



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 030397

Introduced May 15, 2003

Councilmember Clarke

**Referred to the
Committee on Finance**

AN ORDINANCE

Authorizing the Commissioner of Public Property to enter into a series of transactions whereby The City of Philadelphia (“City”) would: (a) sell to the Philadelphia Authority for Industrial Development (“PAID”) a certain City-owned building located at 1901 Vine Street (“Free Library Building”), provided that PAID resells the Free Library Building to a certain third party or parties; (b) lease from PAID the Free Library Building upon PAID’s lease of the building from a certain third party or parties; (c) lease to PAID the land bounded by Nineteenth Street, Vine Street, Twentieth Street and the former Wood Street (“Free Library Land”), provided that PAID leases the Free Library Land to a certain third party or parties; and (d) lease from PAID the Free Library Land upon PAID’s lease of the land from a certain third party or parties; all under and subject to certain terms and conditions.

WHEREAS, The City of Philadelphia (“City”) is considering entering into a series of transactions with the Philadelphia Authority for Industrial Development (“PAID”) pursuant to a financial plan developed in consultation with the City by BW Realty Advisors LLC; and

WHEREAS, the City would execute and deliver a deed to PAID conveying fee simple title to a certain City-owned building (excluding the land and personal property contained therein) located at 1901 Vine Street (the “Free Library Building”); and

WHEREAS, PAID would execute and deliver a deed for the Free Library Building to BW Realty Advisors LLC or its designee or designees (“Investor Group”) for not less than sixty million dollars (\$60,000,000); and

WHEREAS, PAID would pay to the City the net proceeds from the sale of the Free Library Building to the Investor Group, which funds would be deposited into the General Fund of the City; and

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WHEREAS, PAID would lease from the Investor Group the Free Library Building (“Building Lease”); and

WHEREAS, the City would sublease from PAID the Free Library Building (“Building Sublease”), for use as a public library or any other lawful purpose; and

WHEREAS, the City would make fixed quarterly rental payments without setoff or reduction during the term of the Building Sublease; and

WHEREAS, the Building Lease and Building Sublease would be for a term of not more than sixty-five (65) years with an initial term of twenty (20) years (“Initial Term”) and options of the respective tenants to extend for up to forty-five (45) years; and

WHEREAS, the City would covenant to make appropriations and to make payments beginning in Fiscal Year 2004 and in each and every fiscal year during the term of the Building Sublease; and

WHEREAS, the City would lease (“Ground Lease”) to PAID certain City-owned land bounded by Nineteenth Street, Vine Street, Twentieth Street and the former Wood Street, also known as 1901 Vine Street (“Free Library Land”) for a term of up to sixty-five (65) years; and

WHEREAS, PAID would sublease (“Ground Sublease”) the Free Library Land to the Investor Group for the same term, the Investor Group would lease back (“Leaseback Ground Lease”) the Free Library Land to PAID for the same term and PAID would sublease back (“Leaseback Ground Sublease”) the Free Library Land to the City for the same term; and

WHEREAS, the Ground Lease would provide that the ground rent (“Ground Lease Rental Payment”) payable to the City for the Free Library Land during the first twenty (20) years of the Ground Lease could be accrued at least annually at the Investor Group’s option and not be due and payable until the expiration of the Initial Term of the Building Sublease or the earlier termination of the Ground Lease; and

WHEREAS, at the conclusion of the Initial Term of the Building Lease, the Investor Group would be required to pay the accrued Ground Lease Rental Payment plus interest which PAID would pay over to the City, or, if the Investor Group failed to make this payment, PAID would terminate its Ground Sublease with the Investor Group and receive title to the Free Library Building along with additional rent equal to the excess of the accrued Ground Lease Rental Payment plus interest over the fair market value of the

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Free Library Building, if any, plus the residual value of the Ground Sublease term, which title and payment PAID would pay over to the City; and

WHEREAS, title to the Free Library Building shall revert back to the City's ownership at the expiration or earlier termination of the Ground Lease; and

WHEREAS, Section 11 of P.L. 251, August 23, 1967, as amended, known as the Economic Development Financing Law, 73 P.S. § 381, grants authority to the City to convey real property to PAID for such purposes; and

WHEREAS, PAID is a public instrumentality of the Commonwealth and is a body corporate and politic organized and established by the City and existing under the Economic Development Financing Law; and

WHEREAS, PAID has the authority to acquire, own, sell and lease real property pursuant to Section 6(b)(4) of the Economic Development Financing Law, 73 P.S. § 376(b)(4), and to finance facilities pursuant to Section 2(11) thereof, 73 P.S. § 372(11); now, therefore,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Commissioner of Public Property, on behalf of The City of Philadelphia ("City"), is hereby authorized to execute and deliver a deed to the Philadelphia Authority for Industrial Development ("PAID") conveying fee simple title to a certain City-owned building (excluding the land and personal property contained therein) located at 1901 Vine Street ("Free Library Building"), provided that PAID shall execute and deliver a deed for the Free Library Building to BW Realty Advisors LLC or its designee or designees ("Investor Group") for not less than sixty million dollars (\$60,000,000), under and subject to a ground lease as further described in Section 5 of this Ordinance. The net proceeds from the sale of the Free Library Building, after the payment of transactional costs, shall be deposited into the General Fund of the City. A condition of the transfer from the City to PAID and from PAID to the Investor Group shall be that PAID take back from the Investor Group a lease ("Building Lease") of the Free Library Building and shall sublease it to the City consistent with the terms of the lease authorized in Section 2 of this Ordinance.

SECTION 2. The Commissioner of Public Property, on behalf of the City, is hereby authorized to sublease from PAID the Free Library Building ("Building Sublease"), for use as a public library or any other lawful purpose, pursuant to an agreement approved by the City Solicitor and Director of Finance containing certain terms and conditions set forth in the Term Sheet for Building Sublease attached hereto as

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Exhibit A, and such other terms and conditions not inconsistent therewith as may be acceptable to the City Solicitor.

SECTION 3. The Building Lease and the Building Sublease shall have a term of not more than sixty-five (65) years. During the initial term of twenty (20) years (“Initial Term”), the Building Sublease shall provide for the City to make fixed rental payments without setoff or reduction in amounts not to exceed five million five hundred thousand dollars (\$5,500,000) annually.

SECTION 4. The City agrees to be bound by the terms of the Building Sublease and covenants to make appropriations and to make payments beginning in Fiscal Year 2004 and in each and every fiscal year during the term of the Building Sublease in such amounts as shall be due and payable under the Building Sublease.

SECTION 5. The Commissioner of Public Property, on behalf of the City, is hereby authorized to lease (“Ground Lease”) to PAID certain City-owned land bounded by Nineteenth Street, Vine Street, Twentieth Street and the former Wood Street, also known as 1901 Vine Street (“Free Library Land”) for a term not to exceed sixty-five (65) years, provided that PAID would sublease (“Ground Sublease”) the Free Library Land to the Investor Group, the Investor Group would lease back (“Leaseback Ground Lease”) the Free Library Land to PAID and PAID would sublease back (“Leaseback Ground Sublease”) the Free Library Land to the City, all pursuant to documents approved by the City Solicitor and Director of Finance and containing certain terms and conditions set forth in the Term Sheet for Ground Lease attached hereto as Exhibit B, terms and conditions set forth in the Term Sheet for Leaseback Ground Sublease attached hereto as Exhibit C and such other terms and conditions not inconsistent therewith as may be acceptable to the City Solicitor.

SECTION 6. The Commissioner of Public Property, on behalf of the City, is hereby authorized to enter into the Leaseback Ground Sublease whereby the City would lease the Free Library Land from PAID. The Leaseback Ground Sublease shall be approved by the City Solicitor and Director of Finance and shall contain certain terms and conditions set forth in the Term Sheet for Leaseback Ground Sublease attached hereto as Exhibit C, and such other terms and conditions not inconsistent therewith as may be acceptable to the City Solicitor.

SECTION 7. The Ground Lease shall provide that the ground rent (“Ground Lease Rental Payment”) payable to the City for the Free Library Land during the first twenty (20) years of the Ground Lease may be accrued at the Investor Group’s option and not be due and payable until the expiration of the Initial Term of the Building Sublease or the earlier termination of the Ground Lease, in accordance with the Term Sheet for Ground Lease attached hereto as Exhibit B.

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SECTION 8. The Building Sublease shall provide for additional renewal terms, with all terms together not to exceed sixty-five (65) years in the aggregate, at the City's option at the expiration of the Initial Term and any renewal term. During any renewal term, the City shall have the right of first refusal to continue to sublease the Free Library Building at fair market rental value to be determined by appraisal at that time.

SECTION 9. Title to the Free Library Building shall revert back to the City's ownership at the expiration or earlier termination of the Ground Lease, and the Commissioner of Public Property, on behalf of the City, is hereby authorized to accept title to the Free Library Building including all additions and improvements thereto.

SECTION 10. The Director of Finance, the Commissioner of Public Property and the City Solicitor are hereby authorized, jointly and severally, on behalf of the City, to execute all documents and to take all actions as may be necessary or appropriate in order to accomplish the intent and purpose of this Ordinance.

SECTION 11. The City Solicitor is hereby authorized to review and to approve all instruments and documents necessary to effectuate this Ordinance, which instruments and documents shall contain such terms and conditions as the City Solicitor shall deem necessary and proper to protect the interest of the City and to carry out the purposes of this Ordinance.

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