

REQUEST FOR WAIVER OF THE SPECIAL USE PERMIT  
REQUIREMENT FOR NON-HOURLY RATE HOTELS/MOTELS  
AND WAIVER AGREEMENT

DATE FILED: \_\_\_\_\_

NAME OF APPLICANT: FWH Memphis Beale Street, LLC

NAME OF HOTEL/MOTEL: Hampton Inn & Suites @ Beale Street

ADDRESS OF HOTEL/MOTEL: 175 Peabody Place, Memphis, TN

INSTRUCTIONS

Any entity acquiring an existing non-hourly rate hotel/motel may request waiver of the requirement of a Special Use Permit necessary for issuance of a construction and/or Use and Occupancy permit. Each proposed new owner shall execute the attached Application and Agreement and submit, in writing, responses to the questions attached as Exhibit B. The Agreement will be recorded with the Shelby County Register of Deeds at the expense of the waiver applicant.

The original Agreement, exhibits thereto and 14 copies collated into individual packets, the order of which shall follow sequentially as outlined in Exhibit B to the Agreement, and a compact disc with all application documents in PDF format and any proposed conditions in WORD format shall be delivered to the Office of Planning and Development (OPD), Room 476, City Hall, 125 North Main Street, Memphis, TN 38103 together with a non-refundable application fee of two hundred and fifty dollars (\$250.00), which may be applied against the Special Use Permit fee should the Council refuse to grant a waiver. OPD shall immediately forward the application to the City Council office and Council Records for placement on the next available Planning and Zoning Committee agenda. The submission must be received by OPD at least 2 weeks prior to the meeting date on which the applicant wishes to appear.

The applicant or representative shall appear before the Planning and Zoning Committee on the designated date and time to respond to questions about the Hotel/Motel. A Resolution will be prepared by the City Council office which will go before the City Council for approval the same evening. If approved, the Resolution granting the waiver of a Special Use Permit will then be certified through the Council Records office two weeks later when the minutes from the previous meeting date are read and approved. After approval of the minutes for the meeting at which the waiver was approved, the Hotel/motel owner may call Council Records at 901-576-6140 to obtain a copy of the certified Resolution. Construction Code Enforcement will issue the appropriate permit upon presentation of the certified Council Resolution waiving the requirement of a Special Use Permit. If after the required inspections of the premises all other construction code requirements are met, a new Certificate of Occupancy can be granted.

APPLICANT'S AGREEMENTS

The Applicant, by executing and submitting this request for waiver application to the City of Memphis, agrees the Hotel/ the Motel will not be operated as a public nuisance, or as an adult or "hourly rate" motel. Applicant understands that he/she/it has the absolute right to seek a special use permit and is not required to seek a waiver or to make any of the agreements contained herein, but in order to induce the City to waive the requirement and attendant time and expense of obtaining a special use permit, the Applicant agrees that the following terms, covenants and conditions shall apply to its use, occupancy and operation of the subject Hotel/Motel should the Council determine, in its discretion, to grant the requested waiver.

1. Definitions. For the purpose of this Agreement, the capitalized terms shall mean:

"LAND" means the real estate described in Exhibit "A" attached hereto and made a part hereof by reference.

"ADULT MOTEL" means a hotel, motel or similar commercial establishment which:

- a. Offers accommodations to the public for any form of consideration; sexually-oriented material, devices, or paraphernalia or specified sexual activities, or any combination or form thereof, whether printed, filmed, recorded or live.
- b. Offers a sleeping room for rent more than two times in a period of ten hours; or
- c. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours; or
- d. Offers or allows a discount or refund which is less than half the normal daily rate.

"HOURLY RATE HOTEL/MOTEL"

"Motel" means a building in which lodging, or boarding and lodging, are provided and offered to the public for compensation and in which at least a portion of the rooms are directly accessible from a public or private right-of-way, from a parking lot or space or from the exterior of the building. As such, it is open to the general public in contradistinction to a boarding house or apartment. To be considered an hourly rate motel, such lodging must be offered to the public more than twice within any ten-(10) hour period.

"Hotel" means a building in which lodging or boarding and lodging are provided and offered to the public for compensation, and in which ingress and egress to and from all rooms are made through an inside lobby or office supervised by a person in charge at all contradistinction to a boarding house, a lodging house, or an apartment. To be considered an hourly rate Hotel, such lodging must be offered to the public more than twice within any ten-(10) hour period.

"OPERATES OR CAUSES TO BE OPERATED" means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated an Adult Motel whether or not that person is an owner, part-time owner, or permittee of the business.

"PERSON" means an individual, proprietorship, partnership, corporation, association or other legal entity.

"RESIDENTIAL DISTRICT" means a district whose designation begins with the letter "R" according to the Memphis and Shelby County Zoning Ordinances.

2. The Applicant agrees that it will not operate the hotel/ motel or cause the hotel motel to be operated as an hourly rate hotel/motel or as an Adult Motel. For the purposes of monitoring compliance with this Agreement, the Applicant agrees to periodic, random inspections of books and records pertaining to the hotel/motel's operation and rentals. Where there is an apparent pattern that rooms have been rented and vacated more than 2 times in less than 10 hours, a rebuttable presumption is created that the establishment is an Adult Motel.

3. In addition, the Applicant, employee, agent or independent contractor employed on the premises shall not:

- a. Allow excessive use of alcoholic beverages while on the business premises;
- b. Refuse to allow an unimpeded inspection of the business premises as authorized by this Agreement;
- c. Knowingly permit gambling by any person on the business premises;
- d. Demonstrate inability to operate or manage a business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers;
- e. Give false or misleading information in the material submitted during the waiver application process;
- f. Allow possession, use or sale of controlled substances on the premises by any person;
- g. Allow prostitution on the premises;
- h. Operate the business during a period of time when the a required permit is suspended;
- i. Be delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the business.

4. The Applicant agrees any violation of the Applicant's agreement not to operate the Motel as an Adult Motel will cause irreparable harm to the City and its citizens and damages alone for any such violation will be inadequate and as a result of any breach or threatened breach of this Agreement by the Applicant, its successors and assignees, the City may

(a) seek any and all remedies available to it including but not limited to injunctive relief, both affirmative and negative;

(b) by Resolution of the City Council terminate the Agreement or revoke the waiver and the Certificate of Occupancy.

The Applicant agrees to pay the reasonable attorneys fees and court costs of the City's attorneys should they be successful in obtaining relief against the Applicant for violation of this Agreement.

5. The Applicant's obligations hereunder shall be deemed continuing and shall bind its successors and assignees and to this extent shall run with the land.

6. Each of the covenants contained herein shall be deemed a separate covenant, each being enforceable irrespective of enforceability (with or without reformation) of other covenants contained in this Agreement. If any provision of this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provisions had never comprised a part hereof.

7. This Agreement constitutes the entire understanding and agreement between the Applicant and the City with regard to all matters herein; except that any conditions imposed by the Council in Resolution approving the waiver and/or this Agreement shall be incorporated herein by reference. There are no other agreements, conditions or representations, oral or written, express or implied, between the Applicant and the City concerning matters addressed herein.

8. This Agreement may be amended only in writing and signed by the Applicant with approval of the City Council.

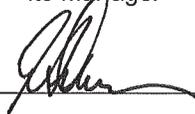
9. This Agreement is executed in and will be performed in the State of Tennessee and shall be construed, controlled and interpreted according to the laws of the State of Tennessee.

10. This Agreement is binding upon and shall inure the benefit of the respective parties hereto, their successors and assignees and this Agreement shall specifically run with the Land and be binding upon the Applicant's successors in interest in the Land and improvements.

FWH MEMPHIS BEALE STREET, LLC

By: Fairwood Hospitality Investors, L.L.C., its Member

By: Fairwood Investors, LLC,  
Its Manager

BY:  \_\_\_\_\_

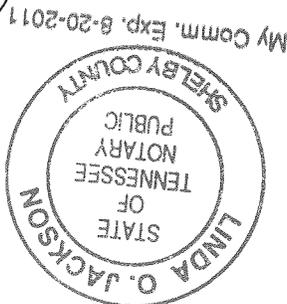
STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Edwin S. Asher, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager of FAIRWOOD INVESTORS, LLC, a Delaware limited liability company, the Manager of FAIRWOOD HOSPITALITY INVESTORS, L.L.C., a Delaware limited liability company, the sole Member, of FWH MEMPHIS BEALE STREET, LLC, a Delaware limited liability company, the within named Applicant; and that such person in such capacity, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal of office, on this the 14<sup>th</sup> day of December, 2009.

  
NOTARY PUBLIC

My Commission expires:



## EXHIBIT A

### LEGAL DESCRIPTION

State of Tennessee  
County of Shelby

The Memphis Center City Revenue Finance Corporation property as recorded in instrument JA 3471 at the Shelby County Register's Office, located in Memphis, Shelby County, Tennessee, and being more particularly described as follows:

Beginning at a point on the West line of Third Street (66.00 foot right-of-way), said point being S09°07'40" W a distance of 24.80 feet from the intersection of the West line of said Third Street with the South line of Peabody Place (68.00 foot right-of-way); thence S09°07'40"W along the West line of said Third Street a distance of 97.57 feet to a point on the North line of a 24.00 foot wide alley; thence N69°52'49"W along the North line of said 24.00 foot wide alley a distance of 196.87 feet to the Southeast corner of The Peabody Place L.P. Property as recorded in instrument CM 8990; thence N20°29'07"E along the East line of the said Peabody Place L.P. Property (Instrument CM 8990), said East line being the face of building of an existing parking garage, a distance of 119.71 feet to a point on the South line of said Peabody Place; thence S70°01'11"E along the South line of said Peabody Place a distance of 147.98 feet to a point of curvature; thence along a curve to the right having a radius of 30.00 feet, an arc length of 41.44 feet (chord S30°26'45"E – 38.22 feet) to the point of beginning.

EXHIBIT B  
SUPPLEMENTAL INFORMATION

1. Site Plan – Please see attached Exhibit B-1
2. Upon the assignment by Peabody Place Hotel Company GP, a Tennessee general partnership and successor by merger to Peabody Place Hotel Company, L.P. (the “Seller”), of its rights as tenant under that certain Lease Agreement dated December 31, 1998, between the Memphis Center City Revenue Finance Corporation and Seller to FWH Memphis Beale Street, LLC (“Applicant”), Applicant will be the sole owner of the hotel and the underlying leasehold interest in the land. Fairwood Hospitality Investors, L.L.C. is the sole member of the applicant.
3. No officer, director, partner, managing agent or manager of FWH Memphis Beale Street, LLC, or Hampton Inn & Suites @ Beale Street has been employed at a sexually oriented business as defined in the Tennessee Code Annotated for the previous five (5) years.
4. No applicant for this waiver or any officer, director, partner, managing agent or manager of FWH Memphis Beale Street, LLC or Hampton Inn & Suites @ Beale Street has been convicted of a crime involving the following:
  - a. Aggravated rape;
  - b. Rape;
  - c. Rape of a child;
  - d. Aggravated sexual battery;
  - e. Sexual battery by an authority figure;
  - f. Sexual battery;
  - g. Statutory rape;
  - h. Public indecency;
  - i. Prostitution;
  - j. Promoting prostitution;
  - k. Distribution of obscene materials;
  - l. Sale, loan or exhibition to a minor of material harmful to minors;
  - m. The display for sale or rental of material harmful to minors;
  - n. Sexual exploitation of a minor;
  - o. Aggravated sexual exploitation of a minor;
  - p. Especially aggravated sexual exploitation of a minor;
  - q. Criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses.
5. Hampton Inn & Suites @ Beale Street does offer accommodations to the public for consideration but does not provide patrons with closed circuit television transmissions, films, motion pictures, videos, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” as defined by Appendix A—Zoning, Section 2. Hampton Inn & Suites @ Beale Street does provide access to Home Box Office (HBO) programming. Because the Hotel does not provide these types of photographic reproductions, The Hampton Inn

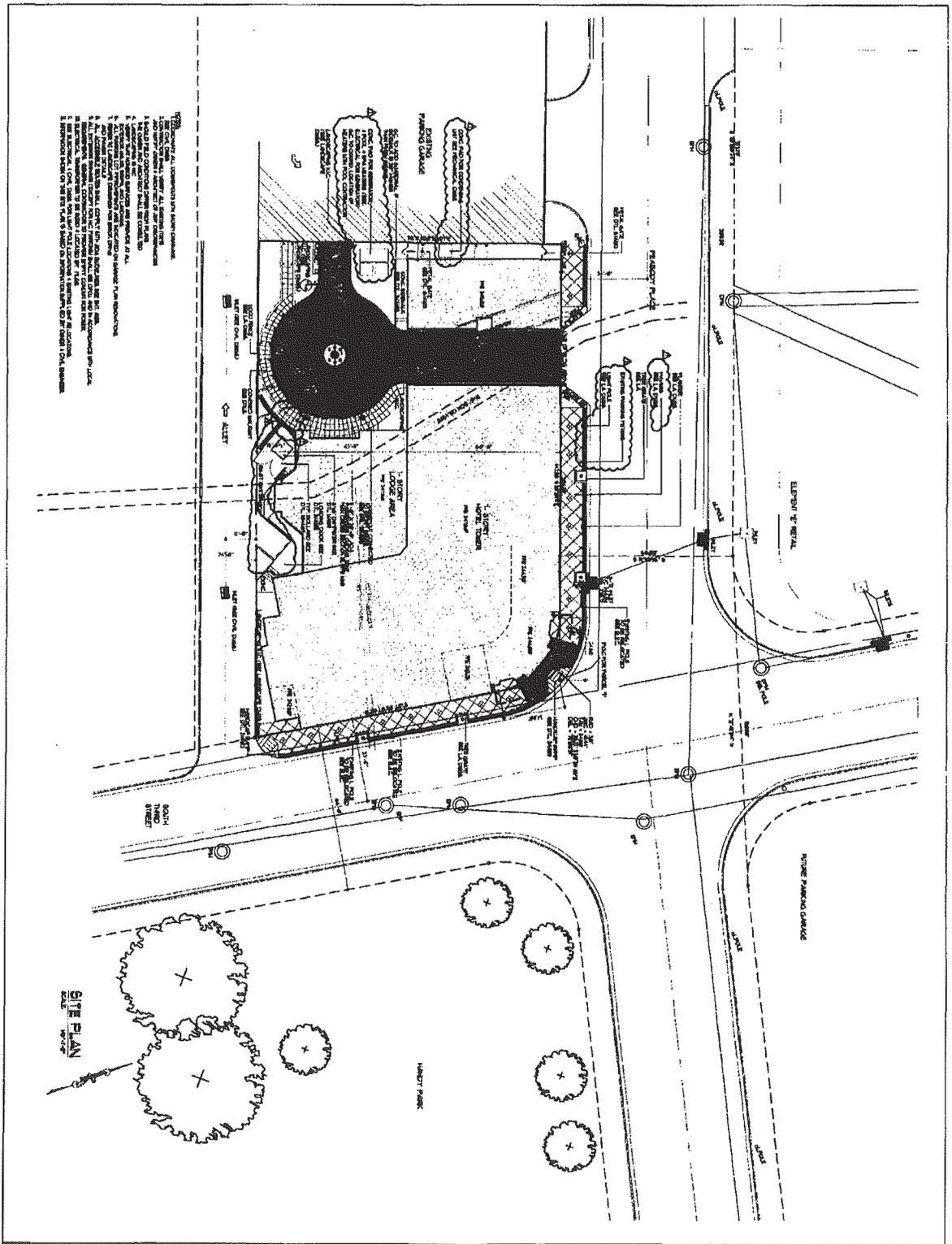
& Suites @ Beale Street does not display a sign visible from the public right-of-way which advertises their availability.

6. The Hampton Inn & Suites @ Beale Street does not offer sleeping rooms for rent more than two (2) times in a period of less than ten (10) hours.
7. The Hampton Inn & Suites @ Beale Street does not allow a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.
8. The Hampton Inn & Suites @ Beale Street does not allow a discount or refund which is less than half the normal daily rate.
9. Seller has an existing loan secured by the hotel with Woodmen of the World Life Insurance Society and/or Omaha Woodmen Life Insurance Society, which Applicant will assume.
10. Purchase Agreement—See Exhibit B-2.

Upon information and belief, the undersigned affirms that the statements set forth above are true and correct. Signed this 14<sup>th</sup> day of December, 2009.

  
\_\_\_\_\_  
For: FWH MEMPHIS BEALE STREET, LLC  
Title: EP

Exhibit B-1



1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
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 10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

SITE PLAN  
 SCALE: 1/8\"/>

**RTKL**  
 RTKL Associates Inc.  
 1000 Peachtree Street, N.E.  
 Atlanta, Georgia 30309  
 Phone: 404.525.8800  
 Fax: 404.525.8801  
 Website: www.rtkl.com

RTKL Associates Inc. 1000  
 SITE PLAN

SCALE: 1/8" = 1'-0"  
 DRAWN BY: J. W. B. JR.  
 DATE: 08/15/08  
 PROJECT: HAMPTON INN & SUITES AT PEABODY PLACE

**Hampton Inn & Suites**  
*Hampton Inn & Suites*

**HAMPTON INN & SUITES**  
 AT PEABODY PLACE  
**PEABODY HOTEL GROUP**  
 MEMPHIS, TENNESSEE





