
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1621 Session of
2007

INTRODUCED BY M. O'BRIEN, JUNE 25, 2007

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JUNE 25, 2007

AN ACT

1 Authorizing the Department of General Services, with the
2 concurrence of the Department of Environmental Protection, to
3 lease to VTE Philadelphia, LP, or its nominee, land within
4 the bed of the Delaware River in the City of Philadelphia.

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

7 Section 1. Land within the Delaware River bed.

8 (a) Authorization.--The Commonwealth owns the lands within
9 the bed of the Delaware River, a portion of which lands are
10 located in the 5th Ward of the City of Philadelphia, and
11 includes lands commonly known as Pier No. 35 1/2 North. The
12 Department of General Services, with the concurrence of the
13 Department of Environmental Protection, acting on behalf of the
14 Commonwealth, is hereby authorized and directed to lease, for
15 such consideration as shall be agreed upon by the parties, to
16 VTE Philadelphia, LP, or its nominee (hereinafter "lessee") for
17 an initial term of 99 years, land within the bed of the Delaware
18 River in the City of Philadelphia, and to extend the period for

1 all or any portion of the leased premises for an additional term
2 of up to 99 years.

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

5 ALL THAT CERTAIN lot or piece of ground together with the
6 improvements thereon erected, situate in the 5th Ward of the
7 City of Philadelphia, Pennsylvania and shown on a Boundary and
8 Topographic Survey made for Pier 35 1/2, LLC, Penn Street &
9 Fairmount Avenue, Pier 35 N, Lot 9, Map 5 N 4, 5th Ward, City &
10 County of Philadelphia, Commonwealth of Pennsylvania by Control
11 Point Associates, Inc., dated February 3, 2005 and more
12 particularly described as follows to wit:

13 Beginning at a point on the dividing line Between Lot 9, Map 5 N
14 4, lands now or formerly Berman and Lot 16, Map 6 N 6, lands now
15 or formerly Isle of Capri Associates, L.P., Said point being
16 distant the following two (2) courses and distances from the
17 intersection and southeasterly right-of-way line of Penn Street
18 (60 foot wide right-of-way, legally open) and the easterly
19 right-of-way line of Delaware Avenue (A.K.A. Christopher
20 Columbus Boulevard, A.K.A. SR. 2001, 150 foot wide right-of-way,
21 legally open):

22 A. Along the southeasterly right-of-way of Penn Street,
23 North 43 degrees 30 minutes 00 seconds East, a distance of
24 140.229 feet to a drill hole, THENCE;

25 B. Along the dividing line between Lot 9, Map 5 N 4 and
26 Lot 16, Map 6 N 6, South 47 degrees 02 minutes 00 seconds
27 east, a distance of 194.573 feet to the true point and place
28 of beginning and from said point of beginning running,
29 THENCE;

30 The following two (2) courses and distances along the dividing

1 line between Lot 9, Map 5 N 4 AND Lot 16, Map 6 N 6:

2 1. South 67 degrees 54 minutes 00 seconds East, a
3 distance of 125.667 feet to a point, THENCE;

4 2. South 46 degrees 04 minutes 40 seconds East, a
5 distance of 361.500 feet to a point on the northeasterly
6 right-of-way line of Fairmount Avenue (62 foot 2 inch wide
7 right-of-way, not open, not on the city tax registry), said
8 point is 53.976 feet on a bearing North 71 degrees 40 minutes
9 00 seconds West from the pierhead line of the Delaware River
10 (established January 5, 1894, Approved by the Secretary of
11 War September 10, 1940), THENCE;

12 3. Along the northeasterly right-of-way line of
13 Fairmount Avenue, North 71 degrees 40 minutes 00 seconds
14 West, a distance of 527.937 feet to a point on the Bulkhead
15 line of the Delaware River, (established January 5, 1894,
16 approved by the Secretary of War September 10, 1940), THENCE;

17 4. Along the Bulkhead line of the Delaware River, North
18 43 degrees 17 minutes 06 seconds East, a distance of 181.316
19 feet to the point and place of BEGINNING.

20 CONTAINING 51,839 SQUARE FEET OR 1.19006 ACRES

21 (c) Lease agreement.--The lease and any other documents
22 hereby contemplated shall be approved as to form and legality by
23 the Attorney General and Office of General Counsel and shall be
24 executed by the Department of General Services, with the
25 concurrence of the Department of Environmental Protection, which
26 approvals shall not be unreasonably withheld, in the name of the
27 Commonwealth. The lease shall grant the lessee, and all
28 successors, assigns and sublessees, the right to use the above-
29 described premises, or to assign the lease or sublease or permit
30 the sublease of the above-described premises for the purposes of

1 the proposed development of one residential tower with accessory
2 parking garage and restaurant, as well as marina and maritime
3 uses all consistent with public access.

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

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

25 (f) Improvements.--

26 (1) The Department of General Services is hereby
27 authorized to execute, on behalf of the Commonwealth of
28 Pennsylvania, any declaration or other document necessary to
29 submit these premises or any portion thereof and any
30 improvements thereon to the provisions of 68 Pa.C.S. Pt. II

1 Subpt. B (relating to condominiums) as a leasehold
2 condominium.

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

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

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

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

20 (iv) Public access to the Delaware River which is
21 consistent with the Waterfront Setback requirements set
22 forth in Section 14-216(6)(g) of the Philadelphia Code
23 (enacted into law by an Ordinance enacting Bill No.
24 050465, passed by the City Council on June 16, 2005, and
25 signed by the Mayor on July 8, 2005).

26 (3) Should the lessee, any sublessee or any of their
27 respective successors or assigns wish to modify the public
28 access and parking required by this section, it must obtain
29 the prior written approval of the Department of Environmental
30 Protection and the Department of General Services, which

1 approval shall not be unreasonably withheld. The public
2 access and parking shall be completed and open to the public
3 no later than the date the first tenant or resident occupies
4 either the leasehold or the land adjacent to the leasehold.

5 (4) Nothing herein shall affect or otherwise limit the
6 requirements of the provisions of the act of November 26,
7 1978 (P.L.1375, No.325), known as the Dam Safety and
8 Encroachments Act, which may require further measures to
9 provide for public access and use of the land and adjacent
10 water.

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

20 (g) Consideration.--The Department of General Services shall
21 lease the land within the bed of the Delaware River as described
22 in subsection (b) upon such terms and conditions and for such
23 other nonmonetary considerations as it shall, with the
24 concurrence of the Department of Environmental Protection for no
25 less than \$5 per square foot payable in advance, established
26 through the lease agreements. Such terms may include a
27 requirement to commence and construct such improvements
28 authorized and/or required in this section within certain time
29 periods.

30 (h) Costs and fees.--Costs and fees incidental to the lease

1 authorized by this section shall be borne by the lessee,
2 including the costs incurred by the Department of General
3 Services and the Department of Environmental Protection in the
4 preparation, execution and review of the lease, nondisturbance
5 agreements and related documents.

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

13 Section 2. Effective date.

14 This act shall take effect immediately.