



RESOLUTION

AUTHORIZING THE CITY OF NASHUA TO ENTER INTO A LEASE AGREEMENT WITH ABSOLUTE BROADCASTING, LLC FOR A PORTION OF 1 PINE STREET EXTENSION

CITY OF NASHUA

In the Year Two Thousand and Seventeen

RESOLVED by the Board of Aldermen of the City of Nashua that the City is authorized to enter into the attached lease agreement, substantially in the form attached, with Absolute Broadcasting, LLC for a portion of the property known as 1 Pine Street Extension, Nashua, New Hampshire. The rental amount is one dollar (\$1.00) per year. The term is for two (2) years with two options to extend for additional two year periods.

LEASE AGREEMENT

THIS LEASE AGREEMENT made between the **City of Nashua**, 229 Main Street, Nashua, NH (“LANDLORD”), and **Absolute Broadcasting LLC**, 141 Main Street Nashua NH 03060, (“LESSEE”).

WHEREAS, LANDLORD is the owner of the building at 1 Pine Street Extension, Nashua, NH (“Property”), which is not immediately required by the LANDLORD;

WHEREAS, the LANDLORD took possession of the building on the Property on December 7, 2016 following a landlord/tenant possessory proceeding pursuant to RSA Chapter 540 in the 9th Circuit, District Division – Nashua, City of Nashua v. Ultima Nashua Industrial Corp., Case No.: 459-2016-LT-00276;

WHEREAS, upon inspection after possession, LANDLORD discovered radio transmission equipment in the Property, which equipment belongs to LESSEE;

WHEREAS, LESSEE has requested to keep its radio transmission equipment in the Property and wishes to lease the portion of the Property which houses the equipment on an “as is” basis; and

WHEREAS, LANDLORD is willing to comply with said request, provided that LESSEE, as a condition to the occupancy of said premises, joins in the execution of this LEASE AGREEMENT for the purpose of accepting each and every condition herein set forth during the occupancy of said premises by the LESSEE.

NOW, THEREFORE, THIS LEASE AGREEMENT WITNESSETH THAT:

1. DEMISE OF THE PREMISES

1.01 For and in consideration of the rent and the mutual covenants hereinafter stated, and the acceptance by the LESSEE of each and every term and condition herein set forth, the LANDLORD hereby leases and demises to the LESSEE a portion of the Property which is located at

1 Pine Street Extension, Nashua, New Hampshire and also described as Lot 77-30 on the City of Nashua’s Assessing Map. The leased premises consist of an enclosed area on the building’s roof approximately 8 ½ feet wide by 13 feet long. Total square footage of the leased premise is 110 ½ (“Premises”). The Premises includes the enclosure structure itself, including the walls, windows, roof, and door.

2. TERM

2.01 The term of this LEASE AGREEMENT shall have a term of two (2) years, commencing on **November 1, 2017** and **terminating on October 31, 2019**. LESSEE thereafter shall have the option to renew this LEASE AGREEMENT for two (2) additional two (2) year periods by giving LANDLORD written notice thereof at least thirty (30) days prior to the expiration of the initial term or of any subsequent renewal term.

3. RENT

3.01 The LESSEE shall be responsible to the LANDLORD for rent payments in money. Rent shall be paid upon execution for the first year and annually on the first day of November thereafter. This annual rent shall be **\$1.00 per year**.

3.02 Payments shall be made to the "Treasurer, City of Nashua" and mailed to the following address: Attention: Treasurer, 229 Main Street, P.O. Box 2019, Nashua, New Hampshire 03061-2019.

4. QUIET ENJOYMENT

4.01 LANDLORD covenants and agrees that so long as the LESSEE is not in default of any of the covenants and agreements of this LEASE AGREEMENT, LESSEE's quiet and peaceful enjoyment of the premises shall not be disturbed or interfered with by the LANDLORD or any person claiming by or through the LANDLORD.

4.02 LANDLORD reserves the right and LESSEE agrees that LANDLORD may relocate the Premises, with LESSEE's prior consent, which consent shall not be unreasonably withheld.

4.03 LANDLORD shall provide LESSEE with a key to enter 1 Pine Street Extension which shall only be used for access to Premises.

5. USE OF PREMISES

5.01 The LESSEE shall use the Premises only for radio transmission equipment and neither the Premises nor any part thereof shall be used at any time during the term of this LEASE AGREEMENT by the LESSEE for the purpose of carrying on any other business, professional or trade of any kind. The LESSEE shall comply with all laws, ordinances, rules and order of appropriate governmental authorities affecting the safety, cleanliness, occupancy, operation and preservation of the Premises during the term of this LEASE AGREEMENT.

5.02 No LESSEE or visitor or invitee of LESSEE may park any motorized vehicle on any portion of the Property which is not designated specifically for parking. No motor vehicles shall be stored upon Property.

5.03 LESSEE shall provide LANDLORD with the means to enter the Premises, e.g. a copy of the key or code required for the lock to the Premises, upon execution of this LEASE AGREEMENT and ensure that LANDLORD is provided any updates or changes to the means of entrance to the Premises within 24 hours after such access is altered.

5.04 LESSEE's use of the Premises shall not adversely effect LANDLORD's use, improvement or maintenance of 1 Pine St. Ext.

6. COMPLIANCE WITH LAWS

6.01 The LESSEE acknowledges that no trade or occupations shall be conducted on the Premises or use made thereof which will be unlawful, improper, noisy or offensive or contrary to any law or municipal by-law or ordinance in force.

6.02 The LESSEE shall obtain and maintain any and all permits necessary for its use of the Premises.

7. ALTERATIONS & MAINTENANCE OF PREMISES

7.01 The LESSEE acknowledges that the Premises is located in an old mill building which is currently used mainly to store machinery and other equipment. As such, LESSEE takes the Premises as is and where is and LESSEE is solely responsible at its own expense for any and all improvements or maintenance to the Premises to keep it fit for LESSEE's allowed use under this LEASE AGREEMENT.

7.02 Items to be included in maintenance shall include ice and snow removal from walks and driveways and any other needed areas for LESSEE to access the Property and the Premises.

7.03 The LESSEE shall be responsible for maintaining the Premises and any improvements thereto during this tenancy. LESSEE agrees to be responsible for any and all repair costs resulting from its use of the Premises. The LANDLORD shall not incur any maintenance or repair costs as a result of this LEASE AGREEMENT.

8. ENTRY AND INSPECTION

8.01 The LANDLORD retains the right to enter the Premises in the case of an emergency or to exhibit the Premises to prospective purchasers or lessees, workmen, contractors or others or when the LESSEE has abandoned or surrendered the Premises or whenever necessary or advisable to determine the condition of the Premises. Whenever practical, the LANDLORD shall provide the LESSEE with 24 hours notice prior to entry. The LANDLORD or its agent may inspect the Premises a minimum of two (2) times in each calendar year. Any indication of LEASE AGREEMENT violations shall be brought to the attention of the LESSEE in writing with 30 days allowed for LESSEE to make necessary corrections.

9. ASSIGNMENT AND SUBLETTING

9.01 Without the prior written consent of the LANDLORD, the LESSEE shall not assign this LEASE AGREEMENT or sublet or grant any concession or license to use the Premises or any part thereof. Consent by the LANDLORD to one assignment, subletting concession or license shall not be deemed to be a consent to any subsequent assignment, subletting, concession or license. An assignment, subletting, concession or license without the prior written consent of LANDLORD or an assignment or subletting by operation of law, shall be void.

10. UTILITIES

10.01 The LESSEE shall be responsible for arranging for the paying for any and all utility services required on the Premises and for LESSEE'S use thereof, including but not limited to electricity, heat, water and sewer.

11. DANGEROUS MATERIALS

11.01 The LESSEE shall not keep or have on the Premises any article or nothing of a dangerous, inflammable or explosive character that might increase the danger of fire on the Premises or that might be considered hazardous or extra hazardous.

12. INSURANCE

12.01 The LESSEE 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;

All required insurance policies shall name LANDLORD as an additional insured and 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. LESSEE shall provide a certificate of insurance to the City of Nashua Risk Management Department prior to signing this LEASE AGREEMENT that includes language indicating the existence of these conditions.

13. HOLDOVER BY LESSEE

13.01 No holdover by LESSEE will be permitted. The LANDLORD and LESSEE must execute a new lease upon expiration of an existing LEASE AGREEMENT in order for the LESSEE to remain in possession of the premises.

14. DEFAULT

14.01 The LANDLORD shall determine what shall constitute a violation of the provisions of the LEASE AGREEMENT or the failure of the LESSEE to otherwise abide by any of the covenants herein contained and may order a discontinuance of the practices or the performance of any of the work related to such default by giving the LESSEE thirty (30) days notice in writing. Failure of the LESSEE to comply with the notice shall automatically give the LANDLORD the right to terminate this LEASE AGREEMENT, evict the LESSEE and take full and complete possession of the Premises.

15. TERMINATION OF LEASE AGREEMENT FOR CAUSE

15.01 In the event that the LESSEE shall default in the payment of any installment of rent or other sum herein specified and such default shall continue for thirty (30) days after written notice thereof, or if the LESSEE shall default in the observance or performance of any other of the LESSEE's covenants, agreements or obligations hereunder and such default shall not be corrected within thirty (30) days of written notice by the LANDLORD to the LESSEE specifying such default and requiring it to be remedied then, and in such an event, LANDLORD may serve a written notice of termination of this LEASE AGREEMENT upon the LESSEE and this LEASE AGREEMENT and the term hereunder shall terminate and upon such termination LANDLORD may immediately or at any time thereafter, without demand or notice, enter into or upon the premises and repossess the same.

15.02 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 AGREEMENT, 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 LESSEE hereby covenants and agrees to pay.

16. RIGHT TO TERMINATE FOR CONVENIENCE

16.01 The LANDLORD may terminate this LEASE AGREEMENT as a result of its sale of Property, such termination to be 30 days prior to any transfer of title. LANDLORD shall give LESSEE at least sixty (60) days' notice, in writing, specifying in said notice the day (and the time of day) of termination which shall be the date on which possession of the Premises shall be surrendered

16.02 The LESSEE may terminate this LEASE AGREEMENT at any time by giving at least thirty (30) days' notice, in writing, specifying in said notice the day (and the time of day) on which possession of the Premises will be surrendered. LANDLORD'S representative shall have sufficient time to check the Premises prior to taking formal possession thereof. In the event that the LESSEE shall terminate this LEASE AGREEMENT in accordance with the above provisions, payment of rent shall cease at the end of the said thirty (30) day period or at the end of the day on which possession shall be surrendered, whichever shall last occur.

17. SURRENDER OF THE PREMISES

17.01 In the event that the term or any extension thereof shall have expired or terminated, the LESSEE shall peacefully quit and surrender to LANDLORD the Premises together with all improvements, alternations or additions made by LESSEE which cannot be removed without damaging the Premises. LESSEE shall remove all personal property and shall repair any damage caused by such removal. LESSEE shall also return all keys and any copies of keys to 1 Pine St. Ext at the end of the term or any extension thereof. LESSEE's obligations to observe or perform the covenants contained herein shall survive the expiration or termination of this LEASE AGREEMENT.

18. INDEMNIFICATION AND RELEASE FROM LIABILITY

18.01 The LESSEE shall defend, indemnify and hold harmless the LANDLORD, its officers, agents and employees, from and against any and all losses suffered by the LANDLORD, its officers, agents and employees and any and all claims, liabilities or penalties asserted against the LANDLORD, its officers, agents and employees by or on behalf of any person on account of, based on or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the LESSEE or from the use, alterations or maintenance of the Premises. This covenant shall survive the termination of this agreement.

19. MISCELLANEOUS

19.01 LANDLORD's Agents. All rights and obligations of LANDLORD under this LEASE AGREEMENT may be performed or exercised by such agents as LANDLORD may select.

19.02 Notice. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by registered or certified mail, postdate prepaid, in a United States Post Office to the address first listed above.

19.03 Extent of Instrument, Choice of Laws, Amendment, etc. This LEASE AGREEMENT, 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, and may be canceled, modified, or amended only by a written instrument executed and approved by the LANDLORD and LESSEE.

19.04 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.

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

19.06 Entire Agreement. This LEASE AGREEMENT embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

19.07 Applicable Laws and Forum. This LEASE AGREEMENT shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this LEASE AGREEMENT, or referable in anyway thereto shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere.

19.08 Taxes. Pursuant to NH RSA 72:23, LESSEE shall pay all properly assessed real and personal property taxes no later than the due date. Failure of the LESSEE to pay the duly assessed personal and real estate taxes when due shall be cause to terminate this LEASE AGREEMENT by the LANDLORD. LESSEE's obligation to pay such taxes extends to real and personal property taxes on structures or improvements added by the LESSEE. If the LESSEE fails to pay the duly assessed personal and real estate taxes on the due date, the tax collector of the City of Nashua shall notify the LANDLORD that the same remains unpaid. Upon receipt of said notification from the tax collector, the LANDLORD shall terminate this LEASE AGREEMENT and pay over to the tax collector from amounts received from said lease such sums as are necessary to satisfy the tax due.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

{Signature page follows}

**LANDLORD:
CITY OF NASHUA**

Date: _____

By: _____
James W. Donchess, Mayor

State of New Hampshire
County of Hillsborough, SS

This instrument was acknowledged before me on _____, 2017 by James W. Donchess as Mayor of the City of Nashua.

Justice of the Peace/Notary Public

**LESSEE:
Absolute Broadcasting LLC**

Date: _____

By: _____

State of _____
County of _____, SS

This instrument was acknowledged before me on _____, 2017 by _____ as _____ of Absolute Broadcasting LLC.

Justice of the Peace/Notary Public