

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

APPLICATION OF OPTASITE TOWERS LLC
AND OMNIPOINT COMMUNICATIONS, INC.
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION, MAINTENANCE AND
OPERATION OF A TELECOMMUNICATIONS
FACILITY AT 52 STADLEY ROUGH ROAD,
DANBURY, CONNECTICUT

DOCKET NO. 366

October 6, 2008

**MOTION FOR A PROTECTIVE ORDER RELATED TO DISCLOSURE
OF THE EXACT MONTHLY RENT IN THE
LEASE AGREEMENT BETWEEN OPTASITE AND CHRIST THE SHEPPARD CHURCH**

On behalf of Optasite Towers, LLC ("Optasite"), a co-applicant, we respectfully submit this motion for a protective order pursuant to Section 4-178a of the Connecticut General Statutes to preclude any disclosure of the exact financial terms of a lease agreement between Optasite and Christ the Sheppard Church and T-Mobile.

**I. THE EXACT CONSIDERATION OF AN AGREEMENT IS NOT REQUIRED
TO BE DISCLOSED PURSUANT TO C.G.S. §16-50o**

Section 16-50o(c) of the Connecticut General Statutes sets forth the following submission requirement in all certification proceedings:

(c) The applicant shall submit into the record the full text of the terms of any agreement, and a statement of any consideration therefor, if not contained in such agreement, entered into by the applicant and any party to the certification proceeding, or any third party, in connection with the construction or operation of the facility. This provision shall not require the public disclosure of proprietary information or trade secrets.

The Statute as written only requires a **statement** of any consideration, not the exact amount of the consideration in any agreement. A "statement of consideration" simply can not be read to require the specific dollar amount of any consideration agreed to by private parties to be disclosed to the Council and other non-parties to the agreement.

In this particular proceeding, a redacted copy of Optasite's lease agreement was included in the Bulk Filing, Applicants' Exhibit 1, as required by Statute. As impliedly and expressly authorized by Section 16-50o(c) of the Connecticut General Statutes, Optasite redacted the exact amount of

the consideration in its agreement¹. Moreover, it is clear from a review of the redacted lease agreement between Optasite and Christ the Sheppard Church, a copy of which is annexed to this motion, that the consideration for the agreement is monthly rent paid in dollars for use of a portion of the Church's property for the installation and operation of the proposed facility. Clearly, the Council and any parties to the proceeding have sufficient information related to Optasite's agreement to adequately inquire into matters relevant to this Docket. We respectfully submit that the exact rent to be paid by Optasite is not required to be disclosed by the very terms of the Statute itself and constitutes proprietary information such that a protective order should be issued.

As the Council is aware, Section 16-50o(c) was adopted by the Legislature in an effort to address perceived deficiencies in Docket 208 and Cross-Sound Cable's agreement with Oystermen in that Docket as related to their opposition. As made clear by the legislative history to the Statute, its purpose was not to require the wholesale disclosure of each and every aspect of applicants' private leasehold agreements with property owners in all Dockets. Indeed, the legislative history does not even contain a discussion of applicants' leasehold agreements in any respect and actually demonstrates that the Legislature was aware of the potential harmful consequences of public revelation of applicants' proprietary or trade secret information. As such, the original bill was amended on the floor prior to its passage to specifically provide for the exclusion of any proprietary or trade secret information.

As the Siting Council is also aware, the wireless industry is a highly competitive business and the specific financial terms of lease agreements are cautiously guarded against revelation from competitors and future landlords. The exact rent contained in lease agreements between tower companies, carriers and their landlords has always been considered proprietary. Indeed, to our knowledge, the exact rent contained in these agreements has never been disclosed by applicants in the numerous Dockets that have been considered since the Legislature's adoption of Section 16-50o(c). This because all involved readily acknowledge the proprietary nature of the information and that the Council does not function under Statute as a clearinghouse for the financial terms of private agreements within the industry.

Given the foregoing, we respectfully submit that principles of statutory construction and the legislative history of Section 16-50o(c) itself require recognition that the amount of monthly rent to be paid by Optasite pursuant to its agreement with Christ the Sheppard Church is exempt from disclosure and/or must be protected from public disclosure as proprietary.

II. THE EXACT RENT TO BE PAID BY OPTASITE IS NOT RELEVANT TO THE SITING COUNCIL'S STATUTORY REVIEW.

Section 16-50p of the Connecticut General Statutes sets for the factors that the Siting Council must consider when evaluating a certificate application for a wireless telecommunications facility. Essentially, the Siting Council balances public need with the environmental impacts associated with a proposed facility. As set forth in Section 16-50p the Council must consider:

¹ The exact amount of commercial insurance associated with Optasite's leasehold improvement was also redacted from the filing.

(A) Except as provided in subsection (c) of this section, a public need for the facility and the basis of the need;

(B) The nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect, including, but not limited to, electromagnetic fields that, whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning, the natural environment, ecological balance, **public health and safety, scenic, historic and recreational values**, forests and parks, air and water purity and fish, aquaculture and wildlife; (Emphasis added)

(G) (b) (1) Prior to granting an applicant's certificate for a facility described in subdivision (5) or (6) of section 16-50i, the council shall examine, in addition to its consideration of subdivisions (1) to (5), inclusive, of subsection (a) of this section: (A) The feasibility of requiring an applicant to share an existing facility, as defined in subsection (b) of section 16-50aa, within a technically derived search area of the site of the proposed facility, provided such shared use is technically, legally, environmentally and economically feasible and meets public safety concerns, (B) whether such facility, if constructed, may be shared with any public or private entity which provides telecommunications or community antenna television service to the public, provided such shared use is technically, legally, environmentally and economically feasible at fair market rates, meets public safety concerns, and the parties' interests have been considered and (C) whether the proposed facility would be located in an area of the state which the council, in consultation with the Department of Environmental Protection and any affected municipalities, finds to be a relatively undisturbed area that possesses scenic quality of local, regional or state-wide significance. The council may deny an application for a certificate if it determines that (i) shared use under the provisions of subparagraph (A) of this subdivision is feasible, (ii) the applicant would not cooperate relative to the future shared use of the proposed facility, or (iii) the proposed facility would substantially affect the scenic quality of its location and no public safety concerns require that the proposed facility be constructed in such a location.


The statutory factors that the Siting Council must balance do not include consideration of the specific financial terms of any agreement between the parties nor is any such information relevant to the above noted statutory criteria. Indeed, Section 16-50p(g) of the Connecticut General Statutes prohibits the Siting Council from any consideration of the applicant's interest in the property proposed for the siting of a facility as follows:

(g) In making its decision as to whether or not to issue a certificate, the council shall in no way be limited by the fact that the applicant may already have acquired land or an interest therein for the purpose of constructing the facility which is the subject of its application.


Clearly, the Siting Council's evaluation of Optasite's and T-Mobile's proposed facility should not be based on the financial terms of Optasite's agreement with Christ the Sheppard Church. Indeed, the specific amount of rent that Optasite and Christ the Sheppard Church agreed upon has no bearing on the public need or environmental compatibility of the proposed facility. As such, it is respectfully submitted that the specific monthly rent of the lease agreement between Optasite and Christ the Sheppard Church is not relevant to this proceeding and should be excluded from any inquiry by the City as provided for in Section 4-178 of the State Administrative Procedure Act.

III. CONCLUSION

For whatever reason, the City of Danbury is intent on inquiring into irrelevant matters before the Council and seeking the public disclosure of information they perceive as "damaging" to the applicants and/or the Church. This despite the fact that the information sought is simply not relevant to the Council's proceedings and is in fact exempt from disclosure. In order to provide for an efficient and orderly usage of time at the continued public hearing in this Docket, we respectfully move the Council for a protective order in advance of the October 28th continuation for the reasons set forth above.



Christopher B. Fisher, Esq.



Lucia Chiocchio, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and twenty copies of Optasite's motion to prevent the disclosure of the financial terms of the lease agreement were served on the Connecticut Siting Council by overnight mail with an electronic copy sent via email and copy served via overnight mail and email to:

City of Danbury
Laslo L. Pinter, Esq.
Robin L. Edwards, Esq.
City of Danbury
Office of the Corporation Counsel
155 Deer Hill Avenue
Danbury, Connecticut 06810
(203) 797-4518
R.Edwards@ci.danbury.ct.us
L.Pinter@ci.danbury.ct.us

Dated: October 6, 2008


Lucia Chiochio

cc: Charles Regalbuto
Hans Fiedler
Hollis Redding
Christopher B. Fisher, Esq.
Paul Lusitani
Michael Libertine

LAND LEASE AGREEMENT

This Agreement is made this 2nd day of September 2005, between Candlewood Baptist Church, a non-profit religious organization, with a principal address of 52 Stadley Rough Road, Danbury, CT 06811-3237, Tax Exempt ID # _____ ("Landlord"), and Optasite Inc. a Delaware Corporation with a principal address of 446 Main Street Second Floor Worcester, MA 01608 ("Tenant"). Landlord and Tenant are sometimes referred to in this Agreement as the "Parties"

WITNESSETH:

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. Landlord hereby leases to Tenant approximately ten thousand (10,000) square feet of that certain real property located in the Town of Danbury, County of Fairfield, State of Connecticut, more particularly described on Exhibit A attached hereto (the "**Leased Parcel**"), for the purpose of installing, maintaining, removing, inspecting, repairing, and replacing one tower structure as described on Exhibit B attached hereto (the "**Tower**"), one or more antennas and related equipment as described on Exhibit B attached hereto (the "**Antennas**"), one or more buildings and certain other improvements as described on Exhibit B attached hereto (the "**Equipment Buildings**") together with (i) the non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, including over, under, or along a right-of-way as shown on Exhibit B attached hereto, and the driveways extending from Stadley Rough Road, Danbury, CT to the Leased Parcel for the purpose of constructing, maintaining, installing, inspecting, repairing, restoring, removing and replacing the Tower, the Antennas, and the Equipment Buildings (collectively, the "**Communications Facility**") and (ii) the non-exclusive right to install and maintain utility wires, poles, cables, conduits and pipes over, under, or along a fifty (50) foot right-of-way extending from Stadley Rough Road, Danbury, CT to the Leased Parcel as outlined on the attached Exhibit B attached hereto. The Leased Parcel, right-of-way for access and right-of-way for utilities described in this paragraph 1 and this Agreement, including, without limitation, those being substantially as shown on Exhibit B attached hereto and made a part hereof are sometimes, collectively, referred to hereinafter as the "**Property**"

In the event that the Tenant or a public utility is unable for any reason to use the aforesaid rights of way, or if the public utility requires a separate utility easement running to it, Landlord hereby agrees to grant additional rights-of-way, easements and other privileges to Tenant and the utility, at no charge to Tenant or the utility, at a mutually acceptable location, as necessary or desirable to install, operate and maintain utility facilities to serve the Communications Facility, and Landlord hereby agrees to execute and deliver such agreements and instruments deemed necessary or desirable to Tenant or the utility in connection with the foregoing, including the consent and joinder of Landlord's mortgagees to any such grant.

Landlord hereby grants permission to Tenant to install, maintain, repair, remove and operate the Communications Facility. Tenant shall have the right to replace the Communications Facility with similar and comparable buildings, equipment, tower structures and antennas.

2. Landlord also hereby grants to Tenant the right to survey the Property, at Tenant's cost, and at Tenant's option, said survey shall then become Exhibit B which shall be attached hereto and made a part hereof.

3. This Agreement shall be for an initial term of five (5) years and commencing on the "Commencement Date" (as hereinafter defined). Base Rent shall be due at an annual rental of

and shall be paid in equal monthly installments of _____ on the first day of the month, in advance, to Landlord at the address set forth above, or to such other person, firm or place as the Landlord may, from time to time, designate by Notice. The "Commencement Date" is defined as the first (1st) day of the month in which Tenant is granted a building permit for the construction of its Communications Facility by the governmental agency charged with issuing such permits.

Tenant agrees to pay all personal property taxes assessed by the town or other taxing authority on the Communications Facility.

Tenant shall pay all utility costs associated with installation, operation, maintenance and removal of the Communications Facility.

4. Tenant shall have the option to extend this Agreement for five (5) successive five (5) year terms. Each option for an extended term shall be deemed automatically exercised without notice by Tenant to Landlord unless Tenant gives Landlord written notice of its intention not to exercise any such option at least six (6) months prior to the end of the then current term, in which case, the term of this Agreement shall expire at the end of the then current term. Base Rent shall be increased on each anniversary of the Commencement Date in accordance with Exhibit E of this Agreement.

5. If at the end of the fifth (5th) five (5) year extension term, this Agreement has not been terminated by either Party by giving to the other Notice of termination at least six (6) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions, except as expressly provided below as to annual Base Rent, for a further term of one (1) year and for one (1) year terms thereafter until terminated by either Party by giving Notice to the other party of such termination at least six (6) months prior to the end of such term. Annual Base Rent for the first (1st) year of this period shall be equal to _____ paid for the last year of the fourth (4th) five (5) year extension. Thereafter, annual Base Rent for each year shall be equal to one _____ for the previous year.

6. Tenant shall use the Property only for the purpose of constructing, maintaining and operating a Communication Facility and uses incidental thereto together with all necessary or desirable connecting appurtenances. The Equipment Building to be placed on the Leased Parcel shall contain only telecommunications equipment and related equipment which is necessary or desirable for the support and operation of the telecommunications services. All improvements shall be at Tenant's expense and the installation and alteration of all improvements shall be at the discretion and option of the Tenant. Tenant will maintain the Communications

Facility in a reasonable condition. Tenant, at its sole expense, shall take all actions necessary in connection with the maintenance and operation of the Communications Facility, including, but not limited to, obtaining all permits and consents from governmental authorities. It is understood and agreed that Tenant's ability to use the Property is contingent upon its obtaining, after the execution date of this Agreement, all of the certificates, permits, and other approvals that may be required by any Federal, state or local authorities which will permit Tenant's use of the Property as set forth above. Landlord shall cooperate with Tenant in its effort to obtain such approvals, including, without limitation, the right of Tenant to contest determinations made by any Federal, state and local authority concerning any permits, approvals and licenses, as well as the application of any laws and regulations, and Landlord shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by Tenant.

If in Tenant's sole opinion, the results of any soil borings or other environmental tests are unsatisfactory, or any application for approval is finally rejected, or Tenant believes that such application for approval will be too costly or time consuming or there is a reasonable likelihood that said application will be rejected in the opinion of Tenant or any certificate, permit, license or approval issued to Tenant is canceled or otherwise withdrawn or terminated by any governmental authority so that Tenant in its sole discretion will be unable to use the Property to provide Tenant's telecommunications services, Tenant shall have the right to terminate this Agreement immediately. Notice of said termination shall be given to Landlord in writing by certified mail, return receipt requested. All rental paid for lease of the Property to said termination date shall be retained by Landlord. Upon such termination, this Agreement shall become null and the parties shall have no further obligations to each other, including the payment of money.

7. Landlord agrees that Tenant shall have free access to the Property at all times for the purposes set forth in this Agreement.

8. (a) During the term of this Agreement, Tenant covenants that it will keep the Property, including, but not limited to, that portion of the access road in which only Tenant utilizes in good repair and condition, which shall include normal maintenance. Tenant also covenants that if it damages or destroys any other part of the mutually used access road, then it shall repair said damage at its sole cost and expense.

(b) If Tenant fails to perform the maintenance and repairs required by subparagraph 8(a) within forty-five (45) days of Notice from Landlord that the repairs must be made, Landlord may make the repairs and the costs thereof shall be payable to Landlord by Tenant within thirty (30) days after receipt by Tenant of copies of bills for the work performed. If Tenant does not make payment to Landlord within said period of time, Landlord shall have the right to add the costs of the repairs or maintenance to the succeeding monthly rental due Landlord from Tenant.

9. All installations and operation in connection with this Agreement by Tenant shall meet with all applicable rules and regulations of the Federal Communications Commission, Federal Aviation Agency and all applicable municipal, state and Federal codes and regulations. Under this Agreement, Landlord assumes no responsibility for the licensing, operation, and/or maintenance of the Equipment and the Antennas.

10. Each Party shall maintain, at its own expense, during the term of this Agreement, general liability

and casualty insurance with a combined single limit of [REDACTED] for bodily injury and property damage. Each Party shall provide a certificate of insurance to the other Party which shall contain a provision for a thirty (30) days notice of cancellation to the other Party, and shall name the other Party as an additional insured. Landlord and Tenant agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Landlord or Tenant. As long as such waivers of subrogation are contained in their respective insurance policies, Landlord and Tenant hereby waive any right that either may have against the other on account of any loss or damage to their respective property to the extent such loss or damage is insurable under policies of insurance for fire and all risk coverage, theft, public liability, or other similar insurance.

11. Notwithstanding anything to the contrary contained herein, provided Tenant is not in default hereunder and shall have paid all rents and sums due and payable to the Landlord by Tenant, Tenant shall have the right to terminate this Agreement, without penalty or charge, at any time, whether prior to or after the Commencement Date, and from time to time, provided that six (6) months prior Notice of its election to terminate is given to the Landlord.

12. Upon expiration or termination of the Agreement, Tenant shall within a reasonable period, remove the Communications Facility, fixtures and all personal property located on the Leased Parcel and repair any damage caused by such removal. Landlord hereby agrees that the Communications Facility and any other fixtures, equipment and personal property of Tenant shall remain the property of Tenant notwithstanding that any such improvements may constitute a fixture under applicable law. If such time for removal causes Tenant to remain on the Property after expiration or termination of this Agreement, Tenant shall pay rent at the then existing monthly rate on a per diem basis until such time as the Communications Facility, personal property and all fixtures, are removed.

13. Each Party shall be responsible for compliance with any and all environmental laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental conditions, as may now or at any time hereafter be in effect, that are in any way related to the activity conducted by such Party. Landlord hereby acknowledges and agrees that it is solely responsible for any adverse environmental conditions existing on the Leased Parcel prior to the Commencement Date or otherwise existing on the Leased Parcel and not caused by the Tenant. Landlord warrants and represents to Tenant that during Landlord's ownership of the Leased Parcel, (i) no hazardous materials have been released into the environment, or discharged, placed or disposed of at, on or under the Leased Parcel; (ii) the Leased Parcel has not been used as a dump for waste material; and (iii) the Landlord has no knowledge of any hazardous materials or environmental contamination existing on the Leased Parcel.

Each Party shall hold the other harmless and indemnify the other from and assume all duties, responsibility and liability, at its sole cost and expense, for all duties, responsibilities, and liabilities (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to failure of such Party to comply with any environmental law imposed upon such party, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or

standards of conduct with regard to any environmental conditions, as may now or at any time hereafter be in effect.

14. If Landlord, at any time during the term of this Agreement, sells all or any part of the Leased Parcel to a purchaser other than Tenant, such sale shall be under and subject to this Agreement and Tenant's rights hereunder

15. Landlord covenants that Tenant, on paying the rent and performing the covenants herein required of Tenant, shall peaceably and quietly have, hold and enjoy the Property. Landlord further covenants to Tenant that there are no pending or threatened legal proceedings or actions of any kind or character affecting the Leased Parcel or Seller's interest therein. If Landlord owns and/or controls additional adjacent land, Landlord agrees for itself and all future holders of such land that no use shall be made of the land during the Initial Term and any Renewal Term that would interfere or compete with Tenants use of the Leased Premises as described herein.

16 (a) Landlord represents and warrants to Tenant that Landlord: (i) is not presently engaged in, (ii) does not presently have actual knowledge of, (iii) has not at any time in the past engaged in, and (iv) has no actual knowledge that any third person or entity has engaged in or permitted any operations or activities upon, or any use or occupancy of, the Leased Premises, on any portion thereof, for the purpose of, or in any way involving the handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge, or disposal (whether legal or illegal), accidental or intentional, of any hazardous substances, materials or wastes regulated under any local, state or federal law. Prior to, during and after the term of this Lease, Landlord shall indemnify and hold Tenant harmless from any and all liability, claims of liability, or loss arising from any hazardous substances, materials, or wastes located on or under the Leased Premises and under any Environmental Regulations, except for claims arising in whole or in part, out of Tenant's use or occupancy of the Leased Premises.

Tenant represents, warrants, and covenants to Landlord that Tenant shall at no time during the term of this Lease Agreement use or permit the Leased Premises to be used in violation of any Environmental Regulations. Tenant shall indemnify and hold Lessor harmless from any and all liability, claims of liability, or loss under any Environmental Regulations arising out of Tenant's use or occupancy of the Leased Premises.

For the purposes, of these provisions, the term "Environmental Regulations" shall mean any law, statute, regulation, order or rule now or hereafter promulgated by any Governmental Authority, whether local, state or federal, relating to air pollution, water pollution, noise control and/or transporting, storing, handling, discharge, disposal or recovery of on-site or off-site hazardous substances or materials, as same may be amended from time to time, including without limitation the following: (i) the Clean Air Act (42 U.S.C. § 7401 et seq.); (ii) Marine Protection, Research and Sanctuaries Act (33 U.S.C. § 401-1445); (iii) the Clean Water Act (33 U.S.C. § 1251 et seq.); (iv) RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. § 6901 et seq.); (v) CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.); (vi) TSCA; (vii) the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. § 135 et seq.); (viii) the State Drinking Water Act (42 U.S.C. § 300 (f) et seq.); (ix) OSHA; (x) the Hazardous Liquid Pipeline Safety Act (49 U.S.C. § 2001 et seq.); (xi) the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.); (xii) the Noise Control Act of 1972 (42 U.S.C. § 4901 et seq.); (xiii) EPCRA; (xiv) National Environmental Policy Act (42 U.S.C. § 4321-4347).

(b) Landlord warrants and covenants that Landlord is seized of good and marketable title and interest to the Real Property and has full power and authority to enter into and execute this Agreement. Landlord further covenants that there are no mortgages, liens, judgments or impediments of title on the Real Property, or affecting Landlord's title to the same, other than as set forth on Exhibit B, and that there are no covenants, easements or restrictions which prevent the use of the Real Property by Tenant as set forth in this Agreement, excluding governmental licenses, zoning, or other regulatory requirements not otherwise reflected in the land records and affecting Tenant's business, compliance of which is the responsibility of the Tenant. Landlord further covenants that all real estate taxes assessed against the Real Property have been paid in full through the most current payment period

In the event Landlord does not have good and marketable title to the Real Property or authority as set forth herein or there are liens, judgments or impediments to Tenant's use, or said real estate taxes have not been paid current, after Landlord has been provided with Notice and a period of thirty (30) days to cure, Tenant may, in addition to any and all rights and remedies provided for herein and in law and equity, withhold rental payments until such time as Landlord demonstrates that it has good and marketable title or authority and/or there are no liens, judgments or impediments to Tenant's use, or terminate this Lease immediately and Landlord will return all rent prepaid by Tenant.

17. It is agreed and understood that this Agreement contains all agreements, promises and understandings between the Parties and that no verbal or oral agreements, promises or understandings shall be binding upon either Party in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the Parties.

18. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Connecticut.

19. All notices and other communications hereunder must be in writing (a "Notice") and shall be deemed validly given if and when sent by confirmed facsimile transmission, overnight express mail services or by certified mail, return receipt requested, addressed as follows (or any other address that the Party to be notified may have designated to the other Party by Notice):

TENANT: Optasite Inc.
 446 Main Street Second Floor
 Worcester, MA 01608

LANDLORD: Candlewood Baptist Church
 52 Stadley Rough Road
 Danbury, CT 06811-3237

20. This Agreement shall be binding upon, and inure to the benefit of, the heirs, personal representatives, successors and assigns of the Parties hereto.

21. At no cost to Landlord, Landlord shall use best efforts to provide to Tenant upon the execution of this Agreement a non-disturbance agreement in form attached as Exhibit C hereto from each and every mortgagee, ground lessor and other lien holder having an interest in the Leased Parcel. Subject to the conditions hereinafter set forth, this Agreement, and all rights of Tenant hereunder, are and shall be subject and subordinate to all mortgages and/or ground leases which may hereafter affect the Leased Parcel whether or not such mortgages or leases shall also cover other lands and/or properties, to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, replacements and extensions of such mortgages and leases and all consolidations of such mortgages, on the express condition that, with respect to any such mortgage or lease hereafter placed on the Leased Parcel, Tenant receives a non-disturbance agreement from such mortgagee or lessor in the form attached hereto as Exhibit C. So long as such non-disturbance agreement has been delivered to Tenant, such subordination shall be automatic and without need for any additional action or documentation.

22. Landlord agrees to execute and deliver a Notice of Lease, the form of which is attached hereto as Exhibit D, which Tenant may record with the appropriate Recording Officer. The date set forth in the Notice of Lease is for recording purposes only and bears no reference to commencement of either term or rent payments.

23. Tenant shall have the right to sublease, license, assign or otherwise transfer, in whole or in part, the Property and/or its rights under this Agreement without the prior written consent of Landlord

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

Charles S. Reynolds

WITNESS

Lynn Morse
WITNESS

Charles S. Reynolds

WITNESS

Lynn Morse
WITNESS

LANDLORD:

Candlewood Baptist Church

BY: Jeffrey Fox

Pastor Jeffrey Fox

duly authorized

BY: Lynn Morse

Mr. Lynn Morse

Church Elder, duly authorized

TENANT:

Optasite, Inc.

James H. Ross III

WITNESS

Gabriel Kent

WITNESS

By: James H. Ross III

James H. Ross III

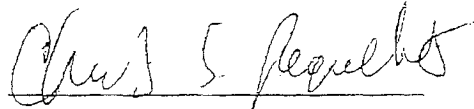
President and Chief Operating Officer

STATE OF CONNECTICUT

) ss: DANBURY

COUNTY OF FAIRFIELD

On the 2nd day of September 2005, before me, Charles S. Regalbuto, Notary Public, personally appeared Jeffery Fox, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted as his free act or deed, executed the instrument.



Commissioner of Superior Court

Notary Public

My Commission Expires:

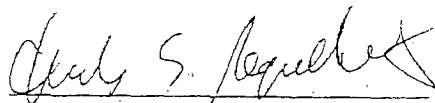
Charles S. Regalbuto
NOTARY PUBLIC
State of Connecticut
My Commission Expires 4/30/07

STATE OF CONNECTICUT

) ss: DANBURY

COUNTY OF FAIRFIELD

On the 2nd day of September 2005, before me, Charles S. Regalbuto, Notary Public, personally appeared Lynn Morse, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted as his free act or deed, executed the instrument.



Commissioner of Superior Court

Notary Public

My Commission Expires:

Charles S. Regalbuto
NOTARY PUBLIC
State of Connecticut
My Commission Expires 4/30/07

COMMONWEALTH OF MASSACHUSETTS

) SS:

COUNTY OF Worcester

The foregoing instrument was acknowledged before me this 2nd day of September, 2005
by James H Ross III, President and Chief Operating Officer of Optasite, Inc on behalf of such corporation as the
president of such corporation, as his free act and deed.



Commissioner of the Superior Court

Notary Public

My Commission Expires: July 10, 2009

EXHIBITS

Exhibit A - Legal Description of Leased Parcel

Exhibit B - Description of Tower, Antennas, Equipment Building and
Equipment and Rights of Way

Exhibit C - Subordination and Non-Disturbance Agreement

Exhibit D - Notice of Lease

Exhibit E - Rental Increases

EXHIBIT A

LEGAL DESCRIPTION OF LEASED PARCEL

The Land is described and/or depicted as follows in which that leased portion of the Land is approximately ten thousand square (10,000) feet excluding access and utility easements:

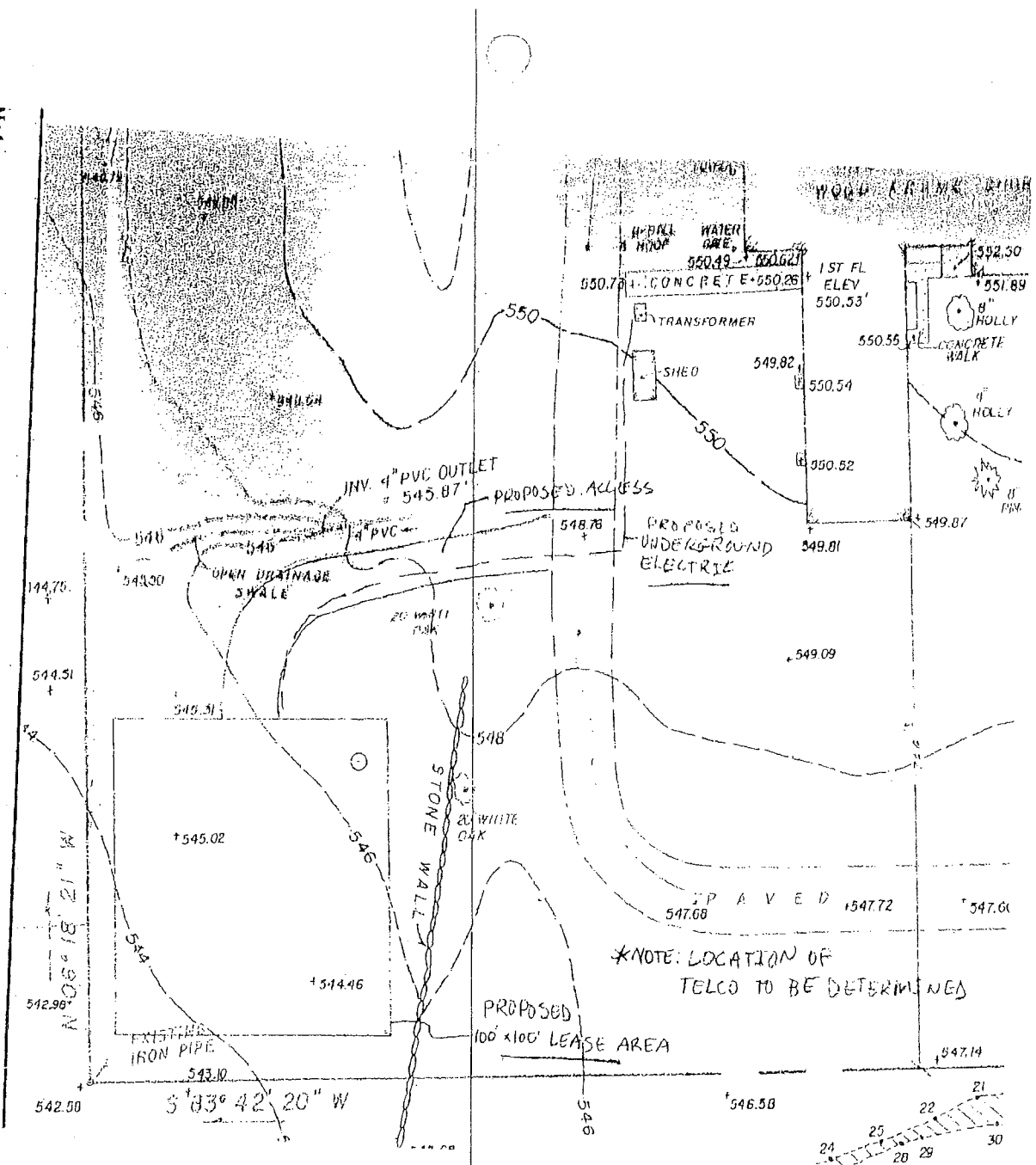
State of; Connecticut
County of; Fairfield
City of; Danbury
Also known as; 52 Stadley Rough Road

As listed in the Danbury's Assessor's office as; map K07, lot 19

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EXHIBIT B
DESCRIPTION OF TOWER, ANTENNAS,
EQUIPMENT BUILDING AND EQUIPMENT AND RIGHTS OF WAY

The Premises are described and/or depicted as follows:



- Notes:**
1. Tenant shall replace this Exhibit B with a professionally drafted Architectural and Engineered drawing of the Property once Tenant receives it.
 2. This lease is conditional upon the review and approval of aforementioned drawing by Landlord.

