

REAL PROPERTY AND ANTENNA SUPPORT STRUCTURE SITE LEASE  
BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND AMERICAN PORTABLE  
TELECOM (APT) KANSAS CITY, INC. LEE'S SUMMIT FIRE DEPARTMENT STATION 5

This Lease is made this 24<sup>th</sup> day of October, 1997, by and between the City of Lee's Summit, Missouri, hereinafter called the Lessor, and, APT Kansas City, Inc., hereinafter called the Lessee.

**WITNESSETH THAT:**

WHEREAS, Lessor owns the real property located at 3650 SW Windemere, on which the Lee's Summit Fire Department Station 5 is located; and

WHEREAS, Lessee desires to lease a portion of the real property owned by the Lessor, and Lessee desires to use the real property for the purpose of installing, replacing, maintaining and operating, at its expense, a personal communication service system facility ("PCS"), including related antenna equipment and fixtures.

NOW THEREFORE, the parties hereto agree as follows.

**1. DEMISE AND USE OF PROPERTY**

The Lessor hereby leases to Lessee a portion of real property, (the "premises") located in the City of Lee's Summit, County of Jackson, and State of Missouri, more particularly described in Exhibit A incorporated herein by this reference.

The Lessee, at the Lessee's expense and risk, shall erect, build, operate and maintain one, monopole or tower (hereinafter "antenna support structure") as approved by the Lessor in Exhibit D, and equipment compound (hereinafter "equipment compound"), at the premises described above for the purpose of installing, replacing, maintaining and operating, at its expense, a personal communication service system facility ("PCS"), including, related antenna equipment and fixtures ("Equipment"). Said location is more particularly shown on Exhibit B attached hereto and incorporated herein by this reference.

Lessee shall have a non-exclusive easement for reasonable access to the premises where the Equipment is located. Lessee shall provide Lessor with a list of Lessee's agents and employees authorized to access the Equipment located on the premises. Lessor shall not be responsible for monitoring access to Lessee's equipment.

**2. TERM**

The Initial Term of this Lease shall be for five (5) years commencing on the date ("Commencement Date") the Lessor signs this Lease. This Lease will be automatically renewed for three (3) additional terms, (each a "Renewal Term") of five (5) years each, unless the Lessee

provides the Lessor notice of intention not to renew not less than 90 days prior to the expiration of the Initial Term or any Renewal Term; and/or Lessee has not cured a default within the time periods as provided in section 20 of this Lease.

### 3. FEE

On the date of the execution of this Lease, Lessee shall remit the sum of \$10,000.00 to Lessor as a one-time only fee for the use of public property.

### 4. RENT

Lessee agrees to pay the Lessor as rent for the premises, placement of the equipment compound and monopole site the annual rents described below. Rent will be paid annually in advance beginning on the Commencement Date and on each anniversary of it. The annual rent for the first year of the Initial Term of this Lease shall be \$13,500.00. Thereafter, the rent due hereunder will be increased on each anniversary of the Commencement Date to an amount equal to the amount of the annual installment of rent payable during the preceding year increased by an amount equal to the change in the CPI during such year. "CPI" means the Consumer Price Index-U.S. City Averages for Urban Wage Earners and Clerical Workers (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics (or a reasonably equivalent index if such index is discontinued). In no event will the amount of the annual installment of rent due under this lease following such adjustment be less than the amount of such installment during the preceding 12-month period.

All annual rent installments are to be paid at Lee's Summit City Hall, 207 SW Market, P.O. Box 1600, Lee's Summit, Missouri, 64063, or at such other place as Lessor may designate from time to time. Any rental payment paid beyond thirty (30) days in default shall have interest thereon at the highest non-usurious rate permitted by law.

### 5. ERECT ANTENNA SUPPORT AND EQUIPMENT STRUCTURE

Lessee, at Lessee's expense, shall dismantle and remove existing tower at the premises and transport said tower to a storage site specified by the Lessor. Lessee shall, at its own cost, erect, build, operate and maintain upon the premises an antenna support structure and equipment compound in accordance with the antenna support structure and equipment compound placement detailed in the site plan of Exhibit B. Lessee shall erect, build, operate and maintain the antenna support structure and equipment compound in accordance with the detailed plan and specifications attached hereto as Exhibits C and D and incorporated herein by this reference. The Lessee may, at its expense, make such improvements on the premises as are necessary for the operation of a transmission site for wireless voice and data communication.

In addition, Lessee agrees that after installation of the antenna support structure and equipment compound it will restore the vegetation on the premises, landscape the premises, at Lessee's sole cost and expense. Said landscaping shall be more specifically detailed in Exhibit B.

After commencement of construction, Lessee agrees that it shall complete the construction of the improvements pursuant to Exhibits C and D within 45 calendar days. Said time period shall be extended by one day for each day that construction is not possible due to weather, as determined in the sole and reasonable discretion of the Lessor. In the event construction is not completed within time provided herein, Lessee shall pay Lessor in addition to all other sums due under this lease in the amount of \$100 per day until construction is completed. "Commencement of Construction" as used herein shall mean actual commencement of construction activities upon the premises and shall not include preliminary pre-construction activities such as geotechnical investigations, environmental assessment, and other technical studies.

#### 6. PERMITS AND LETTER OF CREDIT

Lessee shall obtain all necessary permits, permission, sanctions, and approvals necessary to erect, build, operate and maintain the antenna support structure and equipment compound. At the time of issuance of a building permit for the premises, Lessee shall establish for the benefit of the Lessor financial assurances in a form satisfactory to the City Attorney, such as a surety bond with sufficient financial capability as determined by the Lessor's Director of Finance in a maximum aggregate amount not to exceed the cost for the construction of the antenna support structure, equipment structure, and appurtenances required in the operation of the antenna support structure to be erected and installed pursuant to the terms and conditions of this Lease.

#### 7. TRANSITION OF SERVICES DURING CONSTRUCTION

The Lessee shall develop a plan to be approved by the Lessor for continued operation of the Lessor's current radio communication system during construction and installation of the antenna support structure, equipment structure and restoration. In addition, the Lessee shall develop a transition plan for the change in service to be approved by the City. Lessee shall provide the cabling and all other equipment necessary to place the Lessors antennas the new antenna support structure and restore fire department communication to the level experienced prior to placement of the new antenna support structure as set forth in Exhibit C & D.

#### 8. LIENS OR ENCUMBRANCES

The Lessee shall not suffer the premises or antenna support structure and appurtenances required in the operation of the antenna support structure thereon to become subject to any lien, charge, or encumbrance whatsoever, and shall indemnify the Lessor against all such liens, charges, and encumbrances; it being expressly agreed that the Lessee shall have no authority, express or implied, to create any lien, charge, or encumbrance upon the premises.

#### 9. ASSIGNMENTS

The Lessee may assign this Lease to any party controlling, controlled by or under common control with Lessee or to any party which acquires substantially all the assets of Lessee with notice to the Lessor and Lessee may assign this Lease to third parties only with written approval from the Lessor. Such approval may not be unreasonably withheld, however, if Lessee assigns this Lease to a third party, the Lessor has an option, within Lessor's sole discretion, to renegotiate the terms of this Lease with the assignee.

The Lessor reserves the right to lease antenna space on the antenna support structure to third parties consistent with the rights of the Lessee pursuant to this Lease.

In the event that the Lessor leases antenna space to another commercial carrier which requires a "trade site" for co-location purpose with Lessee, Lessee shall be entitled to use the lease of the antenna support structure as the "trade site" with such other carrier.

#### 10. INSURANCE

Lessee agrees to maintain at its expense at all times during the lease term commercial/general liability insurance properly protecting and indemnifying Lessor and naming Lessor as additional insured in an amount not less than \$1,000,000.00 per person and \$1,000,000.00 per accident for injuries or damages to persons, and not less than \$1,000,000.00 damage or destruction of property, written by insurers licensed to do business in the State of Missouri. Upon execution of this lease by Lessee, Lessee shall deliver to Lessor certificates of such insurance, which shall declare that the respective insurer may not cancel the same in whole or in part without giving Lessor written notice of its intention to do so at least ten (10) days in advance.

In the event Lessee shall fail to procure insurance required under this lease and fail to maintain the same in force continuously during the term, Lessor shall be entitled to procure the same and Lessee shall immediately reimburse Lessor for such premium expense.

#### 11. INTERFERENCE

Lessee agrees that the operation of the antenna support structure and any systems connected therewith shall not interfere with any other radio systems now in operation on the property. Lessor agrees that antennas and/or frequencies installed after the installation of Lessee's equipment by other companies shall not interfere with the operation of Lessee. In the event any such interference occurs, the Lessor shall have the responsibility to coordinate the termination of the interference within 72 hours. If such interference is not terminated within 72 hours, and Lessee is unable to continue its operation, Lessee shall have the right, in addition to any other rights that it may have at law or in equity, to bring an action to enjoin such interference or to terminate this Lease immediately upon notice to Lessor.

#### 12. MAINTENANCE AND REPAIRS

The Lessee shall keep the antenna support structure and equipment structure to be erected, and all other structures which may at any time during the said term be erected upon the premises by Lessee and the appurtenances in good condition through consistent maintenance and repair. "Good Condition" shall mean that the antenna support structure, equipment compound and landscaping shall remain in as good condition as when initially erected and built reasonable wear and tear on the antenna support structure and equipment structure and casualty loss excepted.

### 13. ALTERATIONS

The Lessee shall not make any alteration in the external elevation or architectural design of the antenna support structure or equipment compound on the premises, or injure or remove any of the principal structural supports thereof without the consent in writing of the Lessor.

### 14. NEW STRUCTURES

The Lessee shall not erect or permit to be erected on the premises any new structures, or make or permit to be made any additions to the antenna support structure and equipment structure to be erected upon the premises, except in accordance with plan and specifications previously approved by the Lessor, such approval not to be unreasonably withheld, delayed or conditioned.

### 15. UTILITIES

Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on the premises (including, but not limited to city approved installation of emergency power generators) as shown on the site plan of Exhibit B. Lessee shall have the right permanently to place utilities on (or to bring utilities across) the Property in order to service the Lessee's equipment on the premises.

### 16. UNLAWFUL USE

The Lessee shall not make or suffer any use or occupancy of the premises contrary to any law or ordinance now or hereafter in force.

### 17. TITLE AND QUIET POSSESSION

Lessor agrees that it is the owner of the real property; that it has the right to enter into this lease; that the person signing this Lease has the authority to sign; and, that Lessee is entitled to access to the real property and to the quiet possession of the real property consistent with the terms and conditions of this Lease throughout the initial term and each renewal term unless Lessee is in default as provided in Section 20 of this Lease. Once constructed by the Lessee, and accepted by Lessor, the antenna support structure, equipment compound and appurtenance required for operation of the antenna support structure shall immediately transfer and become the permanent property of the Lessor.

### 18. INDEMNIFICATION

The Lessee shall indemnify, defend, become responsible for and forever hold harmless the Lessor, and its officers, contractors, and employees from and against all suits, actions, reasonable attorney fees, costs, claims, of any character brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any negligent act, error, or omission, or intentional act of the Lessee or its contractors, or employees on the premises pursuant to this Lease. The indemnity required thereunder shall not be limited by reason of the specifications of any particular insurance coverage in Section 10 of this Lease.

The Lessee shall indemnify the Lessor against all costs and expenses, including reasonable attorney fees incurred in discharging the premises from any charge, lien, or encumbrance, or in obtaining possession after default of the Lessee or the termination of the Lease.

The Lessor shall indemnify, defend, become responsible for and forever hold harmless the Lessee, and its officers, contractors and employees from and against all suits, actions, reasonable attorney fees, costs, claims, of any character brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any negligent act, error, or omission, or intentional act of the Lessor or its contractors, or employees on the premises pursuant to this Lease.

#### 19. HAZARDOUS SUBSTANCES

Lessor represents that it has no knowledge of any substance, chemical or waste (collectively "substance") on the premises that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Lessee shall not introduce or use any such substance on the premises in violation of any applicable law.

#### 20. DEFAULT

Failure on the part of Lessee to pay rent within 30 days after same shall become due and rent is not paid within 10 days after notice to Lessee of nonpayment of rent, or failure of Lessee to promptly and faithfully keep and perform every covenant, condition, and obligation of this Lease, other than payment of rent, on the part of Lessee to be kept and performed for more than twenty (20) days after notice of such default shall have been given to Lessee, shall, at the option of Lessor, cause the forfeiture of this Lease, without, however, releasing Lessee from liability, as hereinafter provided, and if such default shall not be corrected within the applicable period aforesaid, possession of the premises shall be delivered to Lessor. Thereupon Lessor shall be entitled to and may take immediate possession of the premises, any other notice or demand being hereby waived. If a default, other than non-payment of rent, is not cured within a 20 day period, this Lease may not be terminated if the Lessee substantially commences action to cure the default within such 20 day period and proceeds with due diligence to fully cure the default within a mutually agreed upon period of time.

Lessee agrees to quit and deliver possession of the premises to Lessor or Lessor's assigns, successors or agents, when this lease terminates by limitation or forfeiture, and Lessee agrees that the premises shall be in substantially the same order and in as good condition as received, normal wear and use and damage caused by casualty excepted.

#### 21. MORTGAGE

This Lease does not create an interest in the premises for the Lessee, except for a leasehold estate. The Lessee may not use the premises or Lessor's radio communications systems in any manner as collateral security for a mortgage or lien agreement of any kind. However, Lessee may, mortgage or grant a security interest in this Lease, the PCS and the Equipment, to any such mortgagees of security interest including their successors or assigns, (hereinafter collectively

referred to as "Mortgagees"), and provide written notice to the Lessor of said mortgage or security interest. In the event Lessee mortgages or grants a security interest in this Lease, the equipment compound, the PCS and the Equipment, Lessor shall execute such consent to leasehold financing as may reasonably be required by Mortgagees, provided that such Mortgagees agree to perform Lessee's obligations under this Lease in the event of foreclosure or exercise of assignment rights with respect to such leasehold estate. Lessor agrees to notify Lessee and Lessee's Mortgagees simultaneously of any default by Lessee and to give Mortgagees the same right to cure any default by Lessee except that the cure period for any Mortgagee shall not be less than ten (10) days after receipt of the default notice. Failure to faithfully keep this provision, shall be considered a default pursuant to the default paragraph above.

## 22. AMENDMENT

Oral agreements in conflict with any of the terms of this Lease shall be without force and effect. All amendments to this lease shall be in writing executed by the parties or their respective successors in interest.

## 23. FRANCHISE REQUIREMENT

Lessor and Lessee agree that this Lease shall not be considered, construed or deemed in anyway a telecommunication franchise agreement for use of public property within the City of Lee's Summit, Missouri.

## 24. PARTIAL INVALIDITY

If any terms or conditions of this Lease or the application thereof to any person or event shall to any extent be invalid and unenforceable, the remainder of this Lease in the application of such term, covenant or condition to persons or events other than those to which it is held invalid or unenforceable shall not be affected and each term, covenant and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

## 25. SERVICE OF NOTICE

All notices, demands and communications as provided herein shall be in writing and shall be served by registered or certified United States mail, return receipt requested to the following address or to such other address(es) as Lessor and Lessee may advise each other in writing pursuant to this Article.

LESSOR:                      City Administrator  
                                    City of Lee's Summit  
                                    207 SW Market  
                                    Lee's Summit, MO 64063

LESSEE:                      American Portable Telecom  
                                    P.O. Box 31793  
                                    Chicago, IL 69631-0793

Copy to: Blackwell, Sanders  
2300 Main Street, Suite 1100  
Kansas City, MO 64108

**26. MISCELLANEOUS**

(a) This lease applies to and binds the heirs, successors, executors, administrators and assigns of the Lessor and Lessee.

(b) This lease is governed by the laws of the state of Missouri.

(c) If requested by Lessee, Lessor agrees promptly to execute and deliver to Lessee a recordable Memorandum of this Lease in the form of Exhibit E.

**27. HOLDING OVER**

In the event Lessee continues to occupy the premises after the last day of the term herein created, or after the last day of any extension of said term, and the Lessor elects to accept rent thereafter, a tenancy from month to month only shall be created and not for any longer period.

**28. TERMINATION**

After the initial term of this Lease, this Lease may be terminated by the Lessee by giving 90 (ninety) days prior written notice of the intent to terminate to the Lessor.

**29. ENTIRE AGREEMENT**

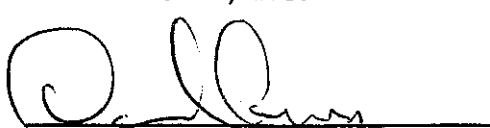
This Lease Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Lease Agreement must be in writing and executed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date first written above.

CITY OF LEE'S SUMMIT, MISSOURI

  
\_\_\_\_\_  
Art Davis, III, City Administrator

AMERICAN PORTABLE TELECOM  
KANSAS CITY, INC.

  
\_\_\_\_\_  
David Lowry, Vice President



STATE OF MISSOURI     )  
  )ss  
COUNTY OF JACKSON    )

On this 24<sup>th</sup> day of October, 1997, before me, a Notary Public in and for the State of Missouri, personally appeared Art Davis III, known to me to be City Administrator of the City of Lee's Summit, the municipality that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipality for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said municipality.

WITNESS my hand and the official seal affixed the day and year first written above.

Kelli A Rhodes  
Notary Public

My Commission Expires:

8/14/98

KELLI A RHODES  
NOTARY PUBLIC STATE OF MISSOURI  
JACKSON COUNTY  
MY COMMISSION EXP. AUG. 14, 1998

STATE OF ILLINOIS )  
 )ss  
COUNTY OF Cook )

On this 20 day of October, 1997, before me, a Notary Public in and for the State of Illinois, personally appeared \_\_\_\_\_, known to me to be David Lowry, Vice President of American Portable Telecom (APT) Kansas City, Inc., the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said limited partnership.

WITNESS my hand and the official seal affixed the day and year first written above.

*Rebecca S. Becker*  
Notary Public

My Commission Expires:  
9/23/2000



Res.#97-20