



## RESOLUTION

**AUTHORIZING THE CITY TO ENTER INTO A SHORT-TERM REAL  
PROPERTY LEASE AGREEMENT FOR 44 BROAD STREET**

### *CITY OF NASHUA*

*In the Year Two Thousand and Seventeen*

**RESOLVED** by the Board of Aldermen of the City of Nashua that the Mayor is authorized to enter into a Real Property Lease Agreement with North Pole Xmas Trees for 44 Broad Street in substantially the same form as the attached.

**LEGISLATIVE YEAR 2017**

**RESOLUTION:** R-17-136

**PURPOSE:** Authorizing the City to enter into a short-term real property lease agreement for 44 Broad Street

**ENDORSER(S):** Mayor Jim Donchess

**COMMITTEE  
ASSIGNMENT:**

**FISCAL NOTE:** Rent in the form of vouchers for Christmas trees. Prorated property taxes.

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**ANALYSIS**

This resolution authorizes the City to enter into a short-term real property lease agreement with North Pole Xmas Trees for 44 Broad Street, on terms and conditions substantially similar to the attached lease agreement.

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**Approved as to form:** Office of Corporation Counsel

By: Donkey Clark

Date: September 21, 2017

## REAL PROPERTY LEASE AGREEMENT

THIS Lease ("Lease") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2017 by and between the City of Nashua, New Hampshire, a municipal corporation with a principal place of business at 229 Main Street, Nashua, NH 03060 ("LANDLORD") and North Pole Xmas Trees, with a mailing address of 280 East Dunstable Road, Nashua, NH 03060 ("TENANT").

1. Premises. LANDLORD does hereby lease, demise and let to TENANT, for the term and upon and subject to the terms and conditions set forth in this Lease, the real property and improvements thereon located at 44 Broad Street, Nashua, NH (Assessor's Map 71 Parcel 2) and more accurately described in Appendix A of this Lease ("Premises").
2. Term. The term of this Lease shall be approximately 7 weeks beginning on November 15, 2017 ("Commencement Date") and expiring at 11:59 p.m. on December 31, 2017 ("Expiration Date") subject to the terms and conditions of this Lease.
3. Rent. The TENANT shall issue the city 75 vouchers to be distributed by the Arlington Street Community Center for the procurement of a Balsam Fir Tree with a quality grade of 1 or better and a size of 6 – 8 Feet in height. This tree would retail on average for approximately \$40.00 and wholesale at approximately \$22.00. The vouchers shall be provided to the City no later than November 1, 2017, and the vouchers can be used any time when the business is open in 2017. The Office of Economic Development shall assist in the administration of this initiative.
4. Utilities. TENANT shall make arrangements directly with the appropriate utility companies for the supply of gas, electricity, water, sewer, and telephone and shall pay all fees, expenses and charges therefore to each such company. LANDLORD shall have no obligation to supply utilities. TENANT shall provide and pay for the costs of driveway snow plowing.
5. Taxes and Fees. TENANT shall be responsible for a prorated payment of any and all properly assessed real and personal property taxes on the Premises described herein at Appendix A no later than the due date of said taxes.
6. Use of Premises. TENANT shall have the right to use the Premises for all lawful purposes. The TENANT shall obtain and maintain any and all approvals/permits necessary for the operation of its business.
7. Maintenance of Premises. TENANT shall keep the Premises in the same condition as of the Commencement Date, reasonable wear and tear, damage by fire or other casualty only excepted. TENANT is responsible for all ongoing maintenance and repairs of land with improvements and shall perform annual tests and inspections as required by law at TENANT's expense. If maintenance or repair is made necessary by a casualty caused by the gross negligence of TENANT or the employees, contractors, agents or invitees of TENANT, such maintenance or repair shall be at the TENANT's expense and TENANT shall pay all costs for such maintenance and repairs; provided, however, that TENANT shall have no obligation to repair the Premises to a condition that is better than the condition of Premises on the Commencement Date. The Tenant shall return the site to its original condition prior to the commencement date upon the expiration of the lease.
8. Alterations-Additions. TENANT shall not make structural alterations or additions to the Premises, but may make non-structural alterations provided the LANDLORD

consents thereto in writing, which consent will not be unreasonably withheld or delayed. If TENANT desires to make structural alterations or additions, they must first submit their proposed structural alterations or additions to the LANDLORD for review and obtain LANDLORD's approval. All such allowed alterations shall be at TENANT's expense and shall be in quality at least equal to the present construction. TENANT shall not permit any mechanics' liens, or similar liens, to remain upon the Premises for labor and material furnished to TENANT or claimed to have been furnished to TENANT in connection with work of any character performed or claimed to have been performed at the direction of TENANT and shall cause any such lien to be released of record forthwith without cost to LANDLORD. Any alterations, additions or improvements made by the TENANT shall become the property of the LANDLORD at the termination of occupancy as provided herein at no cost to the LANDLORD.

9. Assignment-Subleasing. TENANT shall neither assign nor sublet in whole or a part the Premises or any portion thereof without the explicit written consent of the LANDLORD, which consent shall not be unreasonably withheld, conditioned or delayed.

10. Landlord's Access. LANDLORD or its agents may, at reasonable times, enter to view the Premises and make repairs and alterations as LANDLORD should elect to do, provided the LANDLORD gives reasonable notice to TENANT and takes no action to disrupt TENANT's use of the Premises.

11. Fire, Casualty-Eminent Domain.

a. Should a substantial portion of the Premises, or of the property of which they are a part, be substantially damaged by fire or other casualty, or be taken by eminent domain, the LANDLORD may elect to terminate this Lease.

b. The LANDLORD reserves and the TENANT grants to the LANDLORD, all rights which the TENANT may have for damages or injury to the Premises for any taking by eminent domain, except for damage to the TENANT's fixtures, property or equipment.

12. Default and Bankruptcy. In the event that: (a) the TENANT shall default in the payment of any installment of Rent or other terms herein specified and such default shall continue for fifteen (15) days after written notice thereof; or (b) the TENANT shall default in the observance or performance of any other of the TENANT's covenants, agreements, or obligations hereunder and such default shall not be corrected within thirty (30) day period after written notice thereof, or if not susceptible to correction within such thirty (30) day period, TENANT fails to commence to correct such default within such thirty (30) days and to diligently prosecute to completion such correction within a reasonable time; or (c) the TENANT shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of TENANT's property for the benefit of creditors, then all rights of the TENANT pursuant to the Lease shall terminate and the LANDLORD shall have all rights available to LANDLORD at law or in equity.

If it becomes necessary for the LANDLORD to institute suit for eviction or damages on account of rental arrears or violation of the terms of this Lease, the LANDLORD shall be entitled to include in such suit for eviction or damages a claim for attorney's fees and court costs incident thereto which fees the TENANT hereby covenants and agrees to pay.

13. Notice. Any notice from the LANDLORD to the TENANT relating to the Premises or the occupancy thereof, shall be deemed duly served, if (i) delivered by hand, (ii) sent by registered or certified mail with return receipt requested, postage prepaid, (iii) sent by

overnight or same day courier service, addressed to the TENANT at the address noted above. Any notice from the TENANT to the LANDLORD relating to the Premises or to the occupancy thereof, shall be deemed duly served, if (i) delivered by hand, (ii) sent by registered or certified mail with return receipt requested, postage prepaid, (iii) sent by overnight or same day courier service, addressed to the LANDLORD at address noted above or at such address as the LANDLORD may from time to time advise in writing.

14. Surrender. TENANT shall at the expiration of this Lease remove all of TENANT's goods and effects from the Premises. TENANT shall deliver to the LANDLORD the Premises and all keys, locks thereto, and other fixtures connected therewith and all alterations and additions made to or upon the Premises. In the event of TENANT's failure to remove any of TENANT's property from the Premises, LANDLORD is hereby authorized without liability to TENANT for loss or damage thereto, and at the sole risk of TENANT, to remove and store any of the property at TENANT's expense, or to retain same under LANDLORD's control or to sell at public or private sale, without notice any or all of the property not so remove and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property.

15. Insurance-Indemnification.

TENANT's Insurance Relative to the Premises. The TENANT, at its cost, shall be responsible for maintaining a policy of standard fire and extended coverage insurance of TENANT's property and contents situated in, on or about the Premises. The TENANT will provide the LANDLORD with proof that TENANT has obtained such insurance.

Insurance. The TENANT shall carry during the lease term, at its own cost and expense, the following insurance:

- (a) Comprehensive General Liability insurance - \$1,000,000 per occurrence/\$2,000,000 aggregate, including premises and operations and products and completed operations, participant coverage and employment practices. The LANDLORD must be named as an additional insured;
- (b) Workers' Compensation as required by state statute; and
- (c) Builder's Risk as required for any major renovations to a building.

All required insurance policies must provide that the termination, cancellation or modification of said policies will not occur without at least thirty (30) days' prior written notice to LANDLORD. TENANT shall provide a certificate of insurance to the City of Nashua Risk Management Department prior to signing this Lease that includes language indicating the existence of these conditions. All insurance required by this Section shall be provided by responsible companies qualified to do business in New Hampshire and in good standing therein.

Indemnification. TENANT agrees to defend, indemnify and hold harmless LANDLORD, including all agents and employees, from any and all liability for injury, loss, claim or damage to any person or property arising out of the actions or failure to act of TENANT from any and all causes whatsoever.

16. Quiet Enjoyment. LANDLORD covenants that it has the right to make this Lease and that, if TENANT shall pay all Rent and perform all of TENANT'S other obligations under this Lease, TENANT shall have the right, during the Term and subject to the provisions of

this Lease, to quietly occupy and enjoy the Premises without hindrance by LANDLORD or its successors and assigns.

17. Entire Agreement-Amendments. This Lease contains the entire and only agreement between the parties, and no oral statements or representations or prior written matter not contained in this Lease shall have any force or effect. This Lease shall not be modified in any way except by a writing executed by both parties. It is expressly agreed by the parties hereto, that the terms and provision of this Lease are intended to apply only with respect to the Leasehold estate created with respect to the Premises.

18. LANDLORD'S Agents. All rights and obligations of LANDLORD under this Lease may be performed or exercised by such agents as LANDLORD may select.

19. Extent of Instrument-Choice of Laws. This Lease, which may be executed in a number of counterparts, each of which shall have been deemed an original, but which shall constitute one and the same instrument, is to be construed according to the Laws of the State of New Hampshire, is to take effect as a sealed instrument, is binding upon, inures to the benefit of, and shall be enforceable by the parties hereto and their respective successors and assigns.

20. No Waiver of Breach. No assent, by either party, whether express or implied, to a breach of covenant, condition or obligation by the other party, shall act as a waiver of a right of action for damages as a result of such breach, or shall be construed as a waiver of any subsequent breach of the covenant, condition or obligation.

21. Unenforceable Terms. If any terms of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any application of such term shall not be affected thereby.

22. No Waiver of Immunity. No provision in this Lease is intended to be nor shall it be interpreted by either party to be a waiver of immunity by the City of Nashua.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be duly executed and delivered by the proper and duly authorized officer or representative as of \_\_\_\_\_, 2017.

LANDLORD:

City of Nashua, New Hampshire

By: \_\_\_\_\_  
James W. Donchess, Mayor

\_\_\_\_\_  
Witness

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for said County and State, certify that James W. Donchess personally came before me this day and acknowledged that he is the Mayor of the City of Nashua, NH, a New Hampshire municipality, and acknowledged the due execution of the foregoing instrument on behalf of said municipality.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public

My Commission Expires:

TENANT:

North Pole Xmas Trees

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

\_\_\_\_\_  
Witness

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for said County and State, certify that \_\_\_\_\_ personally came before me this day and acknowledged that (s)he is the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and acknowledged the due execution of the foregoing instrument on behalf of said company.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public

My Commission Expires:

## **Appendix A**



# City of Nashua, NH



**SUBJECT PARCEL:**  
44 BROAD ST 3

**Ownership Information:**  
NASHUA, CITY OF  
% ROW/NHDOT  
PO BOX 483  
CONCORD NH 03302

**Parcel Information:**  
PARCEL ID: 71.2  
ACCT NUM: 280558  
LAND AREA: 1.44  
LAND USE: N/A  
BUILDING STYLE: N/A  
LAND VALUE: 328,600  
BLDG VALUE: N/A  
TOTAL VALUE: 328,600

**Sales Information:**  
SALE DATE: Mar 17, 2011  
PRICE: N/A  
BOOK PG: 8302/1666  
QUALIFIED: L.BRSTPK



1 inch:472 feet

Date: 8/26/2017

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