



AGENDA REPORT

Meeting Date: July 24, 2012
Item Number: H-8
To: Honorable Mayor and City Council
From: Brenda Lavender, Real Estate & Property Manager
Subject: THIRD AMENDMENT TO BUILDING AND ROOF SPACE LEASE AND MEMORANDUM OF LEASE BY AND BETWEEN THE CITY OF BEVERLY HILLS AND NEW CINGULAR WIRELESS PCS, LLC
Attachments:
1. Third Amendment To Building and Roof Space Lease
2. Memorandum of Lease

RECOMMENDATION

It is recommended that City Council approve the Third Amendment to Building and Roof Space Lease and Memorandum of Lease by and between the City of Beverly Hills and New Cingular Wireless dba AT&T at 239 S. Beverly Drive. A copy of the amendment and memorandum of lease is on file with the City Clerk.

INTRODUCTION

AT&T leased a portion of the second floor of the building with the previous building owner The Beverly Hills Chamber of Commerce. This amendment relocates AT&T from their larger space on the 2nd floor to a smaller space to accommodate Panera Bread's lease (see floor plan on second page).

DISCUSSION

The amendment reduces the size of AT&T's leased premises from 553 square feet to 182 square feet. The monthly base rent is also reduced from \$6,269.42 to \$5,000 monthly. The relocation of the AT&T space allows better utilization of the balance of the floor. The lease term and options are not affected by this amendment and the City retains the future termination option on the space. AT&T is responsible for all of the relocation costs and improvements to the new space.

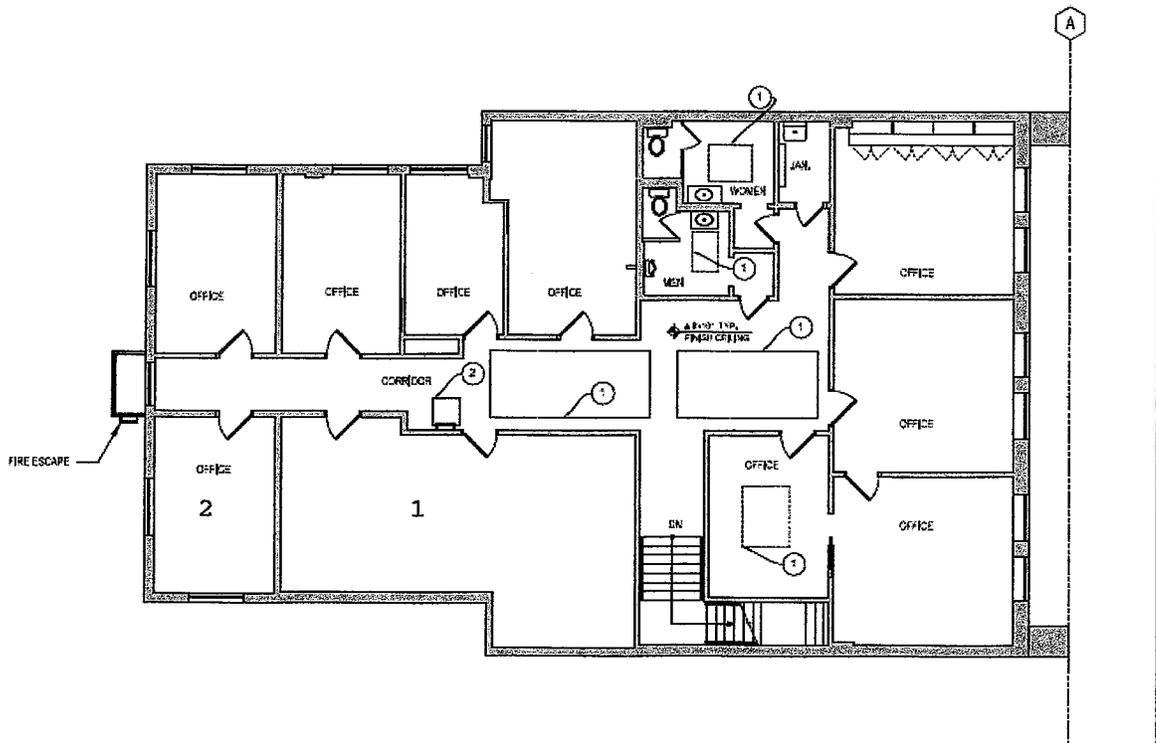
FISCAL IMPACT

There is no out of pocket expense to the City for this lease. The annual revenue for this lease is \$60,000.



Scott G. Miller, Director of
Administrative Services, CFO

Approved By



SECOND FLOOR PLAN

- 1. AT&T current location
- 2. AT&T Relocation Area

Attachment 1

THIRD AMENDMENT TO BUILDING AND ROOF SPACE LEASE

THIS **THIRD AMENDMENT TO BUILDING AND ROOF SPACE LEASE** (the "Amendment"), dated as of the July 24, 2012 ("Effective Date"), and is entered into by and between the **CITY OF BEVERLY HILLS**, a municipal corporation ("Landlord") and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company (dba "AT&T Mobility") ("Tenant"), for certain premises located at 239 South Beverly Drive, Beverly Hills, California (the "Premises").

RECITALS:

A. The Beverly Hills Chamber of Commerce and Civic Association ("Chamber") and Los Angeles Cellular Telephone Company ("LACTC") entered into a Building and Roof Space Lease dated for reference purposes as of November 8, 1989, an Addendum of same date, and amended said Lease by an Amendment to Lease dated March 26, 1997, and a Second Amendment to Building and Roof Space Lease dated June 16, 2010 (collectively and as amended, the "Lease") for premises described in the Lease (the "Premises") which are located in the building at 239 South Beverly Drive, Beverly Hills, CA 90212 (the "Building").

B. The Landlord has acquired the Building from the Chamber.

C. Landlord and Tenant to amend the Lease.

D. All capitalized terms used in this Amendment but not defined herein shall have the same meaning as in the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Reduction in Size and Change of Location of Premises. On or before September 15, 2012, Tenant shall move from the Premises currently described in the Lease to the premises described on Exhibit "A" attached hereto and shall deliver said current premises to Landlord in the condition required by the Lease and free of all Hazardous Materials (as defined in Section 7 below). Upon such relocation, the premises described on Exhibit "A" attached hereto shall become the "Premises" under the Lease; provided, however, that the portions of the roof of the Building that are for Tenant's use (as described in the Lease) shall not change and shall remain part of the "Premises". If Tenant fails to so relocate on or before September 15, 2012, then commencing on September 15, 2012, Tenant shall pay to Landlord for the current premises the holdover rent described in Section 40 of the Addendum to the Lease (i.e., 150% of \$5,685.00 per month), as well as the rent described in Section 2 below for the new premises, and if Tenant fails to so relocate on or before October 1, 2012, such failure shall constitute an Event of Default under the Lease without notice or the opportunity to cure. Tenant accepts the new premises

described on Exhibit "A" in their current condition, without representation or warranty, express or implied.

2. Rent. Commencing on the date which is sixty (60) days after the Effective Date, Tenant shall pay Rent for the Premises described on Exhibit "A" at the rate of \$5,000.00 per month in accordance with the terms of the Lease, which shall be adjusted as set forth in Section 4 of the Second Amendment to Building and Roof Space Lease.

3. Multi-Tenant Building. Landlord has entered into a lease with another tenant for the remainder of the Building who shall have the right to use (on a non-exclusive basis, together with Tenant) the second floor corridor outlined on Exhibit "A", which shall therefore be "common area". Tenant shall promptly repair any damage to said common area(s) caused by Tenant or any of Tenant's officers, employees, agents, contractors, invitees or licensees. If Tenant fails to do so within ten (10) business days after written notice from Landlord, then Landlord may do so and Tenant shall reimburse Landlord for the cost thereof within ten (10) business days after written demand by Landlord as additional rent (and failure by Tenant to do so will constitute an Event of Default under the Lease).

4. Improvements to Premises. All improvements by Tenant shall be subject to the written consent of Landlord (which may be given by Landlord's City Manager), and which shall not be unreasonably withheld. Tenant acknowledges that the location of the Premises is set forth on Exhibit "A" and may not be changed except by a further written amendment to the Lease approved and executed by Landlord.

5. Maintenance of Premises. Tenant shall maintain the Premises in good condition and repair at Tenant's cost and expense.

6. Limitation of Liability of Landlord. Landlord's liability under the Lease, as amended, shall be limited to its interest in the Building.

7. Notice. Landlord's address for notice is hereby changed to:

City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attn: Real Estate Property Manager
Phone: (310) 285-2426

With a copy to:

City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attention: City Attorney

8. Hazardous Materials. Except for products used in connection with the permitted use of the Premises, for use in the manner for which they were designed and in accordance with applicable Laws, and in such amounts as may be normal for the business operations conducted

by Tenant in the Premises, neither Tenant nor any of its employees, agents, representatives, contractors, licensees or invitees, shall use, handle, store or dispose of any Hazardous Materials in, on, under or about the Premises or the Building. In the event of a breach of the covenant contained in the immediately preceding sentence, or in the event Hazardous Materials are released or otherwise caused to be located in, on, under or about the Premises or Building by Tenant, or any of its employees, agents, representatives, contractors, licensees or invitees, Tenant shall be responsible for and shall indemnify, defend and hold Landlord harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in valuation of the Premises or Building, and sums paid in settlement of claims and for reasonable attorneys' fees, consultant fees and expert fees) as a result of any contamination directly or indirectly arising from the activities of Tenant or its subtenants or any of their respective employees, agents, representatives, contractors, licensees or invitees. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work caused by Tenant or any of its employees, agents, representatives, contractors, licensees or invitees in violation of this Lease. Tenant shall promptly take all actions, at its cost and expense as are necessary to return the Premises and/or Building to the condition existing prior to the introduction of any such Hazardous Materials by Tenant or any of its employees, agents, representatives, contractors, licensees or invitees in violation of this Lease, provided Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld, and Tenant shall fully cooperate in connection with any such clean-up, restoration or other work, at Tenant's cost and expense. Furthermore, Tenant shall immediately notify Landlord of any inquiry, test, investigation or enforcement proceeding by or against Tenant or the Premises or Building concerning the presence of any Hazardous Materials in violation of this Lease. Landlord, at Landlord's election, shall have the sole right, at Tenant's expense, to negotiate, defend, approve and appeal any action taken or order issued by any governmental authority with regard to any Hazardous Materials contamination which Tenant is obligated hereunder to remediate. The covenants of Tenant under this Section shall survive the expiration of the term or earlier termination of this Lease.

As used in this Lease, "Hazardous Materials" shall mean asbestos, petroleum fuel, natural gas or any fraction thereof, and any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, any material or substance defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "hazardous material" or "toxic pollutant" under state or federal laws, statutes or regulations, including, without limitation, the California Health and Safety Code anti/or under the Comprehensive Environmental Response, Compensation and Liability Act, 42. U.S.C. §9601, et seq.

9. Memorandum of Lease. Concurrently with its execution and delivery of this Amendment, Tenant shall execute, acknowledge and deliver to Landlord a Memorandum of Lease in the form attached hereto as Exhibit "B".

10. Effect of Amendment. All of the obligations of Tenant under this Amendment shall constitute obligations of Tenant under the Lease.

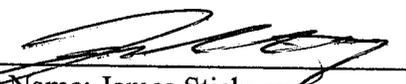
11. Counterparts. This Amendment may be executed in two (2) or more counterparts, all of which shall be considered on and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart. The submission of this Amendment to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Amendment will become effective as binding only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment to be effective as of the last date written below..

TENANT:

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation,
Its: Manager

By: 

Print Name: James Stickney

Title: C&E Director

LANDLORD:

CITY OF BEVERLY HILLS,
a municipal corporation

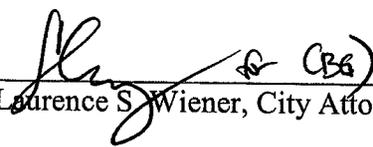
By: _____

William W. Brien, MD, Mayor

ATTEST:

APPROVED AS TO FORM:

Byron Pope, City Clerk

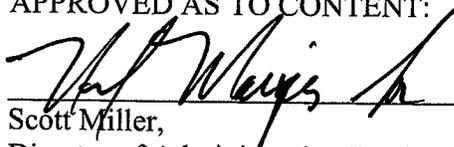


Laurence S. Wiener, City Attorney

APPROVED AS TO CONTENT:

APPROVED AS TO CONTENT:

Jeffrey Kolin, CCM,
City Manager



Scott Miller,
Director of Administrative Services/CFO

EXHIBIT "A"

DIAGRAM OF PREMISES

(Attached.)

Notes:

1. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authority.
2. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.

EXHIBIT "B"

FORM OF MEMORANDUM OF LEASE

(Attached.)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:

City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attn: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned Lessor declares that this Memorandum of Lease is exempt from Recording Fees pursuant to California Government Code Section 27383.

MEMORANDUM OF LEASE

THIS **MEMORANDUM OF LEASE** (the "Memorandum"), is dated as of July 24, 2012 (this "Amendment"), and is entered into by and between the **CITY OF BEVERLY HILLS**, a municipal corporation ("Landlord") and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company (dba "AT&T") ("Tenant"), for certain premises located at 239 South Beverly Drive, Beverly Hills, California (the "Premises").

RECITALS:

A. The Beverly Hills Chamber of Commerce and Civic Association ("Chamber") and Los Angeles Cellular Telephone Company ("LACTC") entered into a Building and Roof Space Lease dated for reference purposes as of November 8, 1989 and amended said lease by an Amendment to Lease dated March 26, 1997, a Second Amendment to Building and Roof Space Lease dated June 16, 2010 and a Third Amendment to Building and Roof Space Lease dated substantially concurrently herewith (collectively and as amended, the "Lease") for premises described in the Lease (the "Premises") which are located in the building at 239 South Beverly Drive, Beverly Hills, CA 90212 (the "Building").

B. The Landlord has acquired the Building from the Chamber.

C. Landlord and Tenant wish to record this Memorandum in order to give record notice of the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Lease. Landlord has leased and demised to Tenant, and Tenant has leased and accepted from Landlord, the portion of the Property defined as the "Premises" in the Lease for a term ending on January 31, 2020, at the rental and upon the other terms and conditions set forth

in the Lease (including five (5) options to extend the Term of the Lease, for five (5) years each), which terms and conditions are incorporated herein by this reference.

2. Purpose. This Memorandum is prepared for the purposes of recordation only and in no way modifies the terms and conditions of the Lease. In the event any provision of this Memorandum is inconsistent with any term or condition of the Lease, the term or condition of the Lease shall prevail.

3. Counterparts. This Memorandum may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the day and year first written above.

TENANT:

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation,
Manager

By: _____
James Stickney
C&E Director

LANDLORD:

CITY OF BEVERLY HILLS,
a municipal corporation

By: _____
William W. Brien, MD, Mayor

ATTEST:

APPROVED AS TO FORM:

Byron Pope, City Clerk

Laurence S. Wiener, City Attorney

APPROVED AS TO CONTENT:

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Jeffrey Kolin, CCM,
City Manager

Scott Miller,
Director of Administrative Services/CFO

ACKNOWLEDGMENT

State of California)
)
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true
and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)
Signature of Notary Public

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)
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Signature _____ (Seal)
Signature of Notary Public

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AND WHEN RECORDED MAIL
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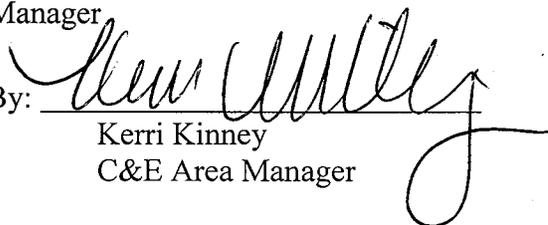
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By: AT&T Mobility Corporation,
Manager

By: _____

Kerri Kinney
C&E Area Manager



LANDLORD:

CITY OF BEVERLY HILLS,
a municipal corporation

By: _____

William W. Brien, MD, Mayor

ATTEST:

Byron Pope, City Clerk

State of California)
County of Los Angeles)

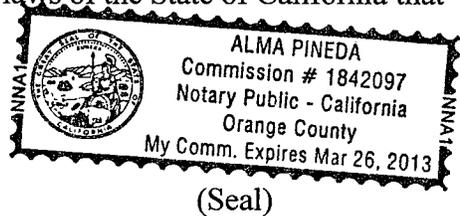
On July 16, 2012, before me, Alma Pineda - Notary Public,
(insert name and title of the officer)

Notary Public, personally appeared Kerri Kinney,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Alma Pineda



State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
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the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)