the Initial Lease Term.

Except as set forth in Paragraph A above, Busted Brick shall not be required to pay any other rent to CIC during the Initial Lease Term. Busted Brick shall have the right and option to renew this Ground Lease for an additional ten (10) year term (the "Renewal Term") upon the same terms and conditions as are herein set forth, but for a fixed rental payment of Ten Dollars (\$10.00) for the entire Renewal Term, which fixed rental payment

shall be due and payable in full upon the commencement of the Renewal Term. Busted Brick shall exercise its said right and option to renew this Ground Lease, unless it provides written notice of its intention for the lease term to lapse to CIC not later than ninety (90) days prior to the expiration of the Initial Lease Term.

II. Busted Brick's Obligations

Busted Brick agrees as follows:

- A. That it shall maintain the Premises, at its sole cost and expense, in as good a condition as the same are in at the time CIC delivers possession thereof to Busted Brick.
- B. That it will occupy the Premises in a safe and proper manner and shall be solely responsible for all utility services attributable to its use and occupancy of the Premises, including, but not limited to trash removal service and expense.
- C. That it will not permit any waste of the premises, nor keep on the Premises any gasoline or other substances which may increase the danger of fire, or which will emit or cause disagreeable odors or violate any insurance provision, or permit any unreasonable smoke, odor, dust, gas or noise that would constitute a nuisance. Busted Brick shall not use the premises for any unlawful purpose. Busted Brick shall not commit waste, or permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or take any action which would abrogate any warranties.
- D. That it shall, at its sole expense, promptly comply with all applicable statutes, ordinances, rules, regulations, orders, and requirements of any fire insurance underwriters or rating bureaus, now in effect or which may hereafter come into effect, whether or not they reflect a change in policy from that now existing, during the term or any part of the term. Busted Brick acknowledges that (i) it has satisfied itself by its own independent investigation that the Premises are suitable for its intended use, and that neither CIC nor CIC's agent or agents has made any representation or warranty as to the present or future suitability of the Premises.

- E. That it will permit CIC, or its agents, to enter upon the Premises at all reasonable times to examine the condition of the Premises and make repairs.
- F. That it will use the Premises for ingress and egress to the Mayflower Building and for an outdoor seating area, subject to the rights of the public to ingress and egress to the Premises described in Section 1 hereof. Busted Brick shall not in any manner block or inhibit access to the Premises described in Section 1 hereof and shall not permit outdoor seating, or place tables or chairs, any closer than thirty-five (35) feet away from the Premises described in Section 1 hereof. Busted Brick will not use the Premises for any unlawful purpose and will obey all laws, regulations and orders of all governmental authorities, respecting the premises.
- G. That it will surrender and deliver up the Premises, at the end of the term, in as good order and condition as the premises now are, and all approved additions and improvements, reasonable wear and tear excepted; Busted Brick agrees to pay for any damage done to the property over and above reasonable wear and tear that occurred during the Initial Lease Term and any Renewal Term. Busted Brick will produce photographs of the Premises at the beginning of the lease term and shall make all said photographs available to CIC in a timely fashion upon CIC's request.
- H. Busted Brick shall allow the Sunrise, Sunset, High Noon Mural to be maintained in its current state **"AS IS-WHERE IS"** without addition or alteration except for ongoing and routine maintenance, and emergency repairs, to be performed by CIC pursuant to Section 1, Paragraph II(I) hereof. Busted Brick shall be solely responsible for Sunrise, Sunset, High Noon Mural repairs and maintenance necessitated by the act, omissions or operations of Busted Brick, or the primary tenant of the Mayflower Building, or the guests, patrons or business invitees of Busted Brick or said primary tenant specifically including repairs and maintenance necessitated by Busted Brick's construction of the Premises described in Section 1 hereof.

III. Surrender

On the last day of the Initial Lease Term, or on any sooner termination, Busted Brick shall surrender the Premises to CIC in the same condition as received, and all approved additions, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices by Busted Brick. Busted Brick shall repair any damage to the Premises. Except as otherwise stated in this Lease, and subject to the terms and conditions of this Lease, Busted Brick shall leave the power panels, electrical distribution systems, lighting fixtures, air conditioning, window coverings, wall coverings, carpets, wall paneling, ceilings and plumbing on the Premises in good operating condition.

IV. Alterations to Premises

Busted Brick shall not, without CIC's prior written consent which shall not be unreasonably withheld or delayed, make any alterations, improvements additions, utility installations or repairs in, on or about the Premises. CIC hereby consents to the alterations, improvements, additions and utility installations which are described and/or depicted upon Exhibits "B" and "C" hereto, and Busted Brick agrees to complete such alterations, improvements, additions and utility installations not later than June 1, 2025. In the event that Busted Brick fails to complete said alterations, improvements, additions and utility installations on or before June 1, 2025, CIC shall then have the right to enter upon the Premises and complete all such alterations, improvements, additions and utility installations.

Any alterations, improvements, additions other than specified herein, or utility installations in or about the Premises that Busted Brick shall desire to make shall be presented to CIC in written form, with proposed detailed plans. If CIC shall give its consent to Busted Brick's making such alteration, improvement, addition or utility installation, the consent shall be deemed conditioned upon Busted Brick acquiring a permit to do so from the applicable governmental agencies, furnishing a copy thereof to CIC prior to the commencement of the work, and compliance by Busted Brick with all conditions of said permit in a prompt and expeditious manner.

Except for work performed by CIC, Busted Brick shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Busted Brick at or for use in the Premises, which claims are or may be secured by any mechanic's or material men's lien against the Premises or any interest therein.

All alterations, improvements, additions and utility Installations (which do not constitute trade fixtures of Busted Brick), which may be made to the Premises by Busted Brick, shall be made and done in a good and workmanlike manner and of good and sufficient quality and materials. Busted Brick's personal property and equipment, other than that which is affixed to the premises so that it cannot be removed without material damage to the Premises or the Building, and other than utility Installations, shall remain the property of Busted Brick.

V. Insurance

Busted Brick shall, at Busted Brick's expense, obtain and keep in force during the term of this Lease a policy of Commercial General Liability insurance with coverage at least as broad as Insurance Services Office Form CG 00 01 in an amount of not less than \$1,000,000.00 per occurrence for bodily injury, property damage, personal & advertising injury. The policy shall cover or be endorsed to cover CIC, its officials, employees, and volunteers as additional insureds against liability arising out of the use, occupancy or maintenance of the Premises by Busted Brick, its employees, agents, representatives, and invitees. Busted Brick's coverage shall be primary and non-contributing as respects the CIC, its, officials, employees, and volunteers. Compliance with the above requirement shall not, however, limit the liability of Busted Brick hereunder.

CIC shall maintain property insurance during the duration of Busted Brick's tenancy. Said insurance shall insure against loss to the Premises. Busted Brick and CIC each hereby release and relieve the other, and waive their entire right of recovery against the other, for direct or consequential loss or damage arising out of or incident to the perils covered by property insurance carried by such party, whether due to the negligence of CIC or Busted Brick or their agents, employees, contractors and/or invitees. If necessary, all property insurance policies required under this Lease shall be endorsed to so provide.

VI. Real Property Tax

CIC shall be responsible for all real property tax and assessments assessed during the lease term, provided however, Busted Brick shall be solely responsible for any assessment for a nuisance abatement.

VII. Assignment

Busted Brick shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Busted Brick's interest in the Lease or in the Premises, without CIC's prior written consent. CIC shall respond to Busted Brick's request for consent hereunder in a timely manner and any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void, and shall constitute a material default and breach of this Lease without the need for notice to Busted Brick.

No assignment or subletting shall release Busted Brick or CIC of their respective obligations hereunder or alter the primary liability of Busted Brick to pay the rent and other sums due CIC hereunder and to perform all other obligations to be performed by the parties hereunder.

VIII. Default

The occurrence of any one or more of the following events shall constitute a material default of this Lease by Busted Brick:

(a) The failure by Busted Brick to make any payment of rent or any other payment required to be made by Busted Brick hereunder, as and when due, where such failure shall continue for a period of fifteen (15) days after CIC provides written notice of default to Busted Brick.

(b) The making by Busted Brick of any general arrangement or general assignment for the benefit of creditors; Busted Brick becoming a "debtor" as defined in 11 U.S.C. (S) 101 or any successor statute thereto (unless, in the case of a petition filed against Busted Brick, the same is dismissed within ninety (90) days; the appointment of a trustee or receiver to take possession of substantially all of Busted Brick's assets located at the

Premises or of Busted Brick's interest in this Lease, where possession is not restored to Busted Brick within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Busted Brick's assets located at the Premises or of Busted Brick's interest in this Lease, where such seizure is not discharged within thirty (30) days. In the event that any provision of this paragraph is contrary to any applicable law, such provision shall be of no force or effect.

(c) The failure by Busted Brick to perform any other obligation hereunder which continues for sixty (60) days after CIC provides written notice of such failure to Busted Brick.

IX. Termination

In the event of any default by Busted Brick, in addition to any other remedies available to CIC under this Lease, at law or in equity, CIC shall have the option to terminate this Lease provided that CIC provides Busted Brick with written notice of default. Busted Brick shall, after notice, have sixty (60) days to cure any default. In the event that CIC shall elect to so terminate this Lease, then CIC may recover from Busted Brick any unpaid rent which had been earned at the time of such termination.

X. Eminent Domain

If the Premises or any portion thereof or the premises are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs; provided that if so much of the Premises are taken by such condemnation as would substantially and adversely affect the operation and profitability of Busted Brick's business conducted from the Premises, Busted Brick shall have the option, to be exercised only in writing within thirty (30) days after CIC shall have given Busted Brick written notice of such taking (or in the absence of such notice, within thirty (30) days after the condemning authority shall have taken possession), to terminate this Lease as of the date the condemning authority takes such possession. If Busted Brick does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the

portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area of the Premises taken bears to the total floor area of the Premises. CIC shall have the option in its sole discretion to terminate this Lease as of the taking of possession by the condemning authority, by giving written notice to Busted Brick of such election within thirty (30) days after receipt of notice of a taking by condemnation of any part of the Premises. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of CIC and Busted Brick. CIC shall to the extent of severance damages received by CIC in connection with such condemnation, repair any damage to the premises caused by such condemnation except to the extent that Busted Brick has been reimbursed therefore by the condemning authority.

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

XI. Access to Premises

CIC and its agents shall have the right to enter the Premises at reasonable times with 24 hours prior notice, during reasonable business hours (except in case of emergency) for the purpose of inspecting the same, performing any services required of CIC, taking such safety measures, erecting such scaffolding or other necessary structures, making such alterations, repairs, improvements or additions to the premises as CIC may reasonably deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other Premises as long as there is no material adverse effect to Busted Brick's use of the Premises.

All activities of CIC pursuant to this paragraph shall be without abatement of rent, nor shall CIC have any liability to Busted Brick for the same.

XII. Signage

Busted Brick, at its sole cost and expense, shall have right to install signs, in a size and location in compliance with all applicable codes and regulations and to the maximum extent allowed by such codes or regulations or variances thereto, including the placement

of a reader board sign if allowed.

XIII. CIC's Obligations

CIC agrees that Busted Brick shall have quiet use and possession of the Premises during the Initial Lease Term and the Renewal Term, if any, subject to Busted Brick's compliance with the terms and provisions of this Building Lease.

SECTION 3 – PROVISIONS APPLICABLE TO BOTH BUILDING LEASE AND GROUND LEASE

I. Prior Agreements

The foregoing Building Lease and Ground Lease supersedes any and all prior agreements and understandings between Busted Brick and CIC and represents the entire agreement between the parties.

II. Memorandum of Lease Agreement

The parties agree that this Building Lease and Ground Lease shall not be recorded in the office of the Recorder of Miami County, Ohio, but that a Memorandum regarding this Building Lease and Ground Lease shall be prepared, executed by the parties and then recorded at Busted Brick's expense, in the office of the Recorder of Miami County, Ohio.

III. Jurisdiction

The parties agree that this lease shall be governed by the laws of the State of Ohio.

IV. Notices

Notices provided pursuant to this lease shall be made at the following locations:

Busted Brick:
Attn: Wesley Martin
Busted Brick Realty Group, LLC
10 Wheatland Drive
Arcanum, Ohio 45304

CIC:
Attn: Patrick Titterington
City of Troy, Ohio
100 S. Market Street
Troy, Ohio 45373

V. Authorization

Both the Busted Brick and the CIC covenant that the execution, delivery and performance of this Lease are a) within the parties' respective power; b) and that each has been duly authorized by all appropriate action. CIC further covenants that it is validly existing and in good standing under the laws of the State of Ohio and has all requisite power and authority and has all licenses necessary to conduct its business.

VI. Binding Agreement

The foregoing Building Lease and Ground Lease shall be binding upon the parties hereto and their respective successors and assigns forever.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of _____, 2023.

BUSTED BRICK REALTY GROUP, LLC
an Ohio Limited Liability Company

THE COMMUNITY IMPROVEMENT CORPORATION OF
TROY, OHIO, a Community Improvement Corporation

By: _____
Wesley Martin, its Authorized Member

By: _____
Jesse E. Westmeyer, its President

STATE OF OHIO
COUNTY OF MIAMI, SS:

Before me, a Notary Public in and for said County and State, personally appeared the above-named Busted Brick Realty Group, LLC, an Ohio Limited Liability Company, by Wesley Martin, its Authorized Member, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed individually and the duly authorized free act and deed of Busted Brick Realty Group, LLC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ____ day of _____, 2023.

Notary Public

STATE OF OHIO
COUNTY OF MIAMI, SS:

Before me, a Notary Public in and for said County and State, personally appeared the above-named The Community Improvement Corporation of Troy, Ohio, an Ohio Community Improvement Corporation, by Jesse E. Westmeyer, its President, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed individually and the duly authorized free act and deed of The Community Improvement Corporation of Troy, Ohio.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2023.

Notary Public

EXHIBIT "A"

Situate in the State of Ohio, County of Miami, City of Troy and being part of Inlot 31 on the Plat of Troy as recorded in Deed Book 1, Page 3, and being the tract as conveyed to Periphery Ventures, LLC by deed recorded in Volume 288, page 445, Official Records of the Records of Miami County, Ohio, and being more particularly described as follows:

Beginning at the southwest corner of said Inlot 31, said corner being the intersection of the east right of way of Cherry Street (66' right of way) and the north right of way of Main Street (99' right of way) witness 2 inch cross notches set North 59° 18' 01" West 2.00' and South 30° 55' 54" West 2.00' and being the PONT OF BEGINNING of the parcel herein described.

Thence, with the west line of said Inlot 31 and the east right of way line of Cherry Street, North 30° 55' 54" East for a distance of 158.35' to a corner in the south line of 10' alley as referenced in Volume 31 Page 626, Deed Records, witness 2 inch cross notch set North 59° 16' 22" West 2.00' and a MAG Nail set North 30° 55' 54" East 2.00'.

Thence, with the south line of said 10' alley and through said Inlot 31, South 59° 16' 22" East for a distance of 40.00' to a 5/8" iron pin set, capped "EAM GeoData" being the northwest corner of the tract as conveyed to the City of Troy, Ohio in Volume 539, Page 717, Deed Records.

Thence, with the west line of said City of Troy, Ohio tract and through said Inlot 31, South 30° 55' 54" West for a distance of 158.33' to the southwest corner of said City of Troy, Ohio tract, being in the south line of said Inlot 31 and in the north right of way line on Main Street, witness 2 inch cross notches set South 59° 18' 01" East 2.00' and South 30° 55' 54" West 2.00'.

Thence, with the south line of said Inlot 31 and the north right of way line of Main Street, North 59° 18' 01" West for a distance of 40.00' to the POINT OF BEGINNING. Containing 0.145 acre, more or less, and subject to all legal highways, easements and restrictions of record. Basis of bearings are based on the Ohio State Plane Coordinates, South Zone, NAD 83 (2011) with the east right of way line of Cherry Street being North 30° 55' 54" East.

This description prepared on an actual field survey performed on July 21, 2022 under my direct supervision, Eric A. Moody, Registered Professional Surveyor Number 7984 of the State of Ohio, and that all monuments referenced herein and placed on the ground represents the boundaries of the herein described tract, and based on a Plat Survey as filed in the Miami County Engineer's Record of Land Surveys, Volume 61, Page 103.

Parcel No.: D08-001020

Prior Instrument Record: Volume 288, Page 445 of the Official Records of Miami County, Ohio.

Grantee hereby assumes and agrees to pay real estate taxes and assessments due and payable in December, 2022 and thereafter.

Property address known as: 9 – 11 W. Main Street, Troy, Ohio 45373.

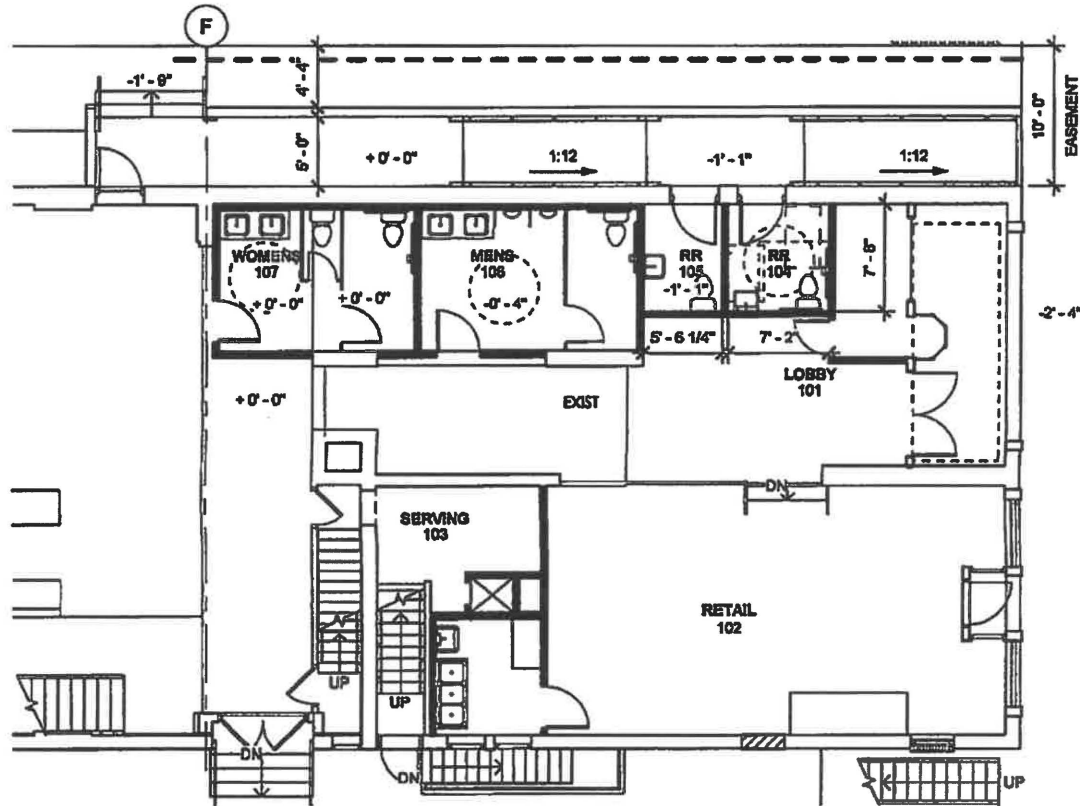
EXHIBIT "B"

Exhibit A: Mayflower Public Restroom / Plaza Opinion of Probable Constructin Cost

11/29/2022

Scope	Quantity	Unit	\$/Unit*	Scope Total
Public Restrooms				
Demolition - (3) openings thru 12" brick wall	75	SF	\$75.00	\$5,625.00
Demolition - (2) openings thru 16" brick wall	50	SF	\$95.00	\$4,750.00
Galvanized Steel Angle Lintels	24	LF	\$60.00	\$1,440.00
New Hollow Metal Door and Frame	2	LS	\$1,400.00	\$2,800.00
New Electric Door Hardware	2	LS	\$1,100.00	\$2,200.00
Interior Concrete / Grout platform (2" average thickness)	115	SF	\$6.00	\$690.00
Gyp Bd / Metal Stud Walls	340	SF	\$5.25	\$1,785.00
Interior Restroom Wall Paint	520	SF	\$1.85	\$962.00
Interior Restroom Floor Finish (porcelain tile)	115	SF	\$7.00	\$805.00
Gyp Bd Ceiling on Susp Ceiling Grid	115	SF	\$5.25	\$603.75
Interior Painting	520	SF	\$1.25	\$650.00
Toilet Accessories	2	LS	\$750.00	\$1,500.00
Interior Light (no switch, occ sensor)	2	LS	\$400.00	\$800.00
Exterior Lighting (timer controlled)	1	LS	\$1,100.00	\$1,100.00
Duplex Receptacle for maintenance	2	LS	\$400.00	\$800.00
Exhaust Fan w/ ducting and exhaust	2	LS	\$980.00	\$1,960.00
Electric Unit Heaters	2	LS	\$2,200.00	\$4,400.00
Electric Sub-Meter	1	LS	\$2,000.00	\$2,000.00
Plumbing Rough-in	2	LS	\$4,100.00	\$8,200.00
Plumbing Fxtures	2	LS	\$1,200.00	\$2,400.00
Public Restrooms Subtotal				\$39,845.75
Plaza				
Moving Site Electric to north bed	1	LS	\$20,000.00	\$20,000.00
Excavation	1	LS	\$4,500.00	\$4,500.00
12"H x 36"W Concrete Strip Footing	64	LF	\$45.00	\$2,880.00
8" CMU foundation wall to grade	192	SF	\$10.00	\$1,920.00
8" double-wythe brick wall	320	SF	\$6.00	\$1,920.00
1/4" x 8" steel wall cap, painted	80	LF	\$10.00	\$800.00
4" raised plaza / ramp	328	SF	\$8.00	\$2,624.00
Concrete Stair	24	LF	\$25.00	\$600.00
4" on-grade sidewalk	680	SF	\$8.00	\$5,440.00
Planting Bed	440	SF	\$5.00	\$2,200.00
Plants	1	LS	\$400.00	\$400.00
Seeding along sidewalk	710	SF	\$1.25	\$887.50
Ramp Handrails	54	LF	\$75.00	\$4,050.00
Stair Handrails	7	LF	\$75.00	\$525.00
Security Camera	1	LS	\$500.00	\$500.00
Plaza Subtotal				\$48,746.50
Material and Labor Subtotal				\$88,592.25
General Conditions	7.00%			\$6,201.46
Overhead	10.00%			\$8,859.23
			<i>Sub-Total</i>	\$103,652.93
Profit	10.00%			\$10,365.29
			<i>Sub-Total</i>	\$114,018.23
Bonds and Insurance	2.00%			\$2,280.36
			<i>Sub-Total</i>	\$116,298.59
Estimating Contingency	7.00%			\$8,140.90
Total Base Bld Construction				\$124,439.49

EXHIBIT "C"



FIRST FLOOR PUBLIC RESTROOM PLAN
1/8" = 1'-0"



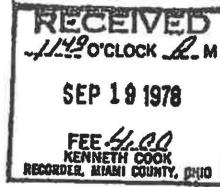
SD101

MAYFLOWER 9 / 11 W MAIN ST, TROY OH 45373
EAST FACADE SITE WORK & RESTROOMS
01/05/22

AO ANDREW
CIRCLE
ARCHITECT

EXHIBIT "D"

18935



TRUSTEE'S DEED

The First National Bank and Trust Company, Troy, Ohio, Trustee U/W of Horace H. Smith, deceased, by the power conferred by ITEM VI of the Last Will and Testament of Horace H. Smith, deceased, and every other power, for FORTY THOUSAND AND NO/100 (\$40,000.00) DOLLARS paid, grants, with fiduciary covenants to City of Troy, Ohio, a municipal corporation, whose tax-mailing address is City Building, Troy, Ohio 45373, the following Real Property:

Situate in the State of Ohio, County of Miami, City of Troy and being a part of Inlot 31, in said City, more particularly described as follows:

Beginning at an iron pin which marks the Southeast corner of Inlot 31, same being a point on the North line of West Main Street at the West line of the Public Square, thence North 64° 00' West, with the North line of West Main Street and the South line of Inlot 31, 80.00 feet to a cross cut in a stone; thence North 26° 07' East, 160.0 feet to a P.K. nail at the South line of an existing 10 foot alley, witness a P.K. nail 20.0 feet distant on line next described; thence South 64° 00' East, with the South line of said 10 foot alley, 72.4 feet to a P.K. nail at the intersection with the West line of a 12 foot public alley; thence South 25° 30' West, with the West line of said 12 foot public alley, 50.95 feet to an iron pin; thence South 64° 26' East, 6.0 feet to a point, witnessed by crosses cut in concrete and stone, 1 foot East and 1 foot North of true corner; thence South 25° 34' West, with the West line of the Public Square, 109.10 feet to the place of beginning.

The above described tract contains a total of 12,370 square feet, same being subject to all legal easements and restrictions of record, specifically an easement for ingress and egress to the adjacent Theatre Building, 20 feet in width adjacent to the existing 10 foot alley, extending Southwest 25.0 feet, said easement is in the Northwest corner of the above described tract.

Description prepared by Richard W. Klockner, Professional Surveyor, in accordance with a survey filed in the Miami County Engineer's Records of Lot Survey Records Volume 16, Page 23.

Prior Instrument Reference: Volume 471, Page 516 of the Dead Records of Miami County, Ohio.

WITNESS its hand this 5 day of September, 1978.

Signed and Acknowledged in the presence of:

Richard J. Fraas
Richard J. Fraas

THE FIRST NATIONAL BANK AND TRUST COMPANY, TRUSTEE U/W OF HORACE H. SMITH, DECEASED

By *Richard J. Fraas*
Vice President

STATE OF OHIO, COUNTY OF MIAMI, SS:

BE IT REMEMBERED, That on this 5 day of September, 1978, before me, the subscriber, a Notary Public in and for said state, personally came Richard J. Fraas, Vice President of The First National Bank and Trust Company, Troy, Ohio, Trustee U/W of Horace H. Smith, deceased, the Grantor in the foregoing Deed, and acknowledged the signing thereof to be his voluntary act and deed individually and as such officer and the voluntary act and deed of The First National Bank and Trust Company, Troy, Ohio, as such trustee.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed on this day and year aforesaid.

This instrument was prepared by William J. McGraw, Attorney at Law, Troy, Ohio.

DESCRIPTION APPROVED 12-17
MIAMI COUNTY ENGINEER
ST. 2024 DATE 9/20/78





MEMORANDUM

TO: Board of Park Commissioners
FROM: Patrick E. J. Titterington 
DATE: April 18, 2023
SUBJECT: **ACTIVATION OF PART OF TEMPORARY DORA AREA FOR 2023 TROY STRAWBERRY FESTIVAL**

RECOMMENDATION:

That the Board of Park Commissioners recommends to Troy City Council that a portion of the DORA Temporary Activation Boundary be activated for the 2023 Troy Strawberry Festival.

BACKGROUND:

Troy City Council established an expanded DORA boundary that could be considered for activation, in part or total, for items such as special events. The Troy Area Chamber of Commerce (Chamber) has requested that there be a temporary activation of a portion of the area during the Troy Strawberry Festival, for Saturday, June 3 and Sunday, June 4, 2023, as follows:

- The Chamber has received a permit from the Miami Conservancy District (MCD) associated with the use of the levee area under the MCD jurisdiction, including the consumption of alcohol on the MCD property.
- The Chamber will be required to obtain the necessary permit from the Ohio Division of Liquor Control, and to provide liquor liability insurance for their sale of alcohol.
- Two maps are attached:
 - One shows the total DORA Temporary Activation Boundary, with the requested activation area shown in gold. The requested area includes the N. Market Street Bridge and a portion of the levee. Having the N. Market Street Bridge included permits persons to carry DORA beverages from the downtown venue to the levee venue.
 - The second map shows the barricades, signage and additional trash containers that will be required. These items, including the emptying of the trash containers, are the responsibility of the Chamber.
- The Chamber will have one point of sales for alcohol, which will be on the lower levee in the general area of the walkway located south of the Stadium to the top of the levee. The Chamber will not have a point of sales for alcohol in the downtown venue, leaving the sale of DORA beverages to the downtown businesses.
- The temporary activation hours would mirror the standard DORA hours (11:00 AM – 11:00 PM). The hours the Chamber plans to sell alcohol would be noon to 8:30 PM on Saturday and noon to 5:30 PM on Sunday. The Chamber does not plan to sell alcohol on Friday evening during the Strawberry Jam portion of the festival.

REQUESTED ACTION:

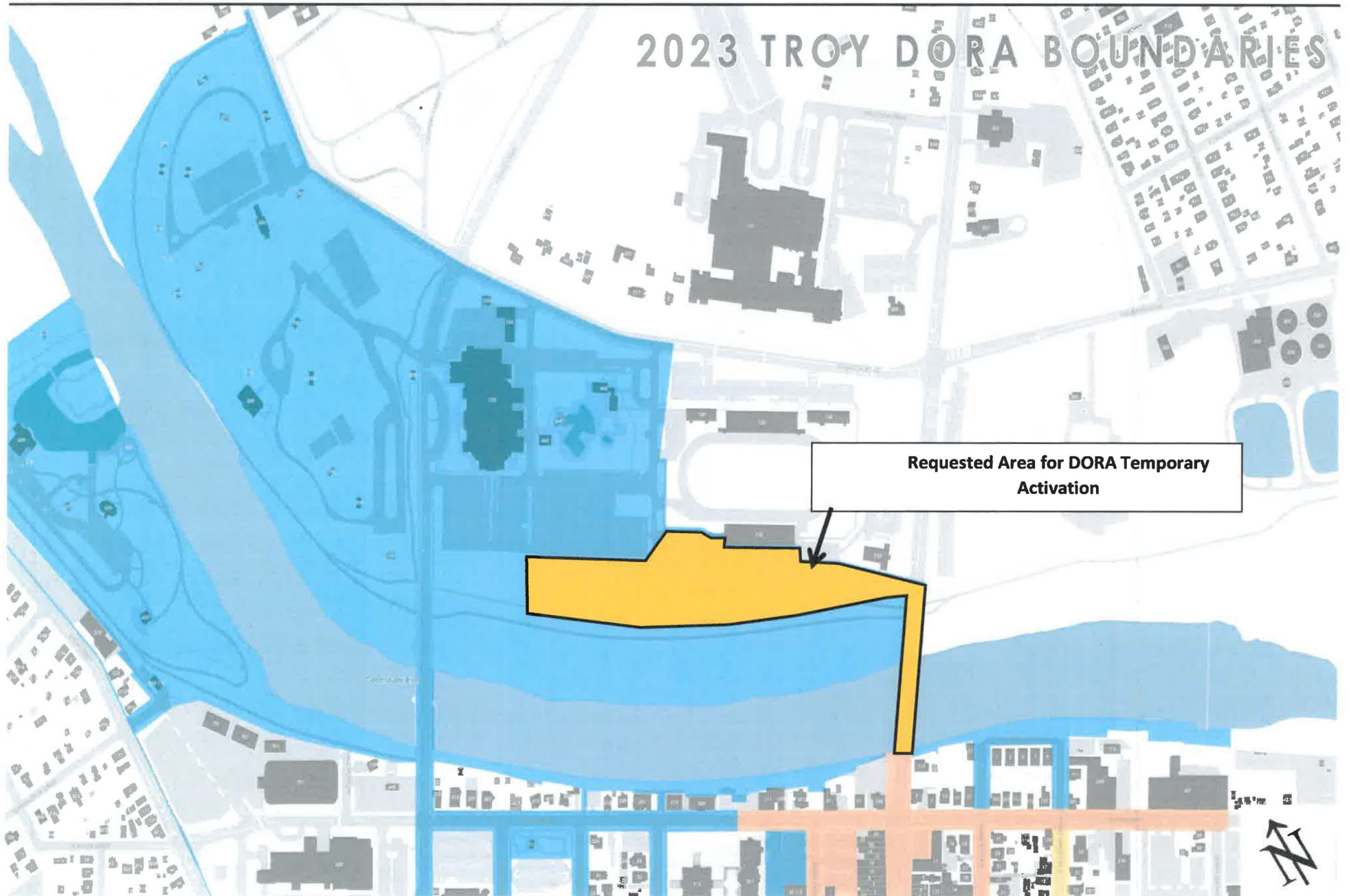
It is requested that the Board consider this request and provide a recommendation to Council that the requested portion of the DORA Temporary Activation Boundary be activated as requested by the Troy Area Chamber of Commerce for the 2023 Troy Strawberry Festival.

encl.



Troy Strawberry Festival 2023 – DORA – Temporary Activation Boundary

2023 TROY DORA BOUNDARIES



Trash cans shown are in addition to what's normally placed for festival.

Additional Signs will likely be added once Vendors are staged to ensure visibility.

