

ORDINANCE 12-42

COUNCIL ITEM 10H
DATE: 7/23/12

AN ORDINANCE AUTHORIZING THE CITY MANAGER OF THE CITY OF PORT ST. LUCIE TO ENTER INTO A SITE LEASE AGREEMENT BETWEEN THE CITY OF PORT ST. LUCIE AND DYNAMIC TOWERS INC; PROVIDING AN EFFECTIVE DATE

THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. The City Manager of the City of Port St. Lucie is hereby authorized and directed to enter into a Site Lease Agreement between the City of Port St. Lucie and Dynamic Towers Inc, for a telecommunication tower located at Apache Avenue Park; to be substantially in the form of the Lease Agreement attached hereto as Exhibit "A" and by reference incorporated herein.

Section 2. This Ordinance shall become effective ten (10) days after its final adoption.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this ____ day of _____, 2012.

CITY COUNCIL
CITY OF PORT ST. LUCIE

BY: _____
JoAnn M. Faiella, Mayor

ATTEST:

Karen A. Phillips, City Clerk

APPROVED AS TO FORM: _____
Roger G. Orr, City Attorney

EXHIBIT "A"
LEASE AGREEMENT

CELL TOWER SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT ("Lease") made on _____ day of _____, 2012, between the CITY OF PORT ST. LUCIE, a Florida municipal corporation (hereinafter referred to as "CITY"), and DYNAMIC TOWERS INC., a Florida corporation, (hereinafter referred to as "DTI").

WITNESSETH

That CITY, for and in consideration of the restrictions and covenants herein contained, hereby leases to DTI and DTI hereby agrees to lease from CITY certain ground space located within Tract B, Port St. Lucie Section 8, which consists of park property known as "Apache Avenue Park" in the City of Port St. Lucie. The leased premises ("the Ground Space"), is more particularly described as follows:

A PARCEL OF LAND BEING A PORTION OF TRACT "B", PORT ST. LUCIE SECTION EIGHT, AS RECORDED IN PLAT BOOK 12, PAGE 38 OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE CENTERLINE OF RIGHT-OF-WAY OF S.W. APACHE AVENUE (60 FOOT PUBLIC RIGHT-OF-WAY) AND CENTERLINE OF RIGHT-OF-WAY OF S.W. ADVANA STREET (60 FOOT PUBLIC RIGHT-OF-WAY), AS SHOWN ON SAID PORT ST. LUCIE SECTION EIGHT;

THENCE ON A PLAT BEARING OF N90°00'00"W ALONG THE CENTERLINE OF RIGHT-OF-WAY OF SAID S.W. APACHE AVENUE, A DISTANCE OF 824.00 FEET TO A POINT ON THE CENTERLINE OF RIGHT-OF-WAY OF S.W. COCOA STREET (60 FOOT PUBLIC RIGHT-OF-WAY);

THENCE N00°00'00"W ALONG THE CENTERLINE OF RIGHT-OF-WAY OF SAID S.W. COCOA STREET, A DISTANCE OF 540.00 FEET TO A POINT OF CURVATURE OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST;

THENCE N90°00'00"E A DISTANCE OF 72.73 FEET;

THENCE N00°00'00"E A DISTANCE OF 32.25 FEET TO THE POINT OF BEGINNING;

THENCE N30°00'00"W A DISTANCE OF 30.00 FEET;

THENCE N60°00'00"E A DISTANCE OF 100.00 FEET;

THENCE S30°00'00"E A DISTANCE OF 30.00 FEET;

THENCE S60°00'00"W A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING;

SAID PARCEL OF LAND SITUATE WITHIN ST. LUCIE COUNTY, FLORIDA, CONTAINING 3,000.00 SQUARE FEET, MORE OR LESS.

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

1. Leased Premises and Permitted Uses

CITY hereby leases to DTI the Ground Space, a portion of the Apache Avenue Park property (the entirety of CITY's property is hereinafter referred to as the "Land"), which is more specifically described above, together with a non-exclusive easement (the "Easement") over, under and across the Land for (i) reasonable access to the Ground Space extending from the nearest public right-of-way and (ii) in the discretion of DTI, source of electric and telephone facilities extending to the Ground Space from the nearest public electric and telephone utility easements (the Ground Space and Easement are hereinafter collectively referred to as the "Property"). The Ground Space will be used by DTI for the purpose of installing, removing, replacing, maintaining and operating, at its sole expense, a wireless communications facility (the "Facility"), composed of a 150' stealth tower structure, and uses incidental thereto. DTI will use the Property in a manner that will not unreasonably disturb the quiet use and enjoyment of Apache Avenue Park by the park visitors and neighboring community.

DTI, at its expense, was granted the right to survey said Property which is legally described on said survey on Exhibit A, attached hereto and made a part hereof, and shall control in the event of discrepancies between it and the above legal description. CITY granted DTI the right to take measurements, make calculations, and to note other structures, setbacks, uses, or other information as deemed by DTI to be relevant and pertinent, as such information relates to City's park property, leased or otherwise abutting or surrounding the Property. To the extent the CITY owns adjacent lands, the CITY grants DTI the right to reasonable use of the adjoining and adjacent lands, as may be necessary, for achieving the construction, installation, maintenance, and operation of the Facility. However, DTI shall provide at least a forty-eight (48) hour advance, written notice or e-mail transmission to the CITY'S Parks and Recreation Department for coordination and approval in the CITY'S sole discretion of any proposed use or disturbance of the non-leased adjoining and adjacent lands.

2. Initial Term

The Initial Term of this Site Lease Agreement shall be for a period of ten (10) years commencing on the date the Lease is fully executed. Lease must be fully executed within sixty (60) days of City Council approval.

3. Renewal Terms

This Lease shall automatically renew for three (3) five-year terms (each being a "Renewal Term"), unless DTI provides CITY with written notice, by certified mail, at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term, of DTI's intention not to renew this Lease; or unless CITY, in its sole discretion, provides DTI with written notice, by certified mail, at least one hundred twenty (120) days prior to the expiration of the Initial Term or any Renewal Term, of CITY'S intention not to renew this Lease.

4. Rent

Rent will commence on the Rent Start Date (as hereinafter defined). The first year's total annual rent shall be EIGHTEEN THOUSAND DOLLARS AND NO CENTS (\$18,000.00) and payable in advance in equally monthly installments (\$1,500.00/month) beginning on the Rent Start Date and on the first day of each month thereafter. Additionally, DTI agrees to make a one time capital contribution to the City of Port St. Lucie in the amount of Sixty-Five Thousand Dollars (\$65,000.00.) This amount shall be paid prior to construction of the tower. The "Rent Start Date" shall commence upon execution of the Lease Agreement. Rent payments shall be sent to the City of Port St. Lucie, Attn: Finance Department, 121 S.W. Port St. Lucie Boulevard, Port St. Lucie, Florida, 34984, or at such other place and to such other person as the CITY may from time to time designate in writing.

During the Initial Term and each Renewal Term, annual rent shall be increased on each anniversary of the Rent Start Date by an amount equal to four percent (4%) of the annual rent for the previous year.

5. Title and Quiet Possession

CITY represents and agrees that (i) it is the owner of the leased premises; (ii) it has the right to enter into this Lease; (iii) the person signing this Lease has the authority to sign on behalf of the CITY; (iv) DTI is entitled to access the Property at all times and to the quiet possession of the Property throughout the Initial Term and each Renewal Term so long as DTI is not in default beyond the expiration of any cure period; (v) it will maintain the Property, in good condition, reasonable wear and tear excepted; and (vi) there are no other liens, judgments or impediments of title on the Property or affecting CITY's title to the same and that there are no covenants, easements, restrictions or agreements binding on CITY or the Property which prevent DTI's permitted use of the Property. DTI's access to the Property "at all times" means that DTI's access shall be seven (7) days a week, twenty-four (24) hours a day, three hundred sixty-five (365) days a year. CITY agrees to provide DTI, contemporaneous with the

signing of this Lease, such access information, cards or keys as may be necessary to grant access.

6. Assignment and Subleasing

DTI will not assign or transfer this Lease without the prior written consent of CITY, which consent will not be unreasonably withheld, delayed or conditioned; provided; however, DTI may assign this Lease without CITY's prior written consent to DTI's principal(s), affiliates, or any subsidiary of DTI, its principal(s) or affiliates, to any entity that acquires all or substantially all of DTI's assets in the market defined by the Federal Communications Commission in which the Ground Space is located by reason of a merger, acquisition or other business reorganization. DTI may sublet the Ground Space without CITY's prior written consent but shall remain as the Lessee and fully liable to CITY under this Lease.

7. Notices

All notices must be in writing and are effective when deposited in the U.S. Mail, certified (return receipt requested) and postage prepaid, or when sent via overnight delivery, to the address set forth below, or as otherwise provided by law.

CITY: City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984
Attn: City Manager

With copy to: City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5099
Attn: City Attorney

With copy to: Parks and Recreation Department
City of Port St. Lucie
2195 SE Airoso Boulevard
Port St. Lucie, FL 34984
Attn: Director of Parks and Recreation

DTI: Dynamic Towers Inc.
575 NW Mercantile Place #104
Port St. Lucie, FL 34986
Attn: Michael F. Haggerty, Director

8. Improvements

DTI shall, at DTI's expense, make such improvements on the Ground Space, as it deems necessary from time to time for the operation of the Facility, including the right to replace, repair, add or otherwise modify its equipment or any portion thereof, whether the

equipment is specified or not on any exhibit attached hereto, during the term of this Lease. A security fence consisting of chain link construction or similar but comparable construction will be placed around the perimeter of the Ground Space at the expense of DTI. DTI will also provide and install public awareness signage concerning the property usage and contact information. Such signage content will be provided to the CITY'S Parks and Recreation Department for review and approval and shall be in compliance with any and all applicable federal, state and local requirements. CITY agrees to cooperate with DTI with respect to obtaining any required zoning approvals and other governmental permits for the cell tower site and such improvements.

Within ninety (90) days after termination or expiration of this Lease, DTI will remove its equipment and improvements (excluding footings, landscaping or plant life) and will restore the Ground Space to the condition existing on the commencement of this Lease, except for ordinary wear and tear. CITY agrees and acknowledges that all of the equipment, fixtures and personal property of DTI shall remain the personal property of DTI and DTI shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law. If such time for removal causes DTI to remain on the Ground Space after termination of this Lease, DTI shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of its equipment and improvements and all personal property is completed.

DTI acknowledges that it may be necessary to remove and replace the landscape and fencing on the Ground Space in the future due to the existing ground conditions. DTI agrees to pay for the cost of any removal and replacement of the landscape and fencing on the Ground Space at the sole discretion of the CITY.

9. Compliance with Laws.

DTI will comply with all applicable laws relating to its possession and use of the Ground Space, including, without limitation, posting requirements of the Federal Communications Commission.

10. Removal.

A. Obsolete and unused towers. Any obsolete or unused tower shall be removed after twelve (12) months of non-use. A removal bond irrevocable letter of credit equal to the following shall be required prior to obtaining final site development permits

1. Towers up to 150 feet in height = \$15,000
2. Towers 151 to 200 feet in height = \$20,000

3. Towers 201 to 300 feet in height= \$25,000

11. Interference

DTI will cure technical interference problems with other equipment located on the Land prior to the effective date of this Lease or any equipment that becomes attached to the Land at any future date when DTI desires to add additional equipment to the Property. Likewise, CITY will not permit the installation of any future equipment, upgrades or enhancements by others, which results in unreasonable technical interference problems with DTI's then existing equipment. CITY and DTI acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this paragraph and therefore, DTI shall have the right to specifically enforce the provisions of this paragraph in a court of competent jurisdiction.

12. Utilities

CITY represents that those utilities adequate for DTI's use of the Ground Space are available. DTI shall pay for all utilities used by DTI at the Ground Space. CITY will cooperate with DTI's efforts to obtain utilities from any location provided by CITY or the servicing utility.

13. Termination

DTI may terminate this Lease at any time within sixty (60) days written notice to CITY without further liability if DTI does not obtain all permits, or other approvals (collectively "approval") required from any governmental authority or any easements required from any third party to operate the Facility, or if any such approval subsequently is canceled, expires or is withdrawn or terminated, or if CITY fails to have proper ownership, or appropriate clear title to the Property or authority to enter into this Lease, or if DTI determines that it will be unable to use the Property for its intended purpose. City may terminate this Lease at any time by providing DTI with 120 days advance written notice. Upon termination, CITY shall retain all prepaid rent.

14. Default

If either party is in default under this Lease for a period of (i) twenty (20) days following receipt of written notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (ii) thirty (30) days following receipt of written notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Lease. If the non-monetary default may not reasonably be cured within a thirty (30) day period, this Lease may not be terminated if the defaulting party commences action to cure the default within such thirty (30) day period and proceeds with due diligence to

fully cure the default.

Notwithstanding anything in this Lease to the contrary, in the event of a default by CITY which results in DTI being unable to operate the Facility for a period of time exceeding CITY's initial thirty (30) day cure period, the rent shall abate for the period of time after expiration of the initial thirty (30) day cure period until the earlier of such date as CITY has cured the non-monetary default or DTI is able to continue operating the Facility; provided, further, that if DTI is unable to operate the Facility for more than Ninety (90) days, DTI shall have the right to immediately terminate this Lease. Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease.

15. Hazardous Substances

CITY represents that it has no knowledge of any substance, chemical or waste on the Land that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. DTI shall not introduce or use any such substance on the Property in violation of any applicable law.

16. Insurance

DTI will maintain comprehensive general liability and property liability insurance with minimum liability limits of not less than ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) for injury to or death of one or more persons in any one occurrence and not less than ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) for damage or destruction of property in any one occurrence, with not less than THREE MILLION DOLLARS AND NO CENTS (\$3,000,000.00) general aggregate insurance coverage. All such insurance policies shall be issued by companies approved by the CITY and licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless the CITY is given at least thirty (30) days prior written notice of such cancellation or modification. DTI shall provide the CITY certificates showing such insurance to be in place and showing the CITY as an additional named insured under the policies.

DTI shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in full force for the duration of this Lease Agreement and any extension or renewal thereof. If insurance certificates are scheduled to expire during the term of this Lease Agreement, DTI shall be responsible for submitting new or renewed insurance certificates to the

CITY at a minimum of thirty (30) days in advance of such expiration. If the insurance policies are not kept in full force during the entire term of this Lease Agreement or any extension thereof, the CITY may procure the necessary insurance policies and DTI shall repay to CITY the full amount of the premium(s) paid by the CITY for such insurance policy procurement. Said repayment shall be provided to the CITY as an additional rent installment for the year following the date on which the premiums were paid by the CITY.

17. Indemnification and Hold Harmless

DTI shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses, or damages, including attorney fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Lease Agreement by DTI or its employees, agents, servants, partners, principals, subcontractors, guests, invitees, licensees, or assignees. DTI shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The indemnities provided by DTI under this Lease Agreement will not extend or apply to any claims, damages, suits or actions caused by or resulting from the sole negligence or willful misconduct of the CITY, or its officers, employees, agents, contractors, or instrumentalities. DTI expressly understands and agrees that any insurance protection required by this Lease Agreement or otherwise provided by DTI shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

18. Taxes

DTI shall be responsible for making any necessary returns for and paying any and all property taxes separately levied or assessed against its improvements on the Ground Space. DTI shall reimburse the CITY, as additional rent, any documented increases in real estate taxes levied against the Property which are directly attributable to the improvements constructed by DTI and are not separately levied or assessed against DTI's improvements by the taxing authority. CITY shall provide to DTI a copy of any notice, assessment or billing relating to real estate taxes for which DTI is responsible under this Lease within thirty (30) days of receipt of the same by CITY. DTI shall have no obligation to make payment of any real estate taxes until DTI has received the notice, assessment or billing relating to such payment as set forth in the

preceding sentence. DTI shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any real estate tax assessment or billing for which DTI is wholly or partly responsible for payment under this Lease. CITY shall reasonably cooperate with DTI in filing, prosecuting and perfecting any appeal or challenge to real estate taxes as set forth in the preceding sentence, including but not limited to, executing any consent to appeal or other similar document.

19. Recording

CITY and DTI agree that this Lease Agreement will be forwarded for recording or filing in the appropriate office of St. Lucie County. CITY and DTI agree to take such actions as may be necessary to permit such recording or filing. DTI shall be responsible for the recording costs. DTI, at DTI's option and expense, may obtain title insurance on the Ground Space leased herein. CITY shall cooperate with DTI's efforts to obtain a title insurance policy by executing documents, or at DTI's expense, obtain requested documentation as required by the title insurance company. If title is found to be defective, CITY shall attempt to cure defects in title. At DTI's option, should the CITY fail to provide requested documentation within thirty (30) days of CITY's receipt of DTI's written request, or fail to provide the Non-Disturbance instrument(s), DTI may withhold and accrue the monthly rental until such time as the requested document(s) are received, or if title is found to be defective and CITY has failed to cure the defects within a reasonable period, DTI may cancel this Lease or cure the title defect at CITY's expense utilizing the withheld payments. Any such notice of termination shall cause this Lease Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease.

20. Co-Location

DTI shall design the 150' stealth tower structure and facility to allow for at least three (3) other telecommunications providers. DTI shall design the tower and facility to allow for at least three other telecommunications providers. The availability of the tower shall be subject to the structural limitations as may be imposed by current or future regulations. DTI shall pay to City twenty-five percent (25%) of all rental revenues received from any co-locator. DTI shall provide copies of all co-locate agreements to the City of Port St. Lucie for verification of co-locate revenue share due to the City. Said agreements shall be provided prior to pulling a building permit for the additional provider. Failure to provide said documentation at any time

during the lease term shall constitute a default. DTI shall be entitled to recoup from any co-locator, a pro rata share of the capital cost of construction of the tower. The City shall not share this capital contribution. City acknowledges and agrees that the continuity of DTI's services is of paramount importance. City at all times shall exercise the greatest care and judgment to prevent damage to DTI's services. City agrees that DTI may cause its engineers to verify by frequency search that the proposed additional provider will not interfere with the radiating or receiving facilities of DTI.

21. Sale of Land

If CITY should, at any time during the term of this Lease Agreement, decide to sell all of its Land, which includes the leased Property, to a purchaser other than DTI, such sale shall be under and subject to this Lease and DTI's rights hereunder, unless both parties agree to terminate the Lease.

22. Casualty

If DTI's Facility or improvements are damaged or destroyed by fire or other casualty, DTI shall not be required to repair or replace the Facility or any of DTI's improvements made by DTI. DTI shall not be required to expend funds for repairs that are more than fifty-percent (50%) of the replacement value of the Facility or any improvements. Additionally, if completion of the repairs is not possible within forty-five (45) days following the date of the damage or destruction, DTI may terminate this Lease by giving thirty (30) days written notice to CITY. Termination shall be effective immediately after such notice is given. Upon such termination, this Lease shall become null and void and CITY and DTI shall have no other further obligations to each other, other than DTI's obligation to remove DTI's property as hereinafter provided.

23. Inspections

CITY shall permit DTI or DTI's employees, agents and contractors access to the Property by DTI or its employees, agents and contractors to conduct inspections on the Ground Space (including Phase I and Phase II audits), radio frequency tests and such other tests, investigations and similar activities as DTI may deem necessary, at the sole cost of DTI. The scope, sequence and timing of the inspections shall be at the sole discretion of DTI; upon reasonable notification to CITY and Director of the Parks and Recreation Department, or his designee, the inspections may be commenced during normal business hours, for the duration of the Lease. DTI and its employees, agents and contractors shall have the right to bring the necessary vehicles and equipment onto the Property and any of the CITY's surrounding property to conduct such tests, investigations and similar activities.

DTI shall indemnify and hold CITY harmless against any loss of damage for personal injury or physical damage to the Property, CITY's surrounding property or the property of third parties resulting from any such tests, investigations and similar activities. Upon written request, DTI shall furnish to CITY copies of the environmental findings. Should DTI exercise this option, DTI at its expense shall restore the Land to its original condition for any changes caused by said testing excluding normal wear and tear.

24. Enforcement

Any and all rights and remedies of the CITY under this Lease Agreement shall be cumulative and shall not be exclusive of any other rights and remedies provided to CITY under applicable law.

25. Holdover

If DTI, with the consent of the CITY, remains in possession of the demised premises after the expiration of the term of this Lease Agreement or any Renewal Terms and if the CITY and DTI have not executed an express written agreement as to such holding over, then such occupancy shall be a tenancy from month to month at a monthly rental fee of the current rent, and such payments shall be made as herein provided. In the event of such holding over, all of the terms of this Lease Agreement including the payment of all charges owing hereunder other than rent shall remain in full force and effect on said month to month basis.

26. Governing Law

This Lease Agreement, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida and venue of any proceedings hereunder shall be in a court of proper jurisdiction in St. Lucie County, Florida.

27. Additional Provisions

(a) Successors in Interest

This Lease applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Lease.

(b) Mechanic's, Material men's and Other Liens

DTI agrees that it will not permit any mechanic's, material men's, or other liens to stand against the demised premises for work or materials furnished to DTI; it being provided, however, that DTI shall have the right to contest the validity thereof. DTI shall immediately pay any judgment or decree rendered against DTI, with all proper costs and charges, and shall cause any such lien to be released off record without cost to the CITY.

(c) Permits, Regulations & Special Assessments

DTI covenants and agrees that during the term of this Lease Agreement DTI will obtain any and all necessary permits and approvals and that all uses of the demised premises will be in conformance with all applicable laws, including all applicable zoning regulations.

DTI shall pay any and all charges, taxes, or assessments levied against the demised premises and failure to do so will constitute a breach of this Lease Agreement.

(d) Force Majeure

DTI and the CITY shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants and conditions of this Lease Agreement when prevented from so doing by cause or causes beyond DTI's or the CITY's control, excluding filing of bankruptcy; but which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of DTI or the CITY.

(e) If any provision of this Lease is held invalid or unenforceable with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(f) The failure of either party to insist upon strict performance of any of the terms or conditions of this Lease or to exercise any of its rights under the Lease shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Lease, either in law or in equity.

28. Written Agreement

This Site Lease Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by ordinance adopted by the City Council.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY;
SIGNATURE PAGES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the CITY and DTI have caused this Lease Agreement to be executed by their respective and duly authorized officers the day and year first above written.

Signed, sealed and delivered
in the presence of:

**CITY OF PORT ST. LUCIE, a Florida
municipal corporation**

Witness

By: _____
Gregory J. Oravec, City Manager

Print Name

Witness

Print Name

STATE OF FLORIDA)
) ss
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me this ___ day of _____, 2012 by Gregory J. Oravec, as **City Manager of the City of Port St. Lucie, a Florida municipal corporation**, on behalf of the City of Port St. Lucie. He is personally known to me.

Notary Public

(Print Name of Notary)

NOTARY SEAL/STAMP

Notary Public, State of _____

My Commission expires _____

APPROVED AS TO FORM
AND CORRECTNESS

Pam E. Booker
Senior Assistant City Attorney

Signed, sealed and delivered
in the presence of:

DYNAMIC TOWERS INC., a Florida corporation

Robin F. Hampl
Witness

By: Kevin T. Aycock
Kevin T. Aycock, President

Robin F. Hampl
Print Name:

[Signature]
Witness

LIRA WALKER
Print Name:

STATE OF FLORIDA)
) ss
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me this 5 day
of July, 2012, by Kevin T. Aycock as **President of Dynamic Towers Inc., a
Florida corporation.** He is personally known to me or has produced FL DL as
identification.

Robin F. Hampl
Notary Public
Robin F. Hampl
(Print Name of Notary)

NOTARY SEAL/STAMP

Notary Public, State of FLORIDA
My Commission expires 7/10/15



STANDARD PROVISIONS

GENERAL

- A. THESE SPECIFICATIONS AND CONSTRUCTION DRAWINGS ACCOMPANYING THEM DESCRIBE THE WORK TO BE PERFORMED AND THE MATERIALS TO BE FURNISHED FOR THE CONSTRUCTION OF THE CONSTRUCTION SITE.
- B. THE DRAWINGS AND SPECIFICATIONS ARE INTENDED TO BE FULLY EXPLANATORY AND COMPLEMENTARY. HOWEVER, SHOULD ANYTHING BE SHOWN, INDICATED OR SPECIFIED ON ONE AND NOT ON THE OTHER, IT SHALL BE THE SAME AS IF SHOWN AND INDICATED OR SPECIFIED ON BOTH.
- C. THE INTENTION OF THE DOCUMENTS IS TO INCLUDE ALL LABOR AND MATERIALS REASONABLY NECESSARY FOR THE PROPER COMPLETION OF THE WORK AS INDICATED IN THE DOCUMENTS.
- D. THE PURPOSE OF THE SPECIFICATIONS IS TO SUPPLEMENT THE INTENT OF THE DRAWINGS AND TO DESIGNATE A PROCEDURE, TYPE OR QUALITY OF MATERIALS REQUIRED TO COMPLETE THE WORK.
- E. MINOR DEVIATIONS FROM THE DESIGN LAYOUT ARE ANTICIPATED AND SHALL BE CONSIDERED AS PART OF THE WORK, HOWEVER, NO CHANGES THAT ALTER THE CHARACTER OR INTENT OF THE DESIGN WILL BE MADE OR PERMITTED WITHOUT A CHANGE ORDER.

CONTRACTS

- A. THE CONTRACTOR AND EACH SUBCONTRACTOR SHALL BE RESPONSIBLE FOR VERIFICATION OF ALL MEASUREMENTS AT THE SITE BEFORE ORDERING ANY MATERIALS OR PERFORMING ANY WORK. NO EXTRA CHARGE OR COMPENSATION SHALL BE ALLOWED DUE TO DIFFERENCE BETWEEN ACTUAL DIMENSIONS AND DIMENSIONS INDICATED ON THE CONSTRUCTION DRAWINGS. ANY DISCREPANCY IN DIMENSIONS SHALL BE REPORTED IMMEDIATELY FOR CORRECTION BEFORE THE OWNER CPM PROCEEDS WITH THE WORK IN THE AFFECTED AREA.
- B. THE CONTRACTOR, WHEN AWARDING THE CONTRACT, WILL NOT BE ALLOWED ANY EXTRA COMPENSATION BY REASON OF ANY OTHER OR THIRD PARTY CONTRACTOR NOT HAVING FULLY PERFORMED HIS OBLIGATIONS PRIOR TO BEGINNING.
- C. NO REPAIRS OR CORRECTIONS THAT RESULT IN DEFICIENCIES THAT MAY BE DISCOVERED AFTER THE WORK IS COMPLETED WILL BE ACCEPTED AS A REASON FOR ANY FAILURE OR DEFICIENCY ON PART OF THE CONTRACTOR TO REFUTE THE REQUIREMENTS OF THE CONTRACT DOCUMENTS.

STORAGE

- A. DO NOT USE THE EXISTING BUILDING SPACE FOR STORAGE OF TOOLS OR MATERIALS WITHOUT THE OWNER CPM AND/OR BUILDING OWNER APPROVAL.
- B. ALL MATERIALS MUST BE STORED IN A LEVEL AND DRY LOCATION AND MUST BE PROTECTED FROM WEATHER, FLOODING OR OTHER WORK. ANY EQUIPMENT OR MATERIAL STORAGE METHOD MUST MEET ALL RECOMMENDATIONS OF THE MANUFACTURER.

PROTECTION

- A. PROTECT FINISHED SURFACES, INCLUDING LAMBS AND HEADS OF GROUNDINGS USED AS PASSAGeways THROUGH WHICH EQUIPMENT AND MATERIALS WILL PASS.
- B. PROVIDE PROTECTION FOR COMPLETION ROOM SURFACES PRIOR TO ALLOWING EQUIPMENT OR MATERIALS TO BE MOVED OVER SUCH SURFACES.
- C. MAINTAIN FINISHED SURFACES CLEAN, UNMARKED AND SATISFABLY PROTECTED UNTIL JOB SITE IS ACCEPTED BY THE OWNER CPM.

REPAIRS AND REPLACEMENTS

- A. IN EVENT OF DAMAGE, THE CONTRACTOR SHALL PROMPTLY MAKE ALL REPAIRS AND REPAIRS AND AT NO ADDITIONAL COST TO THE OWNER CPM AND/OR BUILDING OWNER.

LEGISLATIVE FACILITIES

- A. TELEPHONE: EACH CONTRACTOR TO PROVIDE HIS OWN TELEPHONE ACCESS AS REQUIRED.
- B. PERMANENT POWER IS COMPLETED. ALL CONTRACTORS MAY PROVIDE SERVICE CONNECTIONS FOR PRODUCTION WORK ONLY. ALL SERVICE CONNECTIONS AND ALL SERVICE CONNECTIONS ARE TO BE PROPERLY STORED DURING NON-WORKING HOURS.

CLEAR UP

- A. THE CONTRACTORS SHALL AT ALL TIMES KEEP THE SITE FREE FROM OBSTRUCTIONS AND DEBRIS. ALL DEBRIS SHALL BE REMOVED BY THE CONTRACTORS AT THE END OF EACH WORKING DAY. ALL DEBRIS SHALL BE REMOVED FROM THE BUILDING, INCLUDING ALL TOOLS, SCRAPING AND ABOUT REPAIRS MATERIALS, AND SHALL LEAVE THE WORK CLEAN AND READY FOR USE.
- B. CONTRACTOR SHALL MAINTAIN EXTERIOR SURFACES AND OTHER AREAS FREE FROM ALL WASTE MATERIALS, SANDS AND OTHER FOREIGN MATTER.
- C. CONTRACTOR SHALL REMOVE ALL WASTE MATERIALS FROM THE WORK AREA IMMEDIATELY UPON COMPLETION OF THE WORK.
- D. REMOVE ALL TRACES OF SPILLED MATERIAL FROM ALL WORK SURFACES.
- E. REMOVE PAINT DROPPINGS, SPOTS, STAINS AND DIRT FROM FINISHED SURFACES.

RELATED DOCUMENTS AND CORRELATIONS

- A. GENERAL CONTRACT, ELECTRICAL, AND ANTENNA DRAWINGS ARE INTERRELATED IN PERFORMANCE OF THE WORK. EACH CONTRACTOR MUST REFER TO ALL DRAWINGS, ALL CORRELATIONS TO BE THE RESPONSIBILITY OF THE GENERAL CONTRACTOR.

SHOP DRAWINGS

- A. CONTRACTORS TO SUBMIT SHOP DRAWINGS AS REQUIRED AND LISTED IN THESE SPECIFICATIONS THROUGH THE GENERAL CONTRACTOR TO THE OWNER CPM FOR APPROVAL.
- B. ALL SHOP DRAWINGS TO BE REVIEWED, CHECKED AND CORRECTED BY GENERAL CONTRACTOR PRIOR TO SUBMITTING TO THE OWNER CPM.

PRODUCTS AND SUBSTITUTIONS

- A. SUBMIT 3 COPIES OF EACH REQUEST FOR SUBSTITUTION. IN EACH REQUEST IDENTIFY THE PRODUCT FABRICATOR OR INSTALLATION METHOD TO BE REPLACED BY THE SUBSTITUTION. INCLUDE RELATED SPECIFICATION SECTION AND DRAWING NUMBER AND COMPLETE IDENTIFICATION SHOWING COMPLIANCE WITH THE REQUIREMENTS FOR SUBSTITUTIONS.
- B. SUBSTITUTIONS SHALL INCLUDE ALL NECESSARY PRODUCT DATA AND CUT SHEET INFORMATION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE OWNER CPM. SUBMIT ACTUAL SAMPLES TO CPM FOR APPROVAL IN LEAD OF CUT SHEETS.

COMPLIANCE

- A. ALL MATERIALS, DESIGN AND WORKMANSHIP SHALL BE IN ACCORDANCE WITH ALL APPLICABLE CODES OF WHICH ARE LISTED BELOW. ORDINANCES, AND ALL OTHER APPLICABLE CODES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE OWNER CPM WITH A CERTIFICATE OF OCCUPANCY (IF REQUIRED) AND OTHER LEGAL DOCUMENTS TO VERIFY SUCH COMPLIANCE. WHERE NO CODES OR ORDINANCES EXIST, THE WORK SHALL COMPLY WITH THE 2007 FLORIDA BUILDING CODE WITH SUPPLEMENT AND A DEPARTMENT DIVISION SHALL BE FORWARDED TO THIS EFFECT.

IT IS THE CONTRACTOR'S RESPONSIBILITY TO VERIFY COMPLIANCE WITH THE GOVERNING CODES AND TO NOTIFY THE OWNER CPM OF ANY DISCREPANCIES PRIOR TO PERFORMING WORK. REFERENCE TO ANY STANDARD OR CODE OF PRACTICE IN THIS SPECIFICATION SHALL BE DEEMED TO MEAN THE LATEST EDITION OF THAT STANDARD OR CODE OF PRACTICE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE OWNER CPM. SUBMIT ACTUAL SAMPLES TO CPM FOR APPROVAL IN LEAD OF CUT SHEETS.

ANSI, AIA, INC. - 2007
2007 FLORIDA BUILDING CODE
BUILDING OFFICIALS & CODE ADMINISTRATORS (POPT ST. LIND)
NATIONAL ELECTRICAL CODE (NEC) WITH LOCAL AMENDMENTS
UNDERWRITERS LABORATORIES APPROVED ELECTRICAL PRODUCTS
AMERICAN INSTITUTE OF STEEL CONSTRUCTION SPECIFICATIONS (AISC)
LIFE SAFETY CODE NFPA - 101-2006
FEDERAL AVIATION REGULATIONS
FLORIDA FIRE PROTECTION CODE 2006

ESSENTIAL AND LICENSES

- A. CONTRACTOR SHALL VERIFY ALL EXISTING UTILITIES BOTH HORIZONTAL AND VERTICAL PRIOR TO START OF CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE OWNER CPM WITH A CERTIFICATE OF OCCUPANCY (IF REQUIRED) AND OTHER LEGAL DOCUMENTS TO VERIFY SUCH COMPLIANCE. WHERE NO CODES OR ORDINANCES EXIST, THE WORK SHALL COMPLY WITH THE 2007 FLORIDA BUILDING CODE WITH SUPPLEMENT AND A DEPARTMENT DIVISION SHALL BE FORWARDED TO THIS EFFECT.
- B. THE CONTRACTOR SHALL BE COMPARED WITH A LICENSE OR CERTAIN COMMUNICATIONS, SUCH AS A CELLULAR PHONE OR A PAGER.
- C. THE CONTRACTOR IS RESPONSIBLE FOR ALL SAFETY INCLUDING BUT NOT LIMITED TO PROTECTION OF ALL SITE PERSONNEL AND THE GENERAL PUBLIC DURING THE ENTIRE SITE CONSTRUCTION. PLACE AND MAINTAIN BARRIERS AND WARNING SIGNS TO PREVENT UNAUTHORIZED ACCESS TO THE CONSTRUCTION AREA. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE OWNER CPM WITH A CERTIFICATE OF OCCUPANCY (IF REQUIRED) AND OTHER LEGAL DOCUMENTS TO VERIFY SUCH COMPLIANCE. WHERE NO CODES OR ORDINANCES EXIST, THE WORK SHALL COMPLY WITH THE 2007 FLORIDA BUILDING CODE WITH SUPPLEMENT AND A DEPARTMENT DIVISION SHALL BE FORWARDED TO THIS EFFECT.

COORDINATION WITH PUBLIC UTILITIES

- A. THE CONTRACTOR SHALL COORDINATE WITH RELEVANT AUTHORITIES THE WORKS THAT ARE TO BE CARRIED OUT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE OWNER CPM WITH A CERTIFICATE OF OCCUPANCY (IF REQUIRED) AND OTHER LEGAL DOCUMENTS TO VERIFY SUCH COMPLIANCE. WHERE NO CODES OR ORDINANCES EXIST, THE WORK SHALL COMPLY WITH THE 2007 FLORIDA BUILDING CODE WITH SUPPLEMENT AND A DEPARTMENT DIVISION SHALL BE FORWARDED TO THIS EFFECT.

INSPECTIONS

- A. THE CONTRACTOR SHALL NOTIFY THE OWNER CPM AT LEAST 24 HOURS IN ADVANCE OF REQUIRED INSPECTIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE OWNER CPM WITH A CERTIFICATE OF OCCUPANCY (IF REQUIRED) AND OTHER LEGAL DOCUMENTS TO VERIFY SUCH COMPLIANCE. WHERE NO CODES OR ORDINANCES EXIST, THE WORK SHALL COMPLY WITH THE 2007 FLORIDA BUILDING CODE WITH SUPPLEMENT AND A DEPARTMENT DIVISION SHALL BE FORWARDED TO THIS EFFECT.
- B. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE OWNER CPM WITH A CERTIFICATE OF OCCUPANCY (IF REQUIRED) AND OTHER LEGAL DOCUMENTS TO VERIFY SUCH COMPLIANCE. WHERE NO CODES OR ORDINANCES EXIST, THE WORK SHALL COMPLY WITH THE 2007 FLORIDA BUILDING CODE WITH SUPPLEMENT AND A DEPARTMENT DIVISION SHALL BE FORWARDED TO THIS EFFECT.

EXPERIMENTAL PROTECTION

- A. NOISE LEVEL: THE CONTRACTOR SHALL ENSURE THAT STATE AND LOCAL REGULATIONS ARE COMPLIED WITH IN REGARD TO NOISE LEVELS PRODUCED BY HIS OR HIS SUB-CONTRACTORS' EQUIPMENT OR METHODS OF CONSTRUCTION.
- B. DISTURBANCE: THE CONTRACTOR SHALL TAKE ALL NECESSARY STEPS TO LIMIT THE OPERATION OF ANY QUIET RESIDENCE THAT IS ADJACENT TO THE CONSTRUCTION SITE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE OWNER CPM WITH A CERTIFICATE OF OCCUPANCY (IF REQUIRED) AND OTHER LEGAL DOCUMENTS TO VERIFY SUCH COMPLIANCE. WHERE NO CODES OR ORDINANCES EXIST, THE WORK SHALL COMPLY WITH THE 2007 FLORIDA BUILDING CODE WITH SUPPLEMENT AND A DEPARTMENT DIVISION SHALL BE FORWARDED TO THIS EFFECT.

DATA CONSULT GENERAL NOTES

- A. THE INSTALLATION SHALL COMPLY WITH IBC FUEL GAS CODE.
- B. THE CONTRACTOR SHALL VERIFY ALL CONDUIT LENGTHS, ROUTING AND PLAN DIMENSIONS AND SHALL IMMEDIATELY NOTIFY CONSTRUCTION MANAGER AND ENGINEER OF ANY DISCREPANCIES.
- C. FOR OTHER THAN BLACK STEEL, EXPOSED GAS PIPING SHALL BE IDENTIFIED BY A YELLOW LABEL MARKED "GAS" IN BLACK LETTERS. THE LABELING SHALL NOT BE SPACED AT INTERVALS NOT EXCEEDING 5 FEET. THE LABELING SHALL BE IDENTIFIED BY THE CONTRACTOR.
- D. PIPING SHALL BE MARKED WITH AN APPROVED PERMANENT IDENTIFICATION BY THE INSTALLER SO THAT THE PIPING SYSTEM SUPPLIED BY EACH VENDOR IS READILY IDENTIFIABLE.

GENERAL NOTES

- A. ANY EXISTING FOOTING, CURB, GUTTERS, WALLS, FLOORS, SERVICES, AND EXISTING FEATURES SHALL BE PROTECTED, MAINTAINED OR RESTORED DURING CONSTRUCTION. SUCH BE EXISTING BEFORE COMMENCEMENT OF OPERATIONS.

AS-BUILT DRAWINGS

- A. THE CONTRACTOR SHALL PREPARE A RED LINED SET OF AS-BUILT DRAWINGS IN THE FORM OF OCCUPANCY TO THE OWNER CPM. SUCH DRAWINGS SHALL BE SIGNED, SEALED, DATED AND PROVIDED WITHIN TWO WEEKS FROM PRACTICAL COMPLETION AND PRIOR TO APPROVAL OF THE CONTRACTOR'S FINAL INVOICE.

PRACTICAL COMPLETION

- A. DOCUMENTATION BY CELLULAR CARRIER BEFORE COMPLETION CAN BE ISSUED INCLUDE:
 1. ALL QUALITY ASSURANCE CHECKLISTS AS OBTAINED IN THE PREVIOUS SECTIONS
 2. WARRANTIES AND MAINTENANCE MANUALS, IF APPLICABLE
 3. GROUND SYSTEM RESISTANCE TEST
 4. CERTIFICATE OF OCCUPANCY

INSURANCE AND BONDS

- A. EACH CONTRACTOR SHALL AT HIS OWN EXPENSE CARRY AND MAINTAIN FOR THE DURATION OF THE PROJECT ALL INSURANCE AS REQUIRED AND LISTED AND SHALL NOT COME WITH HIS WORK UNTIL HE HAS PRESENTED A CERTIFICATE OF INSURANCE TO THE OWNER CPM. THE CONTRACTOR SHALL SUBMIT ALL COPIES TO THE GENERAL CONTRACTOR FOR REVIEW AND APPROVAL. FORWARD A COPY OF ALL CERTIFICATES TO THE OWNER CPM.

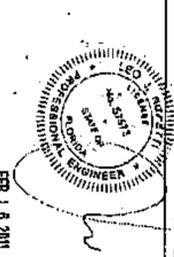
DYNAMIC TOWERS INC.
675 NW MERCANTILE PLACE
SUITE 104
PORT SAINT LUCIE, FL 34986

PROJECT INFORMATION:
APACHE PARK TOWER
PSL PROJECT #P10-142
1445 S.W. APACHE AVENUE
PORT ST. LUCIE, FL 34953
ST. LUCIE COUNTY

CURRENT ISSUE DATE:
FEBRUARY 16, 2011

ISSUED FOR:
SITE PLAN - PROJECT #P10-142

REV.	DATE	DESCRIPTION

SEAL

 FEB 16 2011

PLANS PREPARED BY:
Kinley-Horn and Associates, Inc.
2011 KINLEY-HORN AND ASSOCIATES, INC.
1920 HENRY WAY, SUITE 200
WEST PALM BEACH, FL 33411
(561) 845-0665
FAX: 561-845-0665

PROVIDER:
DYNAMIC TOWERS INC
575 NW MERCANTILE PLACE
SUITE 104
PORT ST. LUCIE, FL 34986

DRAWN BY: CHK. APV.
KM AR LR

LICENSE:
KENN M. SCHAEFER PE 687261
LEO WEBSTER PE 51573

SHEET TITLE:
GENERAL NOTES

SHEET NUMBER: 144121006
REVISION:

KIA Job #:
144121006



Google earth

feet
meters



MEMORANDUM

TO: GREGORY J. ORAVEC, CITY MANAGER

THRU: ROGER G. ORR, CITY ATTORNEY 

FROM: STEFANIE BESKOVOYNE, ASSSITANT CITY ATTORNEY 

DATE: JULY 16, 2012

SUBJECT: CELL TOWER LEASE AGREEMENT
APACHE AVENUE PARK – DYNAMIC TOWERS INC.

Attached please find an Ordinance and a Site Lease Agreement between the City of Port St. Lucie and Dynamic Towers Inc, for the leasing of space for a communication tower located at Apache Avenue Park. The Lease calls for an annual rent in the amount of Eighteen Thousand Dollars per year (\$18,000.00), with a four percent (4%) annual increase. The Lease also provides 25% co-locate revenue share. This Site Lease Agreement has been approved as to form and sufficiency by the Legal Department. Please place this item on the next available City Council's agenda. Should you have any questions or need additional information, please contact me at 873-6332.

SB/liw

RECEIVED

JUN 17 2012

City Manager's Office