

AGREEMENT FOR PCS TOWER AND APPURTENANCES

Agreement made this ____ day of _____, 2001 between the City of Lincoln, Nebraska, a municipal corporation, hereinafter "City" and Cricket Nebraska ~~COMPANY~~ ^{PROPERTY} Properties, hereinafter "CRICKET".

1. Description of Premises. CITY agrees to allow CRICKET to occupy and use a certain parcel of real property located in the City of Lincoln, State of Nebraska, as shown on the attached Exhibit A (the "Premises"), which is incorporated herein by this reference.

2. Term of Agreement. The primary term ("Primary Term") of this Agreement will be for ten (10) years, and will commence on _____. The Primary Term will terminate on _____, unless sooner terminated as provided herein.

This Agreement may thereafter be renewed for three additional terms (each a "Renewal Term") of five years each. The Agreement shall automatically renew for the first Renewal Term, unless CRICKET provides the City with a notice of intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term. The second and third Renewal Terms shall require the mutual consent of CRICKET and the City. The City represents that at the time it enters into this Agreement it has no present intention not to renew this Agreement for the second and third Renewal Terms.

The parties agree that this Agreement is irrevocable until this Agreement expires or terminates as provided herein.

3. Use of Premises. The Premises will be used for the purpose of installing, constructing, maintaining, repairing, operating, altering, inspecting, expanding, adding to and removing CRICKET's communications equipment, including, but not limited to, the following:

- a. Any and all antennas, dishes and/or grids as CRICKET may deem appropriate, within a single 20 foot vertical area on the Tower.
- b. Transmission lines and mounting and grounding hardware.
- c. One space within the City's communications compound ("Communication Compound") containing, without limitation, telecommunications equipment consisting of base station cabinets/vaults, wireless communication equipment, switches, power supplies, batteries, and accessories.
- d. An emergency generator (or other back up power source) to be located, at CRICKET's option, within the Communications Compound. The fuel tank for the generator (gasoline, diesel, butane, propane, LPG or other) may be located either inside the Communications Compound, in accordance with applicable building codes.

For the purposes of this License, all of CRICKET's equipment, antennas, dishes, lines, switches, power supplies, batteries, Communications Compound, generator, generator shelter, Tower, accessories, and necessary appurtenances will be referred to herein collectively as the "Communications Facility."

CRICKET will submit plans and specifications for any buildings or equipment shelters that it intends to use as part of the Communications Facility, to CITY for written approval prior to construction. Thereafter, CITY shall have thirty (30) days to accept or reject CRICKET's building plans (the "Approval Period"). Approvals will not be unreasonably withheld. If CITY does not approve the plans and specifications, this Agreement will be void at CRICKET's election, and terminate without penalty. The approved plans and specifications shall be attached hereto as Exhibit B.

After CITY accepts the building plans, CRICKET shall construct and install, at CRICKET's cost, the Communications Facility at the location depicted on Exhibit A, in accordance with the approved plans and specifications, Exhibit B. The Communications Facility may be installed by CRICKET or by any of CRICKET's agents or contractors. CRICKET may make alterations to the Communications Facility from time to time as CRICKET determines to be necessary or desirable, subject to the approval process described above, which approval will not be unreasonably withheld.

CRICKET may, at its own cost and expense, install, maintain and operate on the Tower or on the Premises, only the equipment necessary for the operation of the Communications Facility in accordance with the plans approved by CITY, as such plans may be amended from time to time for technological or capacity changes. Any damage to the Premises caused by the erection, operation and maintenance of CRICKET's equipment shall be at CRICKET's sole expense. CRICKET may run transmission lines between CRICKET's equipment and CRICKET's antennas.

All work to be performed on the Premises and any easement area shall be performed in a good and workmanlike manner, and in accordance with all applicable governmental laws, ordinances, regulations and codes. CRICKET shall obtain all permits necessary for such construction. All contractors working on the premises shall carry statutory worker's compensation insurance and liability insurance coverages as are customarily maintained by reputable general contractors in the Lincoln, Nebraska area and in accordance with Paragraph 11.

4. Other Licenses and Permits. CRICKET shall secure from the proper governmental authorities all licenses and permits required by law for the erection, maintenance and operation of the Communications Facility, also support structures and appurtenances thereto including the Communications Compound, before construction of the Communications Facility.

5. Ownership of tower improvements. The ownership of all Non-antenna tower Improvements thereon shall pass from CRICKET to CITY when said erection is completed. Until the ownership passes to CITY, as provided above, the risk of loss for the same shall be borne by CRICKET. Thereafter CITY shall bear all risk of loss and

responsible for payment of all personal property taxes assessed directly upon and arising solely from its possession or use of the Communications Facility or buildings on the Premises.

9. Payment of Utilities. CRICKET shall fully and promptly pay for all utility service of every kind furnished to the Premises throughout the term. CITY shall not be liable for any damage to equipment or loss of revenue to CRICKET resulting from the interruption of utility services. All fees due under this Agreement shall continue notwithstanding any interruption of power or other required utility facilities, except for the willful act of CITY.

10. Maintenance of Premises. CITY will maintain the Tower in a proper operating and safe condition, in accord with all applicable government regulations. If, after notice and a reasonable opportunity to act, the City fails to maintain the tower in accord with all applicable government regulations, CRICKET may bring the Tower into compliance and bill the City for the costs and expenses incurred. All costs associated with the maintenance and repair of the Tower, including painting, will be paid by CITY, unless the damage to the Tower is caused by CRICKET, in which case CRICKET shall reimburse CITY for the costs and expenses incurred by CITY to repair the damage and shall be responsible to the users of the Tower for their related costs and expenses.

CRICKET shall, throughout the term of this agreement, at its own cost and expense, keep and maintain its equipment Communication Facility and all appurtenances thereto including all constructed improvements in good, sanitary, lawful and neat order, condition and repair, excluding any of CITY's property and equipment on the Premises, the Tower and Non-Antenna Appurtenances. Neither CRICKET nor any other party shall be allowed to display any signage or advertisement on the tower, on any building within the Premises or anywhere on the Premises, except as required by law. CRICKET shall take all necessary measures and precautions to prevent unauthorized persons access to the Premises, buildings located on the Premises and to the Tower.

11. Liability. CITY shall not be liable for damage to CRICKET's improvements or for any loss or damage to any vehicles parked upon the Premises, except for the willful act of CITY. CRICKET shall at all times during the term of this agreement carry at its own expense public liability insurance of not less than One Million Dollars (\$1,000,000.00) for the injury to or death of one person, and not less than Two Million Dollars (\$2,000,000.00) for the injury to or the death of two or more persons arising out of a single accident or occurrence on the Premises, naming CITY as an additional insured on such policy. The City may, at its discretion, change the required amounts of such insurance during the term of this agreement. CRICKET shall furnish CITY with a certificate of such insurance policy which shall provide such insurance policy shall not be reduced or the coverages changed without first having given CITY thirty (30) days written notice of such change. Any contractor or subcontractor performing work on the Premises for or on behalf of CRICKET shall carry workers' compensation insurance, comprehensive general liability and automobile insurance covering the work in such amounts and with companies satisfactory to CITY with said policies naming CITY as an additional insured.

responsibility to maintain the Tower. If the improvements are damaged or destroyed by an act of nature or from whatever cause, before ownership passes to CITY, the improvements may, at the option of CRICKET be repaired or if the damage is beyond repair, the damaged improvement must be removed at CRICKET's cost and expense. If the improvements are destroyed or extensively damaged after ownership and risk of loss passes to CITY and within any term of this Agreement, the improvement may, at the option of the CITY, be replaced by CITY at its expense. As used in this Agreement, the term "Non-Antenna Tower Improvements" refers to all fixtures and attachments of any nature on the Tower other than the antenna of CRICKET, the antenna mounting structure, all cabling to the antenna, and all other equipment necessary to operate the Communications Facility.

6. Fees. CRICKET shall pay to CITY a fee to occupy and use the ground space on the Premises and space on the Tower. The annual Fee shall be \$22,000 payable in twelve equal monthly installments of \$1833.33 in advance on or before the first day of each and every calendar month. The annual rent in each succeeding year of the Primary Term and any Renewal Term shall be 104% of the Rent in effect during the immediately preceding lease year (the "Percentage Increase") (for example, and by way of illustration only, if the Percentage increase of 104% is used and the prior year's Rent was \$1000, the next year's rent would be \$1040). The Fee for any period during the term of this Agreement that is less than one (1) year will be prorated on a monthly basis. The first monthly installment shall be due upon execution of this agreement. All payments shall be made payable to and mailed to the following address:

City Treasurer's Office
Melissa Jones
555 South 10th Street
Lincoln, NE 68508

7. Access to CITY Property. It is acknowledged that the Tower and appurtenances thereto are constructed on CITY property which is a vital part of CITY's operations. CRICKET shall operate its Communication's Facility thereto on the Premises in such a manner so that the operation does not interfere with CITY's operation of its property nor will it interfere with access to the property by CITY personnel, agents or contractors. CRICKET agrees to comply with any rules, regulations, and procedures that may be adopted by CITY from time to time to provide reasonable security measures to protect the Premises and CITY. CITY retains the right to use the Premises at any time in connection with the need of CITY to provide service to its customers. CITY will endeavor to do so in such a manner so as to not interfere with the construction, operation and maintenance of the Tower. CITY retains the right to use the Premises in any ways that do not interfere with CRICKET's uses.

8. Taxes. Since the real property is owned and used by a governmental entity (CITY), it is tax exempt. CRICKET shall be responsible for and pay all taxes, including property taxes, before any penalties or interest shall accrue thereon, as an additional fee, if taxes are subsequently levied against the Premises. CRICKET will be

12. Property Damage Insurance. During the term of the agreement, CRICKET shall keep in full force and effect an appropriate property damage insurance policy with respect to CITY's property in which the limits of the property damage policy shall be not less than One Million Dollars (\$1,000,000.00).

13. Modular Building. CRICKET may erect, at its own cost and expense, one building on the Premises within the Communications Compound, which shall be maintained, repaired and secured by CRICKET. The building must be constructed according to the applicable laws and regulations of the State of Nebraska. The plans for and location of the building on the Premises must be approved in advance by CITY before the same can be placed on the Premises. At the time this Agreement is terminated, CRICKET shall have ninety (90) days thereafter to remove the building from the Premises or the same, together with all equipment therein, shall become the property of CITY. The City and CRICKET may choose to jointly develop a building which may be used by other providers, as determined by the City.

14. Indemnification. To the fullest extent permitted by law, the CRICKET shall indemnify and Hold Harmless the City, its officers, agents and employees from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the CRICKET's use and occupation of the Site, that results in any Claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by CRICKET or anyone directly or indirectly employed by CRICKET, or anyone for whose acts any of them may be liable, regardless of whether or not such Claim, damage, loss or expense is caused in part by a party indemnified hereunder. This section shall not require CRICKET to indemnify or Hold Harmless the City for any losses, Claims, damages, and expenses arising out of or resulting from the sole negligence or omission of the City.

15. Assignment, Renting or Leasing Space. CRICKET shall have the right to sublicense or assign its rights under this Agreement to any party affiliated, under common control or otherwise related to CRICKET, successor legal entities or any party acquiring substantially all the assets of CRICKET (the "Control Group") without the consent of CITY. CRICKET may sublicense or assign its rights under this License to any other entity with CITY's consent, which will not be unreasonably withheld; provided, however, such assignment or sublicense shall not relieve CRICKET of any of its liability or responsibility hereunder.

16. Events of Default. Default shall occur if any one or more of the following events shall happen:

a. CRICKET shall default in the punctual payment of the fee and such default shall continue for thirty (30) days after receipt of written notice from CITY; or

b. If either party shall neglect or fail to perform or observe any of the material provisions of this Agreement, and such failure is not cured within thirty (30) days after receipt of written notice thereof from the other party, the other party may, at its option, 1) cure the failure at the defaulting party's expense, or 2) terminate this Agreement. If any such default cannot reasonably be cured within thirty (30) days, the defaulting party will not be deemed to be in default under this Agreement if it commences curing such default within the thirty (30) day period and thereafter diligently pursues such cure to completion.

17. Environmental Laws. CITY warrants and represents that the Premises, and any existing improvements on the Premises are free of Hazardous Substances (as defined below). CITY will indemnify, protect, defend, and hold harmless CRICKET from and against all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, attorneys' fees, sustained or incurred by CRICKET pursuant to any federal, state or local laws, implementing regulations, common law or otherwise, dealing with matters relating to the environment, hazardous substances, toxic substances and/or contamination of any type whatsoever (collectively, "Hazardous Substances") in, upon or beneath the Premises, and the other improvements on the Premises (excluding the Communications Facility), provided this indemnification shall not apply with respect to any Hazardous Substances released by CRICKET.

CRICKET will indemnify, protect, defend and hold harmless CITY from and against all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, attorneys' fees, sustained or incurred by CITY pursuant to any federal, state or local laws, implementing regulations, common law or otherwise dealing with matters relating to Hazardous Substances released by CRICKET in, upon or beneath the Premises, the Communication Facility, and the improvements on the Premises.

The indemnification in this section specifically include without limitation costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

18. Nebraska Law. This agreement shall be construed and enforced in accordance with the laws of the State of Nebraska and any legal action brought in respect thereto shall be brought either in the state courts of the State of Nebraska located in Lincoln, Nebraska, or if applicable, in the United States District Court located in Lincoln, Nebraska.

19. Binding Effect. This Agreement shall inure to the benefit and be binding upon CRICKET, its successors or assigns.

20. Interference. CRICKET shall at all times pertinent hereto be responsible for the proper operation of its equipment located on the Premises and shall make certain that the same complies with all pertinent laws, rules and regulations of any applicable governmental authority. In the event that CRICKET's equipment causes interference with any of CITY's equipment or to any communications facilities of a third party

including the public, CRICKET, upon notice received of the interference, shall take all steps necessary to correct and eliminate the interference as soon as possible and shall take all necessary precautions and corrective action needed to prevent the reoccurrence of the interference.

Notwithstanding the foregoing, the parties intend to be bound to the principle that the communications provider who is first in time on the Tower or Premises shall be protected from interference by subsequent providers. CITY will not use the tower or Premises in any manner which will limit, impair or restrict the use or operations of the Communications Facility or allow any use which could cause any destructive or conflicting interference with the Communications Facility. If any harmful interference shall result from the operation of a subsequent communication provider's transmitters, equipment, antennae, dishes or other equipment or devices to the Communications Facility, then CITY shall immediately cause such operations to cease until such interference is eliminated, provided that to do so would not jeopardize, compromise, limit, impair, or otherwise interfere with CITY's use of its properties. If CITY is unable to cure such interference within thirty (30) days of CRICKET's demand, CRICKET may terminate this lease without penalty.

21. Additional Agreements. CRICKET acknowledges the right and authority of CITY to enter into additional agreements for telecommunications equipment and appurtenances thereto of other users on CITY's Tower so long as such agreement does not interfere with CRICKET's use of its space on the Tower.

22. Entire Agreement. This agreement contains the entire understanding of the parties hereto with respect to the conditions of this agreement and supersedes all prior agreements and understandings between the parties with respect to such subject matter. The representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this agreement or unless mutually agreed to in writing between the parties hereto after the date hereto, and neither party has relied on any verbal representation, agreements, or undertakings not expressly set forth herein.

23. 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, or sent by overnight carrier, to the following addresses:

CITY: Parks Department
2740 A Street
Lincoln, NE 68502
TEL: (402) 441-7847
FAX: (402) 441-8706

With a copy to: Steven Huggenberger
Assistant City Attorney
575 S. 10Th / Room 4201

Lincoln, Nebraska 68508
TEL: (402) 441-7286
FAX: (402) 441-8812

CRICKET:

Tel:
FAX:

With a copy to:

A party may change its address to which any notice or demand may be given by written notice thereof to the other party.

24. Contingencies. This Agreement and CRICKET's obligations hereunder are expressly contingent upon the following:

a. CRICKET's satisfaction with the status of title to the Premises and, at CRICKET's option and its expense, CRICKET's receipt of a licensehold title insurance policy insuring its interest in the Premises, in form and substance satisfactory to CRICKET. CITY shall execute the standard form of title company affidavit in order to enable CRICKET to obtain title insurance on the Premises free and clear of all exceptions other than those which have been disclosed in writing to CRICKET and which do not interfere with CRICKET's use of the Premises; and

b. CRICKET's satisfaction, in its sole and absolute discretion, with the feasibility of engineering, installing, constructing and operating the Communication's Facility; and CRICKET's receipt of all necessary or appropriate building and construction permits and all licenses, permits, approvals and consents from all applicable governmental authorities necessary or appropriate for CRICKET to use and operate the Communication's Facility on the Premise.

In the event that any of the foregoing occurs CRICKET may terminate this Agreement without penalty.

CRICKET is hereby given the right to survey, soil test, radio coverage test, and to conduct any other investigations needed to determine if the surface and location of the Premise are suitable for CRICKET's use intended by this Agreement.

25. Termination. CRICKET may terminate this Agreement at any time by notice to CITY without further liability if:

a. CRICKET 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 Communications Facility, or if any such approval is canceled, expires or is withdrawn or terminated; or

b. CITY fails to have proper ownership of the Premises or authority to enter into this Agreement; or

c. Upon 90 days notice, CRICKET makes a showing that the Premises or Tower are or have become unusable with CRICKET's design or engineering specifications for its antenna facilities or the communications system to which the antenna facilities belong. If the siting of the Tower is the cause for the determination of unusability, CRICKET shall consider and give preference to other City sites for the relocation of the Communication Facility.

Upon termination, all prepaid rent will be retained by CITY unless such termination is due to CITY's failure of proper ownership or authority, or such termination is a result of CITY's default. Additionally, upon termination or non-renewal CRICKET must remove its antenna arrays and platforms that it owns from the Tower within thirty (30) days after the expiration of this Agreement, or at the option of the City, ownership of the antenna arrays and platforms may be transferred to the CITY.

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

CITY OF LINCOLN, NEBRASKA,

By: _____
Mayor Don Wesely

CRICKET NEBRASKA PROPERTIES PROPERTY COMPANY

By:  _____
Title: _____

BILLY J. LEONARD
Regional Network Director

EXHIBIT A

DESCRIPTION OF PREMISES

To the Agreement dated _____, 2001, by and between the City of Lincoln and CRICKET.

The Land is situated in the County of Lancaster, State of Nebraska, being commonly described and/or depicted as follows:

That part of Outlot "A" Harrison Addition, of the Northeast Quarter of Section 7, Township 9 North, Range 7 East, City of Lincoln, Lancaster County, Nebraska, and more particularly described as follows:

Referring to the Southwest corner of said Outlot "A"; thence easterly S 84° 12' 19" E, 198.30 feet; thence northerly N 05° 47' 41" E, 25.74 feet, to the point of beginning for the described site; thence northerly N 05° 30' 20" E, 30.00 feet; thence easterly S 84° 29' 40" E, 62.00 feet; thence southerly S 06° 30' 20" W, 30.00 feet; thence westerly N 84° 29' 40" W, 62.00 feet, to the beginning for the described site.

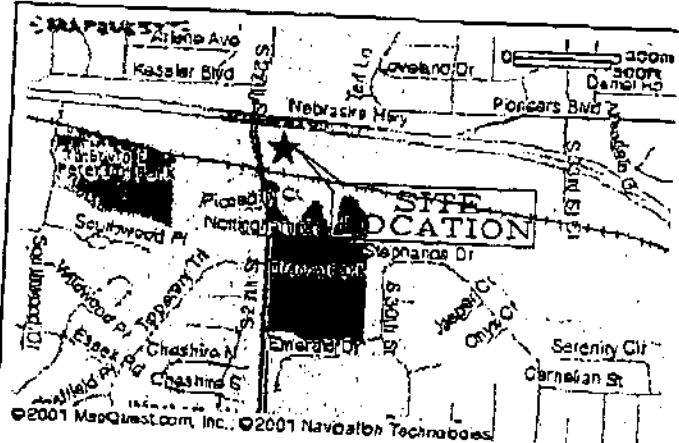
EXHIBIT B

PLANS AND SPECIFICATIONS

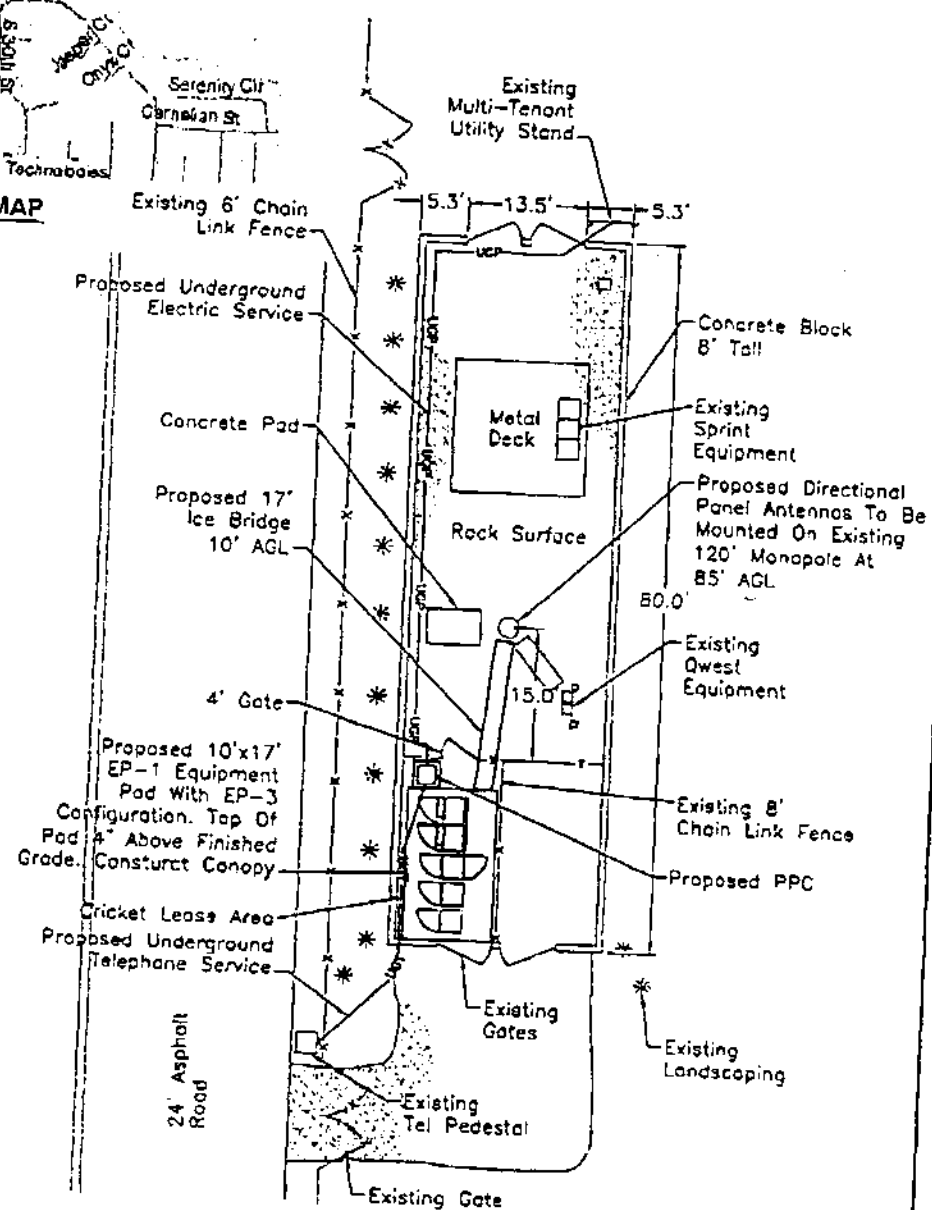
To the Agreement dated _____, 2001, by and between City of Lincoln and CRICKET.

The Plans and Specifications are described and/or attached as follows:

EXHIBIT "B"



VICINITY MAP



PROPOSED COMPOUND LAYOUT
SCALE: 1" = 20'-0"

lamp, ryneason & associates, inc.
engineers surveyors planners
14710 west dodge road, suite 100
omaha, nebraska 68184 2028
ph 402 488 2490
fax 402 488 8720

cricket communications
LUCCENT TECHNOLOGIES
10845 OLD MILL ROAD
OMAHA, NE 68154

DRAWING TITLE:
LEASE EXHIBIT
PROJECT INFORMATION:
STAR CITY SHORES
LIN-021A
4375 SOUTH 33RD STREET COURT
LINCOLN, NE 68518
PROPERTY OWNER:
CITY OF LINCOLN
555 S 10th STREET
LINCOLN, NE 68508

LIN-021A	
REVISION NO. 4	DRAWN BY: SBF
DATE REVISION 08/10/01	CHECKED BY: RED
SCALE 1"=20'	APPROVED BY: CEM
SHEET NO. 1 OF 1	
AVE PROJECT NO. 01003.08	

c:\work\lin-021a_exhibdwg_09/10/01 10:46:33 AM HP LayerJet 800B Series PCL 6