

City of Fayetteville Staff Review Form

2020-0691

Legistar File ID

12/1/2020

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Justin Clay

11/10/2020

PARKING MANAGEMENT (430)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Amending the lease agreement with the GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE for use of parking spaces in the Meadow Street Municipal Parking Deck

Budget Impact:

Account Number	Fund
Project Number	Project Title
Budgeted Item? <u>NA</u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u>NA</u>	Item Cost
Budget Adjustment Attached? <u>NA</u>	Budget Adjustment
	Remaining Budget \$ -

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # 193-16

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 1, 2020

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Peter Nierengarten, Environmental Director

FROM: Justin Clay, Parking Manager

DATE: November 10, 2020

SUBJECT: Parking Lease Amendment with Graduate Hotel

RECOMMENDATION:

Staff recommends amending the lease agreement with the Graduate Hotel for use of parking spaces in the Meadow Street Municipal Parking Deck by reducing the amount of spaces to include the first level of the deck only for the timeframe from April 1, 2020 to June 30, 2020 and to extend the lease agreement for one additional seven (7) year term.

BACKGROUND:

Since 1990, the City has leased to the owners of the hotel the 178 parking spaces located on the first and third levels of the Meadow Street Municipal Parking Deck at a rate of \$50 per space per month. The current agreement is in the second seven (7) year term and is set to expire in 2026.

DISCUSSION:

The Graduate Hotel was forced to close earlier this year due to the COVID19 pandemic. The hotel has since reopened and would like to retroactively reduce the number of parking spaces that it leased from the City for the timeframe from April 1, 2020, to June 30, 2020, by removing the spaces on the third level from its lease agreement.

In addition, the Graduate Hotel has requested to add one additional seven (7) year term to the lease agreement, thus extending the agreement to 2033. Additional amendment language allows the City to increase the rate up to 20% during the third term and requires the two parties to discuss the rate structure one year prior to the beginning of the third term.

BUDGET/STAFF IMPACT:

Loss of \$13,350 in revenue for the three-month period April-June 2020 during the hotel closure.

Attachments:

Meadow Street Parking Deck Amended and Restated Lease Agreement

AMENDED AND RESTATED LEASE OF MEADOW STREET PARKING DECK

This Amended and Restated Lease of Meadow Street Parking Deck, made and entered into this _____ day of _____, 2020 by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain St., Fayetteville, Arkansas, and GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE, a Delaware limited liability company, amends and restates the original agreement made and entered into on September 6, 2011 by and between the City of Fayetteville and Southwind Hospitality, LLC, as amended by Resolution 193-16, which contained Amendment #1 to that certain Lease of Meadow Street Parking Levels 1 and 3 dated July 2016, and that certain Assignment and Assumption of Lease of Meadow Street Parking Deck 1 and 3 dated as of December 4, 2018.

WITNESSETH:

The City of Fayetteville, for and in consideration of the rents hereinafter reserved and of the covenants and agreements hereinafter set forth to be kept and performed by GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE, agrees to lease the premises as later described to GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE, and GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE, agrees to pay rents set forth below and to lease from the City of Fayetteville, eighty-seven (87) parking spaces located on the first level and eighty-nine (89) parking spaces located on the third level (as further described herein) of the Meadow Street Parking Deck on that parcel of land situated in the County of Washington and State of Arkansas, and more particularly described as:

A part of Block numbered Fifteen (15) in the original plat of the City of Fayetteville, Arkansas. described as follows: Beginning at a point 127 feet west of the northeast corner of said Block Fifteen; and running thence west 177 feet; thence south 206 feet; thence east 177 feet; thence north 206 feet to the place of beginning.

Said parcel of land and parking spaces may be hereinafter referred to as the "Leased Premises".

1. **Term of Lease.** The initial term of this Lease shall commence on October 1, 2011 after the execution of the lease by both parties and shall be for a period of one (1) year and cover only the first level with 87 parking spaces at \$50.00 per month each or \$4,350.00 per month. There shall be three automatic annual renewals: each for a period of seven (7) additional years and upon the same terms and conditions as this Lease unless otherwise specified herein or agreed by the parties in writing. For each of the seven (7) year extensions, and unless otherwise stated in this agreement, GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE will lease 176 parking spaces at \$50.00 per month on the first and third levels of the Meadow Street Parking Deck for a total monthly rental of \$8,800.00.

From April 1, 2020, through June 30, 2020, the Leased Premises shall consist of only the first level with 87 parking spaces at \$50.00 per month each or \$4,350.00 per month.

2. **Right of First Refusal.** If at any time during the term of this Lease the City of Fayetteville receives an acceptable bona fide offer to purchase the Leased Premises, or any part thereof, the City of Fayetteville shall submit a written copy of such offer to GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE giving GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE thirty (30) days within which to elect to meet such offer.

3. **Parking Spaces.** This Lease shall be for the entire first level of the Leased Premises consisting of eighty-seven (87) parking spaces of the Fayetteville Municipal Parking Deck located at 25 E. Meadow Street for the term of the first year lease. This lease shall cover the first and third levels (176 parking spaces) in subsequent years.

4. **Rent.** GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE shall pay to the City of Fayetteville as rent for the Leased Premises the following:

- a. The sum of fifty dollars (\$50.00) per month per parking space (87) rented on the first level of the Leased Premises which monthly total shall be Four Thousand Three Hundred Fifty Dollars (\$4,350.00).
- b. The sum of fifty dollars (\$50.00) per month per parking space (89) rented on the third level of the Leased Premises which monthly total shall be Four Thousand Four Hundred Fifty Dollars (4,450).
- c. Beginning with the third term commencing on October 1, 2026, the rent payable to the City for the third term may be increased by up to 20%. The City and GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE shall review the future rent amount payable to the City one year prior to the beginning of the third term.
- d. The monthly rental shall be payable in consecutive monthly installments payable in advance on or before the first day of every calendar month.

5. **Deposit.** [Removed].

6. **Use.** GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE and its subtenant or occupants shall have the right to use the Leased Premises for parking only; any other use of the Leased Premises must be pre-approved by the City of Fayetteville and shall meet all present and future building codes, zoning and other Laws.

7. **Repairs.** The City of Fayetteville shall, during the term of this Lease and any renewal or extension thereof, at its sole expense, keep the Leased Premises in as good order and repair as it is at the date of the commencement of this Lease, reasonable wear and tear and damage by accidental fire or other casualty not within the control of City of Fayetteville excepted. GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE shall not knowingly commit or willfully permit to be committed on the Leased Premises any waste, damaging act, or thing contrary to the rules and regulations prescribed from time to time by either federal, state or municipal authority.

8. **Casualty.** If at any time the Leased Premises or the building which forms the principal component of the Leased Premises should be damaged by fire or any major casualty which is not the fault of GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE and the cost of repairing the damage does not exceed 35% of the value of the Meadow Street Parking Deck, then the City of

Fayetteville shall as soon as reasonably practical repair the damage caused by said fire or other casualty. If, however, the damage should exceed 35% of the value of the Meadow Street Parking Deck, the City of Fayetteville shall have the option of either repairing said premises or terminating this Lease as of the date of said fire or other casualty by giving notice to GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE within thirty (30) days after said date. If the damages should render the Leased Premises untenable for the use of GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE's business as set forth herein, the rental from the date of said fire, or any major casualty not the fault of the GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE, to the date of the completion of the restoration of the premises shall be abated, such abatement being figured on a pro rata basis of the rentals.

In the event the damage should exceed 35% of the value of the Meadow Street Parking Deck and the City of Fayetteville makes the decision not to repair the Leased Premises such a decision must be submitted in writing to GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE. Upon receipt of the notice from City of Fayetteville, GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE has thirty (30) days to elect either, or both, of the following options:

- a. To purchase the entire Leased Premises from City of Fayetteville at its then fair market value and/or,
- b. To repair the Leased Premises as GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE's sole and exclusive expense with all terms of the Lease, except for abatement of rent provided for herein, continuing in effect.

9. **Lighting and Painting.** City of Fayetteville shall, during the term of this Lease and any renewal or extension thereof, at its sole expense, keep, in the same manner as it is as of the date of the commencement of this Lease, the Leased Premises lighted, and all parking spaces properly striped and the premises painted.

10. **Parking Equipment.** City of Fayetteville shall, during the term of this Lease and any renewal or extension thereof, at its sole expense, provide revenue control and access equipment for the Leased Premises. This equipment shall include parking gates, parking card readers, and automatic revenue control machines located at the entrance of the parking deck.

11. **Parking Management Services.** The City of Fayetteville shall provide services to manage the Leased Premises. This service shall include the following:

- a. Provide parking revenues and access control equipment for Leased Premises.
- b. Program parking cards and distributing them to GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE; activate and deactivate parking cards as requested by GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE.
- c. Provide routine maintenance on gates, card readers, revenue control machines, etc. Expenses incurred for maintenance on equipment shall be borne by the City of Fayetteville, unless damages for required repairs were directly caused by GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE and/or its employees.
- d. Provide a minimum of four (4) hours of cleaning services per week; cleaning services include sweeping; blowing; vacuuming; spot washing of soft drinks, mud, or other spills; and the

- emptying of trash containers into the dumpster.
- e. Retrieve revenues from revenue control machines at least once per month.
 - f. Frequently service the revenue control machines to ensure change hoppers have sufficient coins to make change to customers. City staff will take a sufficient amount of money from the revenues collected in order to purchase enough quarters and dollar coins to keep revenue machines fully operational. One hundred percent (100%) of the revenues collected, less monies used to replenish quarter and dollar coin hoppers, will be deposited into the City's account; a check will be issued to GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE for one hundred percent (100%) of the total revenues, less monies used to replenish quarter and dollar coin hoppers and/or cost to replenish parking cards. This revenue shall be reimbursed to GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE within thirty (30) days of receipt of monies collected.
 - g. Provide accounting of all revenues received through the revenue control machines on a monthly basis; provide audit statement; of revenues collected to GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE on a monthly basis.
 - h. All expenses incurred for the purchase of equipment and supplies for the operations of the deck shall be borne by the City of Fayetteville. All purchases shall be initiated by the City of Fayetteville.
 - i. The City agrees to allocate parking cards only to GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE and employees of the Parking Management Division for purposes of executing parking services.
 - j. GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE may reallocate parking cards to a second party as they deem necessary, however. GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE may not resell parking spaces for a greater amount than that paid by GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE to the City of Fayetteville as set forth in this contract except that GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE is free to charge its hotel guests whatever parking fee it determines is appropriate.

12. **Tenant Responsibilities.** GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE shall provide the following:

- a. Reimburse the City of Fayetteville for cost of all parking cards provided for access into the Leased Premises. The City of Fayetteville shall bill GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE for all parking cards issued to GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE at the actual cost of the card plus applicable sales tax. The City of Fayetteville shall have the option to bill GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE for this cost, or may deduct the cost directly from the money collected from the revenue control machines. If invoiced, GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE shall submit payment within thirty (30) day of invoice date to the City of Fayetteville.
- b. Provide advance notification to the City of Fayetteville and post signage at the Leased Premises at least forty-eight (48) hours in advance prior to any parking area closure on Leased Premises.
- c. Provide advance notification at least forty-eight (48) hours in advance to the City of Fayetteville when gates need to be programmed to open/close for special events or any other

reason.

- d. Provide advance notification at least forty-eight (48) hours in advance to the City of Fayetteville when additional parking cards need to be issued and/or programmed.

13. **Insurance and Indemnification.** GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE shall be solely responsible for insuring its interests in the Leased Premises and improvements for its protection. GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE agrees to indemnify and hold harmless the City of Fayetteville, its officers and employees from any and all claims, demands, liabilities, and costs including attorney fees related to Lessee's use of the leased premises.

14. **Taxes.** The City of Fayetteville shall pay all real estate taxes and special assessments, if any, during the term of the Lease.

15. **Utilities/Janitorial.** The City of Fayetteville shall provide and pay for all utility service and janitorial service in the Leased Premises.

16. **Nuisance.** GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE covenants and agrees not to use or allow the Leased Premises to be used for any purpose or in any manner which would constitute or create a nuisance, which would constitute waste, which would interfere with the lawful rights of owners or occupants of adjoining property or which would in any way be contrary to the law, ordinances, orders, rules, regulations or requirements of the federal, state, county or municipal governments or any department, board or bureau thereof. GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE further agrees to promptly comply with the requirements of any of the aforesaid authorities with reference to the installation, erection, construction, use, repair or modifications or any improvements situated upon the Leased Premises during the term of this Lease.

17. **Holding Over.** Any occupancy by GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE of the Leased Premises beyond the expiration of this Lease as herein provided shall be a tenancy from month to month.

18. **Notices.** All notices, demands and requests provided for or permitted to be given under this Lease must be in writing and shall be deemed to have been properly given or served by depositing the same in the United States Mail, addressed to the City of Fayetteville or to GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE, as the case may be, prepaid and certified mail, return receipt requested, at the party's last known address. All notices demand and requests shall be effective seventy-two (72) hours after being deposited in the United States Mail. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request. Either party shall have the right from time to time and at any time upon at least ten (10) days written notice thereof, to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

19. **Legal Representatives, Successors and Assigns.** It is further covenanted and agreed by and between the City of Fayetteville and GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE, that all covenants, agreements, provisions, conditions and undertakings in this Lease contained shall extend to and be binding upon the heirs, executors, successors and assigns of the respective expressed,

and shall be construed as covenants and conditions running with the land and the reversion; and that wherever in this Lease reference is made to either the City of Fayetteville or GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE, it shall be held to include and apply to (wherever and whenever applicable) the heirs, executors, successors, personal or legal representatives and assigns of the City of Fayetteville or GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE, the same as if in each and every case so expressed.

20. **Condemnation.** If during the term of this Lease, or any renewal thereof, all or substantially all of the Leased Premises shall be taken or condemned by a competent authority for any purpose or use, then the Lease shall terminate immediately after the vesting of title in such authority and rent shall be paid to and adjusted as of that day. The term "all or substantially all" shall be deemed to mean a taking of all of the Leased Premises or a taking of such portion of the Leased Premises that GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE cannot reasonably operate in the remainder in substantially the same manner as before.

21. **Right Upon Default.** The City of Fayetteville may declare GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE in default and terminate this lease (subject to applicable cure periods provided for herein) if GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE shall do any of the following:

- a. Fail to pay any installment of monthly rent and continue in default for thirty (30) days after the City of Fayetteville gives GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE written notice specifying the default; or
- b. Fail to timely pay monthly rental payments for two (2) or more months during any consecutive twelve (12) month period during the term of this lease may, at the discretion of the City of Fayetteville, constitute default; or
- c. Default in any other covenant of GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE in this Lease and fail to commence (subject to unavoidable delay) to take reasonable steps to remedy such default within twenty (20) days after the City of Fayetteville gives GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE written notice specifying the default.

Upon the occurrence of any aforementioned default that has not been fully and timely remedied, the City of Fayetteville may terminate this Lease upon ten (10) days written notice of its intent to so terminate, provided such termination shall not be allowed if either of the following provisions are complied with during the notice period or at any prior time:

- i. GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE proceeds to cure the default or takes reasonable remedies to cure the default; or
- ii. GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE contests the amount claimed to be due or any other item for which an amount could be estimated (definite or estimated), and GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE deposits the contested amount in an escrow account with instructions to the escrow agent to disburse the amount in accordance with the written agreement of GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE and the City of Fayetteville or in accordance with the order of a court exercising jurisdiction over the controversy.

22. **Termination.** Neither party may terminate this Lease without consent of the other party unless the other party has committed a default of this Lease, subject to applicable cure periods provided for herein, if any. If the City of Fayetteville sells this parking garage to a third party, this lease and all extensions of this lease must be assigned with the sale.

23. **Assignability.** GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE shall not, without the written consent of City of Fayetteville, assign this Lease, or any rights thereunder, or sublet any part of the Leased Premises, provided however, GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE is authorized to assign this Lease as part of any sale of the hotel that is located adjacent to the Leased Premises provided that, at the time of the closing of the sale, the purchaser agrees to continue to operate the purchased improvements as a hotel. Upon any approved assignment of this lease by GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE in which its assignee agrees to be bound by all terms of this Lease, GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE shall be released and discharged from any further obligations or liabilities it has hereunder and any assignee of GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE shall have all rights belonging to GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE under this Lease.

24. **Estoppel Certificate.** Within forty-five (45) days after notice from the other party, each party shall execute and deliver to the other for the benefit of such party's existing or prospective lender, purchase, assignee or subtenant, as the case may be, an estoppel certificate.

25. **Entire Agreement.** All previous negotiations and understandings between the City of Fayetteville and GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE, or their respective agents and employees, with respect to the Lease set forth herein are merged in this Lease which alone fully and completely expresses the parties' rights, duties and obligations.

26. **Amendments.** No waivers, alterations or modifications of this Lease shall be valid unless written upon or attached to the fully executed copies of this Lease and further executed by both the City of Fayetteville and GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE herein.

27. **Binding.** This Lease shall be binding upon the parties and upon their heirs, successors and assigns. This Lease shall be construed under the laws of the State of Arkansas.

IN WITNESS WHEREOF, the City of Fayetteville and GFAR LESSEE LLC DBA GRADUATE FAYETTEVILLE have executed this Lease on or as of the date first written above.

**GFAR LESSEE LLC
DBA GRADUATE FAYETTEVILLE**

**CITY OF FAYETTEVILLE,
ARKANSAS**



Printed Name: **Martin Hanson**
Title: President / Collegiate Hotel Group, LLC
dba Graduate Hotels Management-Mgr.

Lioneld Jordan, Mayor

WITNESS:

ATTEST:

Peggy Biggers

Printed Name: Peggy Biggers

Title: Contracts Administration Specialist

Kara Paxton, City Clerk-Treasurer