

RESOLUTION NO. 47-02  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Susan W. Linsch ON THE  
18<sup>th</sup> DAY OF November, 2002.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT BETWEEN THE CITY OF CENTERVILLE AND THE CRICKET OHIO PROPERTY COMPANY.

WHEREAS, The City of Centerville is the owner of real property upon which the City has constructed a monopole communications tower at 155 West Spring Valley Road in the City of Centerville, and

WHEREAS, Cricket Ohio Property Company, desires to lease from the City a portion of the premise, and to receive from the City easements over, under and through a portion of the premise for ingress and egress to and from the leased area for the purpose of installing and constructing transmission and receiving equipment at or on the communications tower.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager be and is hereby authorized to enter into a Lease Agreement between the City of Centerville and the Cricket Ohio Property Company for a portion of the City owned property located at 155 West Spring Valley Road for the installation, operation, maintenance, repair and use of its transmission equipment at or on the communications tower owned by the City of Centerville, a copy of which is attached hereto, incorporated herein, and marked as Exhibit "A".

Section 2. That this Resolution shall become effective immediately upon passage.

PASSED this 18<sup>th</sup> day of November, 2002.

Sally D. Bask  
Mayor of the City of Centerville, Ohio

ATTEST:

Marie J. McLaughlin  
Clerk of Council, City of Centerville, Ohio

**CERTIFICATE**

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 47-02, passed by the Council of the City of Centerville, Ohio, on the 18<sup>th</sup> day of November, 2002.

Marie J. McLaughlin  
Clerk of Council

Approved as to form, consistency  
with existing Ordinances, the Charter  
and Constitutional Provisions.

Department of Law  
Robert N. Farquhar  
Municipal Attorney

LEASE AGREEMENT

THIS LEASE AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between the CITY OF CENTERVILLE whose address is 100 West Spring Valley Road, Centerville, OH 45458 (hereinafter referred to as "City"), and CRICKET OHIO PROPERTY COMPANY, a Delaware corporation, whose address is 1225 Washington Pike, Bridgeville, Pennsylvania 15017, (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, the City is the fee simple owner of real property located in Montgomery County, State of Ohio, upon which the City has constructed a monopole communications tower ("Tower"), located at 155 West Spring Valley Road, Centerville, Ohio 45458 and further described as Tax Map and Parcel number 068-00135-0005 on the Montgomery County Tax Map, said real property being more particularly described on Exhibit "A" attached hereto and made a part hereof (hereinafter said parcel of real property and Tower collectively being referred to as the ("Premises")); and

WHEREAS, Tenant is licensed by the Federal Communications Commission ("FCC") and desires to lease from the City a portion of the Premises as more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Leased Area") and further desires to receive from the City easements over, under and through that portion of the Premises as described in Exhibit A attached hereto and made a part hereof, (hereinafter referred to as the "Easement Area") for ingress and egress to and from the Leased Area and for the installation, maintenance, use, operation and replacement of utilities to serve the Leased Area, (the Easement Area and the Leased Area being collectively hereinafter referred to as the "Demised Premises"), all for the purpose of installing and constructing transmission and receiving and related facilities as more particularly set forth and described in Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as "Tenants Facility" or "Transmission Equipment"); and

WHEREAS, the execution of this Lease, the execution and granting of the easements as contemplated herein, and the execution of other documents in connection therewith has been authorized by the City in Resolution Number \_\_\_\_\_ passed, \_\_\_\_\_, 2002, said Resolution being incorporated herein as if fully rewritten herein.

NOW, THEREFORE, in consideration of the premises and the mutual promises and benefits contained herein, the parties hereto hereby agree as follows:

## PREMISES and TITLE

1. (a) The City leases the Leased Area to Tenant. Landlord covenants, represents and warrants to Tenant that: (i) as of the date hereof, the City holds good and marketable fee simple title to the real property which is part of the Premises; (ii) as of the date hereof, the City holds good and marketable title to the Tower; (iii) as of the date hereof, the City has full authority and power to enter into this Lease; and (iv) so long as this Lease is in effect and Tenant is not in default, Tenant shall, at all times during the continuance hereof, have quiet, continuous, peaceable and undisturbed possession and enjoyment of the Demised Premises and rights-of-way and easements granted herein or to be granted pursuant hereto, free from the claims of the City claims, subject to the terms and conditions of this Lease.

(b) Tenant acknowledges that the rights hereby granted to Tenant to install, operate, maintain, repair and use its Transmission Equipment at or on the Tower are shared with the pre-existing tenants to which the City has heretofore granted the right to use space on the Tower for transmission and reception and allied purposes. Tenant covenants and agrees that it shall install, operate, maintain and repair the Transmission Equipment in such a manner as to prevent interference with the transmission or reception of signals by these other pre-existing antennas or dishes located elsewhere at the Tower or in the area surrounding the Tower. In the event the Transmission Equipment causes any such interference, Tenant covenants and agrees to correct such interference or have it corrected immediately and if such interference cannot be so corrected, to take such action as may be necessary to terminate the interference (including, but not limited to, ceasing operation of the Transmission Equipment) until such time as the source of the interference can be located and the cause thereof corrected. In addition, Tenant shall, at the City's request, make such changes in the location of, and adjustments to, its Transmission Equipment as may be necessary or appropriate to prevent interference with transmitting and receiving devices hereafter located at or on the Tower; provided, however, that Tenant shall not be required to make any changes pursuant to this sentence that will adversely affect Tenants Radio Transmission or use of Tenants Transmission Equipment for the purposes for which Tenant is then using such Transmission Equipment.

(i) The City will use its best efforts to ensure that the interference rights of subsequent Tower users are subordinate to those of Tenant, as well as other existing licensees, the older licensees receiving the initial protection consideration until modifications are made then they are considered subsequent users. The City does not warrant or represent that the relay of programs and other transmissions through the Tenant's Transmission Equipment will not be interfered with by the reception or transmission systems of other occupants of the Tower or the surrounding area, and Tenant hereby releases the City, and waives any and all claims against the City with respect to any such interference.

(ii) In the event a dispute regarding interference should arise between the City and Tenant, and should both parties fail to reach an agreement to resolve the dispute, then the City or Tenant, at their option, may submit the dispute to binding arbitration with a consulting engineer agreeable to both parties, or to a panel of three consulting engineers, to be chosen as follows: Both the Tenant and the City shall each choose and pay the fee for an engineering consultant. The two consultants so chosen shall choose a third consultant whose fee shall be borne equally by both parties. The three consultants so chosen shall constitute the arbitration panel, which shall study and make a determination regarding the dispute. The arbitration proceeding must be concluded within thirty (30) days, and both parties agree to be bound by such determination as may be made by the aforementioned panel. In the event the determinations of the panel are in favor of the City, then Tenant shall bear all costs associated with such arbitration proceedings.

(c) Tenant shall order, at its sole cost, a commitment for Leasehold Title Insurance ("Commitment") with respect to the Premises and/or Demised Premises. If said Commitment discloses any liens, defects of and/or encumbrances on title ("Defects") which are not acceptable to counsel for Tenant, Tenant shall notify the City of said Defects and the City shall have thirty (30) days from the date of Tenant's notice to correct the Defect(s). If the City does not elect to correct said Defect(s), Tenant may, at its sole option, reject or accept said Defect(s) or terminate this Lease, by giving written notice to the City of its election.

(d) The City hereby represents to Tenant the following, which shall be true and correct at all times hereafter, as well as on the date hereof, and for which liability for breach shall survive the Lease: To the best of the City's knowledge, information and belief, the Premises and/or the Demised Premises, in its current state, conform with all laws, ordinances, statutes or regulations of any governmental agency, or any applicable private restriction. No notice of the violation of any of said laws, ordinances, statutes, regulations or restrictions has been received by the City.

(e) Provided Tenant is not in default in the performance of its obligations under this Lease beyond the expiration of the applicable period of notice or grace hereunder, Tenant shall have the right, during the term or any renewal terms hereof, to grant a mortgage lien or a security interest in its leasehold estate created hereby, all improvements constructed thereon, and any goods and personal property of every type and description owned by Tenant and installed or kept on the Demised Premises. The City hereby consents to any such mortgage lien or security interest and disclaims any interest of any kind in any fixtures and equipment installed or kept in the Demised Premises. The City's fee title is not nor shall be subordinated to any mortgage lien or security interest given by Tenant

## TERM

2. (a) This Lease shall become effective ("Effective Date") on: (a) the date Tenant sends written notice, if any, to the City that the conditions set forth herein below in paragraph 17(e) have been met to Tenants sole satisfaction; and (b) the date Tenant has paid to the City all of the first years fixed annual Rent due and owing pursuant to paragraph 4(a) herein below. The Term of this Lease shall commence on the first day of the calendar month next following the Effective Date (hereinafter referred to as the "Commencement Date") and shall end at midnight on the last day of the month preceding the month in which the fifth (5th) annual anniversary of the Commencement Date shall have occurred. At the time the Effective Date and the Commencement Date are established, the parties hereto will enter into a Supplemental Letter Agreement stipulating both the Effective Date of this Lease and the Commencement Date of the initial Term of this Lease as provided herein.

(i) Provided this Lease is in full force and effect and provided Tenant shall not then be in default, Tenant shall have renewal options for four (4) successive terms of five (5) years each, for a total of twenty (20) years, after expiration of the initial Term of the Lease. Said Lease shall automatically be renewed for each five (5) year renewal period without any further election and/or written notice being required on the part of Tenant unless Tenant shall give the City written notice, prior to the expiration of the initial Term, or any renewal term hereof, of its election not to renew the Lease. The terms and conditions of the lease for the initial five (5) year Term shall apply to each renewal option period except that the Rent for each renewal term shall be as set forth in paragraph 4(d) herein below.

(b) Tenant shall be responsible for all expenses attributable to any permit and license applications, and the City shall have no obligations with respect thereto. The City agrees to cooperate with Tenant, at Tenant's expense, in obtaining all licenses, zoning approvals, and permits as may be necessary or required for the operation and construction of Tenant's Facility.

## CONSTRUCTION and USE

3. (a) Promptly after the Effective Date, Tenant shall have the right to construct the Tenant's Facility at its sole cost and expense, in good workmanlike manner, in accordance with applicable governmental laws and regulations, and free of any liens or claims for work, labor and services. However, prior to the Effective Date, Tenant shall submit to the City and the manufacturer of the Tower, for review and approval by both the City and said manufacturer, detailed Plans and Specifications ("Plans") of said construction, which approval by the City and said manufacturer shall not be unreasonably withheld or delayed. The City shall not have any obligation to construct, maintain, repair or replace Tenant's Facility or any part

thereof. Tenant shall use the Facility only in connection with a cellular radio and mobile telephone communication station and any other communications related activities.

(b)(i) The City shall not be liable for any damage to Tenant's Facility unless said damage is due to or arises out of any act, negligence, or omission on the part of the City and/or any of the City's members, guests, licensees, invitees, contractors, employees and/or agents. Tenant agrees that the City is not liable for acts of random vandalism caused by members of the public.

(b)(ii) To ensure that Tenant pays for potential damage caused to the Demised Premise resulting from the installation of the Tenant Facility, Tenant shall provide City, during the time of construction, with a bond in the amount of Twenty Thousand and No/Dollars (\$20,000.00), and such bond shall be provided to City upon the commencement of construction of the Tenant Facility and continue in force until completion of the Tenant Facility, and Tenant must receive approval from City of the Bonding Company providing said bond, such approval not to be unreasonably conditioned, withheld or delayed.

(c) Tenant, at its own expense, shall maintain the Tenant's Facility, including, but not limited to, its equipment, antennas, transmission lines and connecting devices, fencing, access roads, and all its improvements in accordance with good engineering standards to assure that at all times the same are in conformance with the requirements of local governmental bodies having jurisdiction.

(d) Further, Tenant shall, at its own expense, keep the Leased Area in good repair and condition, and Tenant shall not perform any acts or carry on any practice which may injure any of the City's other property or be a nuisance or menace to the City. Tenant shall keep the Leased Area clean and free from all rubbish, and shall promptly comply with all laws, orders, regulations or ordinances of all governmental authorities applicable to the cleanliness, safety, occupation and use of same.

(e) Tenant shall not bring or cause to be brought to the Leased Area any Hazardous Materials. In addition, Tenant shall fully and promptly pay, perform, discharge, defend, indemnify and hold harmless the City from any and all claims, orders, demands, causes of action, proceedings, judgments, or suits and all liabilities, costs or expenses (including, without limitation, technical consultant fees, court costs, expenses paid to third parties, and reasonable legal fees) and damages arising out of, or as a result of, (i) any "release", as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), of any "hazardous substances", as that term is defined in CERCLA, or petroleum (including crude oil or any fraction thereof) discharged, deposited, dumped, spilled, leaked or placed into, on or around the Premises or the Demised Premises at any time during the term of this Lease or any renewal or holdover



thereof caused in whole or in part by Tenant, its employee, agent or contractor; (ii) any contamination of the Premises or the Demised Premises soil or groundwater or damage to the environment and natural resources on or around the Premises or the Demised Premises during the term of this Lease or any renewal or holdover thereof, whether arising under CERCLA or other statutes, regulations, or common law caused in whole or in part by Tenant, its employee, agent or contractor; and (iii) any toxic, explosive or otherwise dangerous materials, including, but not limited to, asbestos, which Tenant, its employee, agent or contractor placed on or concealed within, under or around the Premises or the Demised Premises during the term of this Lease or any renewal or holdover thereof. Tenant's indemnification obligations shall survive the expiration or earlier termination of this Lease.

(f) The City may, at the City's option and sole expense, post an observer to monitor Tenant's installation of Tenant's Facility.

(g) Tenant shall operate Tenant's Facility in compliance with all present and future requirements and regulations of the FCC.

(h) Tenant shall have the option of utilizing a portion of City's indoor space for ground-based equipment housing or Tenant may place said equipment outdoors within close proximity of the Tower, and in the event Tenant places its ground-based equipment outdoors, Tenant shall construct a privacy fence around the perimeter of said equipment, subject to approval of the City, at the base of the Tower.

#### RENT

4. (a) For the first five (5) years the total Rent shall be Ninety-Six Thousand and No/Dollars (\$96,000.00), which sum shall be paid by Tenant to City in five (5) equal annual installments of Nineteen Thousand Two Hundred and No/Dollars (\$19,200.00) each ("Rent"). Tenant's obligation to pay the first annual installment of the Rent shall commence as of the Commencement Date, if any, of this Lease and each annual installment of Rent due and payable thereafter shall be made on the successive four (4) annual anniversaries thereof.

(b) The total Rent for each successive five (5) year renewal period of this Lease, if any, shall be increased by three percent (3%).

(i) Upon calculation of the total Rent for each successive five (5) year period, Tenant shall pay the Rent in five (5) equal annual installments, each installment being due and payable on the successive annual anniversary of the Commencement Date of this Lease.



(c) The Rent being paid hereunder by Tenant to the City shall be in consideration for Tenant receiving the Demised Premises and the right to install a combined total of Twelve (12) antennae as part of Tenant's Facility. In the event Tenant utilizes, at any time, as part of Tenant's Facility, in excess of Twelve (12) antennae, Tenant shall pay, as additional Rent to the City during the Initial Term hereof, the sum of Fifty and No/Dollars (\$50.00) per month, per said extra antenna being utilized by Tenant as part of the Tenant Facility at the Demised Premises, and Tenant must receive approval from City for any antenna placed at the Demised Premises subsequent to the twelfth (12<sup>th</sup>) antenna. The monthly Rent for each additional antenna during each year of any term shall be subject to the three percent (3%) increase as set forth in paragraph 4(b) above, and any additional antenna being utilized by Tenant as part of the Tenant Facility at the Demised Premises, as contemplated herein, shall be governed by the provisions of paragraph 1(b) of this Lease.

#### INSURANCE and TAXES

5. (a) During the term hereof, Tenant shall be responsible for all personal property taxes and insurance as to Tenant's Facility and shall carry, at no cost to the City comprehensive general public liability insurance with limits of not less than three million dollars (\$3,000,000) for bodily injury and death, and not less than one million dollars (\$1,000,000) for property damage. Tenant will name the City as an additional insured thereon as its interest may appear and shall provide the City, on the Commencement Date of this Lease, with certificates evidencing that such insurance is in full force and effect. Tenant will indemnify the City against claims for injuries and death sustained by persons or damage to property, arising out of Tenant's use and occupancy of the Demised Premises by Tenant, excepting therefrom those which are due to or arise out of the City's negligence, acts or omission.

(b) In the event the Demised Premises is destroyed or damaged in whole or in part by casualty during the term of this Lease then, at Tenant's option (exercised by notice to City), this Lease may be terminated as of the date of the event or at any time within ninety (90) days thereafter, and no further Rent shall be due under the Termination Section or any other Section of this Lease.

(c) During the term hereof, the Tenant, at Tenant's sole cost and expense, shall be responsible for any increase in real estate taxes and assessments, both general and special, levied against the Premises, solely due to the construction of Tenant's Facility upon the Demised Premises.

#### ASSIGNMENT

6. The Tenant shall not assign this Lease all or any portion of the Leased Area, without first obtaining the written consent of the City, which consent shall not be unreasonably withheld or delayed.

Notwithstanding anything contained herein to the contrary, Tenant shall have the absolute and unconditional right (a) to assign and/or transfer this Lease to a parent entity, if any, or any of its partners, constituent partners, subsidiaries, affiliates, or related entities, or to a successor entity in the event of merger, consolidation, transfer, sale, stock purchase or public offering, and (b) to assign, mortgage, pledge, hypothecate or otherwise transfer this Lease or any of Tenants rights or obligations hereunder to any financial entity (or agent on behalf of any financing entity) to which Tenant has any obligations for borrowed money or in respect of any guaranties thereof, including without limitation obligations evidenced by bonds, debentures, notes or similar instruments, and obligations pursuant to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof. Such assignment and/or transfer of the Lease and/or Leased Area shall not constitute an unauthorized assignment or transfer of this Lease and/or Leased Area and shall not require the consent of the City but any permitted assignee shall first be obligated, in writing, to likewise assume all the obligations of the Tenant under this Lease and Tenant shall, for the full term of this Lease, continue to be jointly and severally liable with such assignee for the payment of Rents and the performance of all obligations required by the Tenant under this Lease.

#### **DEFAULT**

7. If Tenant shall fail to pay the Rent for a period of fifteen (15) days after each annual commencement Date, or if Tenant shall fail to perform any other agreements or conditions contained, and such failure shall not be corrected within thirty (30) days after Tenant shall have received written notice from the City of such failure (or such longer period as may be required to correct such failure, if within said thirty (30) days, Tenant shall commence to correct the same and thereafter diligently pursue the correction thereof), Tenant shall be in default hereunder. Upon the occurrence of any such event of default, the City shall have all rights permitted by law, including, but not limited to, the right, at its election, to terminate this Lease and thereafter, the City may re-enter the Demised Premises and take possession thereof in any manner then permitted by law.

#### **EMINENT DOMAIN**

8. In the event the Demised Premises or any part thereof shall be taken or condemned permanently or temporarily for any public or quasi-public use or purpose by any competent authority in appropriation proceedings or by any right of eminent domain, the compensation award for the fee, leasehold and easement rights therein shall belong to and be the property of the City. Tenant shall, however, be entitled to file a separate action and shall have the right to claim therein compensation as may be separately awarded or allocated for Tenant's Facility and/or by reason of the cost or loss suffered by Tenant's business, the cost of and/or loss suffered by removing Tenant's fixtures, leasehold improvements, Facility and equipment.

### **HOLDING OVER**

9. In the event tenant continues to occupy the Demised Premises after the last day of the term hereby created, including any renewal terms, and the City elects to accept Rent thereafter, a tenancy from month to month only shall be created and not for any longer period. The month-to-month tenancy may be terminated by either party upon thirty (30) days advance written notice.

### **UTILITIES**

10. The City shall have the responsibility to cooperate with Tenant (without any expense to the City) in requesting and/or obtaining permission and/or service from the proper utility companies in order to ensure that all utilities are made available to the Demised Premises necessary to allow Tenant to fully operate its business to be conducted thereon. Tenant shall pay all new utility installation charges, if any, and shall pay all utility charges used in connection with the Tenant's business from the Effective Date of this Lease.

### **RECORDING and EASEMENTS**

11. (a) This Lease and/or a short form referring to this Lease Describing the property herein demised and setting forth the term of this Lease may be recorded by either the City or Tenant, at Tenant's sole cost and expense.

(b) The City does hereby grant and convey to Tenant and does hereby grant and convey to any and all utility companies providing utility services to Tenant's Facility a non-exclusive easement on, over and/or upon the Premises in order for (i) the installation, constructing, laying, maintenance, operation and repair of any and all utilities deemed necessary by Tenant and the respective utility companies, and (ii) vehicular and pedestrian ingress and egress to and from the Leased Area and vehicular and pedestrian ingress and egress to and from the Leased Area for the construction, repair and maintenance of Tenant's Facility and any and all utilities supplying the Tenant's Facility located on the Premises. In the event Tenant and/or any or all of the respective utility companies require, at any time during the term of this Lease, separate recordable easements on, over, and/or under the Premises in order to provide the Leased Area with utilities and/or ingress and egress, the City shall grant and convey said separate easements to Tenant and/or to said utility companies at no cost or expense to Tenant for the granting of said easements. Said easements, if any, shall be recorded at Tenant's sole cost and expense. The location of all utilities and separate easements to be granted to Tenant and/or utility companies under this paragraph shall be mutually agreeable to the City and Tenant and the respective utility company.

### **SURRENDER AT END OF TERM**

12. (a) At the expiration or termination of this Lease, whether by laps of time or otherwise, Tenant will peacefully and quietly surrender to the City the Tower, the Demised Premises and easements in substantially the same condition as received except for reasonable wear and tear, acts of God, insured casualty, and other causes beyond the control of Tenant. In such event, Tenant shall have no claims for refund of any Rent paid to the City through said date of expiration or termination.

(b) At the expiration or other termination of this Lease, whether by lapse of time or otherwise, Tenant will remove Tenant's Facility and, in such event, Tenant shall restore the Demised Premises, easements and the Tower to substantially the same condition as received prior to Tenant's Work, subject to ordinary wear and tear, acts of God, insured casualty, or other causes beyond Tenant's control.

(c) To ensure Tenant's removal of Tenant's Facility, Tenant shall provide City with a performance bond in the amount of Twenty Thousand and No/Dollars (\$20,000.00), and such Bond shall be provided to City within thirty (30) days of the completion of construction of the Tenant Facility, and Tenant must receive approval from City of the Bonding Company providing said bond, such approval not to be unreasonably conditioned, withheld or delayed.

### **TITLE TO IMPROVEMENTS**

13. Title to Tenant's Facility, as well as all fixtures and chattels used in connection therewith, shall be and shall remain the property of Tenant and the exclusive ownership by Tenant is herein acknowledged by the City.

### **TERMINATION**

14. (a) This Agreement may be terminated by the City upon notice, in writing, upon the other party no later than at least one year in advance of the Commencement Date of each successive five (5) year renewal period. The City may also terminate this Agreement in the event that the City is of the opinion that the Tenant is carrying out the terms of this Agreement in an unreasonable, unprofessional, or unworkmanlike manner. Said termination for this particular reason shall occur upon the provision of a written notice of termination to the Tenant at least ninety (90) calendar days in advance of the annual anniversary date of the Commencement Date, stating in the termination notice the reason for said termination. The City, in its sole discretion, may allow the Tenant to cure the reason for the termination provided the cure of the reason is accomplished within thirty (30) days of the date of the forwarding of the termination notice. The parties further agree that should the Tenant become unable for any reason to comply with the terms called for by

virtue of this Agreement, the Tenant shall be in default as provided in paragraph 7 herein. Notwithstanding the above, the Tenant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Tenant; and the City may withhold any compensation to the Tenant for the purpose of set-off until such time as the amount of damages due the City from the Tenant is agreed upon or otherwise determined.

(b) Tenant shall have the right to terminate this Lease at any time without any penalty or further liability whatsoever in the event the location of the Tenant's Facility becomes unacceptable for receiving and/or transmitting radio waves in accordance with Tenant's engineering and other requirements and/or in the event Tenant's Facility becomes unacceptable in accordance with the standards, requirements and conditions then demanded by the Federal Communications Commission or other state, federal, or local regulatory authority. In such event, Tenant shall have no claims for refund of any Rent paid to the City through said date of expiration or termination.

(c) Subject to the terms of any existing or future mortgage indenture or other financing instrument of the City, if, at any time during the Initial Term or any renewal terms of this Lease, the City receives a bona fide offer to sell the Premises and/or the Tower to a 3rd party purchaser for value which offer the City desires to accept, the City shall give Tenant notice thereof, which notice shall specify, in detail, the name and address of the prospective purchaser and the purchase price and other covenants and conditions of the proposed offer, accompanied by the City's affidavit that such proposed offer is in good faith and that all terms and conditions affecting the proposed offer have been accurately disclosed. Tenant shall thereupon have the prior option to purchase the Premises and/or the Tower for the purchase price and upon the other covenants and conditions specified in said notice, which option Tenant may exercise by giving notice to the City within forty-five (45) business days after receipt of the notice from the City. Promptly upon Tenant's submission to the City of a written purchase agreement containing the purchase price and other covenants and conditions of the proposed offer, the City shall execute, acknowledge and deliver to Tenant such offer in duplicate and shall be entitled to receive one of such offer in duplicate and shall be entitled to receive one of such duplicates executed by Tenant.

### **BROKERS**

15. The City and Tenant hereby respectively warrant and represent to and with each other that there is no real estate broker involved in this transaction. The City and Tenant hereby respectively further warrant and represent to and with each other that any fees, commissions or remunerations claimed by reason of this transaction shall be the sole obligation of said party claimed against, and said party shall indemnify and

hold harmless the other from and against any and all demands, losses, costs and expenses of any kind whatsoever arising out of, by reason of, or in connection with said claim for a broker's commission in this transaction.

#### NOTICES

16. All notices required under this Lease to be served upon either party shall be sent by registered or certified mail, return receipt requested, and shall be deemed served when received by the party for whom it is intended at its address herein above set forth (in the case of notice to Tenant, a copy of all notices must be forwarded to Cricket Ohio Property Company, 1225 Washington Pike, Bridgeville, Pennsylvania 15017, or to such other address as the City or Tenant shall hereafter give notice to the other in writing. Notwithstanding anything to the contrary contained herein, any notice given hereunder which is either returned or unclaimed shall be deemed served when deposited in the United States mail, properly stamped and addressed to the other party for whom it is intended.

#### MISCELLANEOUS PROVISIONS

17. (a) It is mutually stipulated and agreed by and between the parties hereto that this instrument contains the entire agreement between them as of this date, and that the execution thereof has not been induced by either party by any representations, promises or undertakings not expressed herein, and that there are no stipulations, promises or undertakings whatsoever by the respective parties in any way affecting the subject matter of this Lease which are not expressly contained in this instrument and no change, alteration or modification hereof may be made except in writing signed by both parties hereto.

(b) The terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, successors, assigns and personal representatives.

(c) This Lease shall be construed under the laws of the State of Ohio.

(d) Tenant, or its authorized representatives, shall be given and is hereby granted the right of ingress and egress in, on, over and through the Premises at any and all reasonable times for the purpose of constructing the Tenant's Facility. Once construction has been completed and Tenant's Facility is on-line, Tenant shall have a restricted right of ingress and egress in, on, over and through the Premises at any and all times for the purpose of determining what repairs or replacements, if any, are necessary to be made by Tenant and for the further purpose of making said necessary repairs or replacements.



(e) This Lease and Tenant's obligations hereunder are subject to and contingent upon the following conditions (all of which must be met without cost or expense to the City), which must be satisfied as set forth herein within twelve (12) months from the date of this Lease Agreement:

(i) Tenant obtaining all governmental approvals (including, but not limited to, platting, subdivision, zoning, zoning variances and/or rezoning classifications) necessary, in Tenant's sole opinion, to allow Tenant to develop the Demised Premises as intended by Tenant. Tenant and/or the City, if required, shall submit applications to commence the appropriate proceedings to obtain such approvals, if necessary. The City agrees to cooperate with Tenant and assist Tenant in obtaining the appropriate approvals as aforesaid.

(ii) A determination, in Tenant's sole opinion, that the Premises and/or Demised Premises, are satisfactory for the Tenant's intended use. In order to make such determination, the City hereby grants to Tenant, its agents, contractors, employees and/or licensees, the right to enter the Premises and Demised Premises for the purpose of conducting engineering tests, soil test borings, preparing a survey, an environmental Phase I Site Assessment and/or Phase II Subsurface Investigation Report and an inspection of utility services, as well as such other tests as Tenant shall determine to make on or about the Premises and Demised Premises.

(iii) The Premises being acceptable to Tenant, in its sole opinion, for purposes of receiving and transmitting radio waves in accordance with Tenant's engineering and other requirements.

(iv) Tenant obtaining the necessary licenses and permits enabling Tenant to construct Tenant's Facility and operate Tenant's intended business.

(v) Tenant and/or the respective utility companies receiving from the City the easement(s) referred to in paragraph 11 herein above, which easement(s) must be acceptable to counsel for Tenant and/or the respective utility companies.

(vi) Tenant receiving a policy for Leasehold Title Insurance solely acceptable to counsel for Tenant.

(vii) The City and Tenant mutually agreeing to the location of the Demised Premises. Tenant shall have a survey of the Leased Area and Easement Area prepared, at its sole cost and expense, and upon completion thereof, the respective legal descriptions thereof shall be attached hereto as Exhibit A.

(viii) Approval of the Plans by the City. Upon approval thereof, said Plans shall be marked Exhibit "C" and attached hereto and made a part hereof.

(ix) The Title Company issuing the Policy for Leasehold Title Insurance receiving a certified copy of the Ordinance, certifying that City is authorized, as aforesaid, and that the officers executing this lease are authorized, on behalf of the Landlord.



In the event said conditions/contingencies are not met to Tenant's sole satisfaction by said date, this Lease Agreement shall immediately terminate and be of no further force and effect as between the parties hereto unless said date is extended by the mutual agreement of the parties hereto. In the event said Lease is terminated and does not, therefore, become effective as between the parties hereto, Tenant does hereby represent and warrant to the City that it shall repair and restore the Premises to its original condition due to any damage which has been done to the Premises as a result of Tenant's tests as set forth in paragraph 17(e) (ii) herein above.

(f) The City understands that monetary damages are not sufficient in the event of breach of the City's obligation to lease the Leased Area to Tenant and perform pursuant to the terms hereof; therefore, failure to perform by the City herein shall entitle Tenant to specific performance to enforce the terms, provisions and/or validity of this Lease on behalf of Tenant.

(g) Waiver of a breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach of such provision, or of any breach of any other provision of this Lease.

(h) If any provision of this Lease shall, to any extent, be found by a court of competent jurisdiction, to be invalid or unenforceable, the validity and enforceability of the remainder of this Lease and each of the other provisions hereof shall not be affected or impaired unless a failure of consideration would result thereby.

(i) Tenant agrees that if the estate created hereby shall be taken in execution, or by other process of law, or if any petition in bankruptcy or for the appointment of a receiver be filed concerning Tenant and same is not dismissed within sixty (60) days thereafter, or should Tenant be declared bankrupt or insolvent according to law, or should any receiver be appointed for the business or property of Tenant or if any assignments shall be made of Tenant's property for the benefit of creditors, then, and in such event, this Lease may be terminated at the option of the City.

(j) The City reserves the right to subject and subordinate this Lease at all times to the lien of any mortgages now or hereafter placed upon the City's interest by parties other than Tenants lenders in the said Premises and on the land and buildings on said Premises or upon any buildings hereafter erected on said Premises, provided that the holder of any such mortgage shall agree not to disturb Tenants rights hereunder so long as Tenant shall perform its obligations hereunder. Tenant covenants and agrees to execute and deliver,

upon demand, such further instrument or instruments subordinating this Lease to the lien of any such mortgage or mortgages as shall be desired by the City and by any mortgagees or proposed mortgagees, provided that the Mortgagee at issue shall furnish a non-disturbance agreement consistent with the forgoing.

(k) Tenant acknowledges that it has examined the Demised Premises prior to the making of this Lease and knows the condition thereof, and that no representations as to the condition or state of repairs thereof have been made by the City, or its agent, which are not herein expressed, and Tenant hereby accepts the Demised Premises in their present condition as of the date of the execution of this Lease.

(l) It is agreed that each and every of the rights, remedies and benefits provided by this Lease shall be cumulative, and shall not be exclusive of any said rights, remedies and benefits, or any other rights, remedies and benefits allowed by law.

(m) In the event that, during the initial Term of this Lease or any renewal terms thereof, replacement, repairs and/or renovation to the Tower are required which necessitate the temporary removal of part or all of Tenant's Facility, Tenant will, at its expense, remove the same within thirty (30) days upon receipt of written request from the City. Tenant will be responsible for reinstallation, at its own expense, after the completion of such repair and/or renovation. Such repair and/or renovation shall be completed by the City in an expeditious manner so as to minimize disruption of Tenant's Facility.

(n) In the event that, during the initial Term of this Lease or any renewal terms thereof, the City determines that it is necessary or advisable to remove the Tower and not replace it, the City may do so upon one hundred eighty (180) days prior written notice to Tenant, and Tenant shall remove Tenant's Facility from the Tower prior to the removal of the Tower by the City. Additionally, in the event that such Tower removal by the City occurs, the City shall make every effort, including zoning approvals, to locate a satisfactory location, in Tenant's discretion, for the relocation of the Tenant Facility, and City shall pay Tenant's removal and relocation costs if said relocation occurs within the first fifteen (15) years of the Lease, said payment by City not to exceed Seventy Five Thousand and No/Dollars (\$75,000.00), and subsequent to said relocation and the Tenant Facility becoming operational, the parties shall be subject to the terms and conditions of this Lease. In the event Tenant does not desire to relocate the Tenant Facility, City shall pay Tenant's cost's to remove the Tenant Facility from the Tower and the indoor location of the ground-based equipment, said payment by City not to exceed Twenty Thousand and No/Dollars (\$20,000.00), and thereafter this Lease shall terminate as between the parties hereto with no further obligation between the parties other than the refunding of rent paid by Tenant to City for any time that the Tenant Facility is out of service due to

City's decision to remove the Tower. Thereafter, rent shall be suspended until such time as the Tenant Facility is fully operational if relocated by Tenant as contemplated herein.

(o) The provisions of this Lease with regard to indemnification by the City or Tenant shall survive the initial Term of this Lease or any renewal terms thereof.

(p) Tenant agrees to replace, if required, at its expense, any existing antennae of the City on the Tower together with the cable to the equipment located in the base of the Tower. Tenant will erect, if required, at its expense, up to a total of four (4) of the City's antennae on the Tenant's antennae platform or pod with cable to the base of the Tower.

(q) Tenant will install, if required, at its expense, any OSHA required safety equipment directly related to Tenants Facility.

(r) Tenant will be responsible, at its expense, for the installation and maintenance of any markings and lighting of the Tower and Tenant's Facility which is required by the Federal Aviation Administration as a result of Tenants installation and will obtain any necessary licenses or permits required by said agency. Tenant will indemnify the City against claims for injury and death sustained by persons or damage to property arising out of Tenant's failure to comply with the terms of this paragraph, including, but not limited to, penalties or fines for failure to properly mark or light the Tower or Tenant's Facility. Tenant will also be responsible, at its expense, to obtain any necessary licenses or permits from the Federal Communications Commission for Tenant's Facility.

IN WITNESS WHEREOF, the parties have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Signed and acknowledged  
in the presence of:

\_\_\_\_\_  
Witness

CITY OF CENTERVILLE

By: \_\_\_\_\_  
Gregory B. Horn,  
City Manager

\_\_\_\_\_  
Witness

CRICKET OHIO PROPERTY COMPANY

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A  
Legal Description**

**The Property is legally described as follows:**

City: CENTERVILLE

State: OHIO

County: MONTGOMERY

The Property of which the Premises are a part is legally described as follows:

**155 West Spring Valley Road, Centerville, Ohio 45458**

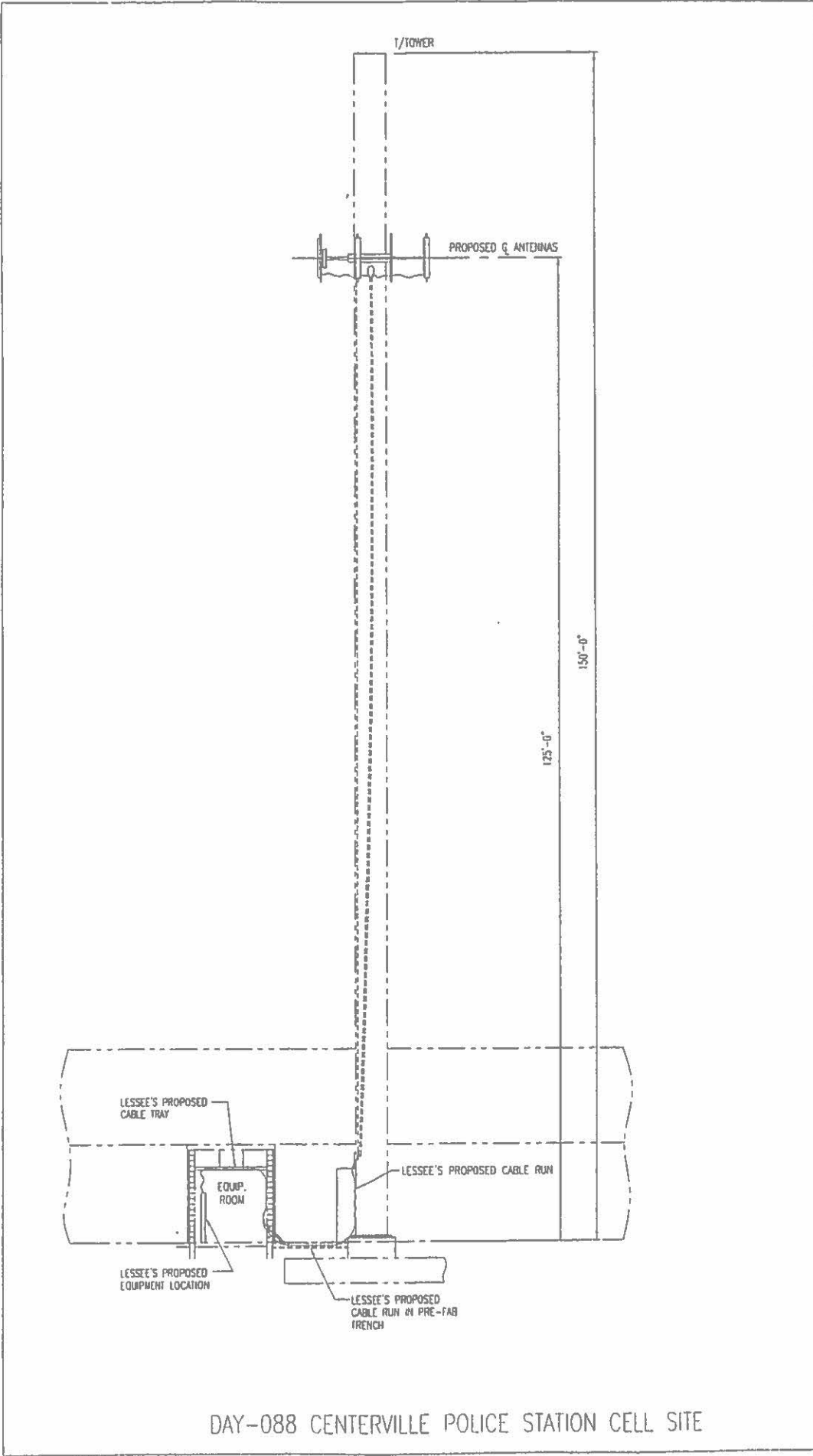
**Tax Parcel ID#: 068-00135-0005**

**EXHIBIT B  
DESCRIPTION OF PREMISES**

To the Lease dated \_\_\_\_\_, 2002, between the City of Centerville, as Lessor, and Cricket Ohio Property Company, a Delaware corporation, as Lessee.

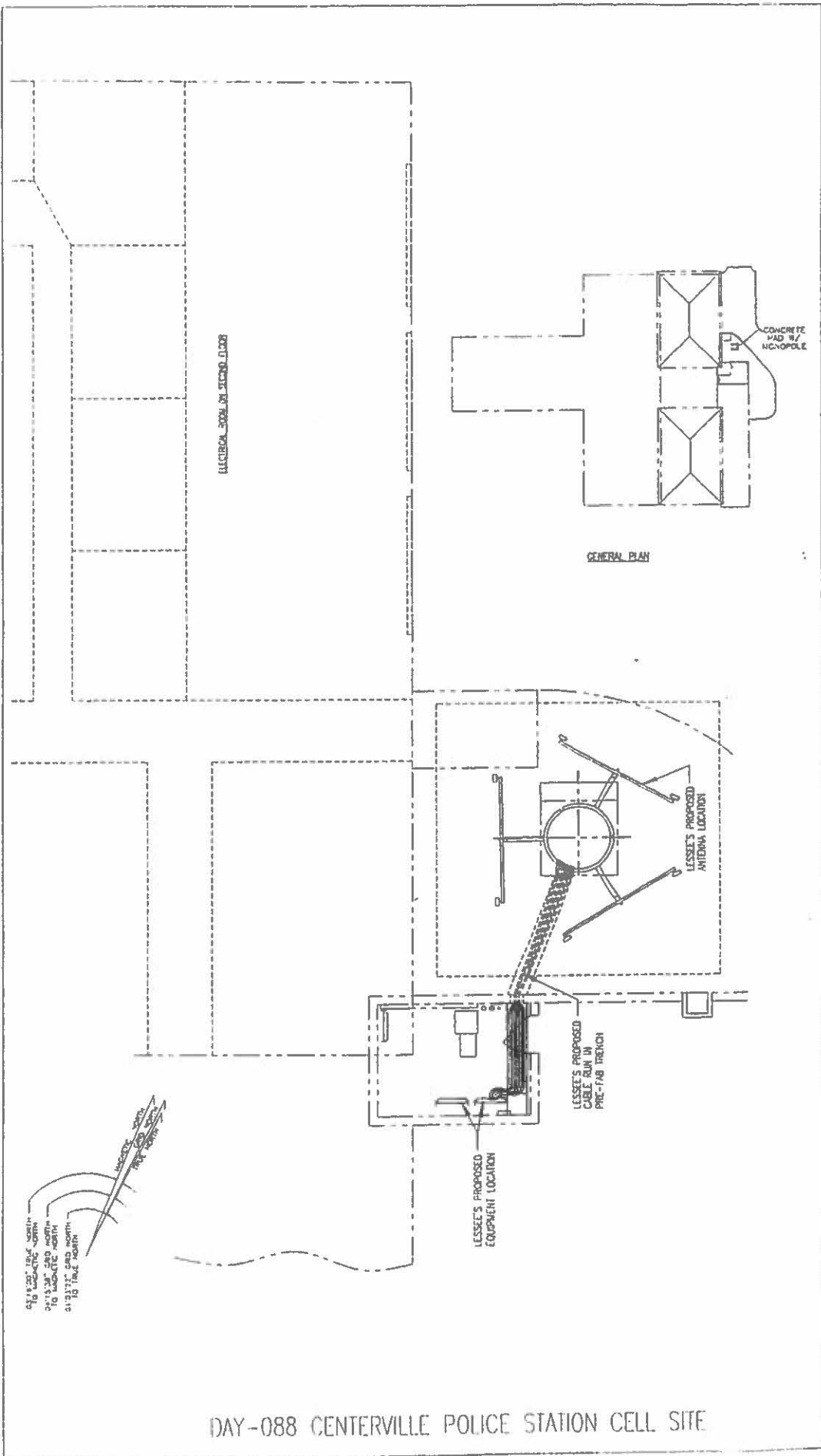
The location of the Premises within the Property together with access, ingress, egress, easements and utilities are more particularly depicted as follows:

Lessor \_\_\_\_\_  
Lessee \_\_\_\_\_



DAY-088 CENTERVILLE POLICE STATION CELL SITE





DAY-088 CENTERVILLE POLICE STATION CELL SITE

**EXHIBIT C**

**MEMORANDUM OF LEASE**

To the Lease dated \_\_\_\_\_, 2002, between the City of Centerville, as Lessor, and Cricket Ohio Property Company, a Delaware corporation, as Lessee.

After recording, please return to:

**Cricket Regional Property Manager  
Cricket Ohio Property Company  
1225 Washington Pike  
DDI Plaza One, Suite 100  
Bridgeville, PA 15017**

**Memorandum of Lease**  
Between the City of Centerville ("Lessor")  
and Cricket Ohio Property Company, a Delaware corporation, ("Lessee")

A Lease Agreement ("Lease") by and between the City of Centerville ("Lessor") and Cricket Ohio Property Company, a Delaware corporation, ("Lessee") was made regarding a portion of the following property:

See Attached Exhibit "A" incorporated herein for all purposes

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date") and shall terminate at midnight on the last day of the month in which the fifth anniversary of the Commencement Date shall have occurred unless renewed as set forth therein. Lessee shall have the right to extend this Lease for four (4) additional five-year terms.

Signatures to follow

IN WITNESS WHEREOF, the parties hereto have executed this memorandum effective as of the date of the last party to sign.

Signed and acknowledged  
in the presence of:

CITY OF CENTERVILLE

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Gregory B. Horn,  
City Manager

CRICKET OHIO PROPERTY COMPANY

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description**

**The Property is legally described as follows:**

City: CENTERVILLE

State: OHIO

County: MONTGOMERY

The Property of which the Premises are a part is legally described as follows:

**155 West Spring Valley Road, Centerville, Ohio 45458**

**Tax Parcel ID#: 068-00135-0005**