

ORDINANCE NO. \_\_\_\_\_

ORDINANCE FOR DESIGNATION OF QUALIFIED PUBLIC USE FACILITY, CREATION OF THE PEABODY HOTEL TOURISM DEVELOPMENT ZONE TOURISM SURCHARGE AND OTHERWISE PROVIDING WITH RESPECT TO THE FOREGOING

**WHEREAS**, the Peabody Hotel first opened in 1869 as a symbol of the South's rebirth and quickly became the business and social hub of Memphis;

**WHEREAS**, in 1925, the Peabody Hotel was rebuilt at its present location on Union Avenue;

**WHEREAS**, in the mid-1970s, downtown Memphis experienced economic decline forcing the Peabody Hotel to close its doors, But the "South's Grand Hotel" would not remain shuttered for long, and was resurrected and faithfully restored by the Belz family - led by Jack Belz - and reopened in 1981, breathing new life into downtown Memphis;

**WHEREAS**, legendary for its charm, elegance, gracious southern hospitality, and now world-famous ducks, the Peabody Hotel is a Memphis landmark, is on the National Register of Historic Places, and continues to carry the distinction of the "South's Grand Hotel" and is a Forbes Four-Star, AAA Four-Diamond rated property and a member of Preferred Hotels & Resorts Worldwide and National Trust Historic Hotels of America;

**WHEREAS**, the Peabody Hotel is one of America's premier tourist destinations, a major employer in the Downtown Memphis community and a key economic driver of the City of Memphis;

**WHEREAS**, Memphis Center City Revenue Finance Corporation ("CCRFC") is the fee owner of certain real property located at 149 Union Avenue, Memphis, Tennessee 38103 (tax parcels nos. 00251A0001 and 00251A0002) ("Hotel Site");

**WHEREAS**, CCRFC has leased to Hotel Peabody L.P., GP, a limited partnership organized under the laws of the State of Tennessee ("Hotel Developer"), the Hotel Site and the improvements thereon pursuant to that certain Lease Agreement dated as of December 31, 1997, recorded as Instrument No. HB 6476 in the Register's Office of Shelby County, Tennessee (as amended, the "PILOT Lease") under which Hotel Developer has the right to acquire the Hotel Site and the improvements thereon at any time after expiration of the term thereof;

**WHEREAS**, Hotel Developer has redeveloped and operates on the Hotel Site the Historic Peabody Hotel, a hotel with 464 rooms, more than 80,000 gross square feet of meeting and event space, parking and commercial space, including ancillary dining and retail space, and related amenities ("Peabody Hotel");

**WHEREAS**, Hotel Developer utilizes in connection with the operation of the Peabody Hotel the adjacent parking facility located at 150 Peabody Place, Memphis, Tennessee (tax parcel no. 005005A00002) (the “Parking Site”);

**WHEREAS**, Hotel Developer proposes to make capital investments totaling more than \$125 million over the next thirty (30) years for the redevelopment and long-term preservation of the Peabody Hotel (the “Project”);

**WHEREAS**, the Local Tourism Development Zone Business Tax Act, Tenn. Code Ann. §§ 67-4-3001 *et seq.* (“Surcharge Act”) authorizes the City of Memphis to designate as a “Qualified Public Use Facility” a full-service hotel with not less than two hundred fifty (250) rooms and related retail, commercial, and parking space that is located in the portion of Downtown Memphis designated as a tourism development zone (“Downtown TDZ”) pursuant to the Convention Center and Tourism Development Financing Act of 1998, which is codified at Tenn. Code Ann. §§ 7-88-101 *et seq.* (“TDZ Act”);

**WHEREAS**, the Surcharge Act authorizes the City of Memphis to levy a privilege tax (“Tourism Surcharge”) on the sale of certain goods and services within such Qualified Public Use Facility and other related facilities, and to assign (or cause to be assigned) to CCRFC the revenues from such Tourism Surcharge that are paid, remitted or otherwise transferred to the City or City Treasurer to pay or reimburse costs incurred, or to pay debt service on indebtedness incurred pursuant to the Surcharge Act to finance or refinance costs, in connection with the acquisition, construction, leasing, renovation, and equipping of said Qualified Public Use Facility and other related facilities;

**WHEREAS**, the Hotel Site, the Parking Site, and the respective improvements thereon, including the Peabody Hotel, are located in the Downtown TDZ and include a full-service hotel of two hundred fifty (250) or more rooms and related retail, commercial, and parking spaces;

**WHEREAS**, the City of Memphis administration finds that it is wise, necessary and advisable to designate the Hotel Site and the improvements thereon, including the Peabody Hotel, together with the Parking Site, as a Qualified Public Use Facility pursuant to and in accordance with the Surcharge Act;

**WHEREAS**, the City of Memphis administration finds that it is wise, necessary, and advisable to seek authorization from this Council to levy a Tourism Surcharge of five percent (5%) of the Sales Price (as defined in the Surcharge Act) on Sales (as defined in the Surcharge Act) made by engaging in any Business (as defined in the Surcharge Act) in or upon the Hotel Site, less and except the Excluded Areas marked in red on the attached **Exhibit A**, and the Parking Site.(“Peabody Hotel Surcharge”);

**WHEREAS**, the City of Memphis administration finds that it is wise, necessary, and advisable to assign revenues generated from the Peabody Hotel Surcharge (“Peabody Surcharge Revenues”) to CCRFC to pay or reimburse costs incurred, or to pay debt service

on indebtedness incurred to finance or refinance costs, in connection with the Project at the Hotel Site;

**WHEREAS**, to enact the Peabody Hotel Surcharge, the City of Memphis administration has proposed the ordinance set forth below (“Tourism Surcharge Ordinance”); and

**WHEREAS**, the City of Memphis administration desires that this Council (i) approve the Tourism Surcharge Ordinance, and (ii) otherwise provide with respect to the foregoing.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Memphis as follows:

1. Sec. \_\_\_ - \_\_\_ -1. **Designation as Qualified Public Use Facility**

The Hotel Site and the improvements thereon, including the Peabody Hotel, less and except the Excluded Areas marked in red on the attached **Exhibit A**, together with the Parking Site, are hereby designated as a qualified public use facility (collectively, the “Peabody Hotel QPUF”) pursuant to and in accordance with Tenn. Code Ann. title 67, chapter 4, part 30 (as amended from time to time, hereinafter in this chapter called the “Act”).

Sec. \_\_\_ - \_\_\_ -2. **Creation of District**

There is created the Peabody Hotel Surcharge District (the “District”) in accordance with the Act.

Sec. \_\_\_ - \_\_\_ -3. **District Boundaries**

The District created by this chapter shall be comprised of the area located in the City within the following boundaries:

**Parcel 1 (Hotel Site):**

Units 1 and 2 of Peabody Place Centre Condominium as described in Master Deed, Declaration of Covenants, Conditions and Restrictions of Peabody Place Centre Condominiums as recorded as Instrument No. JM 5809 in the Register’s Office of Shelby County, Tennessee less and except the Excluded Areas marked in red on the attached **Exhibit A**.

Municipal Addresses: 149 Union Avenue, Memphis, Tennessee  
Tax Parcel IDs: 002051 A00001 and 002051 A00002

**Parcel 2 (Parking Site):**

Unit 1 of Peabody Place Garage Condominium as described in Master Deed, Declaration of Covenants, Conditions, and Restrictions of Peabody Place Garage Condominium as recorded as Instrument No. JN 9703 in the Register's Office of Shelby County, Tennessee.

Municipal Address: 150 Peabody Place, Memphis, Tennessee  
(A/K/A 250 Peabody Place, Memphis, Tennessee)  
Tax Parcel ID: 005005 A00001

Sec. \_\_ - \_\_\_\_-4 **Surcharge Assessment**

The making of Sales (as such term is defined in the Act) by engaging in any Business (as such term is defined in the Act), except for those businesses exempt under Tenn. Code Ann. title 67, chapter 4, part 712, in the District is declared to be a privilege. All such Sales shall be subject to the surcharge assessment provided in this Chapter and the City hereby levies such surcharge on all Sales.

Sec. \_\_ - \_\_\_\_-5 **Surcharge Assessment Rate**

The surcharge levied by this section shall be equal to five percent (5%) of the Sales Price (as such term is defined in the Act).

Sec. \_\_ - \_\_\_\_-6 **Mandatory Registration, Filing of Returns, Payment of Surcharge and Licensing**

All persons carrying on Business (as such term is defined by the Act) in the District, and all persons who may hereafter carry on Business in the District, shall register with the City Treasurer for the purpose of assessment and collection of the surcharge. All persons so registered shall file a return detailing Sales for the prior month and surcharge collected on account of such Sales on or before the twentieth (20th) day of each calendar month and shall remit all surcharge collected during such month, together with any delinquent payments of surcharge, with such return. Each person who files a return and remits the appropriate amount of surcharge shall be granted a license which such person shall display within their place of Business. The City Treasurer is hereby authorized and directed to develop the forms for registration and filing monthly returns, as well as rules and regulations regarding the filing of the same.

Sec. \_\_ - \_\_\_\_-7 **Delinquent Payments**

Any nonpayment or delinquent payment of any surcharge shall be subject to the rights and remedies described in Chapter 5-24 of the Memphis City Code.

Sec. \_\_ - \_\_\_\_-8 **Allocation and Use of Revenues**

All revenues received by the city as a result of the surcharge, except for the reasonable expenses of the City Treasurer incurred as a result of its administrative duties under this chapter which shall not exceed one percent (1%) of such revenues, shall be designated for, and allocated to the payment of the cost of the Peabody Hotel QPUF, including, without limitation, all debt issued or incurred in the acquisition, construction, leasing, renovation and equipping of the Peabody Hotel QPUF, including principal, interest and other fees and charges.

Sec. \_\_\_ - \_\_\_\_-9      **Remittance of Revenues**

On or before the fifteenth (15th) day of each month, the City Treasurer shall remit all revenues received during the prior month, less the aforescribed administrative fee, to CCRFC or its assignee. CCRFC, or its assignee, is hereby directed to deposit such revenues in accordance with the Act and any agreements governing the payment or reimbursement of costs incurred, or debt issued or incurred by CCRFC to finance or refinance costs, in connection with the development of the Peabody Hotel QPUF.

Sec. \_\_\_ - \_\_\_\_-10      **Termination of Surcharge**

1.      The surcharge shall continue until terminated as provided in the Act.
  
2.      All actions heretofore undertaken by the Mayor or his designee and other officials, employees, attorneys and agents of the City in furtherance of the intent of this resolution, and of the documents authorized by this resolution, are hereby ratified, confirmed and approved.
  
3.      The Mayor or his designee and other appropriate officials of the City are hereby authorized to enter into such agreements, and they and other appropriate employees of the City are hereby authorized to execute such certificates or other documents and take such other actions, as may be necessary or appropriate to carry out the intent of this Ordinance.
  
4.      This Ordinance shall take effect from and after its adoption, the welfare of the City of Memphis requiring it.

Sponsor: \_\_\_\_\_

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4.      This Ordinance shall take effect from and after its adoption, the welfare of the City of Memphis requiring it.

Sponsor: \_\_\_\_\_

EXHIBIT A - AREAS EXCLUDED OUTLINED

