**ORDINANCE NO.** 2015-41

ORDINANCE REPEALING AND RESCINDING HIALEAH, FLA., ORDINANCE 79-100 (AUGUST 14, 1979) WHICH GRANTED A VARIANCE PERMIT WAIVING OFF-STREET PARKING REQUIREMENTS FOR AN ADDITION TO THE BUILDING OF APPROXIMATELY 7,320 SQUARE FOOT; APPROVING THE RELEASE OF A UNITY OF TITLE DATED APRIL 24, 1972, RECORDED IN OFFICIAL RECORDS BOOK 7685, PAGE 595, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; AND GRANTING A VARIANCE PERMIT TO ALLOW 48 PARKING SPACES, WHERE 230 ARE REQUIRED, CONTRA TO HIALEAH CODE § 98-2189(4)j. **PROPERTY LOCATED AT 1245 WEST 69TH STREET, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** Southern Bell Telephone and Telegraph Company executed a Unity of Title Agreement which was recorded on May 2, 1972 in Book 7685 at Page 595 of the Public Records of Miami-Dade County (hereafter "Unity of Title");

**WHEREAS**, the Unity of Title was created to restrict the use of both properties as one parcel of land to accommodate the construction of a two-story 14,666 square foot addition on the improved parcel and improve the second parcel as a parking lot to provide for the necessary off-site parking spaces;

**WHEREAS**, the properties tied through the Unity of Title cannot be assigned, sold, transferred or devised separately unless the properties are released from the restrictions of the Unity of Title;

**WHEREAS**, the Southern Bell's successor and current property owner BellSouth Telecommunications, LLC a Georgia limited liability company, doing business as AT&T

Florida (hereafter "AT&T"), desires to own, use, and maintain the properties as two separate parcels of land, independent of each other and therefore desires a release from the Unity of Title;

**WHEREAS**, the property located at 1245 West 69th Street will not satisfy minimum parking requirements for the uses permitted on site without the parking spaces currently located on the other property;

**WHEREAS**, AT&T proffered a Declaration of Restrictive Covenants limiting the number of persons reporting to work at the Property to a maximum of thirty (30) at any given time on any given day, such that no more than thirty (30) of the forty-eight (48) available parking spaces shall be used by persons, at any time, on any day, during regular business hours to perform the work and operations or carry out the business of AT&T at the Property, and further restricting the use of the Property to the storage, installation and maintenance of telecommunications equipment and facilities only, to which the City accepts; and

**WHEREAS,** AT&T the Planning and Zoning Board at its meeting of March 25, 2015, recommended denial of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

**Section 2:** The City Council hereby approves the release of the Unity of Title recorded on May 2, 1972 in Book 7685 at Page 595 of the Public Records of Miami-Dade County, and authorizes the Mayor and the City Clerk, as attesting witness, to execute all instruments necessary to release the Unity of Title.

**Section 3:** The below-described property is hereby granted a variance permit to allow forty-eight (48) parking spaces, where two hundred and thirty are required, contra to Hialeah Code § 98-2189(4)(j) which provide in pertinent part: "Off-street parking shall be provided in accordance with the following minimum standards...*(4) CBD central*

*business district and CR commercial-residential zoning districts. j. Mixed commercial-residential use.* The parking spaces required for the residential component shall be governed by the requirements of the R-3-8 multifamily zoning district and the parking spaces for the commercial component shall be governed by one-half of the CBD central business district zoning district requirements for the applicable commercial uses." Property located at 1245 West 69th Street, Hialeah, Miami-Dade County, Florida and legally described as follows:

> THAT PORTION OF TRACTS 6 AND 7 SE 1/4 OF SECTION 26, TOWNSHIP 52 SOUTH, RANGE 40 EAST, CHAMBERS LAND COMPANY SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 68 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, LYING WITHIN THE FOLLOWING DESCRIBED PARCEL OF LANDS:
>
> BEGIN AT A POINT ON THE EAST LINE OF THE SE 1/4 OF SAID SECTION 26, SAID POINT BEING 510.08 FEET NORTHERLY FROM THE SOUTHEAST CORNER OF SAID SECTION 26; THENCE RUN N2°20 '27W 325.02 FEET ALONG THE EAST BOUNDARY OF SAID SECTION 26, TO A POINT, THENCE RUN S89°54'11'W 260.05 FEET, ALONG A LINE THAT IS PARALLEL TO THE SOUTH BOUNDARY OF SAID SECTION 26, TO A POINT; THENCE RUN S2°20'27'E 325.02 FEET, ALONG A LINE THAT IS PARALLEL TO THE EAST BOUNDARY OF SAID SECTION 26 TO A POINT; THENCE RUN N89°54'11'E 260.05 FEET ALONG A LINE THAT IS PARALLEL TO THE SOUTH BOUNDARY OF SAID SECTION 26 TO THE POINT OF BEGINNING, LESS THE EAST 35 FEET, THE SOUTH 25 FEET AND THE WEST 25 FEET FOR ROAD PURPOSES.

**Section 4: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 5: Penalties.** Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed $500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 6: Additional Penalties upon Violation of the Conditions of Use and/or Declaration of Restrictive Covenants.**

Any change of the terms and conditions of the use identified in this ordinance and as provided in the Declaration of Restrictive Covenants, will cause a revocation of the parking variance and AT&T shall become subject to the parking regulations then in effect in the City of Hialeah and the City is authorized to withhold any future permits, refuse to make any inspections or grant any approval, until such time as there is compliance with this ordinance and the Declaration of Restrictive Covenants.

**Section 7: Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 8: Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 25 day of August, 2015.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 8 day of September, 2015.

Marbelys Fatjo, City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena E. Bravo, City Attorney

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Ordinance was adopted by a (7-0) unanimous vote with Councilmembers, Caragol, Cásals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".