

ORDINANCE NO. BL2020 - 154

An ordinance approving Amendment 2 to the lease agreement between the Metropolitan Government of Nashville and Davidson County, through the Department of Public Works, and OP 611 Commerce Property, LLC, related to parking spaces in the Metropolitan Government's parking facility located at 151 6th Avenue North. (Proposal Number: 2019M-036AG-001)

WHEREAS, BL2013-572, as amended, approved a lease agreement between the Metropolitan Government of Nashville and Davidson County, through the Department of Public Works ("Landlord") and Rogers/Welch Venture, for the use by Rogers/Welch Venture of certain parking spaces in the Metropolitan Government's parking facility located at 151 6th Avenue North ("Library Parking Garage"); and,

WHEREAS, Landlord and OP 611 Commerce Property, LLC, as successor in interest to Rodgers/Welch Venture ("Tenant"), wish to modify certain terms of the lease agreement; and,

WHEREAS, Landlord has agreed to increase the number of Tenant parking spaces by fifty (50) spaces ("Expansion Spaces"), upon Tenant's request and subject to the terms and conditions provided herein.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Amendment 2 to the lease agreement attached hereto as Exhibit A and incorporated herein, between the Metropolitan Government of Nashville and Davidson County, through the Department of Public Works, and OP 611 Commerce Property, LLC, related to parking spaces in the Metropolitan Government's parking facility located at 151 6th Avenue North, is hereby approved, and the Metropolitan Mayor or his designee is authorized to execute it on behalf of the Metropolitan Government.

Section 2. This Ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:



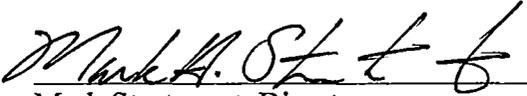
Kim McDoniel, Director
Department of Public Property

INTRODUCED BY:

Members of Council



Kevin Crumbo, Director
Department of Finance



Mark Sturtevant, Director
Department of Public Works

APPROVED AS TO FORM AND LEGALITY:



Assistant Metropolitan Attorney

Electronic Signature Page

(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

A handwritten signature in black ink, appearing to read "Freddie O'Connell". The signature is written in a cursive style with a large initial 'F' and 'O'.

Freddie O'Connell, Councilmember, District 19

Electronic Signature Page

(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

A handwritten signature in black ink that reads "Bob Mendes". The signature is written in a cursive style with a long horizontal stroke at the end.

Bob Mendes

Councilmember At-Large

Electronic Signature Page

(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

A handwritten signature in black ink that reads "Kathleen D. Murphy". The signature is written in a cursive style with a large, prominent "D" in the middle name.

Kathleen Murphy
Councilmember, District 24

Electronic Signature Page

(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

Angie E. Henderson

Angie Henderson
Councilmember, District 34

SECOND AMENDMENT TO LEASE AGREEMENT

This Second Amendment to Lease Agreement (the "Amendment") entered into as of this _____ day of _____, 2019 (the "Effective Date") by and between **THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE**, a Tennessee municipal corporation (the "Landlord") and **OP 611 COMMERCE PROPERTY, LLC**, a Tennessee limited liability company (the "Tenant").

RECITALS:

A. Landlord and Tenant, as successor to Rodgers/Welch Venture, a general partnership, are parties to that certain Lease-Agreement dated October 4, 2013, as amended by First Amendment to Lease Agreement (collectively, the "Lease"), with respect to the use by Tenant of certain parking spaces in a parking garage located at 151 6th Avenue North, Nashville, Tennessee 37203, as more particularly described in the Lease (the "Parking Garage"); and

B. The parties hereto desire to document their agreements regarding certain matters; and,

C. Landlord has agreed to increase the number of Tenant Parking Spaces by fifty (50) spaces (the "Expansion Spaces."), upon Tenant's request and subject to the terms and conditions provided herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, the parties agree as follows:

1. Defined Terms. All terms not defined in this Amendment shall have the meaning given in the Lease.

2. Parking Spaces; Exclusivity.

(a) Section 2.02 of the Lease is hereby amended by deleting the last sentence in its entirety and replacing it with the following:

"In addition, Tenant may reduce or increase the number of Tenant Parking Spaces (maximum of 225) at any time during the Term by providing the Landlord with at least thirty (30) days' prior written notice and, in such event, the Rent shall be recalculated on the effective date of the reduction or increased based on the number of Tenant Parking Spaces in use. With respect to the first one hundred seventy five spaces, Tenant shall pay the monthly rate irrespective of the actual number of Tenant Parking Spaces used monthly. Monthly rent for Expansion Spaces shall be calculated pursuant to Section 2.05(b), below. Notwithstanding the foregoing, in the event Tenant reduces the number of Tenant Parking Spaces, Tenant shall no longer have the right to increase the number of Tenant Parking Spaces and such reduction, or subsequent reductions, shall be a permanent reduction of Tenant Parking Spaces, including the Expansion Spaces, for the remaining Term ("Permanent Reduction). After a Permanent Reduction of all Expansion Spaces, Tenant shall no longer owe any Rent pursuant to Section 2.05(b) below with respect to the Tenant Parking Spaces that are permanently relinquished. If Tenant reduces the number of the Tenant Parking Spaces below One Hundred Seventy Five (175), ("Permanent Reduction") Rent from and after such date shall be calculated pursuant to Section 2.05(c)."

(b) Section 2.04 of the Lease is hereby amended to increase the number of Tenant Parking Spaces provided under the Lease from one hundred seventy-five (175) parking spaces to two hundred twenty-five (225) parking spaces.

(c) The location of one hundred seventy-five (175) Tenant Parking Spaces shall be as shown on Exhibit "B" and Exhibit "C" attached hereto. Should Tenant decide to increase the number of Tenant Spaces,

Landlord shall have the sole discretion to determine the location of those Expansion Spaces. The original Exhibit "B" attached to the Lease is hereby deleted in its entirety and is replaced with the revised Exhibit "B" and Exhibit "C" attached hereto.

(d) Section 2.05 is hereby amended by deleting it in its entirety and replacing it with the following:

“(a) Subject to Landlord’s right to cease operating the Parking Garage in accordance with Section 2.04 above, Landlord shall provide Tenant the exclusive use of up to two hundred twenty-five (225) parking spaces (as adjusted up or down pursuant to Section 2.02) in the locations shown on Exhibit "B" and Exhibit "C" (collectively, the “Tenant Parking Spaces”) for parking by Tenant, its tenants, occupants, unit owners, employees, and guests (collectively, the “Tenant Parties”), on a 24 hour a day, three hundred sixty-five (365) day a year basis, subject to the terms and conditions provided herein. Between the hours of 5:00 am through 6:00 pm, Monday through Friday (the “Exclusive Hours”), the Tenant Parking Spaces in use shall be reserved for the exclusive use of the Tenant Parties. Landlord shall install signage on one hundred seventy-five (175) parking spaces, the current number of spaces in use by Tenant, designating the Tenant Parking Spaces as being “reserved” and not for use by the general public during the Exclusive Hours. If Tenant decides to increase the number of Tenant Parking Spaces above one hundred seventy-five (175), Tenant shall request Expansion Spaces by delivering written notice to Landlord pursuant to Section 2.02. In the request, Tenant shall specify the number of requested Expansion Spaces (maximum of 50). Upon receipt of such notice requesting Expansion Spaces, Landlord shall install signage on the additional requested Tenant Parking Spaces, designating those spaces as “reserved” and not for use by the general public during the Exclusive Hours. Landlord shall, upon notification from Tenant that a vehicle is illegally parked within Tenant Parking Spaces during Exclusive Hours, at its sole cost and expense, cause the vehicle to be removed. At all other times outside of the Exclusive Hours, the Tenant Parking Spaces shall be available to the Tenant Parties on a non-exclusive basis.

Tenant shall pay landlord the monthly parking rate for each of one hundred seventy-five (175) Tenant Parking Spaces allocated to Tenant per month (“Rent”) irrespective of the actual number of Tenant Parking Spaces actually used in a month, unless and until permanent reduction contemplated by Section 2.02. The Rent shall be adjusted on the first day of the second (2nd) Operating Year of this Lease and on the first day of each Operating Year thereafter so that such Rent equals the regularly monthly parking rate charged to the general public for the Parking Garage.

(b) Notwithstanding the terms and conditions of Section 2.05(a), if Tenant has not exercised a Permanent Reduction, with respect to the fifty (50) additional Expansion Spaces the parties agree that the Rent to be paid by Tenant under the Lease shall be calculated as follows:

- (i) For each Access Card that is used at the Parking Garage within a given month (the “Active Access Cards”), Tenant shall pay the amount equal to the regular monthly parking rate charged to the general public for use of the Parking Garage (the “Public Rate”).
- (ii) For each Access Card that is not used at the Parking Garage within a given month (the “Inactive Access Cards”), Tenant shall pay the amount equal to ten percent (10%) of the Public Rate.

(c) If Tenant exercises a Permanent Reduction of Expansion Spaces pursuant to Section 2.02, Tenant will pay for the remaining Expansion Spaces per Sections 2.05(b)(i) and 2.05(b)(ii). If Tenant exercises a Permanent Reduction below one hundred seventy

five spaces, Tenant will pay rent for such spaces based on the sum of number of Tenant Parking Spaces then available, irrespective of the actual number of Tenant Parking Spaces actually used in a month. In such event, no Rent will be owed pursuant to Section 2.05(b)."

3. Access Cards. Section 2.06 is hereby amended by deleting it in its entirety and replacing it with the following:

"Landlord shall provide Tenant with one hundred seventy-five (175) access key cards (or other such means of access as is in use from time to time) for use by Tenant and the Tenant's Parties. If Tenant decides to increase the number of Tenant Parking Spaces above one hundred seventy-five (175), Tenant shall provide Landlord with a written request pursuant to Section 2.02 and additional access cards will be provided for the additional Tenant Parking Spaces in use. Under no circumstances will Tenant be issued more than 225 access card keys."

4. Ratification of Lease. Unless expressly modified herein, all terms and conditions of the Lease are hereby ratified and reaffirmed in their entirety.

5. Lease in Full Force and Effect. The parties represent, warrant and acknowledge to each other that the Lease is unmodified, other than pursuant to the terms of this Amendment, and is in full force and effect as modified herein.

6. Whole Agreement. This Amendment (together with the Lease) sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. As amended herein, the Lease shall remain in full force and effect. In case of any inconsistency between the provisions of the Lease and this Amendment, the latter provisions shall govern and control. From and after the date of this Amendment, all references in the Lease, and in any other document related to the transaction contemplated by the Lease, to the term "Lease" shall be deemed to refer to the Lease as modified by this Amendment.

7. Counterparts; Electronic Signatures. This Amendment may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart hereof shall be deemed to be an original Amendment, but all such counterparts together shall constitute but one agreement. The Parties may execute this Agreement by way of digital signature. The Parties further agree that this Amendment, including any digital signature, may be delivered, communicated, received and stored by electronic means and that an electronic record of same shall be deemed to have the same legal effect as an ink-signed executed copy of this Amendment for all purposes.

[Signatures Commence on Following Page]

Landlord and Tenant have executed this Amendment as of the date first written above.

LANDLORD:

**METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

Approved:

Attest:

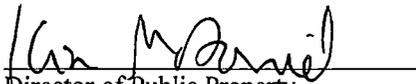
Metropolitan Mayor

Metropolitan Clerk

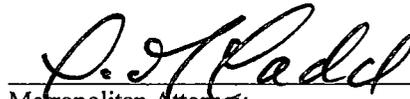


Director of Finance

Approved as to form and legality:



Director of Public Property



Metropolitan Attorney

[Signatures Continue on Following Page]

TENANT:

OP 611 COMMERCE PROPERTY, LLC,
a Tennessee limited liability company

By: Oak Point Properties, LLC,
a Tennessee limited liability company,
its Manager

By: 
Print Name: Justin Albright
Its: Manager