

City of Philadelphia



(Bill No. 060760)

AN ORDINANCE

Authorizing the Water Commissioner, on behalf of the City, to enter into an agreement with the owners of 228 East Mount Airy (Premise A), 7131 Devon Street (Premise B), 261 Sydney Street (Premise C), 263 Sydney Street (Premise D) and 265 Sydney Street (Premise E) for the grant of a right-of-way to the City for drainage, sewer purposes and water main purposes through the property on a line of Devon Street from East Mount Airy Avenue to Sydney Street, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

Section 1. The Water Commissioner, on behalf of the City, is hereby authorized to enter into an agreement, substantially in the form set forth in Exhibit A, with the owners and their successors of 228 East Mount Airy (Premise A), 7131 Devon Street (Premise B), 261 Sydney Street (Premise C), 263 Sydney Street (Premise D) and 265 Sydney Street (Premise E) for the grant of a right-of-way to the City for drainage, sewer purposes and water main purposes through the property on a line of Devon Street from East Mount Airy Avenue to Sydney Street, under certain terms and conditions.

Section 2. The City Solicitor shall include in said agreement such terms and conditions as he may deem necessary to protect the interest of the City.

Section 3. The Chief Clerk shall keep on file Exhibit A and shall make it available for inspection by the public during regular office hours.

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RIGHT OF WAY AND EASEMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 200____, by and between, **7153 DEVON STREET LLC**, the record owner of a certain Property at **228 EAST MOUNT AIRY AVENUE (PREMISE A), 7131 DEVON STREET (PREMISE B), 261 SYDNEY STREET (PREMISE C), 263 SYDNEY STREET (PEMISE D) AND 265 SYDNEY STREET (PREMISE E)** in the 22nd Ward, Philadelphia, Pennsylvania, hereinafter called “Grantor”, and THE CITY OF PHILADELPHIA, hereinafter called “City”;

WITNESSETH:

WHEREAS, Grantor plans to develop the property at 228 East Mount Airy Avenue (Premise A), 7131 Devon Street (Premise B), 261 Sydney Street (Premise C), 263 Sydney Street (Premise D) and 265 Sydney Street (Premise E) as the “the Enclave at Devon Housing Development; and

WHEREAS, the a sewer and a water main for the development are to be constructed to City standards and dedicated to the City in accordance with Chapter 13-300 and Chapter 13-400 of the Philadelphia Code; and

WHEREAS, in order to accept and maintain the said sewer and water main, the Grantor must grant unto the City a certain right-of-way for drainage, sewer and water main purposes, in the purposed right-of-way on a line of Devon Street projected from East Mount Airy Avenue to Sydney Street, under certain terms and conditions; and

WHEREAS, the parties desire to enter into an agreement for the for the grant of said right-of-way; and

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. For good and valuable consideration, the receipt of which is hereby acknowledged, Grantor the owner of the properties at 228 East Mount Airy Avenue (Premise A), 7131 Devon Street (Premise B), 261 Sydney Street (Premise C), 263 Sydney Street (Premise D) and 265 Sydney Street (Premise E), Philadelphia, Pennsylvania 19119,

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hereby give, grant, convey unto the City its successors and assigns, all their rights, title and interest which they presently have or will acquire in the full, free and uninterrupted use, liberty and privilege of a drainage, sewer and water main right-of-way and easement over, under, along and in the Easement described in Section 2 of this Agreement as lies within the land owned by the Grantor.

2. Grantor has granted unto the City, its successors and assigns, the full, free and uninterrupted use, liberty and privilege of a right-of-way and easement for drainage, sewer and water main purposes (hereinafter referred to as the "Easement") over, under, along and in the following premises as lies within the land owned by the Grantor, such portion of the following described property, to wit :

ALL THAT CERTAIN LOT OR PIECE OF GROUND SITUATED IN THE 22nd WARD OF THE CITY OF PHILADELPHIA, DESCRIBED AS FOLLOWS:

BEGINNING at a point at the Northwestern side of Sydney Street (legally Open 40' wide) and the Northeasterly side of Devon Street (legally Open 40' wide), Thence from said point of Beginning :

1. Along the Northwestern side of Sydney Street, South 41 degrees 22 minutes 00 seconds West, a distance of 2.271 feet to a point;
2. Thence North 15 degrees 14 minutes 31 seconds East, a distance of 25.260 feet to a point;
3. Thence North 48 degrees 38 minutes 00 seconds West, a distance of 56.240 feet to a point;
4. Thence South 70 degrees 10 minutes 15 seconds West, a distance of 32.546 feet to a point;
5. Thence North 48 degrees 46 minutes 05 seconds West, a distance of 92.709 feet to a point;
6. Thence North 63 degrees 12 minutes 29 seconds West, a distance of 106.929 feet to a point;
7. Thence South 41 degrees 13 minutes 55 seconds West, a distance of 46.244 feet to a point;
8. Thence North 48 degrees 46 minutes 05 seconds West, a distance of 47.067 feet to a point on the Southeasterly side of East Mount Airy Avenue (54' wide);
9. Thence along the Southeasterly side of East Mount Airy Avenue, North 41 degrees 13 minutes 55 seconds East, a distance of 70.947 feet to a point on the Southwesterly side of the former Philadelphia, Germantown and Chestnut Hill branch of the Philadelphia and Reading Railroad (now the Southeastern Pennsylvania Transportation Authority);
10. Thence along the said Southwesterly side of the former Philadelphia, Germantown and Chestnut Hill branch of the Philadelphia and Reading Railroad

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- (now the Southeastern Pennsylvania Transportation Authority), South 63 degrees 12 minutes 29 seconds East, a distance of 334.484' feet to a point;
11. Thence, South 15 degrees 14 minutes 31seconds West, a distance of 73.310 feet to a point on the Northeasterly side of Devon Street;
 12. Thence along the Northeasterly side of Devon Street, North 63 degrees 12 minutes 29 seconds West, a distance of 30.620 feet to the point and place of beginning.

Containing 16,885 square feet or 0.390 acres

The right-of-way and easement for drainage, sewer and water main purposes, described herein, is according to a plan for a "Right-of-way for Drainage, Sewer and Water Main Purposes in Devon Street Right-of-way from East Mount Airy Avenue to Sydney Street", prepared by the City of, Philadelphia Water Department's Survey Unit, 3585 Fox Street, Philadelphia, PA 19129, PWD Work No. S-40516-AC.

3. Grantor hereby grants the City, its officers, agents, employees and contractors the right of access, ingress, egress to and from the Premises along with the necessary equipment and materials, for the construction, reconstruction, maintenance, alteration, repair and inspection of any and all present and future drainage, sewer and water main structures now situated in the said Easement or which the City may hereafter at any time desire to locate therein.

4. It is expressly understood and agreed that the rights and privileges herein granted to the City shall not terminate, cease or diminish unless and until the City may surrender the same in writing, duly executed by it's proper officers. Grantor hereby grants the City the right to place said Easement on the City Plan. Grantor covenants and agrees to release the City, all its officers, employees, agents, departments and commissions, from all damages or claims for damages which can, may or might arise by reason of such City Plan changes.

5. Grantor covenants and agrees that no change in grades or other alterations within the lines of the Easement shall be made and that no buildings and/or other structures either overhead, underground or upon the surface, shall be constructed within the lines of the Easement or abutting thereon unless the plans for such changes of

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grades, alterations or structures shall be first be submitted to and approved by the Water Department.

6. Grantor warrants that Grantor is the owner in fee of the Easement free and clear of liens, encumbrances, restrictions and other matters of record, has the power and is duly authorized to execute this Right of Way and Easement Agreement, and the City may peacefully and quietly exercise the rights granted hereunder free and clear of rights or consent of third parties.

7. Grantor agrees that this Agreement may be filed of record in the office of the Department of Records of the City of Philadelphia, the same to be public notice of waiver and release of any and all damages which may be sustained by reason of future City Plan changes and the grant of the right-of-way and easement described herein.

8. All notices given under this Easement shall be in writing and shall be deemed to have been duly given if sent by United States certified registered mail, postage prepaid, enclosed in an envelope addressed to the party to be notified, at the following addresses:

If to Grantor at: Valencia Macon
7153 Devon Street, LLC
2 South Oxford Street
Brooklyn, NY 11217

If to Grantee at: City of Philadelphia
Water Department
Projects Control Unit
ARA Tower, Second Floor
1101 Market Street
Philadelphia, PA 19107

or to such other address as either party may give by notice to the other party.

9. The terms and conditions hereof shall be binding upon and shall enure to the benefit of the parties hereto, their successors and assign and be covenants running with the land affected by the Easement.

10. This is not a conveyance of the real estate included within the Easement nor of any interest in the oil, gas and other minerals in, on or under the real

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estate covered hereby, but is a grant solely of rights-of-way and easement as described above.

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IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused these presents to be duly executed the day and year first above written.

APPROVED AS TO FORM

**CITY OF PHILADELPHIA
WATER DEPARTMENT**

KEITH J. JONES
Acting Divisional
Deputy City Solicitor

By: _____
BERNARD BRUNWASSER
Water Commissioner

GRANTOR

By: _____

WITNESS

By: _____

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 7, 2006. The Bill was Signed by the Mayor on January 23, 2007.



Patricia Rafferty
Chief Clerk of the City Council