

**LEASE - COMMONWEALTH PROPERTY WITHIN DELAWARE RIVER BED IN THE
CITY OF PHILADELPHIA TO NCCB ASSOCIATES, LP, AND AFFIRMING
AUTHORITY OF GENERAL ASSEMBLY TO ENACT CERTAIN CONVEYANCES**
Act of Feb. 22, 2008, P.L. 41, No. 5 **Cl. 85**
AN ACT

Authorizing the Department of General Services, with the concurrence of the Department of Environmental Protection, to lease to NCCB Associates, LP, or its nominee, land within the bed of the Delaware River in the City of Philadelphia; and affirming the authority of the General Assembly to enact certain conveyances.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Land within the Delaware River bed.

(a) Authorization.--The Commonwealth owns the lands within the bed of the Delaware River, a portion of which lands are located in the 5th Ward of the City of Philadelphia, and includes lands commonly known as 1143-1151 North Delaware Avenue and Pier No. 53 North. The Department of General Services, with the concurrence of the Department of Environmental Protection, acting on behalf of the Commonwealth, is hereby authorized and directed to lease, for such consideration as shall be agreed upon by the parties, to NCCB Associates, LP, or its nominee, (hereinafter "lessee") for an initial term of 99 years, land within the bed of the Delaware River in the City of Philadelphia and to extend the period for all or any portion of the leased premises for an additional term of up to 99 years.

(b) Description of property.--The land to be leased is more particularly described as follows:

ALL THAT CERTAIN portion of property known as 1143-1151 North Delaware Avenue and Pier 53 North lying between the Bulkhead Line and the Pierhead Line of the Delaware River as established by the Secretary of War on September 10, 1940; said portion being situate on the southwesterly side of former Marlboro Street (47 feet 6 inches wide - stricken and vacated by Ordinance of Philadelphia City Council on September 19, 1982 and confirmed by the Board of Surveyors on July 5, 1983, reserved as a right of way for drainage, water main and public utility purposes) in the Fifth (formerly the Eighteenth) Ward of the City of Philadelphia, Commonwealth of Pennsylvania, bounded and described in accordance with a Plan of Property by Allen J. Bommentre, Jr., Surveyor and Regulator of the Third Survey District, dated April 12, 2005, as follows:

BEGINNING at the point of intersection of the southwesterly side of said former Marlboro Street with the said Bulkhead Line as established by the Secretary of War, said point of intersection being South 20 degrees 49 minutes 27 seconds East 280.992 feet from the intersection of the southeasterly line of Delaware Avenue (140 feet wide) with the aforesaid southwesterly line of former Marlboro Street; and running thence:

(1) Along the said southwesterly side of former Marlboro Street, South 20 degrees 49 minutes 27 seconds East 589.306 feet to its point of intersection with the aforesaid Pierhead Line of the Delaware River as established by the Secretary of War; thence

(2) Along with said Pierhead Line, South 54 degrees 04 minutes 10 seconds West 57.397 feet to its point of intersection

with the southwesterly line of the aforesaid property known as 1143-1151 North Delaware Avenue; thence

(3) Along said southwesterly line of 1143-1151 North Delaware Avenue, North 23 degrees 18 minutes 27 seconds West 589.344 feet to its point of intersection with the aforesaid Bulkhead Line of the Delaware River as established by the Secretary of War, said point of intersection being South 23 degrees 18 minutes 27 seconds East 288.042 feet from the intersection of the said southeasterly line of Delaware Avenue with the said southwesterly line of 1143-1151 North Delaware Avenue; thence

(4) Along said Bulkhead Line of the Delaware River as established by the Secretary of War, North 58 degrees 21 minutes 15 seconds East 82.417 feet to the point and place of beginning. CONTAINING 40,356 square feet (0.9264 acre), more or less.

(c) Lease agreement.--The lease and any other documents hereby contemplated shall be approved as to form and legality by the Attorney General and the Office of General Counsel and shall be executed by the Department of General Services, with the concurrence of the Department of Environmental Protection, which approvals shall not be unreasonably withheld, in the name of the Commonwealth. The lease shall grant the lessee, and all successors, assigns and sublessees, the right to use the above-described premises or to assign the lease or sublease or permit the sublease of the above-described premises for the purposes of the proposed development of one residential tower with accessory parking garage and restaurant, as well as marina and maritime uses all consistent with public access.

(d) Sublease.--The Department of General Services, with the concurrence of the Department of Environmental Protection, acting on behalf of the Commonwealth of Pennsylvania, is also specifically authorized to enter into one or more nondisturbance agreements with any sublessee of the premises described in this section pursuant to which the Commonwealth will agree that, if the Commonwealth succeeds to the interest of the sublessor under a sublease, it will not terminate the sublease unless the sublessee is in default.

(e) Land use restriction.--All leases authorized or referred to under this section shall be made under and subject to the condition, which shall be contained in the lease documents, that no portion of the parcels shall be used as a licensed facility as defined in 4 Pa.C.S. § 1103 (relating to definitions) or any other similar type of facility authorized under the laws of this Commonwealth. This condition shall be a covenant running with the land and shall be binding upon the lessee and sublessees and their respective successors and assigns. Should any portion of any parcel authorized to be leased under this act be used in violation of this subsection, the lease shall terminate immediately.

(f) Improvements.--

(1) The Department of General Services is hereby authorized to execute, on behalf of the Commonwealth of Pennsylvania, any declaration or other document necessary to submit these premises or any portion thereof and any improvements thereon to the provisions of 68 Pa.C.S. Pt. II Subpt. B (relating to condominiums) as a leasehold condominium.

(2) The lessee, all sublessees and their respective successors and assigns, shall provide and maintain at least the following free public access to the riverfront for fishing and other recreational activities and free public parking in connection with such access:

(i) A minimum of ten free public parking spaces available at all times located proximate to the public walkway near the water edge and signage indicating the free public parking.

(ii) Public walkways on the riverfront, including water edge promenades along the entire water edge of the leasehold and adjacent to the water and providing free public access to the water and allowing for passive and active recreational activities year-round and signage indicating the walkways are open to the general public.

(iii) A free public park area along the public walkway near the water.

(iv) Public access to the Delaware River which is consistent with the waterfront setback requirements set forth in section 14-216(6)(g) of the Philadelphia Code, enacted into law by an Ordinance enacting Bill No. 050465, passed by the City Council on June 16, 2005, and signed by the mayor on July 8, 2005.

(3) Should the lessee, any sublessee or any of their respective successors or assigns wish to modify the public access and parking required by this section, it must obtain the prior written approval of the Department of Environmental Protection and the Department of General Services, which approval shall not be unreasonably withheld. The public access and parking shall be completed and open to the public no later than the date the first tenant or resident occupies either the leasehold or the land adjacent to the leasehold.

(4) Nothing herein shall affect or otherwise limit the requirements of the provisions of the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act, which may require further measures to provide for public access and use of the land and adjacent water.

(5) These conditions shall be covenants that run with the land and shall be binding upon the lessee, any sublessee and their respective successors and assigns. Should the lessee, any sublessee or any of their respective successors or assigns permit the parcels authorized to be leased under this section, or any portion thereof, to be used in a manner inconsistent with the conditions contained in this subsection, all rights and interests in the lease authorized by this act shall terminate immediately.

(g) Consideration.--The Department of General Services shall lease the land within the bed of the Delaware River as described in subsection (b) upon such terms and conditions and for such other nonmonetary considerations as it shall, with the concurrence of the Department of Environmental Protection for no less than \$5 per square foot payable in advance, established through the lease agreements, and not less than \$1 per square foot based upon the development plan for any real improvements added to the site subsequent to such agreement, payable when such improvements become occupied. Fifty percent of all payments under this subsection shall be payable to the Commerce Department of the City of Philadelphia to implement the Central Delaware Advisory Group master plan for redevelopment along the waterfront within the boundaries of Executive Order 004-06 of October 12, 2006, providing for the process to establish the master plan. Such terms may include a requirement to commence and construct such improvements authorized and/or required in this section within certain time periods.

(h) Costs and fees.--Costs and fees incidental to the lease authorized by this section shall be borne by the lessee,

including the costs incurred by the Department of General Services and the Department of Environmental Protection in the preparation, execution and review of the lease, nondisturbance agreements and related documents.

(i) Sunset provisions.--In the event that the lease authorized by this section and a community benefit agreement between the lessee and Fishtown Neighborhood Association is not executed within 18 months following the effective date of this section, and a building permit for the proposed residential project is not obtained within 18 months, the authority contained in this section shall be void.

Section 2. Affirmation of exclusive authority of General Assembly.

The General Assembly hereby affirms its existing, sole and exclusive authority to consider and specifically authorize the conveyance of any title, easement, right-of-way or other interest in Commonwealth-owned lands, such as those set forth herein pursuant to the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, and the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act. Nothing in this section shall affect or otherwise limit the authority of the Department of Environmental Protection under section 15 of the Dam Safety and Encroachments Act or section 514 of The Administrative Code of 1929.

Section 3. Effective date.

This act shall take effect immediately.