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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1627 Session of  
2007

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

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SENATOR PICCOLA, STATE GOVERNMENT, AS AMENDED, DECEMBER 10, 2007

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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; AND ←  
5 AFFIRMING THE AUTHORITY OF THE GENERAL ASSEMBLY TO ENACT  
6 CERTAIN CONVEYANCES.

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

9 Section 1. Land within the Delaware River bed.

10 (a) Authorization.--The Commonwealth owns the lands within  
11 the bed of the Delaware River, a portion of which lands are  
12 located in the 5th Ward of the City of Philadelphia, and  
13 includes lands commonly known as 1143-1151 North Delaware Avenue  
14 and Pier No. 53 North. The Department of General Services, with  
15 the concurrence of the Department of Environmental Protection,  
16 acting on behalf of the Commonwealth, is hereby authorized and  
17 directed to lease, for such consideration as shall be agreed  
18 upon by the parties, to NCCB Associates, LP, or its nominee

1 (hereinafter "lessee") for an initial term of 99 years, land  
2 within the bed of the Delaware River in the City of  
3 Philadelphia, and to extend the period for all or any portion of  
4 the leased premises for an additional term of up to 99 years.

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

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

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

28 (1) Along the said southwesterly side of former Marlboro  
29 Street, South 20 degrees 49 minutes 27 seconds East 589.306 feet  
30 to its point of intersection with the aforesaid Pierhead Line of

1 the Delaware River as established by the Secretary of War;  
2 thence

3 (2) Along with said Pierhead Line, South 54 degrees 04  
4 minutes 10 seconds West 57.397 feet to its point of intersection  
5 with the southwesterly line of the aforesaid property known as  
6 1143-1151 North Delaware Avenue; thence

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

16 (4) Along said Bulkhead Line of the Delaware River as  
17 established by the Secretary of War, North 58 degrees 21 minutes  
18 15 seconds East 82.417 feet to the point and place of beginning.  
19 CONTAINING 40,356 square feet (0.9264 acre), more or less.

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

1 parking garage and restaurant, as well as marina and maritime  
2 uses all consistent with public access.

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

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

24 (f) Improvements.--

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

1 condominium.

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

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

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

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

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

25 (3) Should the lessee, any sublessee or any of their  
26 respective successors or assigns wish to modify the public  
27 access and parking required by this section, it must obtain  
28 the prior written approval of the Department of Environmental  
29 Protection and the Department of General Services, which  
30 approval shall not be unreasonably withheld. The public

1 access and parking shall be completed and open to the public  
2 no later than the date the first tenant or resident occupies  
3 either the leasehold or the land adjacent to the leasehold.

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

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

19 (g) Consideration.--The Department of General Services shall  
20 lease the land within the bed of the Delaware River as described  
21 in subsection (b) upon such terms and conditions and for such  
22 other nonmonetary considerations as it shall, with the  
23 concurrence of the Department of Environmental Protection for no  
24 less than \$5 per square foot payable in advance, established  
25 through the lease agreements, AND NOT LESS THAN \$1 PER SQUARE  
26 FOOT BASED UPON THE DEVELOPMENT PLAN FOR ANY REAL IMPROVEMENTS  
27 ADDED TO THE SITE SUBSEQUENT TO SUCH AGREEMENT, PAYABLE WHEN  
28 SUCH IMPROVEMENTS BECOME OCCUPIED. FIFTY PERCENT OF ALL PAYMENTS  
29 UNDER THIS SUBSECTION SHALL BE PAYABLE TO THE COMMERCE  
30 DEPARTMENT OF THE CITY OF PHILADELPHIA TO IMPLEMENT THE CENTRAL

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1 DELAWARE ADVISORY GROUP MASTER PLAN FOR REDEVELOPMENT ALONG THE  
2 WATERFRONT WITHIN THE BOUNDARIES OF EXECUTIVE ORDER 004-06 OF  
3 OCTOBER 12, 2006, PROVIDING FOR THE PROCESS TO ESTABLISH THE  
4 MASTER PLAN. Such terms may include a requirement to commence  
5 and construct such improvements authorized and/or required in  
6 this section within certain time periods.

7 (h) Costs and fees.--Costs and fees incidental to the lease  
8 authorized by this section shall be borne by the lessee,  
9 including the costs incurred by the Department of General  
10 Services and the Department of Environmental Protection in the  
11 preparation, execution and review of the lease, nondisturbance  
12 agreements and related documents.

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

20 SECTION 2. AFFIRMATION OF EXCLUSIVE AUTHORITY OF GENERAL  
21 ASSEMBLY. <—

22 THE GENERAL ASSEMBLY HEREBY AFFIRMS ITS EXISTING, SOLE AND  
23 EXCLUSIVE AUTHORITY TO CONSIDER AND SPECIFICALLY AUTHORIZE THE  
24 CONVEYANCE OF ANY TITLE, EASEMENT, RIGHT-OF-WAY OR OTHER  
25 INTEREST IN COMMONWEALTH-OWNED LANDS, SUCH AS THOSE SET FORTH  
26 HEREIN PURSUANT TO THE ACT OF APRIL 9, 1929 (P.L.177, NO.175),  
27 KNOWN AS THE ADMINISTRATIVE CODE OF 1929, AND THE ACT OF  
28 NOVEMBER 26, 1978 (P.L.1375, NO.325), KNOWN AS THE DAM SAFETY  
29 AND ENCROACHMENTS ACT.

30 Section 2 3. Effective date. <—

1 This act shall take effect immediately.