

## BOROUGH of KENNETT SQUARE

### COUNTY of CHESTER, COMMONWEALTH of PENNSYLVANIA

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#### ORDINANCE NO. 955

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**AN ORDINANCE OF THE BOROUGH OF KENNETT SQUARE, CHESTER COUNTY, PENNSYLVANIA, ACCEPTING DEDICATION OF "SOUTH MILL ROAD" WITHIN THE MAGNOLIA PLACE DEVELOPMENT AND CERTAIN PUBLIC IMPROVEMENTS ASSOCIATED THEREWITH, UPON THE DEVELOPERS' POSTING OF THE REQUIRED 18-MONTH MAINTENANCE FINANCIAL SECURITY, AND PAYMENT OF THE FEE IN LIEU OF THE LIQUID FUELS TAX REIMBURSEMENT FROM THE DATE OF DEDICATION UNTIL THE EFFECTIVE COMMENCEMENT DATE OF THE 2021 LIQUID FUELS TAX PAYMENTS, AND UPON SATISFACTION OF ALL OTHER LEGAL REQUIREMENTS.**

#### **BACKGROUND**

A. KENNETT SQUARE REALTY, L.P. and KENNETT COMMUNITY CENTER, L.P. and Kennett Business Park, LP (collectively, "Developers") are the developers of three tracts of ground located in the Borough of Kennett Square, Chester County, Pennsylvania on which they developed a residential community known as Magnolia Place, including the storm water management facilities serving it (collectively, "Magnolia Place" or the "Development") in accordance with a plan known as "Final Subdivision and Land Development Plans for Magnolia Place," prepared for Developers by Advanced GeoServices, dated April 1, 2011 and last revised March 16, 2012 (the "Plan").

B. Through the Plan, Developers offered to dedicate to the Borough "all rights of way" and "all streets and other property identified as proposed public property" excepting those areas specifically excluded and identified on the Plan as "Not for Dedication."

C. With the exception of certain "punch list" items which the Developers have agreed to correct promptly, the construction and improvements of the street identified on the Plan as "**South Mill Road**" have been completed to the satisfaction of the Borough Engineer and staff, and the Developers have agreed to post maintenance financial security satisfactory to the Borough to guarantee the continued maintenance, and repair if necessary, of the street for eighteen (18) months following dedication, as required by Section 509(k) of the Pennsylvania Municipalities Planning Code, 53 P.S. Sec 10509(k);

D. In addition, in consideration of the Borough's acceptance of dedication prior to the effective date of the 2021 liquid fuels tax reimbursements for dedicated streets, the Developers have agreed to pay to the Borough a Fee in Lieu of the liquid fuels tax reimbursements from the date of dedication until the effective commencement date of the 2021 liquid fuels tax payments.

E. In addition, Magnolia Place 2018, LLC, a Pennsylvania limited liability which owns the land upon which a portion of "South Mill Road" has been constructed by the Developers, has agreed to execute and deliver the necessary Deed of Dedication for that portion of the street.

F In accordance with Section 18-40 of the Borough's Subdivision and Land Development Ordinance, and 8 Pa.C.S.A. §1734(b) the Borough shall have no responsibility of any kind with respect to such street, notwithstanding any use of the same by the public, until dedication thereof is accepted by Ordinance duly adopted at a public meeting following advertisement as required by law, and the Deed of Dedication has been recorded in the Chester County Office of the Recorder of Deeds.

G. After due consideration of all factors, including the fact that the street identified on the Plan as "South Mill Road" will qualify for liquid fuels tax reimbursements to the Borough following dedication (in 2021 and thereafter), the Borough has determined that it is in the public interest for the Borough to accept dedication of the street, upon the Developers' posting of the required 18-month financial security acceptable to the Borough, and payment of the Fees in Lieu of the liquid fuels tax reimbursement from the date of dedication until the effective commencement date of the 2021 liquid fuels tax payments, and upon satisfaction of all other legal requirements.

H. A list of all owners of properties abutting the street (and other neighboring property owners) who received written notice of the proposed enactment of this Ordinance is attached hereto as **Exhibit "C"** as required by 8 Pa.C.S.A. §1731(b).

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the Borough Council of Kennett Square Borough, Chester County, and it is hereby enacted and ordained by the authority of the same as follows:

**SECTION 1.** The Borough of Kennett Square hereby accepts Dedication of "**South Mill Road**" from West Cypress Street to West Mulberry Street, as more fully described in the two legal descriptions attached hereto as "**Exhibit A**", and as depicted on the Magnolia Place "Public Right-of-Way Description Plan" prepared by Advanced GeoServices and dated February 21, 2012, a copy of which is attached hereto as **Exhibit "B,"** together with all of the public water, public sewer, and stormwater management facilities located within the street right-of-way as described herein, as well as the street light posts and the street light fixtures located within and along the street right-of-way (but not any of the underground electrical wiring associated therewith that is located outside the street right-of-way).

**SECTION 2. APPLICABILITY.** The provisions hereof shall supersede any ordinances or parts of ordinances which are inconsistent herewith.

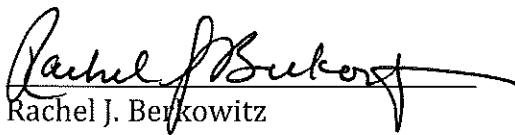
**SECTION 3. SEVERABILITY.** If any provision, sentence, clause, section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of the Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provision, sentence, clause, section or part thereof not been included herein.

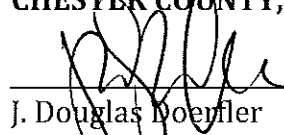
**SECTION 4. EFFECTIVE DATE.** This Ordinance shall become effective January 1, 2020, subject to the requirements of the Developers' completion of the remaining "punch list" items to the satisfaction of the Borough Engineer and staff; posting of the required 18-month maintenance financial security; payment of the Fee in Lieu of the Liquid Fuels Tax Reimbursement from the date of dedication until the effective commencement date of the 2021 Liquid Fuels Tax payments; and satisfaction of all other legal requirements, including recording of the Deeds of Dedication in the Office of the Recorder of Deeds of Chester County, Pennsylvania in accordance with 8 Pa.C.S.A. §1734(b).

**SECTION 5.** The Code of Ordinances of the Borough of Kennett Square, Chester County, as amended, shall remain unchanged and in full force and effect except as amended, supplemented and modified by this Ordinance. This Ordinance shall be codified into, and become a part of, the Code of Ordinances of the Borough of Kennett Square, as amended, upon adoption.

**DULY ENACTED AND ORDAINED** this 2<sup>nd</sup> day December, 2019.

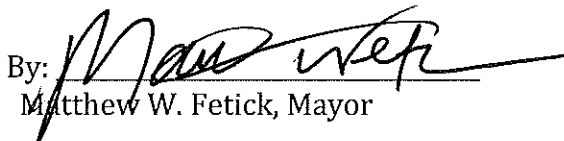
**ATTEST:**

  
Rachel J. Berkowitz  
Borough Secretary

**BOROUGH COUNCIL  
BOROUGH OF KENNETT SQUARE  
CHESTER COUNTY, PENNSYLVANIA**  
  
J. Douglas Boerfler  
President, Borough Council

[Borough Seal]

This Ordinance is hereby examined and approved by me  
this 12<sup>th</sup> day of December, 2019.

By:   
Matthew W. Fetick, Mayor

## **EXHIBIT A**

## SOUTH MILL ROAD

### DESCRIPTION OF RIGHT OF WAY

All that certain parcel of land situated in the Borough of Kennett Square, County of Chester, Commonwealth of Pennsylvania, as shown on a plan entitled "*Public Right-of-Way Description Plan*" prepared by Advanced GeoServices Corporation for Kennett Square Realty, L.P. and Kennett Community Center, L.P. dated 02/21/2012 being more particularly bounded and described as follows:

Beginning at a Point on the southerly right-of-way of public road known as West Cypress Street (45 foot Right-of-Way) and on the northerly property line of lands now or formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P.; said point being measured South 87 degrees 09 minutes 00 seconds West a distance of 183.86 feet from a pipe found on the southerly Right-of-Way of public road known as West Cypress Street (45 foot Right-of-Way) marking a northeasterly corner of lands now or formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P. and northwesterly corner of lands now or formerly John J. Brunovszky; leaving said Point of Beginning the following sixteen (16) courses and distances to wit:

1. Along a curve to the left having a radius of 15.00 feet an arc distance of 26.54 feet to a point of reverse curvature;
2. Along a curve to the right having a radius of 175.00 feet an arc distance of 64.84 feet to a point;
3. South 06 degrees 59 minutes 48 seconds West a distance of 108.11 feet to a point;
4. Along a curve to the left having a radius of 125.00 feet an arc distance of 21.05 feet to a point;
5. South 02 degrees 39 minutes 00 seconds East a distance of 20.09 feet to a common point with the northerly right-of-way of D Street (40 foot Right-of-Way);
6. South 02 degrees 21 minutes 26 seconds East a distance of 69.03 feet, crossing D Street (40 foot Right-of-Way) to a common point with the southerly right-of-way of D Street (40 foot Right-of-Way);
7. South 01 degrees 03 minutes 51 seconds West a distance of 226.39 feet, crossing the North Alley (16 foot Right-of-Way) to a point;
8. South 01 degrees 40 minutes 42 seconds West a distance of 245.68 feet, crossing the South Alley (16 foot Right-of-Way) to a common point with the northerly Right-of-Way of West Mulberry Street (50 foot Right-of-Way);
9. South 01 degrees 24 minutes 14 seconds West a distance of 41.26 feet to a point, on the southerly property line of lands now of formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P. and the northerly property line of lands now or formerly Rockhopper LP.;
10. South 87 degrees 15 minutes 57 seconds West a distance of 50.35 feet to a point where rebar found, marking south westerly corner of lands now or formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P., and northwesterly corner of lands now or formerly Rockhopper LP.;
11. North 01 degrees 40 minutes 42 seconds East a distance of 290.55 feet, along lands now or formerly Kennett Business Park, L.P. to a point where rebar found;
12. North 01 degrees 03 minutes 51 seconds East a distance of 232.77 feet, along lands now or formerly Sunny Dell Foods, Inc. to a point where rebar found;
13. North 00 degrees 20 minutes 38 seconds East a distance of 45.00 feet, along lands now or formerly Sunny Dell Foods, Inc. to a point;
14. South 86 degrees 33 minutes 10 seconds West a distance of 2.53 feet, through lands now or formerly Sunny Dell Foods, Inc. to a point;

15. North 02 degrees 39 minutes 00 seconds West a distance of 244.07 feet, through lands now or formerly Sunny Dell Foods, Inc. and lands now or formerly George Germanovich, Inc. to a common point with the southerly Right-of-Way of West Cypress Street (45 foot Right-of-Way);
16. North 87 degrees 09 minutes 00 seconds East a distance of 83.44 feet, along the southerly Right-of-Way of West Cypress Street (45 foot Right-of-Way) to the said Point of Beginning.

Containing 43,469.27 square feet; 0.998 acres, more or less.

SOUTH MILL ROAD

*Area to be Dedicated by Magnolia Place 2018, LLC.*

DESCRIPTION OF RIGHT OF WAY

All that certain parcel of land situated in the Borough of Kennett Square, County of Chester, Commonwealth of Pennsylvania, as shown on a plan entitled "*Public Right-of-Way Description Plan*" prepared by Advanced GeoServices Corporation for Kennett Square Realty, L.P. and Kennett Community Center, L.P. dated 02/21/2012 being more particularly bounded and described as follows:

Beginning at a Point on the southerly right-of-way of public road known as West Cypress Street (45 foot Right-of-Way), northeasterly corner of proposed South Mill Road Right-of-Way (variable width Right-of-Way) and on the northerly property line of lands now or formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P.; said point being South 87 degrees 09 minutes 00 seconds West a distance of 183.86 feet from a pipe found on the southerly Right-of-Way of public road known as West Cypress Street (45 foot Right-of-Way) marking a northeasterly corner of lands now or formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P. and the northwesterly corner of lands now or formerly John J. Brunovszky; leaving said Point of Beginning through lands now or formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P., leaving West Cypress Street (45 foot Right-of-Way) the following five (5) courses and distances to wit:

1. Along a curve to the left having a radius of 15.00 feet, an arc distance of 26.54 feet to a point; of reverse curvature;
2. Along a curve to the right having a radius of 175.00 feet, an arc distance of 64.84 feet to a point;
3. South 06 degrees 59 minutes 48 seconds West a distance of 94.79 feet to a common point with the existing easterly right-of-way of South Mill Road (54 foot existing Right-of-Way);
4. North 02 degrees 39 minutes 00 seconds West a distance of 175.82 feet to a common point with the southerly right-of-way of West Cypress Street (45 foot Right-of-Way);
5. North 87 degrees 09 minutes 00 seconds East a distance of 29.44 feet along the northerly side of lands now or formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P. to the said point of beginning.

Containing 2,168.02 square feet; 0.050 acres, more or less.

## **EXHIBIT B**





## **EXHIBIT C**

George Germanovich Inc.  
700 W. Cypress Street  
Kennett Square, PA 19348

Cannery Row Properties, LP  
27 Penns Greene Drive  
West Grove, PA 19390

Kennett Business Park, LP  
649 W. South Street  
Kennett Square, PA 19348

Mr. and Mrs. John J. Brunovszky  
600 W. Cypress Street  
Kennett Square, PA 19348

Kennett Square Realty, LP  
649 W. South Street  
Kennett Square, PA 19348

Magnolia Place 2018, LLC  
550 American Ave  
King of Prussia, PA 19406

Rockhopper, LP  
726 Yorklyn Road, Ste 150  
Hockessin, DE 19707

Mr. Richard A. Miller  
636 D Street  
Kennett Square, PA 19348

Mr. Paul Michael Simon  
632 D Street  
Kennett Square, PA 19348

Mr. Jason Matthew Laclair  
Ms. Kathleen Marie Laclair  
630 D Street  
Kennett Square, PA 19348

Mr. Mark J. Stitz  
Ms. Barbara E. Stitz  
101 Chandler Lane  
Wilmington, DE 19807

CSC Legacy, LLC  
118 W. Sickie Street  
Kennett Square, PA 19348

Sutch Susie Speakman Separate  
Property Revocable Trust et al.  
616 D Street  
Kennett Square, PA 19348

Ms. Maria R. Robinson  
614 D Street  
Kennett Square, PA 19348

Mr. Troy Thompson  
612 D Street  
Kennett Square, PA 19348

Mr. Robert E. Pick  
608 D Street  
Kennett Square, PA 19348

Mr. Victor N. Stitz, Jr.  
Ms. Donna Murray Stitz  
1212 Stackhouse Mill Road  
Newtown Square, PA 19073

Mr. Gary Buehler  
Ms. Kathleen Frost  
600 D Street  
Kennett Square, PA 19348

Mr. Craig D. Friedrich  
601 Magnolia Court  
Kennett Square, PA 19348

Mr. Jeffrey C. Flynn  
1511 N. Scott Road  
Wilmington, DE 19806

Ms. Mary E. S. Hickman  
605 Magnolia Court  
Kennett Square, PA 19348

Mr. Andrew McSweeney  
Mr. Christopher McSweeney  
607 Magnolia Court  
Kennett Square, PA 19348

Ms. Dawn Decker  
609 Magnolia Court  
Kennett Square, PA 19348

Mr. Douglas Hayes  
Ms. Betty Jean Hayes  
611 E. Magnolia Court  
Kennett Square, PA 19348

Ms. Danielle C. Lindner  
613 Magnolia Court  
Kennett Square, PA 19348

Mr. Eric K. McKinley  
Ms. Amy B. Lambert  
615 Magnolia Court  
Kennett Square, PA 19348

Ms. Sarah Mapp Hardin  
617 Magnolia Court  
Kennett Square, PA 19348

Ms. Ashely Scott Greaves  
619 Magnolia Court  
Kennett Square, PA 19348

Mr. Mark Audigier  
623 Magnolia Court  
Kennett Square, PA 19348

Mr. Andrew M. Weber  
Ms. Christine L. Weber  
625 Magnolia Court  
Kennett Square, PA 19348

Mr. Bruce G. Smith  
Ms. Donna M. Smith  
627 Magnolia Court  
Kennett Square, PA 19348

Mr. Greg F. Byrne  
Ms. Jodi E. Byrne  
635 Magnolia Court  
Kennett Square, PA 19348

Mr. Daniel G. Leader  
Ms. Rosemary L. Kingery  
632 W. Magnolia Court  
Kennett Square, PA 19348

Mr. and Mrs. Frank C. McCown  
626 W. Magnolia Court  
Kennett Square, PA 19348

Mr. Kevin Sullivan  
Ms. Sherry Sullivan  
618 Magnolia Court  
Kennett Square, PA 19348

Ms. Paula Deborah Brenn  
Mr. Bruce Randall Brenn  
612 E. Magnolia Court  
Kennett Square, PA 19348

Mr. William D. Shin  
Ms. Jeanie C. Shin  
606 Magnolia Court  
Kennett Square, PA 19348

Mr. Bryan Christopher Moore  
Ms. Roza Maria Garza Moore  
600 Magnolia Court  
Kennett Square, PA 19348

Ms. Cynthia Belski  
605 W. Mulberry Street  
Kennett Square, PA 19348

Mr. David London  
611 W. Mulberry Street  
Kennett Square, PA 19348

Mr. Richard Heeren  
Ms. Jean Heeren  
629 W. Magnolia Court  
Kennett Square, PA 19348

Mr. Theodore Vanderslice  
Ms. Theresa Vanderslice  
637 Magnolia Court  
Kennett Square, PA 19348

Mr. Peter C. Thomas  
Ms. Natalie R. Thomas  
630 Magnolia Court  
Kennett Square, PA 19348

Mr. Matthew Genereux  
624 W. Magnolia Court  
Kennett Square, PA 19348

Mr. Ned Weinberger  
Ms. Meredith Weinberger  
616 Magnolia Court  
Kennett Square, PA 19348

Mr. Stuart Randolph Davies  
Ms. Ellen B. Davies  
610 Magnolia Court  
Kennett Square, PA 19348

Ms. Donaa Kleinman  
604 E. Magnolia Court  
Kennett Square, PA 19348

Mr. Edwin C. Sparks, III  
Ms. Mary A. Sparks  
601 W. Mulberry Street  
Kennett Square, PA 19348

MP Desert, LLC  
P. O. Box 4672  
Wilmington, DE 19807

Ms. Joanne Pechulis  
615 Mulberry Street  
Kennett Square, PA 19348

Mr. Kenan M. Kessler  
Ms. Alexandra L. Mairs-Kessler  
633 Magnolia Court  
Kennett Square, PA 19348

Ms. Suzanne Kane  
636 Magnolia Court  
Kennett Square, PA 19348

Ms. Corinne Parker  
360 W. 55<sup>th</sup> Street  
New York, NY 10019

Ms. Carrie Dickman  
620 Magnolia Court  
Kennett Square, PA 19348

Mr. Richard A. Dougherty  
Ms. Joanne Costa Dougherty  
614 Magnolia Court  
Kennett Square, PA 19348

Ms. Christina D. Olexy  
Ms. Aimee T. Olexy  
608 Magnolia Court  
Kennett Square, PA 19348

Ms. Jean Marie Tenlen  
602 E. Magnolia Court  
Kennett Square, PA 19348

Mr. Brian M. Abbott  
Ms. Rachel N. Abbott  
603 W. Mulberry Street  
Kennett Square, PA 19348

Mr. Jason Truskowski  
Ms. Elaine Gehrer  
609 W. Mulberry Street  
Kennett Square, PA 19348

Mr. Richard Everett  
Ms. Stephanie Everett  
621 Mulberry Street  
Kennett Square, PA 19348

Mr. Matthew Ryan McGill  
Ms. Catherine Ludlow McGill  
625 W. Mulberry Street  
Kennett Square, PA 19348

Ms. Laurel Smith  
P. O. Box 2081  
Wilmington, DE 19899

Ms. Tara Stitz  
629 Mulberry Street  
Kennett Square, PA 19348

Mr. James Brian Erisman  
631 W. Mulberry Street  
Kennett Square, PA 19348

Mr. Robert Barkanic  
Ms. Devon Barkanic  
633 W. Mulberry Street  
Kennett Square, PA 19348

Mr. Thomas McDonald  
Ms. Christine McDonald  
635 Mulberry Street  
Kennett Square, PA 19348

Ms. Brenda Mercomes  
639 W. Mulberry Street  
Kennett Square, PA 19348

Mr. Robert T. Fawley  
Ms. Sara Ball  
641 W. Mulberry Street  
Kennett Square, PA 19348