

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1621 Session of 2007

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

SENATOR PICCOLA, STATE GOVERNMENT, AS AMENDED, DECEMBER 10, 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 AND 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 Pier No. 35 1/2 North. The
14 Department of General Services, with the concurrence of the
15 Department of Environmental Protection, acting on behalf of the
16 Commonwealth, is hereby authorized and directed to lease, for
17 such consideration as shall be agreed upon by the parties, to
18 VTE Philadelphia, LP, or its nominee (hereinafter "lessee") for

1 an initial term of 99 years, land within the bed of the Delaware
2 River in the City of Philadelphia, and to extend the period for
3 all or any portion of the leased premises for an additional term
4 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 lot or piece of ground together with the
8 improvements thereon erected, situate in the 5th Ward of the
9 City of Philadelphia, Pennsylvania and shown on a Boundary and
10 Topographic Survey made for Pier 35 1/2, LLC, Penn Street &
11 Fairmount Avenue, Pier 35 N, Lot 9, Map 5 N 4, 5th Ward, City &
12 County of Philadelphia, Commonwealth of Pennsylvania by Control
13 Point Associates, Inc., dated February 3, 2005 and more
14 particularly described as follows to wit:

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

24 A. Along the southeasterly right-of-way of Penn Street,
25 North 43 degrees 30 minutes 00 seconds East, a distance of
26 140.229 feet to a drill hole, THENCE;

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

20070H1621B2980

- 2 -

1 THENCE;

2 The following two (2) courses and distances along the dividing
3 line between Lot 9, Map 5 N 4 AND Lot 16, Map 6 N 6:

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

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

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

19 4. Along the Bulkhead line of the Delaware River, North
20 43 degrees 17 minutes 06 seconds East, a distance of 181.316

21 feet to the point and place of BEGINNING.

22 CONTAINING 51,839 SQUARE FEET OR 1.19006 ACRES

23 (c) Lease agreement.--The lease and any other documents
 24 hereby contemplated shall be approved as to form and legality by
 25 the Attorney General and Office of General Counsel and shall be
 26 executed by the Department of General Services, with the
 27 concurrence of the Department of Environmental Protection, which
 28 approvals shall not be unreasonably withheld, in the name of the
 29 Commonwealth. The lease shall grant the lessee, and all
 30 successors, assigns and sublessees, the right to use the above-
 20070H1621B2980 - 3 -

1 described premises, or to assign the lease or sublease or permit
 2 the sublease of the above-described premises for the purposes of
 3 the proposed development of one residential tower with accessory
 4 parking garage and restaurant, as well as marina and maritime
 5 uses all consistent with public access.

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

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

27 (f) Improvements.--

28 (1) The Department of General Services is hereby
 29 authorized to execute, on behalf of the Commonwealth of
 30 Pennsylvania, any declaration or other document necessary to
 20070H1621B2980 - 4 -

1 submit these premises or any portion thereof and any
 2 improvements thereon to the provisions of 68 Pa.C.S. Pt. II
 3 Subpt. B (relating to condominiums) as a leasehold
 4 condominium.

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

6 successors and assigns, shall provide and maintain at least
7 the following free public access to the riverfront, for
8 fishing and other recreation activities and free public
9 parking in connection with such access:

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

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

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

22 (iv) Public access to the Delaware River which is
23 consistent with the Waterfront Setback requirements set
24 forth in Section 14-216(6)(g) of the Philadelphia Code
25 (enacted into law by an Ordinance enacting Bill No.
26 050465, passed by the City Council on June 16, 2005, and
27 signed by the Mayor on July 8, 2005).

28 (3) Should the lessee, any sublessee or any of their
29 respective successors or assigns wish to modify the public
30 access and parking required by this section, it must obtain

20070H1621B2980

- 5 -

1 the prior written approval of the Department of Environmental
2 Protection and the Department of General Services, which
3 approval shall not be unreasonably withheld. The public
4 access and parking shall be completed and open to the public
5 no later than the date the first tenant or resident occupies
6 either the leasehold or the land adjacent to the leasehold.

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

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

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

20070H1621B2980

- 6 -

1 SUCH IMPROVEMENTS BECOME OCCUPIED. FIFTY PERCENT OF ALL PAYMENTS
 2 UNDER THIS SUBSECTION SHALL BE PAYABLE TO THE COMMERCE
 3 DEPARTMENT OF THE CITY OF PHILADELPHIA TO IMPLEMENT THE CENTRAL
 4 DELAWARE ADVISORY GROUP MASTER PLAN FOR REDEVELOPMENT ALONG THE
 5 WATERFRONT WITHIN THE BOUNDARIES OF EXECUTIVE ORDER 004-06 OF
 6 OCTOBER 12, 2006, PROVIDING FOR THE PROCESS TO ESTABLISH THE
 7 MASTER PLAN. Such terms may include a requirement to commence
 8 and construct such improvements authorized and/or required in
 9 this section within certain time periods.

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

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

23 SECTION 2. AFFIRMATION OF EXCLUSIVE AUTHORITY OF GENERAL
 24 ASSEMBLY.

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

20070H1621B2980

- 7 -

1 NOVEMBER 26, 1978 (P.L.1375, NO.325), KNOWN AS THE DAM SAFETY
 2 AND ENCROACHMENTS ACT.

3 Section 2 3. Effective date.

4 This act shall take effect immediately.

F21L85JAM/20070H1621B2980

- 8 -