

**Agreement for the Lease of
City of Lawrence, Kansas Property**

This Lease Agreement ("Agreement") is entered into this 13th day of June, 1997, by and between the City of Lawrence, Kansas, a Municipal Corporation ("City"), and APT Kansas City, Inc., a Delaware corporation, its successors and assigns ("Tenant"), with principal offices at Shawnee, Kansas and Kansas City, Missouri. The Agreement provides for the granting and leasing of certain property interests ("the property") at the City owned water storage facility generally located at 1815 Stratford, Lawrence, Kansas, and known as the Stratford Water Tower (the "water storage facility") and grants Tenant permission for the installation of certain Tenant improvements on the property ("improvements") pursuant to the following terms and conditions.

The City and the Tenant, in recognition of good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, hereto agree as follows:

1. **NON EXCLUSIVE LEASE.** This is a non exclusive lease. Tenant agrees and acknowledges that Owner may, from time to time, at its option, offer to rent to other tenants, space on the property without the consent of the Tenant.
2. **CITY APPROVAL OF TENANT PLANS AND CONSTRUCTION.** The City shall approve all plans for the installation of improvements on the City property. The Tenant shall submit all proposed drawings, plans, and specifications in sufficient detail concerning the proposed improvements to the property. Such drawings, plans, and specifications, shall include but not be limited to:
 - A. Construction drawings, plans, and specifications for the improvement, including information on any physical contact with the City water storage facility or other permanent City facilities on the property; and
 - B. Information concerning the appearance of the proposed improvements, including color and size of the proposed improvements; and
 - C. Information concerning the compliance of the proposed improvements with all applicable federal, state, and municipal laws, including compliance with Federal Communications Commission regulations for radio frequency requirements; and

D. Such other information as the City or City's consultant may determine as necessary.

At Tenant's sole cost and expense, the City may select a qualified consultant to review and comment on the proposed plans for the improvements, and inspect and observe the construction of the improvements (the duties to be performed by the City's consultant pursuant to this section shall hereinafter be referred to collectively as the "Consultant's Duties"). Tenant shall pay the reasonable costs associated with the Consultant's Duties in a manner as directed by the City, provided, however, that (a) the City or its consultant must first provide Tenant with a detailed description of the Consultant's Duties and a cost estimate thereof, and (b) Tenant's liability to pay the City or its consultant for the Consultant's Duties cost shall in no event exceed the aggregate amount of Ten Thousand Dollars (\$10,000.00).

3. **PROPERTY SUBJECT TO AGREEMENT.** The property interests hereby leased and granted by the City are limited to the following, provided that unless designated as exclusive, the property interest leased shall be considered non exclusive to the Tenant:

- A. Real property comprised of approximately 200 square feet of land for placement of equipment building to house a Base Transceiver Station described in Exhibit A; and
- B. Water storage facility exterior space for the attachment of antennas as described in the approved plans; and
- C. Water storage facility interior space required for cable runs to connect equipment and antennas as described in the approved plans; and
- D. Non-exclusive easements required to run utility lines and cables; and
- E. Non-exclusive easement across City's Property (hereinafter defined) for access,

in or upon the City's real property described on Exhibit "A" attached hereto and subject to the specifications shown and described on said Exhibit "A". The water storage facility located on City's Property shall hereinafter be referred to as the "Water Storage Facility".

4. **TERM.** The term of this Agreement shall be that part of five (5) years commencing on the date designated in a notice that Tenant will deliver to the City (the "Commencement Date Notice") as the date on which Tenant will take possession which, if possession occurs at all, shall be no later than August 1, 1997 (the "Commencement Date") and terminating on December 31 following the fourth (4th) year anniversary of the Commencement Date (the "Term") unless otherwise terminated pursuant to this Agreement. If the Commencement Date Notice is not received by August 1, 1997, then neither party shall have any further rights or obligations under this Agreement.

5. **RENT.** Tenant's obligation to pay rent shall arise only upon delivery of the Commencement Date Notice. Thereafter, Tenant shall pay City rent monthly beginning on the Commencement Date (for that portion of the applicable month in which the Commencement Date occurs). The rent for the first month shall not be payable until ten (10) days after receipt by Tenant of properly executed and acknowledged signature counterparts of this Agreement and Memorandum (defined below) from City. The monthly rent for the Initial Term shall be, together with any applicable sales tax \$1,000.00 per month ("Initial Monthly Rent"). Any partial months will be prorated. City agrees to provide Tenant any information necessary to allow Tenant to make all rent payments through direct deposit or similar paper less transfer of funds. Upon City's execution of this Agreement, Tenant shall pay Owner an additional payment of \$1,500.00.

Tenant may extend the term of this Agreement for two (2) additional five (5) year periods (individually, an "Option Period" and collectively, the "Option Periods"). Tenant shall have elected to extend the term of each successive Option Period unless it gives the City written notice of its intention not to extend at least one hundred twenty (120) days prior to the expiration of the then-current term. The monthly rent for each Option Period shall be the Initial Monthly Rent, increased, upon the commencement of the Option Period, by a percentage of the Initial Monthly Rent which shall be computed by multiplying the number of years in the then-expiring term (whether initial Term or an Option Period) times three percent (3%).

6. **USE AND ACCESS.**

Tenant may use the Property for the purpose of installing, removing, replacing, maintaining and operating a wireless radio communications

facility generally in accordance with Exhibit "A" subject to such modifications and alterations as may result from changes or improvements in technology (the "improvements"), provided that Tenant shall not be required to occupy the Property. The manner in which the improvements will be attached to the water storage facility shall be subject to the prior approval of City. City shall provide an administrative procedure to allow Tenant twenty-four (24) hour, seven (7) days a week year around access to the Property; provided that in the event of an emergency associated with the operation of the water storage facility, the City may deny the Tenant access for reasonable periods of time. Tenant's improvements may be temporarily displaced, removed, and disturbed during storage facility repair, renovation, and maintenance.

Tenant shall pay all personal property taxes assessed against the improvements on the property. Tenant will not allow any mechanics' or materialmen's liens to be placed on the Property as a result of its work on the Property.

Tenant acknowledges and agrees that City is generally exempt from the payment of real and personal property taxes on the Property, which is used for a governmental purpose. Should City's Property lose its exemption from real and personal property taxes, whole or in part, as a result of Tenant's improvements to the Property, Tenant shall pay in full and in a timely manner all such taxes incurred directly to the proper taxing authority. Should any such taxes or assessments be levied or assessed directly against City, Tenant shall reimburse City for the full amount of such taxes and assessments within ten (10) days after City notifies Tenant of City's payment of such taxes and assessments.

7. **UTILITIES.** Payment for electric service and for telephone or other communication services to the property improvements, including the extension of service lines and installation of meters, shall be Tenant's responsibility and Tenant shall timely pay all utility charges assessed by the utility.
8. **REMOVAL OF IMPROVEMENTS.** All personal property and trade fixtures of Tenant shall be removed by Tenant upon the termination of this Agreement unless other wise agreed to in writing by the parties.
9. **INSURANCE.** Tenant shall maintain commercial general liability insurance insuring Tenant against liability for personal injury, death or damage to personal property arising out of use of the Property by

Tenant, its agents and employees, with combined single limits of Two Million and no/100 Dollars (\$2,000,000.00). Tenant shall also maintain fire and extended coverage insurance insuring Tenant's personal property for its full insurable value (subject to reasonable deductibles). Tenant shall provide the City with a Certificate of Insurance demonstrating compliance with the provisions of this Section. Any policy required to be obtained pursuant to this Section 9 shall contain a Waiver of Subrogation in favor of the other party hereto to the extent required under Section 12, Indemnity. The Tenant's insurance policy shall contain the following endorsement:

"At least thirty (30) days prior written notice to the City shall be given by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the City Manager's Office, P.O. Box 708, Lawrence, Kansas, 66044."

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The City warrants and represents to the Tenant that the City maintains either private insurance or self-insurance, in aggregate amounts, pursuant to the limits set forth in the Kansas Tort Claims Act to provide coverage against claims for liability for bodily injury, death, and property damage arising out of the City's ownership, use and management of the Property and Water Storage Facility, and fire and extended coverage on the Property and Water Storage Facility.

10. **CONDITION OF PROPERTY.** City warrants and represents that it shall deliver the Property to Tenant on the Commencement Date. Tenant shall not drill directly into the water storage facility located on, or attach any equipment to, the water storage facility until (a) plans for such attachments have been approved by City, and (b) City has been offered the opportunity to observe the installation of such attachments on other similar water storage facilities. Any alterations to the water tank must be pre-authorized by Owner. Nothing in this Agreement shall be construed or interpreted as creating a guarantee or warranty enforceable against the City that the property or site is or will remain suitable for use in transmitting or receiving communication signals for use by the Tenant.
11. **TERMINATION.** This Agreement may be terminated by Tenant for cause by giving City sixty (60) days written notice to City if any of the following events occur: a) Tenant fails to obtain or loses any necessary permits, approvals, licenses or orders and is thereby unable

to use the Improvements on the Property; b) if Tenant determines at any time that the Property is not appropriate for locating the Improvements for technological reasons, including, without limitation, signal interference; or c) City fails to comply with any material term, condition or covenant of this Agreement and does not cure such failure within thirty (30) days after Tenant's written notice thereof, or in the event of a cure that requires more than thirty (30) days to complete, if City has not commenced such cure within thirty (30) days of such notice and is not diligently prosecuting said cure to completion.

City may terminate this Agreement upon the occurrence of any of the following: a) Tenant's failure to pay any rent required hereunder when due if such failure shall continue for more than ten (10) calendar days after Tenant receives City's written notice of such failure to make timely payment; b) Tenant fails to comply with any material term, condition or covenant of this Agreement, other than the payment of rent, and does not cure such failure within thirty (30) days after Tenant's written notice thereof, or in the event of a cure that requires more than thirty (30) days to complete, if Tenant has not commenced such cure within thirty (30) days of such notice and is not diligently prosecuting said cure to completion; c) if Tenant becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or files a petition under any section or chapter of the Federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or is adjudged bankrupt or insolvent in proceedings filed against Tenant thereunder, or if a receiver or trustee is appointed for all or substantially all of Tenant's assets due to insolvency; d) upon one hundred twenty (120) days' written notice, or, e) if Tenant fails to pay real and personal property taxes in accordance with the provisions of Section 6 of this Agreement.

12. **INDEMNITY.** City and Tenant each indemnify the other against, and hold the other harmless from any and all costs (including reasonable attorney's fees and expenses) and claims, actions, damages, obligations, liabilities and liens which arise out of a) the breach of this Agreement by the indemnifying party; and b) the use and/or occupancy of the Property, or the balance of the City's Property, by such indemnifying party. This indemnity shall not apply to any claims, actions, damages, obligations, liabilities and liens arising from any negligent or intentional misconduct of the indemnified party and shall survive the termination of this Agreement. Except for the acts

of City or its employees or agents, City shall not be liable for any loss or damages arising out of bodily injuries or property damage on the Property.

13. **HAZARDOUS SUBSTANCES.** City warrants that City has no knowledge of any substance, chemical, or waste on the City's Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Tenant shall not use, generate, store or dispose of any such hazardous, toxic or dangerous substance, chemical or waste on City's Property in violation of any applicable federal, state or local law or regulation. Tenant and City shall defend, indemnify and hold harmless each other's respective officers, employees, agents and assigns against any and all losses, liabilities, claims or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this section.
14. **CASUALTY/CONDEMNATION.** If any portion of the Property or Improvements are damaged by any casualty and such damage adversely affects City's use of the Property, or if a condemning authority takes any portion of the City's Property and such taking adversely affects Tenant's use of the City's Property, this Agreement shall terminate as of the date of the casualty or the date the title vests in the condemning authority, as the case may be if Tenant or the City gives written notice of the same within thirty (30) days after it receives notice of such casualty or taking. The parties shall be entitled to make claims in any condemnation proceeding for the value of their respective interests in the Property in accordance with the laws of the State of Kansas. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.
15. **DEFAULT.** Except as expressly limited hereby, City and Tenant shall each have such remedies for the default of the other party hereto as may be provided at law or equity following written notice of such default to cure the same within fifteen (15) days.
16. **MISCELLANEOUS.**
 - a. City represents and warrants that City has full authority to enter into and sign this Agreement and has good and marketable title to the City's Property.

- b. This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the City and Tenant. This Agreement may only be amended in writing signed by all parties. Exhibits "A" and "B" are incorporated into this Agreement by reference.
- c. This Agreement may be signed in counterparts by the parties hereto.
- d. The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of City and Tenant.
- e. The prevailing party in any action or proceeding in court to enforce the terms of this Agreement shall be entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.
- g. Tenant shall not assign this Agreement or sublet all or any portion of the Property without City's prior written consent which shall not be unreasonably withheld or delayed.
- h. Notices shall be in writing and sent by United States mail, postage prepaid, certified or registered with return receipt requested. Any such notice shall be deemed given when deposited in the United States mail. Notice to the City shall be sent to City Manager, P.O. Box 708, Lawrence, Kansas, 66044. Notice the Tenant shall be sent to American Portable Telecom, Inc. P.O. Box 31793, Chicago, Illinois 60631, with a copy to Steve Carman, Blackwell, Sanders, et al., 2300 Main, Suite 1100, Kansas City, Missouri 64108.

A party shall notify the other party of a change in the address for notification purposes.
- i. This Agreement shall be construed in accordance with the laws of the State of Kansas.
- j. Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.

- k. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- l. City and Tenant each represent that they have not been represented by a real estate broker or other listing agent in this transaction. Each party ("Indemnifying Party") shall indemnify and hold the other party harmless from any claims for commission, fee or other payment by such broker or any other leasing agent claiming to have represented the Indemnifying Party herein.
- m. Tenant shall maintain the improvements in a good and safe condition, consistent with industry standards. Tenant warrants that no additional markings or lighting (collectively, "Lighting") on the Water Storage Facility will be required solely as a result of the improvements, and should Lighting ever become necessary solely as a result of the improvements, Tenant shall timely cause the Lighting to be placed on the Water Storage Facility at its sole expense by a contractor approved by City.
- n. This Agreement is not a franchise agreement pursuant to the provisions of K.S.A. 12-2001 et seq.
- o. Prior to construction the Tenant shall be required to receive all lawfully required land use approvals from the City of Lawrence, Kansas and all other regulatory bodies.
- p. The Tenant shall not install or maintain any signs, insignias, or logos on the property or the improvements without the written permission of the City.
- q. The City shall contemporaneously herewith execute, acknowledge and deliver to Tenant for recording a memorandum of this agreement ("Memorandum") in the form of Exhibit "B".
- r. Tenant, upon paying the rent and performing all of its covenants, agreements and obligations under this Agreement, shall peaceably and quietly have, hold and enjoy the Property in accordance with the terms and conditions of this Agreement.

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Norma S. Edgerson
Notary Public

Printed Name: Norma S. Edgerson

My appointment expires: 1-3-2000

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

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

SITE ID: ASE 001

SITE NAME: STRATFORD WATER TOWER (LAWRENCE, KS)

EXHIBIT "A"
TO
SITE AGREEMENT

SKETCH AND DESCRIPTION OF PROPERTY:

SEE Exhibit A-1, attached hereto.

LEGAL DESCRIPTION OF OWNER'S PROPERTY:

Parcel 1

All that part of a tract of land described as
Beginning 656.5 feet East of the Southwest
corner of the North Half of the Southwest
Quarter of Section 36, Township 12, Range
19, in Douglas County, Kansas; thence East
333.5 feet; thence North 653.07 feet; thence
West 333.5 feet; thence South 653.07 feet;
which lies North of the South line of Stratford Road
continued West from West Hills in the City of Lawrence
in Douglas County, Kansas, to the West line of the
above described real estate except such part thereof
as has heretofore been conveyed to the grantee herein.

Parcel 2

Beginning at a point two hundred fifty-three (253.01) feet South of
the North line of the North Half of the Southwest Quarter of Section 36,
Township 12, Range 19, in Douglas County, Kansas; thence East twenty-five
(25.01) feet; thence South one hundred twenty-two (122.01) feet; thence
West twenty-five (25.01) feet; thence North one hundred twenty-two (122.01)
feet to the point of beginning. All in what is sometimes referred to as
the number three (3) of the Entanglement Quadrangle in the West Hills
Section of Lawrence, Kansas. And
Beginning at a point two hundred fifty-three (253.01) feet South of and
also hundred ninety-five and eighty-four hundredths (975.84) feet West
of the Center of Section thirty-six (36), Township twelve (12) south, Range
nineteen (19) East of the Sixth Principal Meridian; thence South one
hundred thirty (130.01) feet; thence South Westwardly twenty and five
hundredths (20.05) feet; thence West one (1.01) foot; thence North one
hundred forty-four and thirty-two hundredths (144.32) feet; thence East
fifteen feet to the point of beginning. All in what is sometimes referred
to as lot number fourteen (14) of the Entanglement Quadrangle in the West Hills
Section of Lawrence, Kansas.

Parcel 3

Beginning at a point 656.5 feet East and 354.4 feet North of the Southwest corner of
the North Half of the Southwest Quarter of Section 36, Township 12, Range 19, being a
point on the continuation of the North line of Stratford Road extended West from the City
of Lawrence, Douglas County, Kansas; and also being a point intended to be the beginning
point in the description of a tract of land conveyed to the City of Lawrence, Douglas
County, Kansas, by deed recorded in Book 131 at page 405 of the records in the office of
the Register of Deeds of Douglas County, Kansas; thence East 323.5 feet to the West City
limits of the City of Lawrence; thence South 60 feet; thence West 323.5 feet to a point
due South of the point of beginning; thence North to the point of beginning.

It is agreed by Owner and APT that the precise legal description for the Owner's Property will be corrected, if necessary, and that the correct legal description may be placed on this Exhibit "A" by APT.

SITE ID: ASE 001
SITE NAME: STRATFORD WATER TOWER (LAWRENCE, KS)

EXHIBIT "B"
TO
SITE AGREEMENT

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM evidences that a lease was made and is hereby entered into by written Site Agreement effective the _____ day of May, 1997, between the City of Lawrence, Kansas, a Municipal Corporation ("Owner"), whose address is as set forth below, and APT Kansas City, Inc., a Delaware corporation ("APT"), whose address is set forth below, the terms and conditions of which are incorporated herein by reference.

Such Site Agreement provides, in part, that Owner, for valuable consideration, leases to APT a part of that certain property owned by Owner which is described in Exhibit "A" attached hereto and incorporated herein for a term of five (5) years commencing on _____, 1997, which term is subject to two (2) additional five (5) year option terms.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK AND SIGNATURE AND NOTARY BLOCKS
OMITTED]