

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

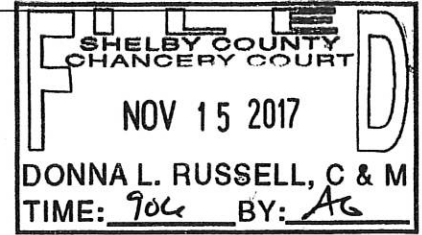
ELVIS PRESLEY ENTERPRISES, INC.,
EPPF, LLC and GUESTHOUSE AT
GRACELAND, LLC,

Plaintiffs,

VS.

CITY OF MEMPHIS,
SHELBY COUNTY, TENNESSEE, and
MEMPHIS BASKETBALL, LLC,

Defendants.



CASE NO. CH-17-1653

Part II

**VERIFIED COMPLAINT FOR DECLARATORY
JUDGMENT, INTENTIONAL INTERFERENCE WITH BUSINESS
RELATIONSHIP, AND OTHER INJUNCTIVE AND EQUITABLE RELIEF**

Plaintiffs, Elvis Presley Enterprises, Inc., EPPF, LLC and Guesthouse at Graceland, LLC, state the following for their Complaint against Defendants, the City of Memphis, Shelby County, Tennessee, and Memphis Basketball, LLC:

I. THE PARTIES

1. Plaintiff, Elvis Presley Enterprises, Inc. ("EPE"), is a Tennessee corporation, with its principal place of business located at 3734 Elvis Presley Boulevard, Memphis, Tennessee.

2. Plaintiff, EPPF, LLC ("EPPF"), is a Delaware limited liability company that is authorized to do business in Tennessee. EPPF is an affiliate of EPE.

3. Plaintiff, Guesthouse at Graceland, LLC ("Guesthouse"), is a Delaware limited company that is authorized to do business in Tennessee. Guesthouse at Graceland is an affiliate of EPE.

4. As EPPF and Guesthouse both are affiliates of EPE, all three (3) Plaintiffs collectively will be referred as to EPE throughout this Complaint.

5. Defendant City of Memphis (“The City”) is a municipal corporation and a governmental entity organized under the laws of the State of Tennessee. The City may be served with process by serving the Mayor of the City of Memphis, Jim Strickland, in care of the Office of City Attorney, 125 North Main Street, Room 336, Memphis, Tennessee 38103.

6. Defendant Shelby County, Tennessee (“The County”) is a governmental entity organized under the laws of the State of Tennessee. The County may be served with process by serving the Shelby County Mayor, Mark H. Luttrell Jr., in care of the Office of the County Attorney, at 160 N. Main, 9th Floor, Memphis, Tennessee 38103.

7. Defendant Memphis Basketball, LLC, is a Nevada limited liability company, authorized to do business in Tennessee, with a principal office address of 191 Beale Street, Memphis, Tennessee 38103-3715. Memphis Basketball, LLC may be served with process by serving its registered agent, CT Corporation System, 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710.

8. In 2012 Memphis Basketball acquired from HOOPS, L.P. (“HOOPS”) the National Basketball Association franchised team known as the Memphis Grizzlies. In connection with that acquisition, Memphis Basketball became the successor-in-interest to HOOPS. Thus, for all matters pertinent hereto, including all legal documents, contracts and other agreements, Memphis Basketball is to be viewed, considered, and treated as if it was the party that made and executed such documents and agreements at the time and date on which HOOPS executed said documents and agreements. And Memphis Basketball is bound by, and

must adhere to and honor all obligations set forth in any such agreements, including the Memphis Arena Use and Operating Agreement (as amended from time-to-time) entered into by and among the City of Memphis and Shelby County, Tennessee and HOOPS, L.P. ("The Arena Use Agreement") (a true and correct copy of The Arena Use Agreement, and the First Amendment and Second Amendment thereto are attached hereto as collective **Exhibit A.**)

9. The Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby (commonly known as "EDGE") is a nominal party to this action. EDGE is not a party to The Arena Use Agreement. EPE has no complaint about any conduct of EDGE, nor is it asserting any claims against EDGE. Rather, EDGE is being identified herein because (as detailed below) certain of the improper conduct that Defendant Memphis Basketball has engaged/is engaging in is designed to keep EDGE from approving and providing to EPE certain tax incentives that it is qualified to receive under its existing relationship with The City, The County and EDGE.

10. Created in 2011 through a joint resolution of the Memphis City Council and the Shelby County Commission, EDGE is the economic development agency for the City of Memphis and Shelby County Government. EDGE provides and coordinates public resources to drive economic development in Memphis and Shelby County. EDGE leverages the benefits of economic development incentive programs to foster public/private partnerships that create jobs, grow the economy, revitalize neighborhoods, attract investments, spark innovation, and encourage entrepreneurship.

11. Through the use of, *inter alia*, its Tax Increment Financing (TIF) program, EDGE encourages development in the City of Memphis and Shelby County by investing a part of any increase in property taxes within the designated TIF area to support growth.

12. As detailed below, in 2015 EDGE approved certain tax increment financing for EPE and its affiliates in connection with The Graceland Project (defined below). And EDGE has indicated that it is prepared to approve and document the approval of additional tax increment financing for the current phase of The Graceland Project. But EDGE (as detailed below) is being improperly prohibited from doing so by Defendant Memphis Basketball.

II. JURISDICTION AND VENUE

13. This Court has personal jurisdiction over this cause pursuant to, *inter alia*, Sections 16-11-102, 16-11-103, 20-2-222, 20-2-223, 29-14-103, and 29-14-113 of the Tennessee Code.

14. The acts and omissions giving rise to the matters asserted herein occurred in this jurisdiction, accordingly venue is proper in this Court pursuant to, *inter alia*, Section 20-4-101, 20-4-102 and 20-4-104 of the Tennessee Code.

III. PRELIMINARY STATEMENT

15. This action arises from Memphis Basketball's improper interference with EPE's efforts to commence construction on the current phase of The Graceland Project. Memphis Basketball maintains that the terms of The Arena Use Agreement prohibit The City, The County and EDGE from approving what has been coined the Supplement to Economic Impact Plan for Graceland Economic Growth Area ("Graceland's Supplemental Economic Plan"). Memphis Basketball is wrong.

16. Although Memphis Basketball's reading and interpretation of The Arena Use Agreement is erroneous, EPE, consistent with its stature as a good corporate citizen of Memphis and Shelby County, tried to negotiate a resolution with The City and Memphis Basketball that would alleviate Memphis Basketball's and The City's "concerns," and also allow EPE to move forward with the current phase of The Graceland Project.

17. Despite EPE's best efforts, no resolution could be reached; largely because EPE was the only party actually interested in finding a workable solution to the specious issues that Memphis Basketball had raised.

18. Inexplicably, Memphis Basketball's representative stated to EPE's representative that Memphis Basketball was not negotiating, but was instead enforcing its rights under the Arena Use Agreement. As a result, and in spite of its good faith efforts, EPE was unable to negotiate an actual solution that would allow EPE to proceed forward with its efforts to further stimulate and enhance the Whitehaven and Memphis economies via The Graceland Project.

19. To add fuel to the fire (as the cliché goes), The City went so far as to inform EPE that in order for The City to honor its commitments to EPE, EPE had to agree to pay The City consequential damages for certain conduct that Memphis Basketball may decide to take in the future. The City and Memphis Basketball obviously have no intentions of trying to work things out with EPE, as no reasonable business person would be agreeable to such terms.

20. EPE was left with no choice but to seek judicial intervention. Accordingly, EPE seeks a declaratory judgment from this Court declaring that The Arena Use Agreement does not prohibit The City, The County and EDGE from approving Graceland's Supplemental Economic

Plan, and thus, that certain tax increment revenues can be used for the current phase of The Graceland Project.

21. EPE also seeks monetary damages, including attorneys' fees and punitive damages, based upon Memphis Basketball's intentional interference with EPE's business relationships with The City, The County and EDGE.

22. EPE further seeks temporary and permanent injunctions restraining and enjoining Memphis Basketball from continuing to interfere with those relationships.

IV. FACTUAL ALLEGATIONS

THE GRACELAND PROJECT

23. EPE owns and/or operates certain retail property located on Elvis Presley Boulevard, in the Whitehaven neighborhood in Memphis, Shelby County, Tennessee that is popularly known as Graceland. Graceland, which is an internationally recognized, National Historic Landmark, is one of America's premier tourist destinations, a major employer in the Whitehaven community, and a key economic driver of the City of Memphis.

24. Graceland has been in Memphis, Shelby County, Tennessee for over one-half of a century; and for generations to come, Graceland undoubtedly will be right there in Whitehaven, Memphis, Shelby County, Tennessee providing jobs and otherwise doing its part to stimulate the local economy.

25. Consistent with EPE's long-term commitment to keeping Graceland an international tourist attraction and to continue bringing tourists and jobs to Whitehaven, Memphis for decades, in 2014-2015 EPE embarked on a comprehensive, multi-phased

revitalization plan, which included, *inter alia*, building a new hotel and a new 220,000 square foot retail, exhibition, and museum facility.

26. EPE proposed to redevelop Graceland to improve the user experience and ensure the long term success of Graceland by constructing a 450-room hotel (formally known as The Guest House at Graceland), equipped with first-class convention and concert facilities, a theatre, as well as redeveloping and upgrading the existing museum facilities and archive studio (“The Graceland Project”).

27. In order make The Graceland Project financially feasible, EPE submitted to EDGE, The City, and The County EPE’s Economic Impact Plan for Graceland Economic Development Area (“The Graceland Economic Plan”) (a true and correct copy of which is attached hereto as **Exhibit B**), along with an Economic Impact Analysis for The Guest House at Graceland. Contained within The Graceland Economic Plan was EPE’s request for approval of a plan for tax increment financing through EDGE, which would provide funds to pay for a portion of the costs relating to implementation of The Graceland Project.

28. The Graceland Economic Plan subsequently was approved by (a) EDGE on November 29, 2014; (b) the Memphis City Council on December 2, 2014; and (c) the Board of County Commissioners of Shelby County, Tennessee on December 8, 2014.

29. Via these approvals, commitments and agreements from and with EDGE, The City, The County, and the State of Tennessee, in 2015 a Tax Increment Financing (TIF) District (“The Graceland TIF”), a new Tourism Development Zone (TDZ) (“The Graceland TDZ”), and Tourism Development Zone surcharge were established for The Graceland Project. And EDGE

ultimately approved EPE for \$124 million in financing to be supported by the new TDZ, TDZ surcharge, The Graceland TIF, and other revenue.

30. As of the date of this Complaint, EPE, consistent with The Graceland Economic Plan, has completed the initial phase of the Graceland Project. The Guest House at Graceland has been constructed and is in full operation. And visitors and tourists are steadily visiting the museum, retail and other facilities at Elvis Presley's Memphis.

31. Per the terms of EPE's agreement with EDGE, The City, The County and The Graceland TIF, incremental property taxes currently are being captured for use on The Graceland Project. Specifically, fifty percent (50%) of the excess property taxes over the Base Tax Amount (as defined in The Graceland Economic Plan) are being allocated for the benefit of The Graceland Project.

32. Consistent with the purposes behind TIFs and TDZs and other public finance vehicles, The Graceland Project has spurred on other significant development and revitalization projects in the Whitehaven community. And because The Graceland TIF applies solely to The Graceland Project Property, the additional revenue generated by the property tax increases from those other projects is available to be used for general municipal purposes.

33. Additionally, much to the benefit of Whitehaven and the Memphis economy, The Graceland Project has evolved such that EPE now is in a position to expand The Graceland Project and the scope of the theater, concert, and entertainment facilities will be of a more substantial nature.

34. But neither the fact that the scope of this phase of the Graceland Project has expanded, nor the fact that EPE already is positioned to commence this work, comes as a

surprise to those persons and entities that are familiar with The Graceland Project and TIFs in general. Quite the contrary, additional growth and development opportunities such as this are precisely what economic growth engines like EDGE yearn for, which is why EDGE is so supportive of The Graceland Project.

35. To that end, in late Spring/early Summer 2017 EPE advised The City, The County and EDGE that EPE would be submitting to EDGE a Supplement to Economic Impact Plan for Graceland Economic Growth Area ("Graceland's Supplemental Economic Plan") (a true and correct copy of which is attached hereto as **Exhibit C**).

36. By way of Graceland's Supplemental Economic Plan, EPE was requesting that EDGE, The City and The County approve certain amendments, modifications and supplements to The Graceland Project, which included the construction of a theater capable of seating 6,200 persons, additional museum space, as well as additional retail facilities and other related improvements (*See Graceland's Supplemental Economic Plan*).

37. Pursuant to the terms of Graceland's Supplemental Economic Plan, and to financially sustain this phase of The Graceland Project, EPE is seeking to have the percentage of incremental property taxes being captured for use on The Graceland Project increased from fifty percent (50%) to sixty-five (65%) of the excess property taxes over the Base Tax Amount (as defined in The Graceland Economic Plan).

38. Consistently, The City subsequently advised EPE's representatives that The City approved of Graceland's Supplemental Economic Plan, and was supportive of EPE's request to have the percentage of incremental property taxes being captured for use on The Graceland

Project increased from fifty percent (50%) to sixty-five (65%) of the excess property taxes over the Base Tax Amount (as defined in The Graceland Economic Plan).

39. More particularly, over the course of a seven (7) day period (running from August 2, 2017 to August 9, 2017) the representatives of EPE and the officials within The City Administration (officials that possessed the necessary authority to bind The City on various matters) communicated both verbally and in writing regarding the remaining issues that needed to be resolved in order for The City to support and approve Graceland's Supplemental Economic Plan. Those communications resulted in The City officials' written confirmation of The City's support of and forthcoming approval of Graceland's Supplemental Economic Plan. To wit:

- On August 2, 2017 James McLaren (Counsel to EPE) and Doug McGowen (The City's Chief Operating Officer) had the following email exchange:

(Mr. McLaren to Mr. McGowen):

I have spoken with Joel Weinshanker regarding our discussion earlier this afternoon. He pushed back on extending the seat tax after the term of the TIF, but agreed to leave the seat tax in place for five years after the termination of the TIF. Please let me know if five years is acceptable.

James

(Mr. McGowen's response to Mr. McLaren):

Acceptable, Thanks James.

* * *

- On August 4, 2017 Mr. McLaren and Mr. McGowen had the following email exchange:

(Mr. McLaren to Mr. McGowen):

As we have discussed, the City Administration will support the increase in the increment captured by the Graceland TIF from 50% to 65% as an incentive for the development of a 6,000 - 7,000 seat event center on the Graceland campus. As a part of the request for the increase in the TIF increment, Elvis Presley Enterprises, or the operator to the center from time to time, has agreed pay to EDGE a fee equal to \$1.00 per ticket sold to events in the center. In order to assure that community based events are excluded from the fee, the fee shall not apply to events where the ticket price is less than \$15.00. The fee shall also not apply to any access to the theater, granted as a part of any other event or entry ticket sold for any part of the Graceland campus unless tickets for the event in the theater are sold to the public as a separate event ticket at a price in excess of \$15.00. The \$1.00 fee shall apply until five years after the termination of the Graceland TIF.

In order to be in the position to seek approval of an amendment to the Graceland Economic Impact Plan incorporation the increase to 65% at the EDGE Board meeting in September, we request that the initial presentation of the Supplement to the Economic Impact Plan for the Graceland TIF be on the Memphis City Council's Executive Committee Agenda on August 22nd.

Please let me know if you need any additional information or would like to discuss further.

(Mr. McGowen's response to Mr. McLaren):

James,

Just want to clarify before we go public on this that your team will also brief the Luttrell administration before this date? If you want to give update to both Mayors simultaneously, we can set that up too.

(True and correct copies of the emails between Mr. McLaren and Mr. McGowen are attached as **Exhibit D**).

40. It is unequivocally clear from these email communications that The City was on board with and approved of EPE's plans for the current phase of The Graceland Project in August 2017.

41. In or about this same time period, The County likewise conveyed to EPE that it too approved of and supported Graceland's Supplemental Economic Plan and EPE's request for an increase in the percentage of incremental property taxes being captured for use on The Graceland Project.

42. More specifically, on August 7, 2017 Harvey Kennedy, The County's Chief Administrative Officer, notified counsel for EPE, Mr. McLaren, that The County was on board with the percentage of incremental property taxes being captured under The Graceland TIF increasing to sixty-five percent (65%):

- On August 7, 2017 Mr. McLaren and Mr. Kennedy had the following email exchange:

(Mr. Kennedy to Mr. McLaren):

James,

We are supportive of the request to increase the TIF increment to (65%). You gave us a good explanation when we visited with you and Mr. Soden last month.

(True and correct copies of the emails between Mr. McLaren and Mr. Kennedy are attached as **Exhibit E**).

43. Based on a schedule for the required public approvals of Graceland's Supplemental Economic Plan agreed to by EDGE, and approval of the City Administration and the County Administration, EPE's representative appeared before the Executive Committee of

the Memphis City Council on August 22, 2017 and the Economic Development Committee of the Shelby County Commission on September 6, 2017. Immediately after the presentation to the Memphis City Council Executive Committee, Memphis Basketball's representatives contacted The City and objected to Graceland's Supplemental Economic Plan. After the presentation to the Economic Development Committee of the Shelby County Commission and a subsequent meeting with representatives of EPE, Memphis Basketball threatened to sue EDGE if it approved Graceland's Supplemental Economic Plan.

44. On September 20, 2017 the Public Hearing required for EDGE to approve Graceland's Supplemental Economic Plan was held during an EDGE Board meeting. At the meeting, EPE's representatives presented a revised proposed development in an effort to accommodate Memphis Basketball's objections to the Supplemental Economic Plan. The public also was given an opportunity to address Graceland's Supplemental Economic Plan during the Public Hearing.

45. Despite having representatives at the Public Hearing, Memphis Basketball made no public comment during the hearing. Nevertheless, the approval of Graceland's Supplemental Economic Plan, which was scheduled to be on the agenda for the EDGE's Board Meeting on September 20, 2017, was pulled as a result of Memphis Basketball's threat to sue EDGE and a request from the City of Memphis Administration.

46. A special meeting of the EDGE Board was set for October 10, 2017 for consideration by EDGE of Graceland's Supplemental Economic Plan. Leading up to that date, EPE unsuccessfully continued to negotiate in good faith to try and reach a reasonable agreement

with The City and Memphis Basketball. Due to Memphis Basketball's actions, the special meeting of the EDGE Board was cancelled on October 9, 2017.

47. On October 9, 2017 counsel for EDGE, Mark Beutelschies, notified counsel for EPE, Mr. McLaren, that:

James,

There are still several open issues according to the City. However, we do not believe that it is in any of the parties' interest to move forward without the Grizzlies explicit agreement that EPE's development will not be contested. We have kept the process open this afternoon as the risk of irritating the EDGE Board. However, it will be a waste of time to meet tomorrow if the Grizzlies' issues have not been resolved in writing.

(A true and correct copy of the email between Mr. McLaren and Mr. Beutelschies is attached as **Exhibit F**).

48. EPE was also notified by the City Administration that it would not approve Graceland's Supplemental Economic Plan until written confirmation was received from Memphis Basketball that Graceland's Supplemental Economic Plan would trigger a breach by The City of The Arena Use Agreement.

49. The formal approval process for Graceland's Supplemental Economic Plan came to a halt because Defendant Memphis Basketball, without proper justification for doing so, had now intervened into the matter, which caused The City to suddenly start back pedaling and impose unreasonable requirements on EPE for The City's consent to the Supplemental Economic Plan.

50. Together, The City and Memphis Basketball forced EDGE to put a complete stop to the entire approval process; thereby causing irreparable harm to EPE.

MEMPHIS BASKETBALL'S IMPROPER INTERFERENCE
WITH THE GRACELAND PROJECT

51. In order to better understand exactly why EDGE could not move forward with approving Graceland's Supplemental Economic Plan, EPE's representatives addressed the matter directly with The City, The County, Memphis Basketball and EDGE.

52. Much to the dismay of EPE, EPE learned that Memphis Basketball actually had threatened to sue EDGE if EDGE proceeded with approving Graceland's Supplemental Economic Plan.

53. While there was no question that Memphis Basketball had certainly issued this threat to EDGE, EPE was baffled by Memphis Basketball's position and heavy-handed tactics, as there absolutely is no basis for Memphis Basketball to sue EDGE, The City, or The County over The Graceland Project. But Memphis Basketball made the threat nonetheless.

54. And unfortunately for EPE, Memphis Basketball's threat achieved Memphis Basketball's intended result: it wrongfully forced EDGE to halt the approval process, and ultimately caused The City to renege on its commitments to EPE.

55. As a result of Memphis Basketball's improper and tortious behavior, EPE is being wrongfully denied its right to implement the next phase of The Graceland Project.

56. Moreover, because of Memphis Basketball's heavy-handed conduct, EPE's business relationship with The City and EDGE has suffered and will continue to suffer unless this Court intervenes and orders Memphis Basketball to discontinue its illegal conduct.

57. As it currently stands, if The City, The County and EDGE complete the approval process for Graceland's Supplemental Economic Plan, they are at risk of being forced to, *inter alia*, defend a frivolous lawsuit by Memphis Basketball. How is it right for Memphis Basketball

to place The City, The County, EDGE or EPE in such a position? It is not right, and Memphis Basketball knows that it is not right for it to do this.

58. Despite Memphis Basketball's egregious conduct, instead of rushing to the court, EPE in the spirit of cooperation and good citizenry, made good faith efforts to negotiate a reasonable agreement with Memphis Basketball and The City.

59. Yet EPE discovered that Memphis Basketball basically had decided that certain things in Memphis, Shelby County, Tennessee were going to be done Memphis Basketball's way or not at all. What is more, Memphis Basketball was taking this heavy-handed approach despite the unambiguous language of the Arena Use Agreement.

60. Indeed, when asked for justification for its position and heavy-handed conduct, Memphis Basketball's representative stated that any interpretation other than Memphis Basketball's interpretation of The Arena Use Agreement was "strained."

61. But a cursory examination of The Arena Use Agreement reveals that there is no such support therein for Memphis Basketball to even balk at The Graceland Project or Graceland's Supplemental Economic Plan, let alone issue specious threats and otherwise completely shut down the approval process for Graceland's Supplemental Economic Plan and concomitantly The Graceland Project, which is exactly what has happened.

62. Although it recognized that The Arena Use Agreement did not actively lend any support to Memphis Basketball's position, in the spirit of cooperating with its fellow corporate citizen, EPE made inquiries to try and find out why Memphis Basketball believed that The Arena Use Agreement supported its position. EPE once again was troubled by what it discovered.

63. EPE learned that Memphis Basketball, albeit incorrectly, contended that EDGE's approval of the current phase of The Graceland Project was paramount to The City and The County impermissibly participating in the design, development, construction and financing of a new Competing Facility (as defined in The Second Amendment to The Arena Use Agreement), which is prohibited by the Non-Participation Provision of that Agreement.

64. But again, a simple perusal of The Arena Use Agreement shows that there is no legitimate basis for Memphis Basketball to remotely suggest that any phase of The Graceland Project is prohibited by that Agreement. To the contrary, The Arena Use Agreement unequivocally and directly authorizes The City and The County to encourage, provide support for, and approve private projects like The Graceland Project.

65. In the Definitions section of the Second Amendment to The Arena Use Agreement, Section 2(a)(v), The City, The County and Memphis Basketball defined "Competing Facility" in pertinent part as follows:

"Competing Facility" means any now existing or new indoor or covered sports or entertainment arena, indoor or covered performance facility or other indoor or covered facility that (i) could compete with the Arena Complex for the booking of any event, or (ii) has or will have a seating capacity of more than 5,000 persons and fewer than 50,000 persons; provided, however, the foregoing provisions shall not apply to any hotel ballrooms, movie theaters or convention and hotel facilities that are not designed or constructed to be able to accommodate or be used as venues for concerts, theatrical shows, public assemblies or sporting events.

66. In Section 21 of The Arena Use Agreement, as amended by The Second Amendment thereto, The City, The County and Memphis Basketball agreed to place certain limitations on The City and The County's ability to compete with Memphis Basketball, or to

attract, book, or to otherwise hosts events at other facilities **operated, owned and/or controlled by The City or The County**. Those parties further agreed to place certain restrictions on The City and The County's ability to (i) build or construction on its own accord a Competing Facility; or (ii) financially support or encourage third-parties to build or construct a Competing Facility.

67. But more importantly, those parties **did not** place any restrictions on The City and The County's ability to provide support for and approve private projects like The Graceland Project. Rather, they specifically agreed and documented in the Second Amendment to The Arena Use Agreement that The City and The County are authorized to provide the approval and tax incentives sought by EPE.

68. More specifically, the Non-Participation provision in Section 21(f), of the Second Amended Agreement states:

"Non-Participation. During the Term, neither CITY/COUNTY nor any CITY/COUNTY Affiliate shall, without the prior written consent of [Memphis Basketball], design, develop, construct or otherwise fund, provide economic or tax benefits or incentives to, or materially participate in the design, development, construction or financing of (any of the foregoing activities, a "Contribution"), any new Competing Facility; **provided, however, the foregoing provisions shall not be interpreted to prohibit transactions and activities normally and/or routinely engaged in by the . . . CITY/COUNTY Industrial Development Corporations and/or other CITY/COUNTY Affiliates, the general purpose of which is to encourage private development, in the ordinary course of establishing tax freeze programs, tax incentive programs, PILOT programs and other similar economic programs aimed at encouraging private development. . . . Notwithstanding anything to the contrary contained herein, no provision or term of this Operating Agreement shall be construed or interpreted as prohibiting or restricting CITY/COUNTY from**

carrying out its lawful purposes, functions and activities, and/or approving any resolution, ordinance, rule and/or regulation in its ordinary course of business, which CITY/COUNTY believes to be in the best interests of CITY/COUNTY and its citizens, provided such actions by CITY/COUNTY are not exercised in a discriminatory manner as applied to the Franchise, the Arena Complex, [Memphis Basketball] or any [Memphis Basketball] Affiliate.” (emphasis added).

69. Approval of The Graceland Project clearly is not prohibited by The Second Amendment to The Arena Use Agreement. Rather, The Graceland Project falls squarely within the exception for “transactions and activities normally and routinely engaged in by [The City and The County] . . . to encourage private development.”

70. Just like The Graceland Economic Plan, which already has been approved and is in full operation, approval of Graceland’ Supplemental Economic Plan constitutes a transaction and activity that normally and routinely is engaged in by The City, The County and EDGE in the ordinary course of establishing tax incentives programs aimed at encouraging private development.

71. Put another way, increasing the percentage of incremental revenues being captured under The Graceland TIF – so that EPE can further stimulate the local economy by building additional facilities and creating more jobs – is a transaction and activity that The City and The County routinely engages in to encourage private development via their tax incentive programs.

72. Moreover, and consistent with the fact that The Graceland Project is not prohibited by The Arena Use Agreement, two years ago EDGE acknowledged that TDZ Revenues and TDZ Surcharge Revenues were available for use on all phases of The Graceland Project. To boot: in the Resolution Related to the Issuance of up to \$84,000,000 Aggregate

Principal Amount of Direct Note Obligations by EDGE (adopted May 20, 2015) (a true and correct copy of which is attached as **Exhibit G**), EDGE states:

WHEREAS, The City has allocated the TDZ Revenues to the Issuer to pay debt **service on any qualified public use facility and qualified associated developments to be located in the Graceland TDZ** from time to time. (emphasis added).

* * *

WHEREAS, the City of Memphis has approved the Tourist Surcharge and has allocated the revenues created by The Tourism Surcharge (the "Surcharge Revenues") to the Issuers to pay debt service on **any qualified public use facility and qualified associated developments to be located in the Graceland TDZ** from time to time (emphasis added).

73. When all of the hyperbole that Memphis Basketball has thrown around is stripped away, it is clear that the "prohibition" provision of The Arena Use Agreement does not apply to Graceland's Supplemental Economic Plan or The Graceland Project.

74. And no reasonable person could legitimately conclude that at the time in which it made the heavy-handed threats to sue The City, The County and EDGE, Memphis Basketball reasonably believed that Agreement prohibited those entities from approving Graceland's Supplemental Economic Plan.

75. As Memphis Basketball's unjustified and unlawful threats to sue The City, The County and EDGE are the sole reason why (i) Graceland's Supplemental Economic Plan has not been approved; and (ii) EPE is unable to continue work on the current phase of The Graceland Project, Memphis Basketball's conduct is wrongful and is causing irreparable harm to EPE.

76. Memphis Basketball's outrageous actions, which constitute unlawful tortious interference, warrant and justify the issuance of injunctive relief against Memphis Basketball, as well as an award of compensatory and punitive damages in favor of EPE.

77. Additionally, The City, The County, EDGE and EPE are entitled to a declaratory judgment from this Court declaring that The Arena Use Agreement does not prohibit The City, The County and EDGE from approving Graceland's Supplemental Economic Plan, and that The Graceland Project can continue forward with the increased percentage of incremental property taxes being captured for use on the Project.

V. CAUSES OF ACTION

COUNT ONE DECLARATORY JUDGMENT

78. EPE repeats and realleges paragraphs 1-77 of this Complaint as though fully set forth herein.

79. Pursuant to Tenn. Code Ann. § 29-14-103, EPE seeks a declaratory judgment from this Court declaring that The Arena Use Agreement does not prohibit The City, The County and EDGE from approving Graceland's Supplemental Economic Growth Plan, and thus, that the increased percentage of incremental property taxes can be used for the current phase of The Graceland Project.

80. As detailed herein, Memphis Basketball, to the detriment of EPE, is improperly interfering with EPE's business relationship with The City, The County and EDGE, and thereby preventing the commencement of the current phase of The Graceland Project.

81. Despite the clear and unambiguous language in The Arena Use Agreement to the contrary, Memphis Basketball maintains that the terms of The Arena Use Agreement prohibit The City, The County and EDGE from approving Graceland's Supplemental Economic Growth Plan. But again, Memphis Basketball is wrong.

82. The City, The County and EDGE each granted tentative approval to EPE to move forward with the current phase of The Graceland Project under Graceland's Supplemental Economic Plan. Indeed, representatives of The City, The County and EDGE specifically confirmed their approval and support directly to EPE's representatives. But Memphis Basketball intervened and forced those entities to halt the formal approval process.

83. The City, despite its initial indication of approval, support and enthusiasm, made a 180 degree turn, and now EDGE and The City have each stated they will not approve the current phase of The Graceland Project until the looming threat of Memphis Basketball is resolved. Therefore, judicial intervention is necessary to resolve the dispute, which arises from Memphis Basketball's incorrect interpretation of the Arena Use Agreement.

84. Again, because of Memphis Basketball's actions, and the looming threat of being sued by Memphis Basketball, The City, The County and EDGE cannot/will not formalize their approval of Graceland's Supplemental Economic Plan. Thus, a declaratory judgment is being sought, so that The City, The County, EDGE and EPE each can take the appropriate action to move forward with approval of the Graceland Supplemental Economic Plan and The Graceland Project.

85. Particularly, The City, The County, EDGE and EPE seek a declaration from this Court declaring that The Arena Use Agreement does not prohibit The City, The County and EDGE from approving Graceland's Supplemental Economic Plan. Because the language of that Agreement is so clear and unambiguous, it is difficult to believe that Memphis Basketball is actually forcing EPE to seek this declaration, yet it is nonetheless.

86. This Court has discretion under Tenn. Code Ann. § 29-14-113 to consider and rule upon this request for declaratory judgment as to the effect of the Non-Participation provision of The Second Amendment to The Arena Use Agreement. EPE respectfully requests that the Court exercise its discretion and render a ruling on this issue. Failure to act in this regard will allow Memphis Basketball to continue wielding the Non-Participation Agreement as a sword to improperly interfere with EPE's business relationship with The City, The County and EDGE. More importantly, absent judicial intervention by this Court, the Whitehaven Community, as well as all other communities in Memphis and Shelby County, will be irreparably harmed as a result of EPE's inability to further stimulate the local economy via The Graceland Project.

87. The parties attempted to resolve these intertwined issues without judicial intervention, but it now has been made clear that there must be judicial intervention, in the form of a declaratory judgment, in order for the parties to resolve these important issues.

88. The present rights of EPE are being infringed upon by Memphis Basketball's specious claims that approval in the current phase of The Graceland Project would be a violation of The Arena Use Agreement's Non-Participation Clause, making this an existing controversy and justiciable dispute under the Tennessee Declaratory Judgments Act.

89. A judicial construction of The Arena Use Agreement's Non-Participation Clause will materially advance the ultimate resolution of this dispute.

90. Accordingly, EPE requests a declaratory judgment from this Court declaring that The Arena Use Agreement does not prohibit The City, The County and EDGE from approving Graceland's Supplemental Economic Growth Plan, and thus, that the increased percentage of incremental property taxes can be used for the current phase of The Graceland Project.

COUNT TWO
INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONSHIP

91. EPE repeats and realleges paragraphs 1-90 of this Complaint as though fully set forth herein.

92. EPE has an existing business relationship with The City, The County and EDGE, as more fully described above, by way of the existing Graceland Economic Plan, the establishment of The Graceland TIF, The Graceland TDZ and TDZ surcharge, and The Graceland Project.

93. In connection with those existing relationships, EPE seeks to move forward with certain amendments, modifications and supplements to The Graceland Project, which include the construction of a theater capable of seating 6,200 persons, additional museum space, as well as additional retail facilities and other related improvements (*See* Graceland's Supplemental Economic Plan).

94. Memphis Basketball is aware of EPE's relationship with The City, The County and EDGE, specifically The Graceland TIF and The Graceland Project, and has demonstrated this awareness through its current, ongoing threat to sue EDGE and The City should they proceed forward with formal approval of the current phase of The Graceland Project and Graceland's Supplemental Economic Plan.

95. Memphis Basketball has clearly communicated its intent to interfere with the existing relationship between The City, The County, EDGE, and EPE. Indeed EDGE, The City and The County already have tentatively approved the current phase of The Graceland Project, but Memphis Basketball's heavy-handed threats have caused EDGE to halt the approval process, and ultimately caused The City to renege on its commitments to EPE.

96. Memphis Basketball has improperly interfered with EPE's relationship with The City, The County and EDGE. And it did so by improper means, as the basis for their interference is a bad faith "interpretation" of The Arena Use Agreement.

97. While the Arena Use Agreement contains limitations on The City and The County's ability to compete with Memphis Basketball, or to attract, book, or to otherwise host events at other facilities operated, owned and/or controlled by The City or The County, those parties did not place any restrictions on The City and The County's ability to provide support for and approve private projects like The Graceland Project. Rather, they specifically agreed and documented in the Second Amendment to The Arena Use Agreement that The City and The County are specifically authorized to provide the approval and tax incentives sought by EPE.

98. Memphis Basketball knows that The Arena Use Agreement does not prohibit The City, The County and EDGE from approving Graceland's Supplemental Economic Plan.

99. To the contrary, The Arena Use Agreement authorizes The City and The County to encourage, provide support for, and approve private projects like The Graceland Project. And that is precisely why The City, The County and EDGE initially approved Graceland's Supplemental Economic Plan.

100. In threatening The City and EDGE, Memphis Basketball has demonstrated bad faith, heavy-handed tactics, intentionally for the purpose of causing irreparable harm to EPE.

101. Memphis Basketball is abusing its position and status and unduly influencing The City, which has caused the current phase of The Graceland Project to come to a halt. Memphis Basketball is engaging in this improper behavior, even though it is clear that The Graceland

Project does not violate The Arena Use Agreement, nor would it otherwise offend any right of Memphis Basketball.

102. Memphis Basketball's unjustified and unlawful interference, via threats to sue The City, The County and EDGE, are the sole reason why (i) Graceland's Supplemental Economic Plan has not been approved; and (ii) EPE is unable to continue work on the current phase of The Graceland Project.

103. These actions by Memphis Basketball have not only interfered with The Graceland Project and Graceland's Supplemental Economic Plan, they also have interfered with The Graceland TIF, constituting unlawful tortious interference.

104. As a direct and proximate result of Memphis Basketball's improper interference, EPE has been damaged and is entitled to recover money damages from Memphis Basketball, including without limitation, all of its pecuniary and consequential losses caused by Memphis Basketball's intentional, improper interference.

COUNT THREE TEMPORARY RESTRAINING ORDER

105. EPE repeats and realleges paragraphs 1-104 of this Complaint as though fully set forth herein.

106. Memphis Basketball has improperly interfered with EPE's existing relationship with The City, The County and EDGE, by threatening to sue if The City, The County and EDGE proceed with approval of the current phase of The Graceland Project and Graceland's Supplemental Economic Plan.

107. This continuing threat and interference, which Memphis Basketball knows is improper and unfounded, has achieved Memphis Basketball's intended result: it has halted the current phase of The Graceland Project.

108. Moreover, because of Memphis Basketball's vicious and deceitful conduct, EPE's business relationship with The City and EDGE has suffered and will continue to suffer unless this Court intervenes and orders Memphis Basketball to discontinue its illegal conduct.

109. EPE reasonably believes that its interest is endangered and likely to be lost or rendered inadequate without the grant of injunctive relief preventing Memphis Basketball from further interfering with The Graceland Project and Graceland's Supplemental Economic Plan.

110. Therefore, equity dictates that EPE be granted a temporary restraining order and, upon hearing, a preliminary and permanent injunction: Prohibiting Memphis Basketball, LLC, and its officers, directors, employees, agents, managers, shareholders, principals, and/or owners (of all or any portion of an interest in Memphis Basketball, LLC), or anyone acting on or under Memphis Basketball, LLC's behalf or at Memphis Basketball, LLC's direction, from further interfering with EPE's business relationship with The City, The County and EDGE, by issuing threats to sue or otherwise cause harm to The City, The County or EDGE if they move forward with approving Graceland's Supplemental Economic Plan and the current phase of The Graceland Project.

111. EPE will suffer immediate and irreparable injury, loss, and damage unless Memphis Basketball, LLC, and those under Memphis Basketball, LLC's control and direction are restrained and enjoined as requested hereunder.

112. Moreover, EPE is likely to prevail on the merits of this Complaint and the balance of equities favors entry of the requested equitable relief.

113. The injuries, losses and damages to EPE cannot be remedied by money damages alone.

114. Because EPE has no adequate remedy at law and there is a substantial likelihood that it will prevail on the merits of this Complaint, the equitable relief sought herein is appropriate.

COUNT FOUR TEMPORARY AND PERMANENT INJUNCTION

115. EPE repeats and realleges paragraphs 1-114 of this Complaint as though fully set forth herein.

116. Based on Memphis Basketball LLC's prior intentional, improper actions in threatening to sue if EDGE and The City approve Graceland's Supplemental Economic Plan, which halted The Graceland Project, EPE has a good faith and reasonable basis for being gravely concerned about continued and future interference by Memphis Basketball, LLC.

117. Absent entry of a temporary injunction restraining and this Court enjoining Memphis Basketball, LLC from further interfering with EPE's business relationship with The City, The County and EDGE, EPE reasonably believes that it will not be able to proceed with the current phase of The Graceland Project, thereby causing irreparable harm to EPE.

118. As manifested in the foregoing factual allegations, EPE is likely to prevail on the merits of this action.

119. EPE has sustained and will continue to sustain immediate and irreparable injury as a result of Memphis Basketball LLC's voluntary and intentional actions in interfering with The Graceland Project and Graceland's Supplemental Economic Plan.

120. With respect to such conduct, EPE has no adequate remedy at law.

121. The balance of the equities favors the issuance of a temporary injunction in favor of EPE.

122. Accordingly, EPE requests that this Court grant a Temporary and Permanent Injunctions enjoining Memphis Basketball, LLC, and its officers, directors, employees, agents, managers, shareholders, principals, and/or owners (of all or any portion of an interest in Memphis Basketball, LLC), or anyone acting on or under Memphis Basketball, LLC's behalf or at Memphis Basketball, LLC's direction, from further interfering with EPE's business relationship with The City, The County and EDGE, by issuing threats to sue or otherwise cause harm to The City, The County or EDGE if they move forward with approving Graceland's Supplemental Economic Plan and the current phase of The Graceland Project.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Elvis Presley Enterprises, Inc., EPPF, LLC and Guesthouse at Graceland, LLC, pray that judgment be entered in their favor and against the Defendants as follows:

1. That the Court issue a declaratory judgment declaring that The Arena Use Agreement does not prohibit The City, The County and EDGE from approving Graceland's Supplemental Economic Growth Plan and the current phase of The Graceland Project, and thus,

that the increased percentage of incremental property taxes can be used for the current phase of The Graceland Project.

2. That EPE be awarded judgment against Defendant Memphis Basketball, LLC in an amount to be determined by the trier of fact, plus attorneys' fees and all cost incurred in connection with this action;

3. That punitive damages be assessed against Defendant Memphis Basketball, LLC in favor of EPE based on the intentional bad faith actions of Defendant Memphis Basketball, LLC;

4. That this Court enter an order enjoining Memphis Basketball, LLC and its officers, directors, employees, agents, managers, shareholders, principals, and/or owners (of all or any portion of an interest in Memphis Basketball, LLC), or anyone acting on or under Memphis Basketball, LLC's behalf or at Memphis Basketball, LLC's direction, from further interfering with EPE's business relationship with The City, The County and EDGE, by issuing threats to sue or otherwise cause harm to The City, The County or EDGE if they move forward with approving Graceland's Supplemental Economic Plan and the current phase of The Graceland Project.

5. That injunctive relief be granted enjoining Memphis Basketball, LLC and its officers, directors, employees, agents, managers, shareholders, principals, and/or owners (of all or any portion of an interest in Memphis Basketball, LLC), or anyone acting on or under Memphis Basketball, LLC's behalf or at Memphis Basketball, LLC's direction, from further interfering with EPE's business relationship with The City, The County and EDGE, by issuing threats to sue or otherwise cause harm to The City, The County or EDGE if they move forward

with approving Graceland's Supplemental Economic Plan and the current phase of The Graceland Project; and

6. That EPE be granted and awarded any such other, further, or different relief to which this Court might find EPE to be entitled.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.

Respectfully submitted this the 15th day of November, 2017.

A handwritten signature in black ink, appearing to read 'Clarence A. Wilbon', written over a horizontal line.

Clarence A. Wilbon (TN Bar No. 023378)

J. Bennett Fox, Jr. (TN Bar No. 026828)

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VERIFICATION

I, Jack Soden, am the CEO of
Elvis Presley Enterprises, Inc., and in that capacity do swear and affirm that the statements
given in its Verified Complaint for Declaratory Judgment, Intentional Interference with
Business Relationship, and Other Injunctive and Equitable Relief are true and correct to the
best of my information and belief.

Jack Soden
Title: CEO

SUBSCRIBED AND SWORN TO before me by Jack Soden as
CEO of Elvis Presley Enterprises,
on the 14th day of November, 2017, to certify my hand and seal
of office.

Joe Douglas King
Notary Public – State of TN

My Commission Expires:

2/5/19

