

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
 :
APPLICATION OF HOMELAND : DOCKET NO. 509
TOWERS, LLC FOR A CERTIFICATE :
OF ENVIRONMENTAL :
COMPATIBILITY AND PUBLIC NEED :
FOR THE CONSTRUCTION, :
MAINTENANCE AND OPERATION OF :
A TELECOMMUNICATIONS FACILITY :
AT 1837 PONUS RIDGE ROAD, NEW :
CANAAN, CONNECTICUT : JUNE 26, 2022

New Canaan Neighbors Supplemental Request for Administrative Notice

New Canaan Neighbors (“NCN”) submitted a FOIA request to the Town of New Canaan (“Town”) requesting the Option Agreement between the Town of New Canaan and 1837 LLC. The Town cannot presently locate the fully executed unredacted version of this agreement. In the hopes that the fully executed version of this record would be found, NCN did not previously submit a whited-out unexecuted copy of the Option Agreement. However, since this is the only agreement still available, NCN requests to submit the attached Option Agreement and correspondence with the Town concerning the lost public record. Terms in the Option Agreement provide information that is important to management of the parcel, ingress and egress onto the site,

increased levels of activity around the reservoir, and other relevant environmental impacts to the selected site.

Thus, NCN respectfully requests that the Siting Council take administrative notice of the following items found in the public record, as well as judicially cognizable facts and generally recognized technical or scientific facts within the Council's specialized knowledge, and facts not subject to reasonable dispute and known within the jurisdiction of the Council or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned:

1. Town of New Canaan and 1837 LLC Option Agreement, executed in or around either February or March 2021. (Attached as Public Record 30.)
2. Email Exchange concerning FOIA Request, Town of New Canaan. (Attached as Public Record 31.)

Respectfully submitted,

/s/Justin Nishioka
Justin Nishioka, NCN Representative

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically mailed to the following service list on June 26, 2022.

Attorney Lucia Chiochio

NCN Supplemental Request for
Administrative Notice

Public Record 30

Please record and return to:
Attorney Douglas E. LoMonte
Berchem Moses PC
1221 Post Road East, Suite 301
Westport, CT 06880

OPTION AGREEMENT

This Option Agreement (the "Agreement") is dated as of March 29, 2021, by and between 1837 LLC, a Connecticut limited liability company (the "Owner") and TOWN OF NEW CANAAN, a Connecticut municipal corporation (the "Town").

RECITALS

- A. Owner is the fee simple owner of the property located at 1837 Ponus Ridge Road, New Canaan, Connecticut and more particularly described on Schedule A, attached hereto (the "Property")
- B. Owner entered into an Option and Ground Lease Agreement (the "Ground Lease") with Homeland Towers, LLC ("Homeland Towers") pursuant to which Homeland Towers secured the right to construct and maintain a telecommunications tower ("Tower") and related facilities within a 5,625 square foot fenced compound on the Property (the "Compound").
- C. The Town has entered into a Communications License Agreement with Homeland Towers pursuant to which the Town secured the right to install, operate and maintain certain public safety communications equipment (the "Public Safety Equipment") on the Tower and within the Compound.
- D. The Town desires assurances that the Town will have the right to continue to operate and maintain the Public Safety Equipment on the Tower and within the Compound.

NOW, THEREFORE, the Owner and the Town agree as follows.

1. **The License Option.** In consideration of the sum of Ten Thousand and 00/100 Dollars (\$10,000.00), receipt of which is acknowledged by the Owner, the Owner grants to the Town an exclusive and irrevocable option to license the Compound on the following terms and conditions (the "License Option"):

a. The License Option is exercisable only upon termination or expiration of the Ground Lease.

b. The License Option will be exercisable by the Town by delivery of written notice to the Owner together with an exercise fee of Fifty Thousand and 00/100 Dollars (\$50,000.00).

c. Upon exercise of the License Option, the Town will have the right to: (i) access the Compound to the same extent permitted to Homeland Towers under the Ground Lease; and (ii) operate and maintain the Public Safety Equipment on the Tower and within the Compound (the "License"), for a term of ninety eight (98) years (the "Term").

d. If the Town exercises the License Option, the Town will pay the Owner during the Term: (i) the sum of One Dollar (\$1.00) per year as a license fee; and (ii) forty percent (40%) of the amount, if any, received by the Town as rent, license fee or the like from any telecommunications carrier or other party that co-locates on the Tower ("Co-Location Revenue"). If the Town receives Co-Location Revenue, then the Town will pay the forty percent (40%) share to the Owner in annual installments and, with each installment, the Town will furnish a statement showing the amount received from each co-locating telecommunications carrier or party during the applicable year.

e. If the Town exercises the License Option, then, for the duration of the Term, the Town will be responsible for maintaining the Tower and the fencing and screening landscaping surrounding the Compound in good repair, at the Town's expense, and for paying all utility costs associated with the operation of the Public Safety Equipment.

f. If the Town exercises the License Option, then the Town will, upon the first to occur of: (i) the expiration of the Term; or (ii) such time as Town permanently removes the Public Safety Equipment from the Tower, remove the Tower from the Property, take the tower foundation down to grade and restore the Compound to its original condition at the Town's expense, provided that the Owner shall have the right to assume ownership of, and responsibility for, the Tower and direct the Town to leave the Tower in place.

2. **Expiration.** This Agreement will expire automatically upon the expiration or earlier termination of the License without requirement to record a notice or release upon the New Canaan Land Records.

3. **Entire Agreement.** This Agreement represents the entire Agreement by and between the parties with respect to the subject matter hereof, and may not be modified, except in writing signed by both parties.

4. **Successors and Assigns.** This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective, successors and assigns.

5. **Assignment.** This Agreement is strictly not assignable by the Town without the express prior written consent of the Owner. This Agreement is assignable by the Owner to any party that acquires the Property from the Owner.

6. **Severability.** If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the parties hereto direct that such court interpret and apply the remainder of this Agreement in the manner that it determines most closely effectuates their intent in entering into this Agreement, and in doing so

particularly take into account the relative importance of the term, provision, covenant or restriction being held invalid, void or unenforceable.

7. **Governing Law.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Connecticut, without regard to its conflicts of laws or provisions.

8. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

9. **Captions.** Any title or caption contained in this Agreement is for convenience only and shall not be deemed a substantive part of this Agreement.

10. **No Waiver.** Any delay or failure by either party to exercise any right under this Agreement, or any party's partial exercise of any right under this Agreement, shall not constitute a waiver of such right or any other right. The waiver by either party of any particular breach of this Agreement or right hereunder shall not operate or be construed as a waiver of any other breach of this Agreement or right hereunder, and no such waiver shall be effective unless set forth in writing by the Owner or the Town.

{This space intentionally left blank. The next page is the first signature page.}

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first indicated on Page 1.

Witnesses:

1837 LLC

Signature

Name

Title

STATE OF CONNECTICUT)

)

TOWN OF NEW CANAAN _____, 2021

COUNTY OF FAIRFIELD)

)

Personally appeared _____, duly authorized _____ of 1837 LLC, signer and sealer of the foregoing instrument, and acknowledged the same to be _____ free act and deed and the free act and deed of the said limited liability company, before me.

Notary Public /

Commissioner of Superior Court

{Signature page to Option Agreement}

Witnesses:

TOWN OF NEW CANAAN

Elen M. Petersen
Elen M. Petersen

Signature

[Handwritten Signature]

Name

Kevin J. Moynihan

Title

First Selectman

Fran Consiglio
Fran Consiglio

STATE OF CONNECTICUT)

) TOWN OF NEW CANAAN MARCH 29, 2021

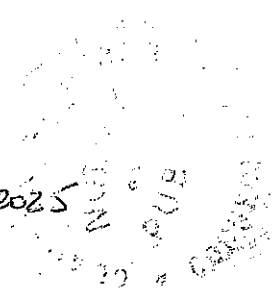
COUNTY OF FAIRFIELD)

Personally appeared Kevin J. Moynihan, duly authorized First Selectman of the Town of New Canaan, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed and the free act and deed of the Town, before me.

Claudia Weber

Notary Public /
Commissioner of Superior Court

my Commission expires 4-30-2025



{Signature page to Option Agreement}

**SCHEDULE A
PROPERTY DESCRIPTION**

All that certain tract, piece or parcel of land, with any buildings and improvements thereon, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, known and designated as "Parcel 'B' Area = 5.16 Acres" on a certain map entitled "Map Showing Subdivision of Property owned by The Stamford Water Company, New Canaan, Connecticut" which map is now on file in the Office of the Town Clerk of said New Canaan and numbered 5246, reference thereto being had.

Said premises are more particularly known as 1837 Ponus Ridge, New Canaan, CT.

NCN Supplemental Request for
Administrative Notice

Public Record 31

NCN PUBLIC RECORD 31



Justin Nishioka <justin.nishioka@gmail.com>

FW: Option and Ground Lease Agreement

Pitt, Mimi <mimi.pitt@newcanaanct.gov>
To: Justin Nishioka <justin.nishioka@gmail.com>

Fri, Jun 3, 2022 at 11:56 AM

Yes I will.

Mimi Pitt
Project Coordinator
Town of New Canaan
77 Main Street
New Canaan, CT 06840
203-594-3001
mimi.pitt@newcanaanct.gov

CONFIDENTIALITY NOTICE: The information contained in this e-mail transmission may be privileged and confidential and is intended only for the use of the addressee named above. If the reader of this transmission is not the intended recipient, you are notified that any disclosure, dissemination, distribution or copying of its contents is strictly prohibited. If you have received this transmission in error, please notify me immediately by telephone and destroy the original. Thank you.

From: Justin Nishioka [mailto:justin.nishioka@gmail.com]
Sent: Friday, June 3, 2022 11:54 AM
To: Pitt, Mimi <mimi.pitt@newcanaanct.gov>
Subject: Re: FW: Option and Ground Lease Agreement

CAUTION: EXTERNAL EMAIL: This Email Originated from Outside of the Organization. DO NOT Click Links or Open Attachments unless you recognize the sender and know the content is safe.

Thank you, Mimi. You mentioned that portions of the attached agreement were whited-out. If you ever happen to come across an unredacted copy, please let me know.

Thanks again for your help.

Justin

On Fri, Jun 3, 2022 at 11:48 AM Pitt, Mimi <mimi.pitt@newcanaanct.gov> wrote:

Hi Justin:

As we discussed, I have gone back and reviewed the production to your FOIA request. I have also checked with Pam Flynn in the First Selectman's office. I have not found a fully executed copy of the Option Agreement so the copy that was provided signed by Kevin Moynihan on 3/29/2021 is what I found. I was also unable to find the Exercise Agreement you referred to; however, I did locate the Option and Ground Lease Agreement executed in February of 2021 which I have attached.

Let me know if there is anything else. Have a nice weekend.

Mimi Pitt
Project Coordinator
Town of New Canaan
77 Main Street
New Canaan, CT 06840
203-594-3001
mimi.pitt@newcanaanct.gov

CONFIDENTIALITY NOTICE: The information contained in this e-mail transmission may be privileged and confidential and is intended only for the use of the addressee named above. If the reader of this transmission is not the intended recipient, you are notified that any disclosure, dissemination, distribution or copying of its contents is strictly prohibited. If you have received this transmission in error, please notify me immediately by telephone and destroy the original. Thank you.

-----Original Message-----

From: HR [mailto:nccopier@newcanaanct.gov]
Sent: Friday, June 3, 2022 11:50 AM
To: Pitt, Mimi <mimi.pitt@newcanaanct.gov>
Subject: Option and Ground Lease Agreement

Scanned from MFP13674480
Date:06/03/2022 11:49
Pages:22
Resolution:200x200 DPI
