



City of Philadelphia

Philadelphia, PA 19107

BILL NO. 050139

Introduced February 17, 2005

Councilmember DiCicco

**Referred to the
Committee on Streets and Services**

AN ORDINANCE

Authorizing the Water Commissioner on behalf of the City to enter into an agreement with the owners of the properties and their successors at 3101 through 3131 West Thompson Street for the grant of a right-of-way for water main purposes, 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 agreement, substantially in the form set forth in Exhibit A, with the owners of the properties and their successors at 3101 through 3131 West Thompson Street for the grant of a right-of-way for water main purposes, 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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Exhibit A

“RIGHT OF WAY AND EASEMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 200
, by and between, WESTRUM BREWERY PARK ASSOCIATES, LP the record
owner of a certain Property at 3101 THROUGH 3131 WEST THOMPSON STREET
in the 29th Ward, Philadelphia, Pennsylvania, hereinafter called “Grantor”, and THE
CITY OF PHILADELPHIA, hereinafter called “City”;

WITNESSETH:

WHEREAS, the property bounded by Thompson Street, Master Street, 31st Street and
32nd Street is being developed as the Brewerytown Square Housing Development; and

WHEREAS, a water main for the development is to be constructed to City
standards in a proposed forty feet wide right-of-way, midway between 31st Street and
32nd Street from Thompson Street to Master Street; and

WHEREAS, the water main is to be dedicated to the City in accordance
with Chapter 13-300 of the Philadelphia Code; and

WHEREAS, in order to accept and maintain the said sewer and water
main from the developer, the property owner must grant unto the City a certain right-of-
way for water main purposes, 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 owners of the property at 3101 through 3131 west Thompson
Street, Philadelphia, Pennsylvania 19121 (herein after referred to as the “Affected
Property”) hereby give, grant, convey unto the City its successors and assigns, all their

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rights, title and interest which they presently have or will acquire in the full, free and uninterrupted use, liberty and privilege of a 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 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 Affected Property, to wit :

ALL THAT CERTAIN LOT OR PIECE OF GROUND SITUATE IN THE 29TH WARD OF THE CITY OF PHILADELPHIA, BEING A FORTY FEET WIDE RIGHT-OF-WAY FOR WATER MAIN, GAS AND PUBLIC UTILITY PURPOSES, LOCATED MIDWAY BETWEEN 31ST STREET AND 32ND STREET FROM THOMPSON STREET AND DESCRIBED AS FOLLOWS:

BEGINNING at a point On the northeasterly right-of-way line of Thompson Street (50 feet wide, Legally Open), Said point being North 78°59'00" West, a distance of 180.00 feet from the intersection of the northwesterly right-of-way line of 31st Street (50 feet wide, Legally Open), and the northeasterly right-of-way line of Thompson Street; Thence, extending from the said point of Beginning the following courses; 1) Extending along the northeasterly right-of-way line of Thompson Street, North 78°59'00" West, a distance of 40.00 feet to a point; Thence, 2) North 11°01'00" East, a distance of 418.00 feet to a point of the southerly right-of-way line of Master Street (38 feet wide, Legally Open); Thence, 3) Along the southwesterly right-of-way line of Master Street, South 78°59'00" East, a distance of 40 feet to a point; Thence, 4) South 11°01'00" West, a distance of 418.00 feet to the first mentioned point and place of Beginning. Containing 16,720 square feet or 0.38384 Acres of land, more or less.

The right-of-way and easement for water purposes, described herein, is according to a plan entitled "RIGHT-OF-WAY PLAN FOR WESTRUM

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DEVELOPMENT COMPANY'S "BREWERYTOWN SQUARE", 3101-31 THOMPSON STREET", dated November 12, 2004, prepared by the Philadelphia Water Department Survey Unit, 3585 Fox Street, Philadelphia, PA 19129 (Reference Plan prepared by Bohler Engineering, Inc., 1120 Welsh Road, Suite 200, North Wales, PA 19454, Project Number PO2-0847, Sheet 1, dated July 21, 2004, and signed and sealed by Joseph James Wright, Professional Land Surveyor - PA License SU-037826-E).

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 and sewer 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 its 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 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

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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: Westrum Development Company
370 Commerce Drive, Suite 100
Fort Washington, PA 19034

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

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.

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APPROVED AS TO FORM

**CITY OF PHILADELPHIA
WATER DEPARTMENT**

By:_____

**BERNARD
BRUNWASSER
WATER
COMMISSIONER**

GRANTOR

By:_____”

WITNESS