

Document Break Sheet

Document Identification:

Document Name: A2C0020A_01_LSE_19970804_0

Document Date: 19970804

Image Name:

Location Identifier: A2C0020A

Truncated Doc Name: LSE

Document Sequence: 01

ABSTRACT

**LICENSE AGREEMENT FOR WIRELESS
COMMUNICATION ANTENNA ON EXISTING WATER TOWER**

THIS NON-EXCLUSIVE LICENSE AGREEMENT is entered into this 29th day of July, 1997, by and between the **CITY OF COCOA, FLORIDA**, a Florida Municipal Corporation, whose address is 603 Brevard Avenue, Cocoa, Florida 32922 (hereinafter "City") and **APT TAMPA/ORLANDO, INC.**, a Delaware Corporation, whose address is 8410 W. Bryn Maur, Suite 1100, Chicago, IL 60631-3486 (hereinafter "Licensee").

WHEREAS, the City is the owner and operator of a water tower located on real property owned by the City in the City of Cocoa, Florida; and

WHEREAS, the Licensee is in the communication business and desires to non-exclusively utilize a portion of the Tower and Property for the installation, operation, maintenance and repair of certain Antennae Facilities more fully defined herein; and

WHEREAS, the City is willing to grant the Licensee a non-exclusive license to a portion of the Tower and the Property in order to allow the Licensee to install, operate, maintain, and repair the Antennae Facilities pursuant to the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Licensed Premises.** The City hereby grants to the Licensee a non-exclusive license to occupy and use that certain portion of the Tower and the Property in accordance with the terms of this License Agreement.

2. **Intended Use.** The license granted by this License Agreement is for the installation, operation, repair and maintenance of the Antennae Facilities on the Tower and Property at the locations shown on the Site Plan. This use shall be non-exclusive. The Licensee may not add additional Antennae Facilities from that shown on the Site Plan, without the prior, written approval of the City, which approval shall not be unreasonably withheld or delayed. If Licensee requests additional Antennae Facilities, the City reserves the right to require additional compensation to be paid to the City and to negotiate any amendments to this Agreement deemed reasonably necessary as a result of the additional Antennae Facilities. The Licensee shall also have the right to use the Property as may be reasonably necessary to install, operate, repair, and maintain the Antennae Facilities, providing said use does not in any way interfere with the City's operation of the Tower and use of the Property.

3. **Definitions.** The following words and phrases contained in this Agreement shall have the meaning ascribed to them below unless the context clearly indicates otherwise:

3.1 **"Antennae Facilities"** shall mean Licensee's exterior transmitting or receiving device mounted on the Tower and the reasonable and necessary appurtenances thereto, including, but not limited to, cables, utility lines and equipment, and unstaffed accessory ground structures and buildings, which are located on the Property and approved by the City hereunder for the transmission and/or reception of wireless telecommunication services provided by Licensee.

3.2 **"City"** shall mean the City of Cocoa, Florida, a Florida Municipal Corporation.

3.3 **"Commencement Date"** shall mean the earlier of the date the Licensee begins construction of the Antennae Facilities or thirty (30) days after the issuance of a building permit by the City in accordance with paragraph 8. of this Agreement.

3.4 **"Effective Date"** shall mean the day and year the last party hereto has executed this Agreement.

3.5 **"License Agreement"** shall mean this Agreement between the City and Licensee.

3.6 **"Licensee"** shall mean APT Tampa/Orlando, Inc., a Delaware Corporation.

3.7 **"License Fee"** shall mean the fee paid by Licensee to City pursuant to paragraph 5 of this License Agreement.

3.8 **"Other License Request"** shall mean that phrase as defined in paragraph 13.2 of this Agreement.

3.9 **"Property"** shall mean the real property owned by the City and which is legally described in Exhibit "1" of this License Agreement. Exhibit "1" is hereby fully incorporated into this License Agreement by this reference.

3.10 **"Site Plan"** shall mean the Site Plan, and any amendments thereto, submitted by Licensee for City approval pursuant to paragraph 8 of this License Agreement.

3.11 **"Tower"** shall mean the water tower owned and operated by the City and which is located on the Property.

4. **Term and Renewals.** The term of this License shall be five (5) years, commencing on the Commencement Date, and ending on the fifth (5th) anniversary date thereof. Provided the Licensee is not then in default under this License Agreement, the Licensee and City may

mutually agree in writing to renew the term of this License Agreement for two (2) successive renewal terms of five (5) years each, but neither party shall be obligated to do so.

5. License Fee.

5.1 The Licensee shall pay the City a license fee of One Thousand One Hundred and No/100 Dollars (\$ 1,100.00) per month, payable in advance in quarterly payments of Three Thousand Three Hundred and No/100 Dollars (\$3,300.00). The first payment shall be due within twenty (20) business days of the Commencement Date and shall be prorated until the end of the calendar quarter; and subsequent payments shall continue on the first day of each and every calendar quarter thereafter during the term of this License Agreement.

5.2 Any amounts not paid by the Licensee to the City within ten (10) days of its due date shall include a late payment charge of five percent (5%) of the amount due. In the event of non-payment after such 10 day period, the City may, after giving ten (10) calendar days prior notice to the Licensee, suspend the license granted under this License Agreement until the Licensee has been paid in full.

5.3 The License Fee shall be increased annually effective as of each anniversary of the Commencement Date by an amount equal to the greater of three percent (3%) of the then-current License Fee, or the percentage increase in the Consumer Price Index (CPI) over the CPI for the twelve (12) months prior to the date the License Fee is to increase provided, however, that the increase shall not exceed eight percent (8%) in any one (1) year.

6. Taxes. The Licensee shall pay all applicable taxes, if any, which become due and payable during the term of this License Agreement. This shall include, without limitation, all applicable sales taxes and any real estate taxes assessed against the City's property solely by virtue of this License Agreement.

7. Aesthetic Standards. Unless otherwise agreed in writing by City, the Antennae Facilities located on the Tower shall, at all times, be the same color as the Tower. The Antennae Facilities not located on the Tower shall be a color approved by the City. The Antennae Facilities shall also be as unobtrusive as practicable. The Antennae Facilities shall not obstruct the visual sight of the American Flag and the "City of Cocoa" which is painted on the Tower.

8. Site Plan and Installation of Antennae Facilities.

8.1 No later than thirty (30) days after the Effective Date, unless otherwise extended by mutual agreement of the parties, Licensee shall submit to the City for approval, a detailed Site Plan accurately depicting the location and design of installation of the proposed Antennae Facilities. The Site Plan shall be submitted in accordance with the City's then applicable Site Plan and building permit procedures and requirements. Unless otherwise agreed to by the City, the Site Plan shall indicate that Licensee's concrete equipment pad and utilities cabinet shall be located underneath

the Tower at a location mutually agreed upon by the parties during the Site Plan process. If the location of the equipment pad and utilities cabinet is cost prohibitive to Licensee, Licensee shall have the right to terminate this License Agreement without penalty. The Site Plan shall also indicate that all cables installed by Licensee which run from the equipment pad and utilities cabinet to the Tower shall be installed underground. In addition, the Site Plan shall indicate that the Antennae Facilities do not extend beyond the top handrail of the platform which runs around the perimeter of the Tower. The approval by the City shall not be unreasonably withheld or delayed. Upon approval, the Site Plan shall be attached to this License Agreement as Exhibit "2". Exhibit "2" shall be deemed fully incorporated into this License Agreement by this reference. As part of the Site Plan submittal, Licensee shall submit to the City an engineer's report, prepared by an independent engineering consultant acceptable to the City and certified to the City, which evidences that Licensee's proposed Antennae Facilities do not in any way negatively effect the structural integrity, loading capacity, or City's use of the Tower. Licensee agrees to pay up to Three Thousand and No/100 Dollars (\$3,000.00) towards the cost of the report. In addition, Licensee shall submit to the City written documentation, in a form reasonably acceptable to City, that the Antennae Facilities will not generate radio interference with the City's antennas on the Tower which currently operate at 150-170 MHZ and 450 MHZ.

8.2 The Antennae Facilities shall be installed and maintained according to the Site Plan and approved building permit. If the Tower or other property owned by the City is damaged during the installation and /or operation of the Antennae Facilities, the Licensee shall immediately notify the City within twenty four (24) hours of such damage. The Licensee shall be solely liable for all expenses incurred to repair the damage. Unless otherwise decided by the City, and said decision shall be at the City's sole and absolute discretion, Licensee shall make the repairs within ten (10) days of such damage, or as soon as reasonably possible. All repairs shall be to the City's sole satisfaction.

8.3 Within thirty (30) days after installation of the Antennae Facilities, the Licensee shall provide the City with as-built drawings of the location of the Antennae Facilities installed on the Tower and Property, which show the actual location of the Antennae Facilities consistent with Site Plan and approved building permit. In addition, the Licensee shall also provide the City with a complete and detailed inventory of the Antennae Facilities and related personal property and equipment. The Licensee shall not allow any liens to be placed on the Property.

9. **Equipment Upgrade.** The Licensee may update or replace the Antennae Facilities, from time to time, provided that if the replacement facilities are greater in number or size than the existing facilities, or the replacement facilities change in their location on the Tower, the Licensee shall obtain the City's prior written approval for such upgrade or replacement consistent with the Site Plan procedure established by paragraph 8 of this License Agreement. Such approval shall not be unreasonably withheld or delayed.

10. **Maintenance.**

10.1 The Licensee shall have the sole responsibility for the maintenance, repair and

security of the Antennae Facilities and related personal property and equipment, and shall keep the same in good repair and condition during the term of this License Agreement.

10.2 The Licensee shall maintain the Antennae Facilities in such a manner so as not to conflict or interfere with the use of the Tower and Property by the City. The Licensee shall not interfere with the preexisting use of the Tower by, and the facilities and/or equipment of, other licensees of the City. The Licensee shall be solely responsible for any damage it causes to the antennas and equipment of other licensees of the City.

10.3 The City shall not willfully interfere or allow interference with Licensee's Antennae Facilities. The City agrees that it will not allow the location of any subsequent licensing equipment so as to conflict with or prevent the reasonable maintenance of the Licensee's Antennae Facilities.

10.4 The City and the Licensee shall keep the Tower and Property free of debris and any dangerous, noxious, or offensive matter which would create a hazard or undue vibration, heat, noise, or signal interference.

10.5 In the event the Tower is painted, upgraded, repaired, or altered by the City or another licensee or user, the Licensee shall receive prior written notice thereof and Licensee shall take reasonable measures to protect the Antennae Facilities during such painting, upgrading, etc. Licensee shall promptly and temporarily remove or relocate in Licensee's discretion, at Licensee's sole expense, any portion of the Antennae Facilities which interfere with the City's ability to paint, upgrade, repair, or alter the Tower. Licensee agrees to pay the City any material increase in the cost of painting the Tower incurred by the City as a result of the Antennae Facilities. Licensee shall take such steps as are necessary to protect the Antennae Facilities during any such painting, upgrading, repairing, or altering of the Tower.

10.6 In order to minimize disruption to the surrounding area, normal maintenance and repairs to the Antennae Facilities shall be restricted to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, excluding legal holidays. Bona fide emergency maintenance and repairs to the Antennae Facilities may be conducted at any time, if necessary.

11. **Utilities.** The Licensee shall, at its expense, separately meter charges for the consumption of electricity and other utilities associated with its use of the Tower and Property and shall timely pay all costs associated therewith.

12. **Compliance with Laws.**

12.1 Licensee shall comply with all present and future federal, state and local laws, ordinances, rules and regulations (including, but not limited to, laws, rules and regulations issued by the Federal Communication Commission (FCC), Federal Aviation Administration (FAA), and the City in connection with the installation, use, operation, repair and maintenance of the Antennae Facilities,

and the Tower as affected by the Antennae Facilities. The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with, the foregoing shall be Licensee's sole responsibility.

12.2 Licensee's use of the Tower and Property is contingent upon its obtaining all certificates, permits, zoning, and other approvals that may be required by any federal, state, or local authority. Licensee shall erect, maintain, and operate its Antennae Facilities in accordance with site standards, state statutes, ordinances, rules and regulations now in effect or that thereafter may be issued by the FCC or any other governing bodies. The payment of any penalties or fines arising out of, or in any way connected with, the violation of, or non-compliance with, the foregoing shall be Licensee's sole responsibility.

13. **Interference.**

13.1 Licensee's installation, operation, repair, and maintenance of the Antennae Facilities shall not damage or interfere in any way with the City's Tower operations or related repair and maintenance activities. Licensee agrees to cease all such actions which interfere with the City's own use of the Tower and Property (other than approving Other License Requests which shall be subject to paragraphs 13.2 and 13.3 of this Agreement) immediately upon actual notice of such interference, provided, however, in such case Licensee shall have the right to terminate the License Agreement without further obligation or liability beyond that incurred as of the termination date. The City, at all times during this License Agreement, reserves the right to take any action it deems necessary, in its sole and absolute discretion, to repair, maintain, alter, or improve the Tower operations as may be necessary, including, but not limited to, leasing or licensing any part of the Tower and Property.

13.2 The License herein granted to Licensee is non-exclusive and the City may grant additional licenses to allow other communication providers to locate Antennae Facilities on the Tower and Property. In the event any other party requests a license to place any type of additional antenna or transmission facility on the Tower and Property ("Other License Requests"), the procedures of the next paragraph shall govern to determine whether such antenna or transmission facility will mechanically, structurally, or by regulation interfere with Licensee's transmission operations.

13.3 The City shall submit the Other License Request to Licensee, complete with all technical specifications reasonably requested by Licensee, for Licensee's review for mechanical, structural, or regulatory interference to Licensee's ability to receive or transmit wireless communication services from the Tower and Property. The third party shall be responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. Licensee shall have thirty (30) days following receipt of said Other License Request to make any objections thereto known to the City in writing, and failure to make any objection within said thirty (30) day period shall be deemed consent by Licensee to the installation of antennas or transmission facilities pursuant to said Other License Request. Any objections shall be made in good faith and shall not be based in any way on Licensee's desire to prohibit one of its competitors from collocating on

the Tower or Property. If Licensee gives notice of objection due to mechanical, structural, or regulatory interference during such thirty (30) day period and Licensee's objections are verified by the City to be valid, then and in such event the City shall not proceed with such Other License Request unless the other party modifies the Other License Request in a manner determined, to eliminate the objectionable Other License Request, provided, however, if Licensee's ability to receive or transmit wireless communication services from the Tower is materially affected, the City shall take such action as shall be reasonably required to eliminate the interference by the subsequent user.

14. Default by Licensee and City's Remedies. The City reserves the right to revoke and terminate this License Agreement and rescind all rights and privileges associated with this License Agreement in the following circumstances, each of which shall represent a default and breach of this License Agreement:

14.1 Licensee defaults in the payment of the License Fee in accordance with this License Agreement; or

14.2 Licensee defaults in the performance of any material covenant or condition of this License Agreement and does not cure such other default within thirty (30) calendar days after written notice from the City specifying the default complained of, unless, however, the nature of the default is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) calendar days, in which case the Licensee shall have such time as is reasonably necessary to remedy the default, provided the Licensee promptly takes and diligently pursues such actions as are necessary therefor; or

14.3 Licensee abandons the Antennae Facilities, providing the City first notifies Licensee, in writing, that it has reasonable cause to believe that Licensee has abandoned the Antennae Facilities and Licensee does not, within thirty (30) calendar days after the written notice is received, provide the City a written memorandum clearly indicating that Licensee has not abandon the Antennae Facilities. If City can not locate Licensee after a reasonable attempt to do so, constructive notice in a newspaper of general circulation in Brevard County, Florida shall constitute written notice for purposes of this paragraph; or

14.4 Licensee is adjudicated bankrupt or makes any assignment for the benefit of creditors or Licensee becomes insolvent, or is unable or unwilling to pay its debts; or

14.5 Licensee has acted grossly negligent, as defined by general and applicable law, in maintaining or operating the Antennae Facilities; or

14.6 Licensee has committed any act of fraud upon the City; or

14.7 Licensee has made a material misrepresentation of fact to the City while performing its obligations under this License Agreement.

In the event the City intends to declare a default under paragraphs 14.5, 14.6, or 14.7, City shall provide Licensee fifteen (15) calendar days written notice of such intention and Licensee shall be given a reasonable opportunity to appear and be heard before the City's City Council and to convince the City Council that such act did not constitute a default under this Agreement. If the City Council, in its sole and absolute discretion, determines that it believes Licensee's act constituted a default under this Agreement, the City shall have all the rights stated in the next paragraph.

In the event of a default by Licensee, the City shall have the right, at its option, in addition to and not exclusive of any other remedy the City may have by operation of law, without any further demand or notice, to re-enter the Tower and Property and eject the Licensee therefrom and declare this License Agreement terminated, in which event Licensee shall immediately pay the City a sum of money equal to the total of: (a) the amount of the unpaid License Fee accrued through the date of termination; and (b) any other amount necessary to compensate the City for all damages proximately caused by Licensee's failure to perform its obligations under the License Agreement.

15. **Cure By The City.** In the event of any default of this License Agreement by Licensee, the City may at any time, after notice, cure the default for the account of and at the expense of the Licensee. If the City is compelled to pay or elects to pay any sum of money or do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney's fees in instituting, prosecuting, or defending any action to enforce the City's rights under this Agreement, the sums so paid by the City, with all interest, costs and damages, shall be deemed to be additional fees and shall be due from the Licensee to the City on the first day of the month following the date the respective expenses were incurred.

16. **Termination.**

16.1 **By City.** This License Agreement may be terminated by the City, without penalty to City, under the following circumstances:

- a. Licensee defaults pursuant to paragraph 14 of this License Agreement;
or
- b. City determines, in its sole and absolute discretion, that the Tower is structurally unsound, including but not limited to age of structure, damage, or destruction of all or part of the Tower from any source, or factors relating to condition of the Tower; or
- c. Licensee abandons the Antennae Facilities and licensed Property; or
- d. City decides, in its sole and absolute discretion and for any reason whatever, to discontinue the use of the Tower, providing Licensee is given twelve (12) month prior written notice.

- e The Tower is altered, damaged, or destroyed, pursuant to paragraph 18 of this License Agreement.
- f The Tower and/or Property is taken by eminent domain pursuant to paragraph 19 of this License Agreement.

16.2 **By Licensee.** This License Agreement may be terminated by the Licensee, without penalty to Licensee, under the following circumstances:

- a. Licensee is unable to obtain or maintain any license, permit, or other governmental approval necessary for the construction and/or operation of the Antennae Facilities or Licensee's business; or
- b. City defaults in the performance of any material covenant or condition of this License Agreement and does not cure such default within thirty (30) days after written notice from Licensee specifying the default unless, however, the nature of the default is such that it cannot, in the exercise of reasonable diligence, be remedied within thirty (30) calendar days, in which case the City shall have such time as is reasonably necessary to remedy the default; or
- c. Licensee determines it no longer requires the use of the Tower and Property for its purposes after twelve (12) months written notice to the City. Licensee shall be liable for all License Fees and other enumeration owed the City up to the expiration of the twelve (12) month notice period; or
- d. The Tower is altered, damaged, or destroyed, pursuant to paragraph 18 of this License Agreement.
- e. The location of the concrete equipment pad and utilities cabinet is cost prohibitive, pursuant to paragraph 8.1 of this License Agreement.
- f. The Tower and/or Property is taken by eminent domain pursuant to paragraph 19 of this License Agreement.

16.3 Upon termination of this License Agreement, for any reason, the City, at its sole and absolute discretion, may require the Licensee to remove its equipment, personal property, and Antennae Facilities from the Tower and Property within thirty (30) days of written notice from the City to remove such items, and Licensee shall repair any damage to the Tower and Property caused by removal of its equipment, normal wear and tear excepted; all at Licensee's sole cost and expense. Any such property or facilities which are not removed within said thirty (30) day period, shall automatically become the property of the City and Licensee shall be fully liable to the City for

any costs incurred by the City to remove any equipment, personal property, and Antennae Facilities, not removed by Licensee.

16.4 Notice of termination pursuant to this paragraph shall be given in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice. All License Fees paid prior to said termination date shall be retained by the City. Upon such termination, this License Agreement shall become null and void and the parties shall have no further obligations to each other, unless otherwise provided by this License Agreement.

17. **Fitness for Use.** The City makes no warranties or representations as to the fitness of the Property or Tower for the uses intended by the Licensee, whatsoever. Furthermore, the City does not warrant or guarantee that the use or zoning of surrounding properties will not be of such a nature that could interfere with Licensee's use of the Tower and Property during the term of this License Agreement.

18. **Alteration, Damage, or Destruction.** If the Tower, or any portion thereof, is altered, destroyed, or damaged so as to materially hinder effective use of the Antennae Facilities through no fault or negligence of Licensee or City, Licensee or City may elect to terminate this License Agreement upon thirty (30) days written notice to the other party. In such event, Licensee shall promptly remove the Antennae Facilities from the Tower and Property. This License Agreement (and Licensee's obligation to pay the License Fee) shall terminate upon Licensee's fulfillment of the obligations set forth in the preceding sentence, at which termination Licensee shall be entitled to the reimbursement of any License Fees prepaid by Licensee. The City shall have no obligation to repair any damage to any portion of the Tower and Property.

19. **Condemnation.** In the event the Tower and/or the Property is taken by eminent domain, this License Agreement shall terminate as of the date title to the Tower and/or Property vests in the condemning authority. In the event a portion of the Property is taken by eminent domain, either party shall have the right to terminate this License Agreement as of said date of title transfer, by giving thirty (30) days written notice to the other party. In the event of any taking under the power of eminent domain, Licensee shall not be entitled to any portion of the reward paid for the taking and the City shall receive the full amount of such award. Licensee hereby expressly waives any right or claim to any portion thereof although all damages, whether awarded as compensation for diminution in value of the Tower and/or Property, shall belong to the City. Licensee shall have the right to claim and recover from the condemning authority, but not from the City, unless the City is the condemning authority, such compensation as may be separately awarded or recoverable by Licensee on account of any and all damage to Licensee's business and any costs or expenses incurred by Licensee in moving/removing its equipment, personal property, Antennae Facilities, and improvements.

20. **Indemnification.** City and Licensee each indemnify the other against, and hold the other harmless from any and all costs (including reasonable attorney's fees and expenses, through all appellate proceedings) and claims, actions, damages, obligations, liabilities and liens which arise

out of (a) the breach of this License Agreement by the indemnifying party; and (b) the use and/or occupancy of the Tower and Property by such indemnifying party. The indemnity shall not apply to any claims, actions, damages, obligations, liabilities and liens arising from the negligence or intentional misconduct of the indemnified party and shall survive the termination of this License Agreement.

The indemnification provided shall obligate the indemnifying party to defend at its own expense or to provide for such defense, at the option of the indemnified party, of any and all claims of liability and all suits and actions of every name description that may be brought against the indemnified party or its employees or officers, which may result from the obligations performed by the indemnifying party pursuant to this License Agreement. In all events the indemnified party shall be permitted to choose legal counsel of its sole choice, the fees for which shall be reasonable and subject to and included with the indemnification provided herein.

21. **Insurance.** During the term of the License Agreement, the Licensee shall maintain in full force and effect, and at its sole cost and expense, the following types and limits of insurance:

21.1 Worker's Compensation insurance which meets applicable statutory requirements, and Employer's Liability insurance with limits of One Hundred Thousand Dollars (\$100,000) for each accident.

21.2 Commercial General Liability insurance with limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence.

21.3 Automobile Liability insurance covering all owned, hired and non-owned vehicles in use by Licensee, its employees and agents, with personal protection insurance, if applicable, to comply with the provisions of state law, with limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence.

21.4 At the start of and during the period of any construction, builder risk insurance, or an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the Antennae Facilities. Upon completion of the installation of the Antennae Facilities, Licensee shall substitute for the foregoing insurance, insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Antennae Facilities, at limits deemed appropriate to Licensee. The amount of insurance, at all times, shall be representative of the insurable values installed or constructed.

22. **Insurance Administration.**

22.1 **Occurrence Basis.** All policies shall be written on an occurrence and not a claims-made basis.

22.2 **Coverage Amounts.** The coverage amount set forth above may be met by

a combination of underlying and umbrella policies so long as, in combination, the limits equal or exceed those stated.

22.3 Additional Insured. All policies, except for property/builder's risk and worker's compensation policies, shall name the City as an additional insured, as the City's interests may appear from time to time. Each policy which is to be endorsed to add the City as an additional insured, shall contain Separation of Insureds wording as follows:

"Except with respect to the Limits of Insurance and any rights or duties specifically assigned to the first Named Insured, this insurance applies separately to each insured against whom claim is made or "suit" is "brought".

22.4 Evidence of Insurance. Certificates of insurance for each insurance policy required to be obtained by the Licensee in compliance with this paragraph shall be filed and maintained with the City annually during the term of the License Agreement or filed more frequently at such time Licensee changes its insurance policies. Licensee shall immediately advise the City of any claim or litigation that may result in liability to the City.

22.5 Cancellation of Policies of Insurance. All insurance policies maintained pursuant to this License Agreement shall contain a thirty (30) day notice of cancellation in the event policies are canceled or non-renewed.

22.6 Insurance Companies. All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Florida, or surplus line carriers on the State of Florida Insurance Commissioner's approved list of companies qualified to do business in the State of Florida.

22.7 Deductibles. Licensee agrees to indemnify and save harmless the City from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this License Agreement.

22.8 Contractors. Licensee shall require that each and every one of its contractors, and their subcontractors, who perform work on the Tower and Property, carry, in full force and effect, worker's compensation, commercial general liability and automobile liability insurance coverages of the type which Licensee is required to obtain under the terms of paragraph 21 above, with appropriate limits of insurance.

23. Hazardous Substance Indemnification.

23.1 Licensee represents and warrants that its use of the Tower and Property will not generate any hazardous substance and that it will not, in violation of any applicable law or regulation, store or dispose on or near the Tower and Property nor transport to or near the Tower and Property,

any hazardous substance. Licensee further agrees to hold the City harmless from and indemnify it against any release by Licensee and its employees, agents, and contractors of any such hazardous substance and any damage, loss, or expense or liability resulting from such release, including all reasonable attorney's fees, costs, and penalties incurred as a result thereof, through all appellate proceedings, except any release caused by the negligence of the City's employees or duly authorized agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local environmental law, regulation, or rule presently in effect or promulgated in the future, as such laws, regulations, or rules may be amended, from time to time, and it shall be interpreted to include, but not be limited to, any substance which, after release into the environment, will, or may reasonably be anticipated to, cause sickness, death or disease.

23.2 City represents and warrants that its use of the Tower and Property will not generate any hazardous substance and that it will not, in violation of any applicable law or regulation, store or dispose on or near the Tower and Property nor transport to or near the Tower and Property, any hazardous substance. Licensee further agrees to hold the City harmless from and indemnify it against any release by City and its employees, agents, and contractors of any such hazardous substance and any damage, loss, or expense or liability resulting from such release, including all reasonable attorney's fees, costs, and penalties incurred as a result thereof, through all appellate proceedings, except any release caused by the negligence of the Licensee's employees or duly authorized agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state, or local environmental law, regulation, or rule presently in effect or promulgated in the future, as such laws, regulations, or rules may be amended, from time to time, and it shall be interpreted to include, but not be limited to, any substance which, after release into the environment, will, or may reasonably be anticipated to, cause sickness, death or disease.

24. **Acceptance of Tower and Property.** Upon submitting the Site Plan pursuant to paragraph 8.1 of this Agreement, the Licensee accepts the Tower and Property in the condition existing as of the Commencement Date. The City makes no representation or warranty with respect to the condition of the Tower and Property and the City shall not be liable for any latent or patent defects in the Tower and Property.

25. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to the CITY, to: City Manager
City of Cocoa
603 Brevard Avenue

Cocoa, Florida 32922
Phone: 407-639-7551
Facsimile: 407-639-7575

With a copy to: Amari, Theriac & Eisenmenger, P.A.
ATTN: Richard S. Amari, Esq.
P.O. Box 1807
Cocoa, Florida 32923-1807
Phone: 407-639-1320
Facsimile: 407-639-6690

If to the Licensee, to:

American Portable Telecom, Inc.
Real Estate Department
P.O. Box 31793
Chicago, IL 60631-0793
(813) 663-1000

With a copy to: APT
5907 Hampton Oaks Pkwy.
Suite B
Tampa, Florida 33610
(813) 663-1000

Either party hereto may change the address at which it receives written notices by so notifying the other party hereto in writing.

26. **Assignment.** Licensee may not assign this License Agreement without the prior written consent of the City, provided, however, approval shall not be unreasonably withheld or delayed. Any assignee approved by the City shall be required to execute this License Agreement and assume the duties and obligations of Licensee arising under this License Agreement. Any assignment shall not be deemed a waiver of any provision of this License Agreement or a release of Licensee from performance by Licensee of its obligations hereunder. Nothing in this License Agreement shall preclude the City from licensing other space for communications equipment to any person or entity which may be in competition with Licensee or any other party.

27. **Miscellaneous.**

27.1 The City and Licensee represent that each, respectively, has full right, power and authority to execute this License Agreement.

27.2 This License Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of, or amendment to, this License Agreement must be in writing and executed by both parties.

27.3 This License Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any state action shall be Brevard County, Florida. Venue for any federal action shall be Orlando, Florida.

27.4 If any term of this License Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this License Agreement, which shall continue in full force and effect.

27.5 City and Licensee each represent that they have not been represented by a real estate broker or other agent in this transaction. Each party shall indemnify and hold the other harmless from any claims for commission, fee or other payment by such broker or any other agent claiming to have represented a party herein.

27.6 The parties agree that they both have shared equally in drafting this License Agreement and no party should be favored or disfavored regarding the interpretation of this License Agreement in the event of a dispute between the parties.

27.7 Notwithstanding anything herein to the contrary, it is agreed by the City and the Licensee that under no circumstance shall the City be liable to the Licensee for any claim by the Licensee for any loss of revenue resulting from either the City's use, maintenance, and repair of the Tower, the City's or Licensee's termination of this License Agreement pursuant to paragraph 16.1 herein, or any act of God.

28. **No Joint Venture.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

29. **Attorney's Fees.** In the event of any litigation or arbitration arising out of this License Agreement, the prevailing party shall be entitled to an award of its reasonable attorney's fees and court costs incurred in such actions, through all appellate proceedings.

30. **Counterparts.** This License Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be considered an original agreement; but such counterparts shall together constitute but one and the same instrument.

31. **Licensee's Due Care.** Licensee shall at all times exercise due care and shall install, operate, maintain, and repair the Antennae Facilities using commonly accepted methods and

devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public or damage to the Tower and Property. The Antennae Facilities shall be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

32. **Agreement not Recordable.** Neither this License Agreement nor any notice of it shall be recorded in any public records.

33. **Sovereign Immunity.** Nothing contained herein shall be deemed a waiver, by either party, of the City's right to sovereign immunity or other limitations imposed by Section 768.28, *Florida Statutes*.

34. **Waiver.** Failure of the one party to insist upon performance by the other party of any provision of this License Agreement within any time period shall not act as a waiver of the one party's right to later claim a failure to perform on the part of the other party.

35. **Right to Refuse Admission to Property and to Eject.** City reserves the right to refuse admission to the Property to any person not known by City or properly identified; to eject any person from the Property whose conduct may tend to be harmful to the safety and interests of the Property, any Licensee and the property thereon; to close any part of the Property during any riot or other commotion where person or property may be impaired.

THIS LICENSE AGREEMENT has been executed by the parties effective the day and year the last party hereto has executed this document.

WITNESS:

CITY OF COCOA, FLORIDA (CITY):



Print Name: BRADLY ROGER BETTEN, SR.



F. TERRY SEAWELL, City Manager

Date: _____

EXHIBIT "1"

LEGAL DESCRIPTION

Real property, situated in the City of Cocoa, Brevard County, Florida, legally described as follows:

Township 24 South, Range 36 East, Section 33

Dixon's Addition to Cocoa, Lot 36, including 15 feet of vacated alley between Lots 36 & 35, excluding road Right of Way.

WITNESSES

Kim Ragle
Print Name: Kim Ragle

Cheryl L. Schmelzer
Print Name: CHERYL L. SCHMELZER

R:\COCOA\AAG\AGREE\license agreement for wireless antennae - final draft.wpd

APT TAMPA/ORLANDO, INC.
(LICENSEE):

By: Terry R. McDowell
Print Name/Title: TERRY R. McDOWELL
DIRECTOR - ENGINEERING & OPERATIONS

Date: 8-4-97