

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 1627** Session of
2007

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

AMENDMENTS TO SENATE AMENDMENTS, HOUSE OF REPRESENTATIVES,
JANUARY 29, 2008

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
19 (hereinafter "lessee") for an initial term of 99 years, land

1 within the bed of the Delaware River in the City of
2 Philadelphia, and to extend the period for all or any portion of
3 the leased premises for an additional term of up to 99 years.

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

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

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

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

1 thence

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

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

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

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

1 uses all consistent with public access.

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

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

23 (f) Improvements.--

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

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

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

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

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

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

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

1 no later than the date the first tenant or resident occupies
2 either the leasehold or the land adjacent to the leasehold.

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

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

18 (g) Consideration.--The Department of General Services shall
19 lease the land within the bed of the Delaware River as described
20 in subsection (b) upon such terms and conditions and for such
21 other nonmonetary considerations as it shall, with the
22 concurrence of the Department of Environmental Protection for no
23 less than \$5 per square foot payable in advance, established
24 through the lease agreements, and not less than \$1 per square
25 foot based upon the development plan for any real improvements
26 added to the site subsequent to such agreement, payable when
27 such improvements become occupied. Fifty percent of all payments
28 under this subsection shall be payable to the Commerce
29 Department of the City of Philadelphia to implement the Central
30 Delaware Advisory Group master plan for redevelopment along the

1 waterfront within the boundaries of Executive Order 004-06 of
2 October 12, 2006, providing for the process to establish the
3 master plan. Such terms may include a requirement to commence
4 and construct such improvements authorized and/or required in
5 this section within certain time periods.

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

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

19 Section 2. Affirmation of exclusive authority of General
20 Assembly.

21 The General Assembly hereby affirms its existing, sole and
22 exclusive authority to consider and specifically authorize the
23 conveyance of any title, easement, right-of-way or other
24 interest in Commonwealth-owned lands, such as those set forth
25 herein pursuant to the act of April 9, 1929 (P.L.177, No.175),
26 known as The Administrative Code of 1929, and the act of
27 November 26, 1978 (P.L.1375, No.325), known as the Dam Safety
28 and Encroachments Act. NOTHING IN THIS SECTION SHALL AFFECT OR
29 OTHERWISE LIMIT THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL
30 PROTECTION UNDER SECTION 15 OF THE DAM SAFETY AND ENCROACHMENTS

1 ACT OR SECTION 514 OF THE ADMINISTRATIVE CODE OF 1929.

2 Section 3. Effective date.

3 This act shall take effect immediately.