

## Exhibit B

REAL PROPERTY AND MONOPOLE SITE LEASE BY AND BETWEEN  
THE CITY OF LEE'S SUMMIT AND APT KANSAS CITY, INC.  
LEE'S SUMMIT FIRE DEPARTMENT HEADQUARTERS

This Lease is made this 23<sup>rd</sup> day of April, 1997, by and between the City of Lee's Summit, Missouri, hereinafter called the Lessor, and, APT Kansas City, Inc., a Delaware corporation, its successors and assigns, ("APT") hereinafter called the Lessee.

**WITNESSETH THAT:**

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, removing, replacing, maintaining and operating, at its expense, a communication facility, including antenna equipment and fixtures.

NOW THEREFORE, the parties hereto agree as follows.

**1. DEMISE AND USE OF PROPERTY**

The Lessee's use of a portion of real property, (the "Property") shall be limited to the portion of the Property 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 and more commonly referred to as:

- \* describe land and structure with reference to site plan attached as Exhibit B (collectively, the "premises")

The Lessee, at the Lessee's expense and risk, shall erect, build, operate and maintain antenna and an equipment structure, at the premises described above for the purpose of installing, removing, replacing, maintaining and operating, at its expense, a communication facility, including, antenna equipment and fixtures. 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 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 is in default 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 \$5,000.00 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 structure and antenna 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 \$15,000.00. 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 AND EQUIPMENT STRUCTURE

Lessee shall, at its own cost, erect, build, operate and maintain upon the premises and the existing monopole, detailed in Exhibit A, an antenna and equipment structure in accordance with the antenna and equipment structure placement detailed in the site plan of Exhibit B. Lessee shall erect, build, operate and maintain the antenna and equipment structure in accordance with the detailed plan and specifications attached hereto as Exhibits C 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 equipment structure to restore the vegetation on the premises. Lessee shall be responsible for the cost of repairs required to the premises.

### 6. REMOVAL OF COMMUNICATION FACILITY

All personal property and trade fixtures of Lessee may be removed by Lessee upon the expiration or termination of this Agreement.

## 7. PERMITS AND CONSTRUCTION

Lessee shall obtain all necessary permits, permission, sanctions, and approvals necessary to erect, build, operate and maintain the antenna, and equipment structure. The placement of the antenna equipment on the existing monopole and construction of the equipment structure shall be completed within 30 days from the date of issuance of building permit. In the event placement and/or construction is not completed within said time period, Lessee agrees to pay to the City as liquidated damages, and not as a penalty, the amount of \$100.00 for each day that expires after the 30 day placement and construction period, until placement and/or construction is completed. In addition, in the event the City experiences an interruption of existing city voice and/or data communication services as a result of actions of the Lessee during placement and/or construction, Lessee agrees to timely rectify any such interruption and pay all reasonable costs associated with the repair and/or restoration of said city services.

## 8. LIENS OR ENCUMBRANCES

The Lessee shall not suffer the premises or any erection or improvements 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 affiliates and subsidiaries 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 monopole to third parties consistent with the rights of the Lessee pursuant to this Lease.

## 10. INSURANCE

Lessee agrees to maintain at its expense at all times during the lease term commercial general liability insurance and naming Lessor as an additional insured in an amount of \$1,000,000.00 per person and \$1,000,000.00 per accident for injuries or damages to persons, and and \$1,000,000.00 for 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 and any systems connected therewith shall not interfere with any other communication systems currently in operation on the monopole and 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 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 and equipment structure to 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 and equipment structure shall remain in as good condition as when initially erected and built, normal wear and tear excepted.

## 13. ALTERATIONS

The Lessee shall not make any alteration in the external elevation or architectural design of the monopole 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

Without prior written approval of Lessor, 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 monopole, antenna and equipment structure to be erected upon the premises, except in accordance with plan and specifications previously approved by the Lessor.

## 15. UTILITIES

Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on the premises 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 warrants that it is the owner of the 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 Property and to the quiet possession of the premises 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.

## 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 misconduct 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 this 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 misconduct 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. At time of transfer of possession of the premises, the monopole, equipment structure and improvements placed on the premises pursuant to the rights and obligations of this Lease shall remain on the premises as property of the Lessor.

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. The Lessee may not use the premises in any manner as collateral security for a mortgage or lien lease of any kind. However, Lessee may, upon notice to Landlord, mortgage or grant a Security interest in this Lease and the Monopole Facility, to any such mortgagees or holders of security interests including their successors or assigns, (hereinafter collectively referred to as "Mortgagees") provided Mortgagees execute an express written assumption of all responsibilities of the Lessee under this Lease, including annual rental fees. In the event Lessee mortgages or grants a security interest in this Lease and Antenna, Lessor shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. 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:                      Real Estate Department  
                                    American Portable Telecom  
                                    P.O. Box 31793  
                                    Chicago, Illinois 69631-0793

Copy to:                      Blackwell, Sanders  
                                    2300 Main, Suite 1100  
                                    Kansas City, Missouri 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 D.

#### 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

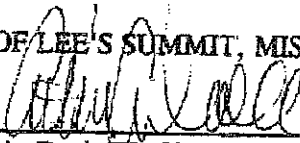
After the initial term of this Lease, this Lease may be terminated by the Lessee by giving 90 (ninety) days prior written notice of the intent to terminate to the Lessor. Upon termination, all prepaid rent shall be retained by Lessor.

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.

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

CITY OF LEE'S SUMMIT, MISSOURI

  
\_\_\_\_\_  
Arthur A. Davis III, City Administrator

APT OF KANSAS CITY, INC.

  
\_\_\_\_\_  
David Blayha  
Director of Engineering and Operations

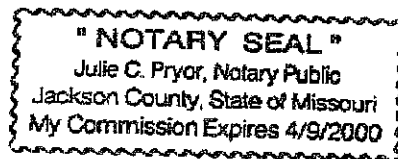


STATE OF MISSOURI )  
 )ss  
COUNTY OF JACKSON )

On this 23 day of April, 1997, before me, a Notary Public in and for the State of Missouri, personally appeared Arthur A. 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.

*Julie C. Pryor*  
Notary Public



STATE OF MISSOURI )  
 )ss  
COUNTY OF JACKSON )

On this 23<sup>rd</sup> day of April, 1997, before me, a Notary Public in and for the State of Missouri, personally appeared David Blayha, known to me to be Director of Engineering and Operations of APT of 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 \* for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said APT of Kansas City, Inc..

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

NORMA S. EDGERSON  
Notary Public - Notary Seal  
STATE OF MISSOURI  
Jackson County  
My Commission Expires: January 3, 2000

*Norma S. Edgerson*  
Notary Public

REAL PROPERTY AND ANTENNA SITE LEASE  
BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND APT OF KANSAS CITY, INC.  
LEE'S SUMMIT FIRE DEPARTMENT HEADQUARTERS

EXHIBITS

Exhibit A - Legal Description - Equipment Structure

Exhibit B - Equipment Site Plan

Exhibit C - Plans and Specifications

Exhibit D - Memorandum of Access

APR-23-97 WED 9:07 AM KAW VALLEY ENGINEERING

FAX No 816-587-0129

P. 2  
EXHIBIT A**KAW VALLEY ENGINEERING, INC.****ENGINEERING • PLANNING • SURVEYING • INSPECTION • TESTING**

RIVERSIDE, MISSOURI 64150 • 122 Northwest Parkway • TEL: (816) 587-5033 FAX: (816) 587-0129

APRIL 23, 1997

97-14,106

**DESCRIPTION:**

A TRACT OF LAND BEING PART OF LOT 8, BLOCK 17, WILLIAM B. HOWARD'S FIRST ADDITION, LEE'S SUMMIT, JACKSON COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 8; THENCE S 28°52'24" E ALONG THE EAST LINE OF SAID LOT 8 A DISTANCE OF 18.03 FEET THENCE S 61°07'36" W A DISTANCE OF 6.78 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE S 28°52'24" E A DISTANCE OF 16.00 FEET; THENCE S 61°07'36" W A DISTANCE OF 10.00; THENCE N 28°52'24" W A DISTANCE OF 16.00 FEET; THENCE N 61°07'36" E A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING. CONTAINS 160 SQUARE FEET, MORE OR LESS.

**END OF DESCRIPTION.**

**RESOLUTION NO. 97 - 09**

**A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A REAL PROPERTY AND ANTENNA LEASE BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND APT OF KANSAS CITY, INC. FOR THE LEE'S SUMMIT FIRE DEPARTMENT HEADQUARTERS LOCATED AT 207 SE DOUGLAS.**

WHEREAS, APT of Kansas City, Inc., a Delaware corporation, desires to lease a portion of real property owned by the City of Lee's Summit and located at 207 S.E. Douglas, on which is currently located a monopole and the Lee's Summit Fire Department Headquarters; and,

WHEREAS, APT of Kansas City, Inc. will place an antenna on said monopole and real property and equipment necessary for the operation of the company's communication facility; and,

WHEREAS, in consideration for the location of the antenna, APT of Kansas City, Inc. will pay rent in accordance with the terms of the Lease; and,

WHEREAS, the City Council of the City of Lee's Summit believes it in the best interest of the citizens to enter into this Lease which will make available state of the art communication technologies to the businesses and citizens and for provision of city services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1 That the City Administrator is hereby authorized to execute on behalf of the City and attached Real Property and Antenna Lease By and Between the City of Lee's Summit and APT of Kansas City, Inc. - Lee's Summit Fire Department Headquarters

SECTION 2. That the original of the executed Lease shall be attached to this resolution by the City Clerk and maintained as part of the official records for the City of Lee's Summit.

PASSED by the City Council of the City of Lee's Summit, Missouri, and approved by the Mayor of said City this 18<sup>th</sup> day of March, 1997.

  
\_\_\_\_\_  
Mayor, Karen R. Messerli

ATTEST:

  
City Clerk, *Denise R. Chisum*

APPROVED AS TO FORM:

  
City Attorney, *Christine M. Treat*