

## Legislation Details (With Text)

**File #:** 010378      **Version:** 1      **Name:**

**Type:** Bill      **Status:** ENACTED

**File created:** 5/24/2001      **In control:** Committee on Public Property and Public Works

**On agenda:**      **Final action:** 6/14/2001

**Title:** Authorizing the Commissioner of Public Property, on behalf of the City of Philadelphia, to enter into a lease agreement with the Philadelphia Authority for Industrial Development for further sublease to Urban Cable Works of Philadelphia, L.P., a Delaware limited partnership, to lease a certain parcel of ground located at 5201 Umbria street, Philadelphia, Pennsylvania, under certain terms and conditions.

**Sponsors:** Councilmember Nutter

**Indexes:** PAID

**Code sections:**

**Attachments:** 1. CertifiedCopy01037801.pdf

Date	Ver.	Action By	Action	Result	Tally
8/31/2001	1	MAYOR	SIGNED		
6/14/2001	1	CITY COUNCIL	READ	Pass	17:0
6/14/2001	1	CITY COUNCIL	PASSED	Pass	17:0
6/7/2001	1	CITY COUNCIL	ORDERED PLACED ON THIS DAY'S FIRST READING CALENDAR		
6/7/2001	1	CITY COUNCIL	SUSPEND THE RULES OF THE COUNCIL	Pass	
6/7/2001	1	CITY COUNCIL	ORDERED PLACED ON NEXT WEEK'S SECOND READING CALENDAR		
6/6/2001	0	Committee on Public Property and Public Works	HEARING NOTICES SENT		
6/6/2001	0	Committee on Public Property and Public Works	HEARING HELD		
6/6/2001	0	Committee on Public Property and Public Works	AMENDED		
6/6/2001	1	Committee on Public Property and Public Works	REPORTED FAVORABLY, RULE SUSPENSION REQUESTED		
5/24/2001	0	CITY COUNCIL	Referred		
5/24/2001	0	CITY COUNCIL	Introduced	Pass	

Authorizing the Commissioner of Public Property, on behalf of the City of Philadelphia, to enter into a lease agreement with the Philadelphia Authority for Industrial Development for further sublease to Urban Cable Works of Philadelphia, L.P., a Delaware limited partnership, to lease a certain parcel of ground located at 5201 Umbria street, Philadelphia, Pennsylvania, under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. The Commissioner of Public Property is hereby authorized to enter into a lease agreement ("Lease") with the Philadelphia Authority for Industrial Development ("PAID") to lease a certain parcel of ground, which is part of a larger parcel of ground at 5201 Umbria street, Philadelphia, Pennsylvania

("Premises"), the Premises being more fully described as follows:

ALL THAT CERTAIN lot or piece of ground, SITUATE in the 21st Ward of the City of Philadelphia and described according to a Survey and Plan of Property (VI-A-#115) made by Joel S. Cirello, Surveyor and Regulator of the Ninth Survey District, dated February 2, 2000:

BEGINNING at a point of tangency on the northeasterly side of Umbria street (on City Plan 80' wide, legally open), said point being located the two (2) courses and distances from the westerly end of a curved comer that connects the northwesterly side of Domino lane (on City Plan 60' wide, legally open) and the said northeasterly side of Umbria street; (1) Northwestwardly along the said northeasterly side of Umbria street N.48÷06'30"W. the distance of 39.104' to a point of curvature; (2) Northwestwardly along the said northeasterly side of Umbria street on the arc of a circle curving to the right having a radius of 500.000' the arc distance of 300.471' to the said point of beginning: THENCE extending along the said northeasterly side of Umbria street N.13÷40'37"W. the distance of 89.270' to a point of curvature; THENCE extending northwestwardly on the arc of a circle curving to the left having a radius of 571.558' the arc distance of 299.821' to a point of tangency; THENCE extending along the said northeasterly side of Umbria street N.43÷43'57"W. the distance of 8.593' to a point; THENCE extending N.46016'03"E. the distance of 55.000' to a point; THENCE extending S.37÷11'15"E. the distance of 390.000' to a point; THENCE extending S.52÷53'19"W. the distance of 133.000' to a point of tangency on the said northeasterly side of Umbria street, the first mentioned point and place of beginning.

SECTION 2. The Lease shall be substantially in the form set forth in Exhibit "A" attached hereto and made a part hereof, with such changes as the City Solicitor deems necessary or appropriate to protect the interests of the City. PAID shall sublease to Urban Cable Works of Philadelphia, L.P., a Delaware limited partnership with a principal place of business at 1700 North Forty-ninth street, Philadelphia, PA 19131, under a sublease agreement which shall be substantially in the form set forth in Exhibit "B" attached hereto and made a part hereof.

SECTION 3. The Chief Clerk of City Council shall keep on file all exhibits referenced in this Ordinance and shall make them available for inspection by the public during regular office hours.

### **PRIME LEASE AGREEMENT**

THIS PRIME LEASE AGREEMENT (the "Lease" or "Agreement") is made this      of      , 2001, by and between THE CITY OF PHILADELPHIA acting through its Department of Public Property (the "City" or "Landlord"), and PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT ("PAID" or the "Tenant"), a Pennsylvania industrial development authority, with a principal place of business at 2600 Centre Square West, 15th and Market Streets, Philadelphia, Pennsylvania.

#### **BACKGROUND**

A. The City is the owner of property located at 5201 Umbria Street, Philadelphia, Pennsylvania, as is more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. Pursuant to Ordinance #      , the City, acting through its Department of Public Property, is authorized to lease the Premises to PAID for further sublease to Urban Cable Works of Philadelphia, L.P., a Delaware limited partnership with a principal place of business at 1700 North 49<sup>th</sup> Street, Philadelphia, Pennsylvania 19131 ("Subtenant"), pursuant to a sublease of even date herewith for use as a hub in Subtenant's telecommunication network ("Hubsite").

C. The Landlord desires to lease to the Tenant and the Tenant desires to lease from the Landlord the Premises for the Term (as

defined in Article 2.1) on the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the rent reserved herein and the mutual covenants set forth in this Agreement, the City and PAID, intending to be legally bound, agree as follows:

**ARTICLE 1  
PREAMBLE**

1.1 Preamble. The Background is incorporated herein and made a part hereof.

**ARTICLE 2  
DEFINITIONS**

2.1 Definitions: The terms defined in this Article shall, for all purposes of this Lease and all future agreements which may become supplemental thereto, have the meaning herein specified.

- (a) "Additional Rent" shall be deemed to have the meaning set forth in Section 5.3.
- (a) "Annual Basic Rent" shall be deemed to have the meaning set forth in Section 5.2.
- (a) "Applicable Law" shall mean the following, as they now are, or at any time may be applicable to Landlord, Tenant, the Premises, any part(s) thereof, and/or this Lease, or any part(s) thereof: all present and future laws, ordinances, orders, rules, regulations, guidelines, orders and requirements of all federal, state, city and any other municipal or local governments, courts, departments, commissions, boards, board of fire underwriters, bureau, quasi-governmental authorities, and any other body exercising functions similar to those of any of the foregoing, including but not limited to those laws, statutes, ordinances, notices, orders, rules and regulations governing or regulating the use or operation of any part of the Premises, the environment, including but not limited to the Environmental Law (defined below), and those statutes commonly known as the "Americans With Disabilities Act of 1990", generally codified at 42 U.S.C. §§ 12101 *et seq.*, and all rules, regulations and guidelines promulgated pursuant thereto (the "ADA"), as any or all of the foregoing may be amended from time to time.
- (a) "Base Year" shall mean the first full calendar year of this Lease.
- (a) "Base Rent" shall be deemed to have the meaning set forth in Section 5.1.
- (a) "City" shall mean the City of Philadelphia.
- (a) "Commencement Date" shall be deemed to have the meaning set forth in Section 4.1.
- (a) "Condemnation" shall be deemed to have the meaning set forth in Section 14.1.
- (a) "Default" shall be deemed to have the meaning set forth in Section 13.1.
- (a) "Environmental Law" shall mean all current and future federal, state, and local environmental safety or health laws, statutes, rules, regulations, ordinances, orders, or common law including, but not limited to, reported decisions of any state or federal court and shall include, but not be limited to, the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. § 651 *et seq.*), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 *et seq.*); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 *et seq.*); the Toxic Substances Control Act, as amended, (15 U.S.C. § 2601 *et seq.*); the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 *et seq.*); the Clean Air Act, as amended, (42 U.S.C. § 7401 *et seq.*); the Clean Water Act, as amended (33 U.S.C. § 1251 *et seq.*); the Pennsylvania Solid Waste Management Act, as amended (35 P.S. § 6020.101 *et seq.*); the Pennsylvania Clean Streams Law, as amended (35 P.S. 691.1 *et seq.*); the Pennsylvania Underground Storage Tank and Spill Prevention Act (35 P.S. § 6021.101, *et seq.*); and the Pennsylvania Hazardous Material Emergency Planning and Response Act, as amended (35 P.S. § 6022.101 *et seq.*), the Pennsylvania Air Pollution Control Act, 35 P.S. § 4001, as any of the foregoing may hereinafter be amended; any rule or regulation promulgated pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health,

or safety issues of or by the federal government or any state or other political subdivision thereof, or any agency, court or body of the federal government, or any state or political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

- (a) "Environmental Release" shall mean any intentional or unintentional releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing, abandoning, discarding or dumping of any Hazardous Substance during Tenant's occupancy of the Premises from, on, into or about the land, water or air of the Premises, the Improvements, the common areas or the real property surrounding the Improvements in violation of any Environmental Law.
- (a) "Extended Term" shall be deemed to have the meaning set forth in Section 4.2.
- (a) "Hazardous Substance(s)" shall mean (i) asbestos, flammables, volatile hydrocarbons, industrial solvents, explosives, chemicals, radioactive material, oil, petroleum products or by-products, crude oil, natural gas, natural gas liquids, volatile or highly volatile liquids, and/or synthetic gas, and shall include, without limitation, substances defined as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic substances", "pollutants", or "contaminants", as those terms are used in any Environmental Law or at common law, and (ii) any and all other materials or substances that any governmental agency or unit having appropriate jurisdiction shall determine from time to time are hazardous, harmful, toxic, dangerous or otherwise required to be removed, cleaned-up, or remediated.
- (a) "Hubsite" shall be deemed to have the meaning set forth in Section B of the Background of this Lease.
- (a) "Improvements" shall be deemed to have the meaning set forth in Section 6.5(b).
- (a) "Initial Term" shall be deemed to have the meaning set forth in Section 4.1.
- (a) "Land" shall mean the parcel of land described in Exhibit "A" attached hereto and made a part hereof.
- (a) "Landlord" shall mean the City.
- (a) "Lease" shall be deemed to include this Lease and all amendments hereto.
- (a) "Lease Year" shall mean each successive twelve (12) month period after the Commencement Date during the Term of this Lease.
- (a) "Permitted Use" shall be deemed to have the meaning set forth in Section 6.2.
- (a) "Premises" shall be deemed to have the meaning set forth in Section A of the Background of this Lease.
- (a) "Rent" shall mean Base Rent, Annual Basic Rent and Additional Rent.
- (a) "Sublease" shall be deemed to have the meaning set forth in Section 6.1
- (a) "Subtenant" shall be deemed to have the meaning set forth in Section B of the Background of this Lease.
- (a) "Tenant" shall mean PAID.
- (a) "Term" shall mean the Initial Term and/or the Extended Term(s), as the case may be.

### ARTICLE 3 PREMISES

3.1 Premises. Landlord, subject to the provisions and conditions herein, leases, rents, demises and lets unto Tenant and Tenant leases from Landlord for the Initial Term and Extended Term(s), as the case may be, the Premises as shown in Exhibit "A".

3.2 Condition of and Title to the Premises. The Tenant has inspected the Premises (including all improvements thereon), the state of title to the Premises and access routes thereto and accepts the Premises in its "AS-IS" condition. Without limiting

the generality of the preceding sentence, the Landlord makes no representations or warranties regarding (a) the surface and/or subsurface conditions of the Premises, including any existing improvements, (b) the Landlord's title to the Premises, (c) any liens, encumbrances or restrictions on the title to the Premises and/or the use of the Premises, (d) the suitability of the Premises for any use, (e) the compliance by or of the Premises including any improvements thereon with any of the Applicable Laws, including, without limitation, any of the Applicable Laws regulating zoning and/or Hazardous Substances; (f) the existence or condition of any access routes which purport to provide access to the Premises; and/or (g) access to Premises. Notwithstanding the preceding, Landlord warrants that the Premises is not subject to any leases, subleases or tenancies.

#### **ARTICLE 4 TERM & SURRENDER OF PREMISES**

4.1 Initial Term. The term of this Agreement shall commence on the date of the full execution and delivery of this Agreement (the "Commencement Date"), shall continue for five (5) years and shall expire at midnight on the fifth anniversary of the Commencement Date (the "Initial Term").

4.2 Extended Term. Provided the Sublease is in full force and effect and provided that no Default (defined in Section 13.1) has occurred and is continuing hereunder beyond the expiration of any notice and cure periods, the Tenant may extend this Agreement for two five (5) year terms. If the Tenant exercises its right to extend this Lease pursuant to this Section, it shall do so by providing written notice to the Landlord at least sixty (60) days in advance of the expiration of the then current Term, whereupon this Lease shall be extended for the Extended Term (as defined herein) and Tenant shall be obligated to comply with the terms and conditions of this Lease during the Extended Term(s).

#### 4.3 Surrender of Premises.

(a) Tenant will, on the last day of the Term or upon any earlier termination of the Lease, immediately vacate and surrender the Premises to Landlord without fraud or delay, in such condition as is at least comparable to that condition which the Premises was in at the inception of this Lease, reasonable wear and tear excepted, and free and clear of all leases, occupancies, liens, and encumbrances other than those created by Landlord, if any. Tenant hereby waives any requirement of additional notice from Landlord to vacate the Premises.

(b) Any realty, fixtures or personal property of Tenant which shall remain on the Premises after the termination or expiration of this Lease may, at the option of Landlord, be deemed to have been abandoned by Tenant unless Tenant provides Landlord written notice prior to the termination or expiration of the Lease that Tenant intends to remove such realty, fixtures or personal property within sixty (60) days of the expiration of the Lease. Upon termination or expiration of the Lease, or sixty (60) days after the termination or expiration of the Lease if written notice is provided to Landlord pursuant to this section, any realty, fixtures or personal property of Tenant which shall remain on the Premises may either be retained by Landlord as its property or be disposed of, without accountability by Landlord, in such manner as Landlord sees fit. If Landlord disposes of such property, Tenant shall pay to Landlord, as Additional Rent, all actual out-of-pocket costs reasonably incurred by Landlord for such disposition.

(c) The Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant or Subtenant or anyone claiming through or under Tenant and Tenant hereby releases Landlord from any claims by Tenant for any loss or damage to such property which may occur at any time during the Term of this Lease, provided that such loss or damage is not caused by the gross negligence or willful misconduct of Landlord.

#### **ARTICLE 5 RENT**

5.1 Base Rent. During the first five (5) years of the Term, the Tenant shall pay to the Landlord, without demand or setoff, annual rent in the amount of Eleven Thousand Four Hundred Dollars (\$ 11,400.00) per year for the Initial Term ("Base Rent"). During such first five (5) years, the Base Rent shall be due and payable in twelve (12) equal monthly installments of Nine Hundred Fifty Dollars (\$ 950.00) each, each such installment to be paid in advance on the first day of each calendar month during the Initial Term. If the Commencement Date does not begin on the first day of a month, the monthly rent for that partial month shall be prorated by multiplying the monthly rent by a fraction, the numerator of which is the number of days of the partial month included in the Term of this Lease and the denominator of which is the total number of days in the month.

5.2 Annual Basic Rent during the first Extended Term and each Extended Term thereafter shall be as follows:

(a) The Annual Basic Rent during the first Extended Term and each Extended Term thereafter shall be adjusted and shall be equal to Eleven Thousand Four Hundred Dollars (\$11,400.00) multiplied by the CPI Increase. The "Current CPI" is the "Consumer Price Index Seasonally Adjusted U.S. City Average For All Items For All Urban Consumers (1982-84=100)" published monthly in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor ("CPI-U") for the calendar month that is three months prior to the first calendar month of the Extended Term for which the Annual Basic Rent increase is being calculated and the "Prior CPI" is the CPI-U for the calendar month that is three months prior to the Commencement Date.

(b) Notwithstanding the provisions of Section 5.2(a) above, in no event shall the Annual Basic Rent payable during any Extended Term be less than the Base Rent for the Initial Term.

(c) In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally adjusted U.S. City Average For All Items For Urban Wage Earners and Clerical Workers (1982-84=100)" published monthly in the "Monthly Labor Review" by the Bureau of Labor Statistics of the United States Department of Labor ("CPI-W") shall be used for making the computation in Section 5.2(a) above. In the event CPI-W is discontinued, comparable statistics on the purchasing power of the consumer dollar published by the Bureau of Labor Statistics of the United States Department of Labor shall be used for making the computation in Section 5.2(a) above.

(d) If the base year (1982-84=100) selected by the United States Department of Labor shall be changed, then the resultant index shall be readjusted so as to reflect the base initially established under Section 5.2.

(e) If the aforesaid indexes shall no longer be published by the Bureau of Labor Statistics of the United States Department of Labor, or cannot be readjusted in accordance therewith, then another index generally recognized as authoritative shall be substituted by Landlord and Tenant.

5.3 Additional Rent. Tenant shall pay all costs associated with the Premises, it being intended that this Lease is a triple net lease and all other payments specified by this Lease and all costs, expenses and obligations of every kind and nature whatsoever relating directly or indirectly to Tenant's use, occupancy and/or operation of the Premises, or this Lease, shall be paid by Tenant ("Additional Rent").

## **ARTICLE 6 GENERAL USE, OCCUPANCY AND OPERATION OF THE PREMISES**

6.1 It is understood and agreed that Tenant shall sublease the Premises to Subtenant on all of the terms and conditions set forth in this Lease. Tenant shall cause such sublease to be in a form acceptable to Landlord in its sole discretion and Tenant shall impose upon Subtenant all of the obligations required to be imposed on Subtenant pursuant to this Lease and all of the obligations of Tenant contained in this Lease unless otherwise specified (the "Sublease"). Tenant covenants and agrees that it shall not amend or modify the Sublease or waive any rights thereunder without the prior written consent of Landlord. So long as Tenant imposes all of the Tenant's obligations hereunder upon Subtenant in the Sublease (except as otherwise specifically set forth herein) and uses diligent, reasonable and good faith efforts to enforce the provisions of the Sublease, and so long as Tenant does not, itself, violate any of the restrictions or conditions of this Lease, PAID as Tenant shall have no obligation to Landlord to perform any of the other covenants of Tenant contained in this Lease, other than the payment of Base Rent, Annual Basic Rent and Additional Rent to the extent directly required of Tenant as set forth in Article 5 hereof and Tenant's other obligations contained in this Section 6.1, and in Sections 11.1, 11.2, 16.1, Article 17, Article 19, Article 20, Article 21 and Article 26.

6.2 General Use, Occupancy and Operation of the Premises. Tenant, at its own cost and expense, shall install, improve, use, occupy and operate the Premises in accordance with all Applicable Laws, for the exclusive purpose of operating a Hubsite in accordance with all of the provisions of this Lease and for no other purpose ("Permitted Use").

6.3 Labor, Materials and Supplies. Tenant, at its own cost and expense, shall provide all labor, materials, supplies, accessories and equipment required for its installation and improvement of the Hubsite at Premises. Landlord is not obligated to, nor shall Landlord by virtue of this Lease, supply any labor, materials or supplies to Tenant.

6.4 Prohibited Uses of the Premises.

(a) Tenant shall not use or permit the use of the Premises, or any part thereof, for any unlawful purpose or for any purpose other than that specified in this Agreement. No act shall be performed and no omission shall be made by or on behalf of Tenant which may

cause or result in the existence of any condition in, on, or about the Premises which may constitute a public or private nuisance, or which may make void or voidable any insurance then in force with respect to the Premises and/or Tenant's operations thereon.

(b) Tenant shall not store any Hazardous Substances in violation of Applicable Laws on any part of the Premises.

(c) Tenant shall not use and/or occupy the Premises, or any part thereof, in any manner which could impair the Landlord's title thereto, or any part thereof (as such title may exist from time to time), or in such manner as might make possible a claim of adverse usage or possession by any person or entity, or of an implied dedication of the Premises, or any part thereof.

#### 6.5 Improvements to the Premises.

(a) Except as specified by the prior written approval of the Landlord acting through the Commissioner of Public Property, which approval shall not be unreasonably denied, neither Tenant nor anyone acting on behalf of Tenant shall alter, improve or modify any part of the Premises, or attach any article, appurtenance, material or item thereto, including without limitation, any signs, fences, security device or barricades.

(b) It is intended, and required, that Tenant, at its sole cost and expense, shall improve the Premises by constructing a Hubsite in compliance with all Applicable Laws and also subject to Landlord's reasonable approval as to the exact nature, quality and location of the improvements upon the Premises, such approval to be obtained as set forth in subsection (a) above. All such improvements (the "Improvements") as made from time to time throughout the Term shall be the property of Tenant but upon expiration or earlier termination of this Lease such Improvements shall automatically become the property of Landlord without the requirement of any further action by either party hereto.

### **ARTICLE 7 APPLICABLE LAWS, TAXES AND UTILITIES: LICENSES AND PERMITS AND CITY INSPECTION**

7.1 Compliance With Applicable Laws. Landlord and Tenant shall at all times comply with all Applicable Laws to the extent that such Applicable Laws pertain to the Premises.

#### 7.2 Taxes and Utilities.

(a) Tenant shall pay all applicable Federal, state and local taxes, as and when the same become due, and before any penalty or late charge is assessed or comes into effect.

(b) Tenant shall pay as and when the same become due, all rents and charges for any and all utilities utilized by or on behalf of Tenant in relation to this Lease, including without limitation, electricity and telephone, and any other utility or services used or consumed in operating, using and/or servicing the Premises, or any parts thereof. The Landlord is not and shall not be required to render any services (including utility services) of any kind to Tenant. The Landlord does not represent or warrant the availability, adequacy, or sufficiency of any utility or other service to the Premises.

7.3 Licenses and Permits. Tenant, at its own cost and expense, shall obtain and maintain throughout the Term of this Lease, all licenses and permits required by the Applicable Laws for the operation of the Hubsite. Notwithstanding anything set forth herein to the contrary, the Landlord does not represent or warrant that the Tenant will be able to obtain or maintain any of the approvals, licenses or permits which are, or may be necessary and/or required to operate the Hubsite or the Premises including, without limitation, those approvals, licenses and permits which the Tenant may be required to obtain from any City of Philadelphia agency, department, bureau, board, commission or department.

#### 7.4 Inspection of Tenant's Hubsite.

(a) The Landlord shall have the right upon twenty-four (24) hour advance notice, except in the case of an emergency, to inspect the Premises and the Hubsite and Tenant's operation thereof, to determine if they are being maintained and operated in accordance with this Lease.

(b) Review, approval and/or inspection by the Landlord under this Lease of the Hubsite and/or Tenant's use, occupancy and/or operation of them shall not constitute a representation, guaranty, or warranty by the Landlord to the

Tenant, or to any person or entity, as to the quality or substance of the matter or item reviewed or approved, or its compliance with any of the Applicable Laws and shall not constitute and shall not be deemed to constitute approval otherwise required by the City of Philadelphia and all City of Philadelphia agencies, departments, boards, bureaus and commissions in connection with any aspect of the Hubsite, the Premises and/or Tenant's operation thereof. Neither the Tenant nor any other person or entity should rely in any way on any Landlord approval, review and/or inspection and at all times Tenant and its employees, agents, contractors and subcontractors must use their own independent judgment as to Tenant's use, occupancy, and/or operation of the Hubsite and Premises (and/or any work performed by or on behalf of Tenant thereon), and the compliance of those conditions and operations with all of the Applicable Laws.

**ARTICLE 8  
MAINTENANCE AND REPAIR OF PREMISES**

8.1 Tenant's Maintenance and Repair Obligation.

(a) At all times during the Term, Tenant, at its cost and expense, shall maintain the Premises clear from all weeds, trees or other vegetation exceeding three (3) feet in height.

(b) At all times during the Term, Tenant, at its cost and expense, shall (i) assume the full and sole responsibility for the condition, repair, replacement and maintenance of the Premises including, without limitation, all repair required as a result of vandalism or malicious mischief, and (ii) keep the Premises (including the Improvements) in a clean and orderly condition, free of garbage, debris, rubbish, unlawful obstructions and the accumulation of snow and ice. Notwithstanding the foregoing, Landlord shall perform and construct at its sole cost and expense, and Tenant shall have no responsibility to perform or construct, any repair, maintenance or improvement necessitated by the gross negligence or willful misconduct of Landlord or its agents, employees or contractors.

(c) Tenant shall not cause, permit or suffer any waste, damage, or injury to the Premises, and shall promptly repair (or cause to be repaired) any injury or damage caused by Tenant or any of its agents, contractors, subcontractors, licensees, invitees, or employees.

8.2 Landlord's Maintenance or Repair Obligations. The Landlord shall have no maintenance or repair obligations except as set forth herein. Except as set forth herein, the Landlord shall not, and shall not be required to maintain, alter, repair, build, rebuild or replace any part(s) of the Premises or any Improvements, facilities, equipment, vehicles or materials thereon (regardless of ownership of any of the foregoing), and the Tenant expressly waives any and all rights to make repairs at the expense of the Landlord which right may be provided for in any law now in effect or hereafter enacted.

**ARTICLE 9  
BONDS: PERFORMANCE BOND  
LABOR AND MATERIALMAN'S BOND  
RELEASE AND WAIVER OF LIENS**

9.1 Performance Bond. Prior to commencing any work at the Premises, the cost of which will exceed One Thousand Dollars (\$1,000.00), the Tenant shall provide the Landlord with a bond or bonds in an amount wholly acceptable to the Landlord and issued by a corporate surety approved by the Landlord in a form wholly satisfactory to the Landlord to insure the full faithful payment and performance of such work (the "Performance Bond").

9.2 Labor and Materialmen's Bonds. Tenant represents that every contract for the alteration, installation, restoration, and or repair of or addition to any part(s) of the Premises shall contain a provision obligating the contractor to make prompt payment for all material furnished, labor supplied or performed, rental for equipment employed and services rendered by public utilities, in or in connection with the subject contractor's work, whether the said material, labor, equipment or services enter into and become component parts of the Premises of which it is a part. Where the estimated cost of any contract described in the preceding sentence is estimated to exceed One Thousand Dollars (\$1000.00), each such contract shall obligate the contractor to furnish Tenant and Landlord, prior to the date on which such contractor commences work under such contract, with a bond wholly satisfactory to the Landlord, for the prompt payment by such contractor of any amounts due for materials, supplies, labor, services and equipment.

9.3 Prohibition Against Liens. Tenant will not create and will not permit to remain, and will, at its own cost and expense within thirty (30) days after notice of the filing thereof, pay or cause to be paid in full or cause to be removed of record by



bonding over the same, all liens, encumbrances and charges upon the Premises, or any part thereof (or the income therefrom) arising out of Tenant's use or occupancy thereof, or by reason of any labor or materials furnished or claimed to have been furnished to Tenant.

## ARTICLE 10 ENTRY ON PREMISES BY CITY

10.1 In addition to Landlord's right of entry under any other provision of this Lease, Tenant will permit the Landlord and any of its authorized representatives to enter the Premises at all times, for any reasonable purpose, upon twenty-four (24) hour prior written notice, including, but not limited to: (a) performing any government functions; and/or (b) making any repairs to the Premises which Tenant has failed to perform in violation of this Lease and such failure continues beyond the expiration of applicable notice and cure periods. Except as set forth herein, nothing contained in this Article shall create or imply any duty upon the part of the Landlord to make any repairs or do any work to or upon the Premises. Performance of repairs by the Landlord shall not constitute a waiver of Tenant's Default (defined in Section 13.1) in failing to perform the repairs.

## ARTICLE 11 INDEMNIFICATION AND RELEASE

11.1 Indemnification of the Landlord. The Tenant and its successors and assigns, shall indemnify, defend and hold harmless the Landlord, and each of its successors, assigns, officers, boards, employees, agents, commissions and representatives (collectively, the "Indemnified Parties"), from and against any and all losses, claims, suits, actions, damages, expenses (including, but not limited to, counsel fees and litigation costs) and liabilities, including, but not limited to, those in connection with loss of life, bodily and personal injury or damage to property (real or personal, and regardless of ownership), which occur, in whole or in part, as a result of (a) any act or omission of Tenant, its directors, officers, agents, successors, assigns, members, shareholders, contractors, subcontractors, employees, invitees, licensees, servants or guests, (b) the use, operation or occupancy of the Premises, or any parts thereof, and/or (c) Tenant's operations pursuant to this Lease, and/or (d) the exercise of any right and/or performance of any obligation under or pursuant to this Lease. The Tenant's obligations as set forth in this Section are not and shall not be limited by the provisions of any insurance policy maintained by or on behalf of Tenant and/or any Applicable Law, including, without limitation, The Pennsylvania Workmens Compensation Act, as amended, currently codified at 77 P.S. §1 et seq. This Section is limited to the Limitation of Liability set forth in Section 11.3 below.

11.2 Tenant's Waiver of Claims. In consideration of the Lease, Tenant does hereby remise, quitclaim, release and forever discharge, and by these presents does for Tenant's successors, assigns, agents, members, employees, guests, invitees, contractors, subcontractors, officers, directors, shareholders and/or any person or entity claiming under or through them (collectively, the "Releasing Parties"), hereby remise, quitclaim, release and forever discharge, the Landlord, its successors, assigns, agents, employees, officers, boards and commissions (acting officially or otherwise) (collectively, the "Released Parties"), from any and all manner of, actions and causes of action, suits, claims and demands whatsoever, in law or in equity, which the Releasing Parties or any of them may have against the Released Parties or any of them, relating in any way whatsoever to (a) this Lease and/or the Premises or (b) the existence, condition, operation, use or occupation of the Premises. Tenant hereby voluntarily assumes all risk of loss, damage, or injury, including without limitation, death, that may be sustained by the Releasing Parties, including the public in general or any of them, in connection with this Lease, and/or Tenant's use, occupancy and/or operation of the Premises. Tenant hereby waives any defenses and/or immunities it may have to any claim against the Landlord raised by or on behalf of any of its employees under any insurance policy maintained by or on behalf of Tenant and/or any Applicable Law, including, without limitation, The Pennsylvania Workmens Compensation Act, as amended, currently codified at 77 P.S. § 1 et seq.

11.3 Landlord Has No Liability. Except as set forth in Section 3.2 herein, Landlord shall have no liability under this Lease to Tenant or anyone claiming through or under Tenant (including Subtenant). Tenant's liability to Landlord under this Lease shall be limited to its interest in the Premises. Notwithstanding the foregoing, Tenant shall not be permitted to limit Subtenant's liability under the Sublease.

## ARTICLE 12 INSURANCE

12.1 Tenant shall, at its sole cost and expense, obtain and maintain during the Initial Term, the Extended Term(s) (if applicable) and for the period of time following the Term as is required to fulfill Tenant's indemnification obligations, hereunder, the following insurance policies in the following minimum amounts:

- (a) Workers Compensation and Employers Liability
  - (i) Workers Compensation Insurance in accordance with the laws of the Commonwealth of Pennsylvania;
  - (ii) Employers Liability: \$500,000 each Accident - Bodily injury by Accident; \$500,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
- (a) Commercial General Liability
  - (i) Limit of liability: \$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
  - (ii) Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations) liability; and explosion, collapse and underground hazards.
- (a) Automobile Liability
  - (i) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
  - (ii) Coverage: Owned, non-owned and hired vehicles.
- (d) Property Coverage. "All Risk" property insurance in the amount equal to the full replacement value of the Premises.
- (e) Builders Risk Insurance/Installation Floater. If applicable, during the period of any construction on the Premises, Tenant shall maintain "all risk" builder's risk insurance in an amount equal to the anticipated completion value of the project under construction. The coverage shall remain in full force and effect during the construction of the Improvements and until completion of the Improvements and acceptance by Tenant.
- (e) Landlord shall have the right to adjust the insurance requirements provided for in this Section from time to time during the Term of this Lease but not more than once every three (3) years.

12.2 Additional Insurance Requirements. All insurance shall be procured from reputable insurers authorized to do business in the Commonwealth of Pennsylvania and wholly acceptable to the Landlord. All insurance required herein shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Tenant exercise any rights hereunder until the required evidence of insurance has been furnished to the Landlord. If Tenant fails to obtain or maintain the required insurance, the Landlord shall have the right to treat such failure as a Default (defined in Section 13.1) hereunder and to exercise all of its rights and remedies. The insurance shall provide for at least thirty (30) days prior written notice to be given to the Landlord in the event coverage is materially changed, canceled or not renewed. The Landlord, its officers, employees, agents and representatives are to be named as additional insureds on all policies required hereunder, except the Workers' Compensation and Employers' Liability Policy. All such policies shall include an endorsement stating that the coverage afforded the Landlord and its officers, employees, agents and representatives as additional insureds will be primary to any other coverage available to them.

12.3 Insurance Certificates. Certificates of insurance evidencing the required coverages shall be submitted to the Commissioner of Public Property and the City's Risk Manager (14th Floor, 1515 Arch Street, Philadelphia, Pennsylvania 19102) upon execution of this Lease, and at least ten (10) days before each extension date. The Landlord reserves the right to require Tenant to furnish certified copies of the original policies of all insurance required under this Lease at any time upon ten (10) days prior written notice to Tenant. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit or reduce Tenant's obligations under Article 11 and/or any of the indemnifications made by Tenant to the Landlord hereunder, or to limit Tenant's liability under this Lease to the limits of the policies of insurance required to be maintained by Tenant. If the Tenant during the Term neglects or refuses to maintain any of the insurance required herein, or fails to submit proof of such insurance as required herein and fails to cure same after ten (10) business days following receipt of written notice from the

Landlord informing the Tenant of such Default (defined in Section 13.1), then the Landlord may terminate this Lease immediately without any liability on its part. In such event, the Tenant shall continue to be subject to any and all liabilities of the Tenant hereunder, actual or contingent, which may have arisen on or before such termination date, and the Landlord reserves to itself all of the remedies available in law or in equity or contained in this Lease.

### ARTICLE 13 DEFAULT

13.1 Default. The occurrence of any one or more of the following matters shall constitute a default by Tenant under this Lease ("Default"):

- (a) Failure to pay within ten (10) days following receipt of written notice that the Base Rent, Annual Basic Rent, Additional Rent, or any other sum or amount owing to the Landlord under this Lease is past due;
- (b) Subject to the provisions of Section 6.1 hereof, failure by Tenant to observe or perform any covenant, term, condition or provision of this Lease and Tenant fails to cure such default within thirty (30) days after receipt of written notice from Landlord specifying the nature of such default where such default could reasonably be cured within said thirty (30) day period;
- (c) The assignment, levy upon or execution or the attachment by legal process of the interest of Tenant;
- (d) (i) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law, or similar law for the relief of debtors is (are) instituted by or against Tenant, and, if instituted against Tenant, is (are) allowed against it or consented to by it or not dismissed within sixty (60) days after such institution, or (ii) Tenant admits its inability to pay its debts as they become due;
- (e) Failure of Subtenant to be the franchisee of the operation of a cable communications system in Area II of the City of Philadelphia;
- (f) A default by Subtenant under the Sublease which is not cured within the cure period, if any, specified therein; and/or
- (g) Failure to enforce the provisions of the Sublease.

### ARTICLE 14 EMINENT DOMAIN

14.1 Taking. If any portion of the Premises shall be taken by condemnation, sale in lieu of condemnation or in any other manner for any public or quasi-public purpose (collectively "Condemnation"), this Lease shall terminate on the date that title or possession thereto is taken by the condemning authority, whichever is earlier.

14.2 Award. In the event of any Condemnation, the entire award for such taking shall belong to Landlord, except that Tenant shall be entitled to independently pursue a separate award relating to the loss of, or damage to, Tenant's personal property and trade fixtures and Tenant's relocation costs directly associated with the Condemnation. Tenant shall have no claim against Landlord or the award for the value of any unexpired term of this Lease.

### ARTICLE 15 REMEDIES

15.1 Remedies of the Landlord. Upon the occurrence of any Default, the Landlord's rights shall include, without limitation, the following:

- (a) The right to accelerate the Base Rent, Annual Basic Rent and/or Additional Rent for the entire unexpired balance of the Term discounted to its net present value.
- (b) The right to terminate this Lease.

(c) Whether or not this Lease has been terminated as herein provided, to remove Tenant and Tenant's property from Premises. Landlord shall be under no liability for any loss or injury by reason of any such entry, or removal.

(d) The right at any time, or from time to time after the termination of the Lease, without further notice, to enter upon and re-enter upon the Premises and possess and repossess itself of the Premises, by force, summary proceedings, ejectment or otherwise, and to dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises.

(e) The right to re-lease the Premises to any tenant Landlord in its sole discretion may choose, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include the waiver of any right to the payment of any rent to the Landlord) and for such uses as Landlord, in its sole discretion, may determine, and the Landlord may collect and receive any payments by reason of such re-letting. The Landlord shall not be required to mitigate damages or exercise any care or diligence with respect to such re-letting. For the purpose of such re-letting, the Landlord may decorate or make repairs, changes, alterations or additions in or to the Premises, or any part(s) thereof to the extent deemed by the Landlord to be desirable or convenient, and the cost of such decoration, repairs, changes, alterations or additions and any reasonable brokerage and legal fees expended by Landlord shall be charged to and be payable by Tenant hereunder.

(f) Confession of Judgment in Ejectment. If Landlord terminates this Lease because of Default, or when the Term, or any Extended Term has expired, any attorney for Landlord may file an agreement for entering in any competent court an action and judgment in ejectment against Tenant, and all persons claiming under Tenant, for the recovery by Landlord of possession of the Premises, for which a true copy of this Lease shall be its sufficient warrant, whereupon, without any prior proceedings whatsoever, an appropriate writ shall issue. If possession of the Premises remains in or is restored to Tenant, Landlord shall have the right upon any subsequent Default(s), or upon the termination of this Lease, to bring additional actions to recover possession of the Premises as set forth in this section. In any action of ejectment, Landlord shall first cause to be filed in such action an affidavit made by Landlord or someone acting for Landlord, setting forth the facts necessary to authorize the entry of judgment, of which facts such affidavit shall be prima facie evidence, and if a true copy of this Lease (and of the truth of the copy such affidavit shall be sufficient evidence) shall be filed in such suit, action or actions, it shall not be necessary to file the original as a warrant of attorney, notwithstanding any rule of court, custom or practice to the contrary.

(g) The right to enter judgment against Tenant and to enforce all of the other provisions of this Lease provided in this Lease may be exercised by any assignee of Landlord's right, title and interest in this Lease.

(h) No failure by Landlord or by Tenant to insist upon the strict performance of any term, covenant, agreement, provisions, condition or limitation of this Lease or to exercise any right or remedy consequent upon a breach of this Lease and no acceptance by the Landlord of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No breach may be waived except by a written instrument executed by the nonbreaching party. This Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach of this Lease notwithstanding any waiver of a breach of either party.

(i) No expiration or termination of this Lease, by operation of law or otherwise, shall relieve Tenant of its liabilities and obligations under this Lease, all of which shall survive such expiration or earlier termination.

15.2 Landlord's Performance of Tenant's Obligations. Upon Default by Tenant in the performance or observance of any covenant or any condition to be performed or observed by Tenant hereunder the Landlord may, but shall not be required to, on behalf of Tenant, perform such covenant and/or take all or any such steps, as may be necessary or appropriate to meet the requirements of any such covenant or condition, and all actual and out-of-pocket costs and expenses reasonably incurred by the Landlord in so doing, including reasonable legal fees, shall be paid by the Tenant to the Landlord upon demand, together with interest at the rate of ten percent (10%) or such lesser rate as represents the maximum rate which the Landlord lawfully may charge in respect of Tenant, from the respective dates of Landlord's incurring of the costs.

15.3 Landlord's Rights are Cumulative. No right or remedy conferred upon or reserved to the Landlord in this Lease is intended to exclude any other right or remedy provided in this Lease or by law or equity, but each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Lease or now or hereafter existing at law or in equity.

**ARTICLE 16  
SUBCONTRACTING, ASSIGNMENT, SUBLETTING**

16.1 Assignment or Sublet.

(a) Tenant shall not assign, sublet or permit the use of any of the rights, privileges or premises granted under this Lease, in whole or in part, to any other person, firm, corporation or entity, except to the Subtenant pursuant to a Sublease on the terms and conditions specified in this Lease. Notwithstanding the foregoing, Landlord acknowledges that except to an entity in connection with the transfer of stock of Subtenant or in connection with the sale of substantially all of Subtenant's assets, Subtenant shall not assign, license, franchise, sublet or permit the use of any of the rights, privileges or premises granted under the Sublease, in whole or in part, to any other person, firm, corporation or entity without first obtaining the written consent of the City (acting through the Commissioner of Public Property) and PAID, which consent shall not be unreasonably denied.

(b) Any purported assignment, mortgage, pledge, encumber, license, franchise, contract, subcontract, lease or sublease or other disposition in violation of this Article shall be null and void.

16.2 Assignment by Landlord. Landlord may assign, transfer or encumber all or any part of Landlord's interest in this Lease at any time with prior written notice to Tenant.

**ARTICLE 17  
NOTICES**

17.1 All notices, demands, requests, consents, certificates, waivers or other communications from either party to the other with respect to this Lease shall be in writing and shall be effective if sent by certified or registered United States mail, postage prepaid, return receipt requested and obtained, or by hand delivery with receipt obtained, or by overnight courier service providing receipted proof of delivery (provided if delivery is refused, delivery shall be deemed to have occurred on the date of the refusal),

(a) If to the Landlord, addressed as follows:

Commissioner of Public Property  
Municipal Services Building, 10th Floor  
1401 John F. Kennedy Boulevard  
Philadelphia, PA 19102-1677

With copies to:

City Solicitor of the City of Philadelphia  
Attn: Real Estate and Economic Development  
1515 Arch Street, 17th Floor  
Philadelphia, PA 19102

(b) If to the Tenant, addressed as follows:

Attention: President  
Philadelphia Authority for Industrial Development  
2600 Centre Square West  
15th and Market Streets  
Philadelphia, PA 19103

With copies to:

Ellen Brown, Esquire  
Philadelphia Authority for Industrial Development  
2600 Center Square West  
15th and Market Streets

Philadelphia, PA 19103

or to such other address as the party to receive notice may from time to time designate by written notice to the other in the manner above described. Notices sent by registered or certified mail shall be effective three (3) business days after mailing. Notices sent by hand delivery shall be effective on the date of delivery if delivered during a business day, or on the next business day if not delivered during a business day. Notices sent by overnight courier service shall be effective on the business day following the day that such notice was received by such courier service for delivery.

**ARTICLE 18  
LANDLORD'S RIGHT TO ENFORCE STRICTLY**

18.1 Any law, usage or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce all terms, conditions and covenants of this Lease in strict accordance with its terms, notwithstanding any conduct or custom on the part of the Landlord in refraining from so doing at any time or times, or from enforcing its rights hereunder strictly in accordance with the same. Any such conduct or custom shall not be construed as having created a custom in any way or manner contrary to any specific term, condition or covenant of this Lease, or as having in any way or manner modified the same.

**ARTICLE 19  
NONDISCRIMINATION**

19.1 This Lease is entered into under the terms of the Philadelphia Home Rule Charter and in its performance, Tenant shall not discriminate or permit discrimination against any person because of race, color, religion, national origin, sex, sexual orientation, or ancestry. Any such discrimination constitutes a Default under this Lease entitling Landlord to all rights and remedies provided in this Lease or otherwise available in law or equity.

**ARTICLE 20  
MEMBERSHIP**

20.1 Memberships.

(a) In accordance with Chapter 17-400 of The Philadelphia Code, Tenant agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment, on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a Default under this Agreement entitling the Landlord to all rights and remedies provided in this Agreement or otherwise available in law or equity.

(b) Tenant agrees to include the immediately preceding paragraph, with appropriate adjustments for the identity of the parties, in all contracts and subcontracts which are entered into for work to be performed pursuant to this Lease.

(c) Tenant further agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute a Default under this Lease entitling the Landlord to all rights and remedies provided in this Lease or otherwise available in law or equity.

**ARTICLE 21  
LEASE DOES NOT CONSTITUTE A JOINT VENTURE**

21.1 Nothing in this Lease shall be construed as creating a joint venture or partnership between Landlord and Tenant.

**ARTICLE 22  
ENTIRE AGREEMENT**

22.1 This Lease contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relating to the Premises and there are no promises, agreements, conditions, inducements, understandings, warranties or representations, oral or written, expressed or implied, between them other than as set forth in this Lease.

### **ARTICLE 23 INVALIDITY OF CERTAIN PROVISINS**

23.1 If any term or covenant of this Lease or the application thereof to Tenant shall, to any extent, be held invalid or unenforceable, the remaining terms and covenants of this Lease, or the application of such term or covenant to Tenant shall not be affected thereby, and each term and covenant of this Lease shall be valid and enforceable to the fullest extent permitted by law.

### **ARTICLE 24 TENANT'S CERTIFICATION OF NON-INDEBTEDNESS**

24.1 Tenant hereby certifies and represents that Tenant is not currently indebted to the City of Philadelphia, and will not at any time during the Term be indebted to the City of Philadelphia for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City of Philadelphia on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City of Philadelphia has been established. In addition to any other rights or remedies available to the Landlord under this Agreement and/or at law or in equity, Tenant acknowledges that any breach or failure to conform to this certification may, if such breach or failure is not resolved to the Landlord's satisfaction within a reasonable time frame specified by the Landlord in writing, result in the termination of this Lease for Default (in which case Tenant shall be liable for all excess costs and other damages, resulting from the termination).

### **ARTICLE 25 SURVIVAL**

25.1 Any and all provisions set forth in this Lease which, by its or their nature, would reasonably be expected to be performed after the termination or expiration of this Lease shall survive and be enforceable after such termination or expiration. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Lease, shall survive any termination or expiration of this Lease. Any express statement of survival contained in any Article or Section of this Lease shall not be construed to affect the survival of any other Article or Section, which shall be determined pursuant to this Article.

### **ARTICLE 26 MACBRIDE PRINCIPLES**

#### 26.1 MacBride Principles

(a) In accordance with Section 17-104 of The Philadelphia Code, Tenant by execution of this Lease certifies and represents that (i) Tenant (including, if applicable, any parent company, subsidiary, exclusive distributor or company affiliated with Tenant) does not have, and will not have at any time during the Term of this Lease (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (ii) no product to be provided to the City under this Lease will originate in Northern Ireland, unless Tenant has implemented the fair employment principles embodied in the MacBride Principles.

(b) In the performance of this Lease, Tenant agrees that it will not utilize any suppliers, subtenants, including but not limited to Subtenant, subcontractors or subconsultants at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier, subtenant, including but not limited to Subtenant, or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. Tenant further agrees to include the provisions of this Article 26 with appropriate adjustments for the identity of the parties, in all subcontracts, subleases, including but not limited to the Sublease, and supply agreements which are entered into in connection with the performance of this Lease.

(c) Tenant agrees to cooperate with the City of Philadelphia's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The

Philadelphia Code. Tenant expressly understands and agrees that any false certification or representation in connection with this Article 26 and/or any failure to comply with the provisions of this paragraph shall constitute a substantial breach of this Lease entitling the City to all rights and remedies provided in this Lease or otherwise available at law (including, but not limited to, Section 17-104 of The Philadelphia Code) and/or in equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

**ARTICLE 27  
MISCELLANEOUS**

27.1 Captions. The captions of this Lease are for convenience only, are not a part of this Lease, and do not in any way define, limit or describe the scope, intent or terms of this Lease.

27.2 Time is of the Essence. Time is of the essence to this Lease.

27.3 Amendment. This Lease shall not be amended except by an instrument in writing executed by Landlord and Tenant. All approvals and consents required in this Lease shall be provided in writing in order to be effective. No oral representations, whenever made, by any official or employee of Landlord shall be effective to amend the terms of this Lease.

27.4 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

27.5 Binding on Successors. The terms, covenants and conditions contained in this Lease shall extend to and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

27.6 No Third-Party Beneficiaries. Nothing in this Lease is intended to confer a third party beneficiary right upon any person or entity.

27.7 No Brokers. It is expressly understood and agreed between the parties that neither the Landlord nor the Tenant has procured the assistance of any broker, agent, finder or salesperson in connection with the execution and delivery of this Lease or the consummation of the transactions set forth herein, and neither Landlord nor Tenant shall have any liability to any such broker, agent, finder or salesperson in connection with the transactions set forth herein.

27.8 Reasonableness. Wherever this Agreement requires the Landlord to review, grant approval or consent, or exercise its discretion reasonably, Tenant acknowledges and agrees that the Landlord shall be deemed to be acting reasonably and in good faith if the Landlord acts in a manner reasonable for the exercise of its fiduciary, municipal, and political functions.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

**CITY OF PHILADELPHIA**

APPROVED AS TO FORM  
Kenneth I. Trujillo  
City Solicitor

By: Andres Perez, Jr., Commissioner  
Department of Public Property

Per:



John Mondlak  
Assistant City Solicitor

**PHILADELPHIA AUTHORITY FOR  
INDUSTRIAL DEVELOPMENT**

Witness

By: \_\_\_\_\_  
Name: James McManus  
Title: Chairman

By: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Paul Deegan  
Title: Secretary  
**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PREMISES**

DESCRIPTION OF LOT "B"

**ALL THAT CERTAIN** lot or piece of ground, SITUATE in the 21st Ward of the City of Philadelphia and described according to a Survey and Plan of Property (VI-A-#115) made by Joel S. Cirello, Surveyor and Regulator of the Ninth Survey District, dated February 2, 2000:

**BEGINNING** at a point of tangency on the northeasterly side of Umbria Street (on City Plan 80' wide, legally open), said point being located the two (2) courses and distances from the westerly end of a curved comer that connects the northwesterly side of Domino Lane (on City Plan 60' wide, legally open) and the said northeasterly side of Umbria Street; (1) Northwestwardly along the said northeasterly side of Umbria Street N.48°06'30"W. the distance of 39.104' to a point of curvature; (2) Northwestwardly along the said northeasterly side of Umbria Street on the arc of a circle curving to the right having a radius of 500.000' the arc distance of 300.471' to the said point of beginning; THENCE extending along the said northeasterly side of Umbria Street N.13°40'37"W. the distance of 89.270' to a point of curvature; THENCE extending northwardly on the arc of a circle curving to the left having a radius of 571.558' the arc distance of 299.821' to a point of tangency; THENCE extending along the said northeasterly side of Umbria Street N.43°43'57"W. the distance of 8.593' to a point; THENCE extending N.46°16'03"E. the distance of 55.000' to a point; THENCE extending S.37°11'15"E. the distance of 390.000' to a point; THENCE extending S.52°53'19"W. the distance of 133.000' to a point of tangency on the said northeasterly side of Umbria Street, the first mentioned point and place of beginning.

CONTAINING in Area 28,339 sq. ft., 0.65058 Acres.

**SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT (the "Lease" or "Agreement") is made this \_\_\_\_ day of March, 2001, by and between the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT as sublandlord, having a principal place of business at 2600 Centre Square West, 15th and Market Streets, Philadelphia, Pennsylvania ("PAID" or "Landlord") and Urban Cable Works of Philadelphia, L.P., a Delaware limited partnership with a principal place of business at 1700 North 49th Street, Philadelphia, PA 19131 ("CABLE WORKS" or "Tenant").

**THE LEASE**

**BACKGROUND**

A. The City of Philadelphia ("City" or "Prime Landlord") is the owner of certain property located at 5201 Umbria Street, Philadelphia, Pennsylvania, as is more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Premises"). Pursuant to Ordinance # \_\_\_\_\_, the City has leased the Premises to PAID ("Landlord") pursuant to a lease of even date herewith (the "Prime Lease") for further sublease to CABLE WORKS ("Tenant") for use as a hub in Tenant's telecommunications network ("Hubsite").

B. The Landlord desires to lease to the Tenant and the Tenant desires to lease from the Landlord the Premises for the Term (defined in Section 2.1) on the terms and conditions of this Agreement and under and subject to the Prime Lease. Tenant acknowledges that it has received and reviewed a copy of the Prime Lease, a copy of which is attached hereto as Exhibit "B".

NOW, THEREFORE, in consideration of the rent reserved herein and the mutual covenants set forth in this Agreement, PAID and CABLE WORKS, intending to be legally bound, agree as follows:

**ARTICLE 1  
PREAMBLE**

1.1 Preamble. The Background above is incorporated herein and made a part hereof.

**ARTICLE 2  
DEFINITIONS**

2.1 Definitions: The terms defined in this Article shall, for all purposes of this Lease and all future agreements which may become supplemental thereto, have the meaning herein specified.

(a) "Additional Rent" shall be deemed to have the meaning set forth in Section 5.3.

(a) "Annual Basic Rent" shall be deemed to have the meaning set forth in Section 5.2.

(a) "Applicable Law" shall mean the following, as they now are, or at any time may be applicable to Landlord, Tenant, the Premises, any part(s) thereof, and/or this Lease, or any part(s) thereof: all present and future laws, ordinances, orders, rules, regulations, guidelines, orders and requirements of all federal, state, city and any other municipal or local governments, courts, departments, commissions, boards, board of fire underwriters, bureau, quasi-governmental authorities, and any other body exercising functions similar to those of any of the foregoing, including but not limited to those laws, statutes, ordinances, notices, orders, rules and regulations governing or regulating the use or operation of any part of the Premises, the environment, and those statutes commonly known as the "Americans With Disabilities Act of 1990", generally codified at 42 U.S.C. §§ 12101 et seq., and all rules, regulations and guidelines promulgated pursuant thereto (the "ADA"), as any or all of the foregoing may be amended from time to time.

(a) "Base Year" shall mean the first full calendar year of this Lease.

(a) "Base Rent" shall be deemed to have the meaning set forth in Section 5.1.

(a) "City" shall mean the City of Philadelphia.

(a) "Commencement Date" shall be deemed to have the meaning set forth in Section 4.1.

(a) "Condemnation" shall be deemed to have the meaning set forth in Section 14.1.

(b)