
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1627 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 NCCB Associates, LP, or its nominee, land within the
4 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 1143-1151 North Delaware Avenue
12 and Pier No. 53 North. The Department of General Services, with
13 the concurrence of the Department of Environmental Protection,
14 acting on behalf of the Commonwealth, is hereby authorized and
15 directed to lease, for such consideration as shall be agreed
16 upon by the parties, to NCCB Associates, LP, or its nominee
17 (hereinafter "lessee") for an initial term of 99 years, land
18 within the bed of the Delaware River in the City of

1 Philadelphia, and to extend the period for all or any portion of
2 the leased premises for an additional term 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 portion of property known as 1143-1151 North
6 Delaware Avenue and Pier 53 North lying between the Bulkhead
7 Line and the Pierhead Line of the Delaware River as established
8 by the Secretary of War on September 10, 1940; said portion
9 being situate on the southwesterly side of former Marlboro
10 Street (47 feet 6 inches wide - stricken and vacated by
11 Ordinance of Philadelphia City Council on September 19, 1982 and
12 confirmed by the Board of Surveyors on July 5, 1983, reserved as
13 a right of way for drainage, water main and public utility
14 purposes) in the Fifth (formerly the Eighteenth) Ward of the
15 City of Philadelphia, Commonwealth of Pennsylvania, bounded and
16 described in accordance with a Plan of Property by Allen J.
17 Bommentre, Jr., Surveyor and Regulator of the Third Survey
18 District, dated April 12, 2005, as follows:

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

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

1 (2) Along with said Pierhead Line, South 54 degrees 04
2 minutes 10 seconds West 57.397 feet to its point of intersection
3 with the southwesterly line of the aforesaid property known as
4 1143-1151 North Delaware Avenue; thence

5 (3) Along said southwesterly line of 1143-1151 North
6 Delaware Avenue, North 23 degrees 18 minutes 27 seconds West
7 589.344 feet to its point of intersection with the aforesaid
8 Bulkhead Line of the Delaware River as established by the
9 Secretary of War, said point of intersection being South 23
10 degrees 18 minutes 27 seconds East 288.042 feet from the
11 intersection of the said southeasterly line of Delaware Avenue
12 with the said southwesterly line of 1143-1151 North Delaware
13 Avenue; thence

14 (4) Along said Bulkhead Line of the Delaware River as
15 established by the Secretary of War, North 58 degrees 21 minutes
16 15 seconds East 82.417 feet to the point and place of beginning.
17 CONTAINING 40,356 square feet (0.9264 acre), more or less.

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

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

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

22 (f) Improvements.--

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

30 (2) The lessee, all sublessees and their respective

1 successors and assigns, shall provide and maintain at least
2 the following free public access to the riverfront, for
3 fishing and other recreation activities and free public
4 parking in connection with such access:

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

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

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

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

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

1 either the leasehold or the land adjacent to the leasehold.

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

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

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

27 (h) Costs and fees.--Costs and fees incidental to the lease
28 authorized by this section shall be borne by the lessee,
29 including the costs incurred by the Department of General
30 Services and the Department of Environmental Protection in the

1 preparation, execution and review of the lease, nondisturbance
2 agreements and related documents.

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

10 Section 2. Effective date.

11 This act shall take effect immediately.