Regular Council

# AGENDA ITEM REPORT

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| **To:** | George Lahanas |
| **Subject:** | Approve a Parking Lease Agreement with GEMI Lessee LLC, 100 Grand River LLC, and 341 Evergreen, LLC to provide parking for the Graduate Hotel as anticipated in the Development Agreement for the Park District redevelopment project |
| **Meeting:** | Regular Council - 13 Jul 2021 |
| **Department:** | Planning, Building, and Development |
| **Staff Contact:** | Thomas Fehrenbach, Director of Planning, Building and Development |

## BACKGROUND INFORMATION:

In September of 2018, the City entered into a Development Agreement (available here) with 100 Grand River LLC and 341 Evergreen, LLC (the Developer) for the Park District redevelopment project. The project encompassed three buildings, one of which was slated for the Graduate Hotel, which has recently opened for business.

As part of the Agreement, the City agreed to offer 25 spaces to the Hotel in what was then Parking Lot #8, the parking lot in closest proximity to the hotel. As a reconfiguration of the parking lot and surrounding streetscape was anticipated, a stipulation was put in place to continue to offer 25 spaces as close as possible to the hotel within the City system.

Parking Lot #8 is currently being redeveloped, including a portion that is becoming the new roadway. As such, the parking capacity in the lot is being reduced by approximately 50%, or 40 spaces. In order to maintain as many spaces as possible for other permit parking in the new Lot #8, while also working to suit the hotel needs, staff negotiated the attached agreement with the hotel operator, which has been agreed to by the Hotel Operator and has been approved as to form by the City Attorney.

Essentially, the agreement allows the hotel to lease 10 permits in Lot #8 for $90 per space per month, while also leasing 30 spaces in City Hall West Lot #15 at $85 per space per month, which would equate to $41,400 for the first year. The initial rates are in line with the overall system as well as what was anticipated in the Development Agreement. Further, they are subject to change by the City Council in line with the prevailing rates as set annually during the budget process. The agreement is for 30 years, with either party having the ability to terminate the agreement with 30 days notice.

Beyond this agreement, staff will include the Graduate Hotel as a vendor for validations and other programs to serve the additional needs of the Hotel operations and guests.

**Recommended Motion:**

**Move approval of the Parking Lease Agreement with GEMI Lessee LLC, 100 Grand River LLC, and 341 Evergreen, LLC to provide parking for the Graduate Hotel as anticipated in the Development Agreement for the Park District redevelopment project**

**ATTACHMENTS:**

Parking Agreement - Final

# PARKING LEASE AGREEMENT

This Agreement is executed between the CITY OF EAST LANSING ("City"), a Michigan municipal corporation, whose address is 410 Abbot Road, East Lansing, Michigan 48823, GEMI LESSEE, LLC, a Delaware limited liability company, whose address is 2000 High Wickham Place, # 300, Louisville, Kentucky 40245 ("Hotel Operator"), 100 Grand River, LLC, a Delaware limited liability company, whose address is 40600 Ann Arbor Road E, Suite 201, Plymouth, Michigan 48170 and 341 Evergreen, LLC, a Delaware limited liability company, whose address is 40600 Ann Arbor Road E, Suite 201, Plymouth, Michigan 48170 (100 Grand River LLC, and 341 Evergreen, LLC collectively referred to as to as "Developer").

## RECITALS

A. On September 27, 2018, the City, the Developer, the East Lansing Downtown Development Authority, and the East Lansing Brownfield Redevelopment Authority entered into a Master Development Agreement titled Park District Development Agreement ("Development Agreement") for a redevelopment project as described therein.

B. Section III. d) of the Development Agreement provides for the future lease of twenty five (25) parking spaces by the Developer from the City in the City's Evergreen Avenue Parking Lot ("Parking Lot 8"), at the initial rate of Ninety Dollars per month per leased space, such rate to be annually adjusted as provided for therein, the intended purpose of such lease to provide valet parking for the planned mixed-use retail, office, hotel building described as Building D in Section I. a) 2) of the Development Agreement ("Hotel").

C. The Parties hereto acknowledge that subsequent to the execution of the Development Agreement, Developer assigned its respective interests related to the future lease of parking spaces as described in paragraph B above to Hotel Operator.

D. The City is currently redeveloping the streetscape in the area near the Hotel, which includes a re-configuration of Parking Lot 8 as well as the City Hall West Lot ("Parking Lot 15"). Parking Lot 8 is being reduced by approximately 50%, or 40 spaces. In recognition of this decreased capacity in Parking Lot 8, the City intends to initially offer 15 additional spaces above the 25 that are required in the Development Agreement, the additional spaces to be located in Parking Lot 15.

E. In accordance with Section III. d) of the Development Agreement, the parties wish to establish a Parking Lease Agreement for parking uses to best serve the needs of the Hotel Operator, support the City parking system, and satisfy the intent to enter into a Parking Lease Agreement outlined in Section III. d) of the Development Agreement.

In accordance therewith, and as set forth below, the City, Hotel Operator, and Developer agree as follows:

1. **Parking Spaces.**

(a) Pursuant to this Agreement, the City will lease 10 parking spaces in the reconfigured Parking Lot 8 and 30 spaces in the redeveloped Parking Lot 15 for a total of 40 parking spaces to the Hotel Operator.

2. **Signage and Maintenance.**

(a) **Signage**. The City shall be responsible, at its sole expense, for general signage in Parking Lot 8 and Parking Lot 15 (including, but not limited to traffic flow, pedestrian flow, parking access, cost and control, speed control and ingress and egress). The City shall be the only party to this Agreement authorized to erect or cause any signage to be placed in or on Parking Lot 8 and Parking Lot 15. The City shall visually designate the spaces of Parking Lot 8 and Parking Lot 15 that are reserved for the sole use of the Hotel pursuant to this Agreement. The City shall be responsible for the installation and maintenance of any stencil lettering or signs that designate such spaces. Hotel Operator may make requests regarding the placement, number, or other details regarding such signage, however the City will retain final decision making authority with regard to any and all signage within Parking Lot 8 and Parking Lot 15.

(b) **Maintenance and Operations.** The City will be responsible, at its sole expense, for all maintenance, cleaning, and operations of Parking Lot 8 and Parking Lot 15 and related parking equipment, including but not limited to, personnel, control equipment (if any), snow and ice removal, lighting, cleaning, painting, striping, repaving and repairs, and any and all other related maintenance and operational costs.

3. **Issuance of Identification Placards.** The Hotel Operator, in a manner consistent with City Standards, will be responsible for the production and use of vehicle identification placards (or their equal) to be placed in or on vehicles that are authorized by Hotel Operator to park in the spaces leased by Hotel Operator pursuant to this Agreement. The Hotel Operator will then, in its sole discretion, distribute the placards for valet and/or hotel staff parking. The City shall enforce the use of Parking Lot 8 and Parking Lot 15 in accordance with this Agreement and all state and local codes and regulations. The City agrees that it will not lease or intentionally provide to third parties spaces that are leased to the Hotel Operator. Other than the signage requirement set forth in Paragraph 2(a) above, the City shall have no responsibility under this Agreement to guarantee the availability of the leased parking spaces at any given time.

4. **Monthly Charge.** The monthly charge for the leased parking spaces shall be as follows:

(a) 10 Evergreen Lot 8 Parking Spots –$90 per month per space; and

(b) 30 City Hall West Lot 15 Parking Spots –$85 per month per space.

The rates set forth above will be effective upon the full execution of this Agreement and will remain in effect for one year. Such rates may be adjusted annually by resolution of the City Council. Such adjustment shall not exceed the then prevailing permit

parking space rental rate charged by the City throughout the City municipal parking system. Each annual rate adjustment shall be effective on the first day of the month following the anniversary date of the full execution of this Agreement ("Annual Rent Adjustment Date.") The City will invoice the Hotel Operator Monthly for the lease amounts due each month under this Agreement. Payment is due on the date shown on the invoice. Past due amounts shall be subject to a penalty in an amount equivalent to 10% of the outstanding balance on the invoice that is past due.

5. **Duration, Expiration, Termination and/or Suspension.**

(a) **Duration.** This Agreement shall remain in effect for thirty (30) years, measured from the first day of the first full calendar month following its execution unless it is executed on the first day of any month, in which case it will run for exactly thirty (30) years. Notwithstanding the foregoing, the City and the Hotel Operator agree to meet every five (5) years within 7 days of the Anniversary date of the execution of this Agreement (or such more frequent basis as may be mutually agreeable to the City and the Hotel Operator) to determine if the number of parking spaces set forth in Paragraph 4 above continue to be in the best interests of the City and the Hotel Operator. If the City and the Hotel Operator mutually agree that an equivalent amount of revenue may be provided to the City under different parking space or parking rental terms, then the City and the Hotel Operator may by mutual written agreement and subject to approval by City Council amend this Agreement to provide for different terms.

(b) **Expiration and Termination.** If either Lot 8 or Lot 15 is demolished or replaced, this Agreement shall be modified to provide Hotel Operator the option to lease a minimum of twenty-five (25) spaces in any newly-built City-owned or operated parking lot or garage, or the nearest City-owned or operated parking lot or garage with space available. It is expressly acknowledged by the parties that though this Agreement involves the initial lease of forty (40) spaces, that this paragraph does not guarantee replacement of forty (40) spaces, but instead provides for a minimum replacement of twenty-five (25) spaces subject to then available parking space capacity within the City-owned or operated parking system.

The Agreement may be terminated at the option of either the City or the Hotel Operator at any time upon thirty (30) days written notice to the other. This Agreement shall be terminated at the option of the City if payments are not made in accordance with this Agreement and the Hotel Operator has not cured the payment default within 30 days of written notice to the Hotel Operator of such default. Invoices sent by the City to Hotel Operator that show past due amounts shall constitute the notice required under this section. Termination by the City shall not, in any way, limit or affect any other remedies the City may have as a result of Hotel Operator's breach of this Agreement.

(c) **Suspension for breach of payment.** In the event that the Hotel Operator fails to pay invoices when due, the City, in its sole discretion, may suspend access to the leased parking spaces by any means available to the City until such time as payment is made. Such suspension may occur without notice to the Hotel Operator. Unless the Agreement has been

terminated pursuant to paragraph 5(b), once payment is made by Hotel Operator, the City shall restore access to the leased spaces (or other security devices) without delay.

6. **Indemnification and Liability**

(a) Hotel Operator agrees that it will not permit the use of Lot 8 or Lot 15 in any manner that would result in a violation of any local, state or federal laws, ordinances, rules, or regulations now or hereafter in force and applicable thereto. Hotel Operator agrees to protect, defend and indemnify the City, its officers, agents, and employees from any and all liabilities, claims, liens, fines, demands and costs, including legal fees, of whatsoever kind and nature which may arise in whole or in part from the negligent acts or omissions of Hotel Operator, or its officers, agents, employees, or subcontractors. Such indemnification extends to any injury or death to any persons, including Hotel Operator's own employees, officers or agents, and for loss or damage to any property, including property owned or in the care, custody or control of the Hotel Operator.

(b) To the extent allowed by law, and without waiving the City's immunity as provided by law, the City shall indemnify and hold harmless Hotel Operator, its officers, agents, employees, invitees, guests and independent contractors for City's own negligence or negligence of City's employees, officials, and agents. This provision is not intended, and shall not be construed to waive or limit any immunity defense which the City may have including governmental immunity or any other lawful defense in law or equity.

7. **Warranty of Authority.** Each party warrants to the others that it is authorized and has the power to perform the terms of this Agreement, the execution and performance have been authorized by all necessary action and this Agreement is valid and binding upon such party in accordance with its terms.

8. **Transfer of Interest by Developer.** By executing this Agreement, 100 Grand River, LLC and 341 Evergreen, LLC each agree that upon execution of this Agreement neither shall have any further interest in the terms of the Development Agreement related to Parking Spaces as set forth in Section III, d) of the Development Agreement, and the entirety of any remaining respective interests they may hold are transferred to Hotel Operator by operation of this Agreement. The Parties acknowledge and agree that upon execution of this Agreement, 100 Grand River, LLC and 341 Evergreen, LLC, shall have no interest in future modifications or amendments to this Agreement, and shall not be considered necessary parties to any future modification or amendment of this Agreement.

9. **Documents.** The parties will execute all documents necessary to effectuate the terms of this Agreement and the Development Agreement.

10. **Transfers and Conveyances.** Hotel Operator shall not assign its interest in this Agreement without prior written consent of the City. Any such assignment by the Hotel Operator shall not relieve the Hotel Operator from any of the Hotel Operator's obligations pursuant to the terms of this Agreement and Hotel Operator shall assume the position of a guarantor of the terms of this Agreement.

11. **Notices.** All notices or communications under this Agreement shall be in writing and shall be served personally or by certified mail addressed to the City Clerk for service on the City or to any respective member of the remaining parties at their respective registered agent addresses, their respective addresses as set forth in the opening paragraph of this Agreement, or at such other address as a party may designate by written notice to the other parties. Notice as provided for in this section shall be deemed received if sent by electronic mail if it is acknowledged by the intended recipient by return electronic mail.

12. **Amendment.** This Agreement may only be amended by a written agreement signed by the City and Hotel Operator, and subject to approval by City Council.

13. **Waiver.** The waiver of any breach of this Agreement by a party shall not operate or be construed as a waiver by any party of any subsequent breach. Each and every right, remedy and power granted to a party under this Agreement or allowed by law shall be cumulative and not exclusive of any other.

14. **Enforceability.** If any of the provisions of this Agreement or its application to any party under any circumstances is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement or its application.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the matters set forth in this Agreement. This Agreement supersedes and terminates any and all other previous or contemporaneous communications, representations, understandings, agreements, negotiations, discussions, whether oral or written, between the parties with respect to the matters set forth herein.

16. **Governing Law.** This Agreement shall be governed by the laws of the state of Michigan.

17. **Execution of Agreement.** This Agreement may be executed in duplicate original counterparts and all copies of this Agreement so executed shall be deemed to be one agreement.

18. **Interpretation.** The language set forth in this Agreement is the result of comprehensive negotiations between the parties. In the event there is any ambiguity of any of the provisions of this Agreement, such ambiguity shall not be construed against either party.

This Agreement is fully executed on the date it is executed by the last in time signing party and shall be effective on that date.

*[Signatures on following pages]*

**CITY:**

CITY OF EAST LANSING, a Michigan municipal corporation

By:_____
Name: Aaron Stephens
Its: Mayor

STATE OF MICHIGAN)
:ss.
COUNTY OF INGHAM)

Acknowledged before me this ____ day of _____, 2021, by Aaron Stephens, Mayor of the City of East Lansing, a Michigan municipal corporation, on behalf of said municipal corporation.

_____
_____, Notary Public
State of Michigan, County of _____
My Commission Expires:_____
Acting in the County of _____

**Approved as to form:**

_____
Michael Homier, City Attorney

**Certified as to sufficiency of funds:**

_____
Jill Feldpausch, Chief Financial Officer

**HOTEL OPERATOR:**

GEMI LESSEE LLC, a Delaware limited liability company

By:_____
Name:
Title:

STATE OF )
:ss.
COUNTY OF )

Acknowledged before me this ____ day of _____, 2021, by _____, of _____, a Delaware limited liability company, as authorized agent on behalf of GEMI LESSEE LLC.

_____
_____, Notary Public
State of_____, County of _____
My Commission Expires:_____
Acting in the County of _____

**DEVELOPER:**

100 Grand River, LLC, a Delaware limited liability company

By:_____
Name:
Title:

STATE OF )
)ss.
COUNTY OF )

Acknowledged before me this ____ day of _____, 2021, by _____, of 100 Grand River, LLC, a Delaware limited liability company, on behalf of 100 Grand River, LLC.

_____
_____, Notary Public
State of_____, County of _____
My Commission Expires:_____
Acting in the County of _____

**DEVELOPER:**

341 Evergreen, LLC, a Delaware limited liability company

By:_____
Name:
Title:

STATE OF )
)ss.
COUNTY OF )

Acknowledged before me this ____ day of _____, 2021, by _____, of 341 Evergreen, LLC, a Delaware limited liability company, on behalf of 341 Evergreen, LLC.

_____
_____, Notary Public
State of_____, County of _____
My Commission Expires:_____
Acting in the County of _____

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