

RESOLUTION # 3707

2024

Introduced by: City Manager Nathan Mai-Lombardo
of the City of Berkeley, MO

A RESOLUTION OF THE CITY OF BERKELEY, MISSOURI, DIRECTING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF BERKELEY, MISSOURI, AND NATURAL BRIDGE SL REALTY LLC

WHEREAS, Natural Bridge SL Realty LLC (together with its successors and assigns, the “Developer”) has a contract to acquire the property and hotel located at 9600 Natural Bridge Road in the City of Berkeley, Missouri (the “Project Site”); and

WHEREAS, the Developer proposes to (a) renovate, construct and improve the existing hotel and operate and maintain a new commercial facility consisting of a hotel, together with necessary site improvements and public infrastructure (the “Project Improvements”) and (b) equip the Project Site and the Project Improvements with certain personal property (the “Project Equipment” and, collectively with the Project Site and Project Improvements, the “Project”); and

WHEREAS, to facilitate the Project, the Developer wishes to have the City consider certain incentives; and

WHEREAS, the City of Berkeley, Missouri and the Developer desire to set forth the general terms of the agreement of the parties regarding incentives for the Project, with the understanding that such matters will be set forth in additional detail in the documents relating to the Project which will be subject to further consideration and approval by the parties.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BERKELEY, MISSOURI AS FOLLOWS:

SECTION 1. That the form, terms, and provisions of the Memorandum of Understanding attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “MOU”), by and between the City of Berkeley, Missouri and the Developer is hereby approved and the City Manager is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer, on behalf of the City, such MOU in substantially the form attached hereto.

SECTION 2. If for any reason the Chapter 100 Bonds (as defined in the MOU) are not issued within one year after the date of adoption of this Resolution, this Resolution shall be deemed rescinded and the MOU terminated, and neither party will thereafter have any rights under this Resolution or the MOU against the other, except that the Developer shall reimburse the City for all fees and out-of-pocket expenses incurred by the City in connection with the Project.

SECTION 3. This Resolution shall be in full force and effect from and after the date of its passage.

PASSED this day of **2024**

Mayor Babatunde Deinbo

ATTEST:

Final Roll Call:

Deanna Jones, City Clerk

Vacant	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Williams	Aye ___	Nay ___	Absent ___	Abstain ___
Councilman Hoskins	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Anthony	Aye ___	Nay ___	Absent ___	Abstain ___
Councilman Hindeleh	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman-at-Large Crawford-Graham	Aye ___	Nay ___	Absent ___	Abstain ___
Mayor Deinbo	Aye ___	Nay ___	Absent ___	Abstain ___

Approved as to Form:
Donnell Smith, City Attorney

MEMORANDUM

TO: Mayor Deinbo and Members of the Berkeley City Council

FROM: Elliot Liebson, Director of Planning and Development

THROUGH: Nathan Mai-Lombardo, City Manager

DATE: 11/21/2024

RE: Resolution and Memorandum of Understanding (MOU) for hotel renovation project at 9600 Natural Bridge

The Resolution states the following:

- That the City is willing to consider chapter 100 incentives for the renovation of 9600 Natural Bridge.
- That future action on this project will be required.
- That the city is in agreement with sales tax exemption for all construction materials for this project.

This is a statement of intent; it does not obligate the City to any financial costs. The resolution and MOU authorizes Gilmore Bell, the City's Bond Counsel, to prepare a plan for the project and the bond documents that will memorialize the terms of the incentives. Final authorization for the project and the incentives will occur in December. A representative from Gilmore Bell will be at the Council meeting to explain this process, Memorandum of Understanding, and Resolution.

As the Council is fully aware, this property has been a sore spot for Natural Bridge and the City for several years. Since 2014, the hotel has changed brands 4 times, and has been in arrears for property taxes for seven of the last nine years. In 2024 the City revoked the hotel's permanent Occupancy Permit, and this appears to have motivated the current ownership to sell the property. The group that has put the property under contract; Natural Bridge SL Realty LLC (a collaboration between Clover Hospitality Group and Fine Hospitality Group), has an extensive record of successfully renovating and reopening distressed hotels such as this one, and as they will demonstrate in their presentation, they are investing heavily in this project, and are committed to turning an eyesore into a first-class hotel. In order to do so they have requested the incentives package outlined in the MOU in your packet. The package consists of the following requests:

- Chapter 100 tax abatement, with a sliding scale of payments to the city (and other taxing bodies) over 20 years.
- Full (100%) abatement of *personal* property tax.
- 100% exemption of sales tax on construction materials only.
- And additional 1% sales tax Community Improvement District, the revenues of which would help pay costs of the project.

Staff feels this is a good deal, first and foremost because the City will receive it's full share of sales tax (estimated at \$100,000 per year), once the hotel is renovated. Moreover, this project will serve as a catalyst for further revitalization (and increased sales and property tax) from the rest of the corridor. It takes the largest vacant property in the City and returns it to productive use, and so we strongly recommend Council approve this project.

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "Memorandum") is entered into this _____ day of _____, 2024, between the CITY OF BERKELEY, MISSOURI (the "City") and NATURAL BRIDGE SL REALTY LLC (together with its successors and assigns, the "Developer").

RECITALS:

A. The Developer has a contract to acquire the property and hotel located at 9600 Natural Bridge Road in the City (the "Project Site").

B. The Developer proposes to renovate, construct and improve the existing hotel and operate and maintain a new commercial facility consisting of a hotel, together with necessary site improvements and public infrastructure (the "Project Improvements"). In addition, the Developer is intending to furnish and equip the Project Site and the Project Improvements with certain personal property (the "Project Equipment" and, collectively with the Project Site and Project Improvements, the "Project").

C. To facilitate the Project, the Developer wishes to have the City consider certain incentives to induce the Developer to (1) acquire the Project Site, (2) construct the Project Improvements thereon and (3) equip the Project Site and the Project Improvements with the Project Equipment.

D. The City and the Developer desire to set forth herein the general terms of the agreement of the parties regarding incentives for the Project, with the understanding that such matters will be set forth in additional detail in the documents relating to the Project which will be subject to further consideration and approval by the parties.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, and subject to the conditions herein set forth, the City and the Developer agree as follows:

1. Tax Abatement; Issuance of Chapter 100 Bonds.

(a) General.

(i) In accordance with the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri (collectively, the "Act"), the City will issue approximately \$16,000,000 aggregate principal amount of taxable industrial revenue bonds (collectively, the "Chapter 100 Bonds"). The Chapter 100 Bonds will be issued pursuant to one or more Trust Indentures (the "Indenture") between the City and UMB Bank, N.A., as trustee (the "Trustee").

(ii) The City will initially obtain a leasehold interest in the Project Site pursuant to a Base Lease (the "Base Lease") between the City and the Developer and subsequently acquire fee title to the Project Site and the Project Improvements once the Project Improvements are complete. The Developer will transfer the Project Equipment to the City pursuant to a bill of sale upon acquisition. The City will, pursuant to one or more Lease Agreements (the "Lease"), lease the Project to the Developer in consideration of rental payments that are sufficient to pay the principal of and interest on the Chapter 100 Bonds.

At the end of the lease term for the Project, the City will convey the Project back to the Developer for nominal consideration.

(iii) The Chapter 100 Bonds shall be special, limited revenue obligations payable solely out of payments, revenues and receipts derived from the lease of the Project by the City to Developer. The Chapter 100 Bonds and the interest thereon shall not be a debt of the City, and the City shall not be liable therefor. The Chapter 100 Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction.

(b) *Tax Exemption; Payments in Lieu of Taxes.* So long as the City owns title to the Project, the City expects the Project to be exempt from ad valorem property taxes. Accordingly, the parties acknowledge that no property tax exemption will exist until the transfer to the City of title to the Project is completed (the "Transfer Date"). Following the Transfer Date, the Developer shall be entitled to 20 years of partial property tax abatement as described herein. The Developer will be responsible for any taxes on the Project until the Transfer Date. The Developer agrees that, during each year that the Project is exempt from ad valorem taxes by reason of the City's ownership, the Developer will make payments in lieu of taxes ("PILOT") in the amounts set forth below:

(i) *Real Property:* During the tax abatement period, the Developer will make the following fixed payments in lieu of taxes ("PILOTs") with respect to the Project Site and Project Improvements:

Year	PILOT
1	\$30,000
2	30,000
3	30,000
4	80,000
5	80,000
6	80,000
7	80,000
8	80,000
9	133,000
10	133,000
11	133,000
12	133,000
13	133,000
14	133,000
15	133,000
16	133,000
17	133,000
18	133,000
19	133,000
20	133,000

(ii) *Personal Property:* During the tax abatement period, the Developer will make PILOT payments equal to \$0.00 in connection with the Project Equipment.

(iii) PILOTS to Emergency Service Districts: Pursuant to Section 100.050 of the Act, certain emergency service districts may elect to be reimbursed up to 100% of the taxes they would have otherwise received, but for the tax abatement. In addition to the PILOT payments set forth above, during the tax abatement period, the Developer will make any PILOT payments required to satisfy the obligations to any emergency service providers as required by the Act (although there currently are none).

(c) Sales Tax Exemption on Construction Materials. The City will, upon the Developer's agreement (in form and substance satisfactory to the City) to fully indemnify and protect the City from any judgments or actions in connection therewith and the repayment of sales taxes under certain circumstances including, but not limited to, the City not issuing the Chapter 100 Bonds for any reason, furnish the Developer a project exemption certificate that will enable the Developer's purchase of construction materials for the Project to be exempt from sales taxes, to the extent provided by law. The City's project exemption certificate cannot be used for purchase of the Project Equipment.

(d) No Abatement on Special Assessments, Licenses or Fees. The property tax exemptions described in this Memorandum shall not apply to special assessments and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Project. The Developer and any subsequent owners of the Project will make payments with respect to all special assessments, licenses and fees that would otherwise be due with respect to the Project as if such Project or any applicable portion thereof were not owned by the City.

2. Creation of a Community Improvement District.

(a) Pursuant to pursuant to the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (the "CID Act"), the Developer shall, following acquisition of the Project Site, (i) petition the City for the creation of a community improvement district (the "CID") and (ii) submit a ballot proposition to the CID's qualified voters to authorize the imposition of a one percent (1%) community improvement district sales tax to be imposed by the CID for twenty-seven (27) years from the date of creation of the CID on all retail sales made in the boundaries of the CID that are subject to taxation pursuant to the provisions of Sections 144.010 to 144.525, inclusive, of the Revised Statutes of Missouri, with certain exceptions listed in the CID Act (the "CID Sales Tax"). The CID's boundaries shall cover, at a minimum, all portions of the Project Site used for commercial/retail uses. The City agrees to cooperate with and assist the Developer in all proceedings and duly consider the petition relating to the creation and certification of the CID.

(b) The parties acknowledge and agree that the creation of the CID shall be solely for the purpose of providing additional tax revenues for funding a portion of the Project Improvements consisting of public infrastructure (the "CID Projects"). The Developer shall cause the CID, promptly following its formation and constitution of its board of directors, to authorize and enter into a district project agreement (in a form satisfactory to the City), which provides terms related to (1) the Developer's agreement to advance all funds for and complete the CID Project, (2) the issuance of notes, bonds or other obligations (the "CID Obligations") to reimburse the Developer to the extent necessary for the costs incurred in completing the CID Project, subject to limits contained therein, (3) the term of and limitations on the use of the CID Sales Tax, and (4) the operation and governance of the CID. The petition for creating the CID shall provide that the CID's continued existence shall be conditioned upon the CID entering into such district project agreement.

3. Costs and Expenses. The Developer shall be responsible for paying all fees for professional services and expenses in connection with consideration and implementation by the City of the incentives described herein. The Developer may seek reimbursement of the costs of creating the CID and issuing the CID Obligations costs from the CID.

4. Other Terms; Further Authority; Future Legislation.

(a) The parties agree that the intent of this Memorandum is to set forth in principle the primary terms relating to certain incentives for the Project. The final terms of such incentives will be set forth in the Trust Indenture, the Lease, the Base Lease and other documents, including a development and performance agreement and the district project agreement, which are subject to further approval by the governing bodies of the City and the CID, as applicable, and by appropriate representatives of the Developer in their sole discretion. Such provisions will include, but are not limited to, indemnification to the City, events of default, remedies upon default, early termination provisions and the agreement of the Developer to cooperate and assist the City in creating an additional community improvement district and/or a transportation development district encompassing the Project Site and the surrounding properties located in the industrial development park for the City.

(b) The City Manager, the City Attorney and Gilmore & Bell, P.C., as Bond Counsel to the City, and the officers, employees and representatives of the City, are hereby authorized to work with the Developer, their respective counsel and others, to prepare and distribute the plan for industrial development in accordance with Section 100.050 of the Act, prepare for submission to and final action by the City Council all documents necessary to effect the authorization, issuance and sale of the Bonds and other actions contemplated hereunder in connection with the financing of the Project.

(c) The City agrees to, in good faith, consider the application of the incentives described herein, and to negotiate in good faith and use reasonable efforts to agree upon mutually acceptable documents pertaining thereto; provided, however, that nothing in this Memorandum shall be deemed to obligate the City to approve the incentives described herein, and the parties acknowledge and agree that such decisions and determinations shall remain within the sole discretion of the governing body of the City, pursuant to the applicable enabling legislation respecting the applicable incentive.

5. Termination of this Memorandum.

(a) If for any reason the Chapter 100 Bonds are not issued within one year after the date of adoption of the resolution of the City approving this Memorandum, this Memorandum shall be deemed terminated, and neither party will thereafter have any rights under this Memorandum against the other, except that the Developer shall reimburse the City for all fees and out-of-pocket expenses incurred by the City in connection with the Project.

(b) Upon the execution of documents containing the substantive terms hereof, the applicable provisions of this Memorandum shall have no further effect. If there are any inconsistencies between the terms hereof and the terms of any of the documents pertaining to the incentives described herein, the terms of such other documents shall control.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and the Developer have caused this Memorandum to be executed in their respective names as of the date first above written.

CITY OF BERKELEY, MISSOURI

By: _____
Name: Nathan Mai-Lombardo
Title: City Manager

NATURAL BRIDGE SL REALTY LLC

By: _____
Name: _____
Title: _____