

BOROUGH of KENNETT SQUARE

COUNTY of CHESTER, COMMONWEALTH of PENNSYLVANIA

ORDINANCE NO. 956

AN ORDINANCE OF THE BOROUGH OF KENNETT SQUARE, CHESTER COUNTY, PENNSYLVANIA, ACCEPTING DEDICATION OF “WEST MULBERRY STREET” 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 “**West Mulberry Street**” 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, Rockhopper, LP, a Pennsylvania limited partnership which owns the land upon which the southern portion of "West Mulberry Street" 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 "West Mulberry Street" 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 "**West Mulberry Street**" from South Washington Street to South Mill Road, 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.

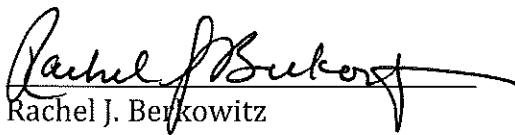
SECTION 3. SEVERABILITY. If any provision, sentence, clause, section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections 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.

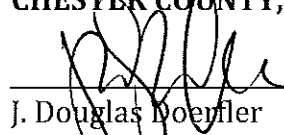
SECTION 4. EFFECTIVE DATE. This Ordinance shall become effective January 1, 2020, subject to the requirements of the Developers' completion of the remaining "punch list" items to the satisfaction of the Borough Engineer and staff; posting of the required 18-month maintenance financial security; payment 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 2nd 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 12th day of December, 2019.

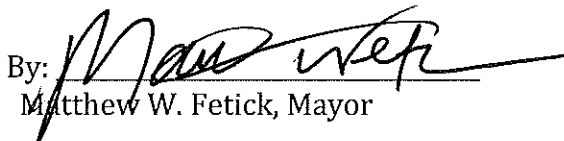
By: 
Matthew W. Fetick, Mayor

EXHIBIT A

WEST MULBERRY STREET

Kennett Square Realty, L.P. and Kennett Community Center, L.P.

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 easterly Right-of-Way of South Mill Road (50 foot Right-of-way); said point being the following nine (9) courses and distances from a pipe found on the southerly Right-of-Way of public road known as West Cypress Street (45 foot wide Right-of-Way) marking the 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:

1. South 87 degrees 09 minutes 00 seconds West along the northerly side of lands now or formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P. a distance of 183.86 feet to a point;
2. 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;
3. Along a curve to the right having a radius of 175.00 feet an arc distance of 64.84 feet to a point;
4. South 06 degrees 59 minutes 48 seconds West a distance of 108.11 feet to a point;
5. Along a curve to the left having a radius of 125.00 feet an arc distance of 21.05 feet to a point;
6. 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);
7. 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);
8. 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;
9. South 01 degrees 40 minutes 42 seconds West a distance of 245.68 feet, crossing the South Alley (16 foot Right-of-Way) to the said Point of Beginning;

Leaving the said Point of Beginning the following six (6) courses and distances to wit:

1. Along a curve to the left having a radius of 15.00 feet an arc of 24.72 feet to a point;
2. North 87 degrees 15 minutes 57 seconds East a distance of 444.85 feet to a point;
3. Along a curve to the left having a radius of 15.00 feet an arc of 23.51 feet to a common point with the westerly Right-of-Way of South Washington Street (54 foot Right-of-Way);
4. South 02 degrees 33 minutes 00 seconds East a distance of 39.95 feet, along the westerly Right-of-Way of South Washington Street (54 foot Right-of-Way) to a point on the southerly property line of lands now or formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P. and the northerly property line of lands now or formerly Rockhopper LP;
5. South 87 degrees 15 minutes 57 seconds West along lands now or formerly Rockhopper LP, a distance of 477.66 feet to a point on the southerly property line of lands now or formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P., the northerly property line of lands now or formerly Rockhopper LP, and the easterly Right-of-Way of South Mill Road (50 foot Right-of-Way);

6. North 01 degrees 24 minutes 14 seconds East, along the easterly Right-of-Way of South Mill Road (50 foot Right-of-Way), a distance of 41.26 feet to the said Point of Beginning.

Containing 12,024.82 square feet; 0.276 acres, more or less.

WEST MULBERRY STREET
Rockhopper LP

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 easterly Right-of-Way of South Mill Road (50 foot Right-of-way); said point being the following ten (10) courses and distances from a pipe found on the southerly Right-of-Way of public road known as West Cypress Street (45 foot wide Right-of-Way) marking the 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:

1. South 87 degrees 09 minutes 00 seconds West along the northerly side of lands now or formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P. a distance of 183.86 feet to a point;
2. 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;
3. Along a curve to the right having a radius of 175.00 feet an arc distance of 64.84 feet to a point;
4. South 06 degrees 59 minutes 48 seconds West a distance of 108.11 feet to a point;
5. Along a curve to the left having a radius of 125.00 feet an arc distance of 21.05 feet to a point;
6. 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);
7. South 02 degrees 21 minutes 26 seconds East a distance of 69.03 feet, crossing D Street (40 foot D Street) to a common point with the southerly right-of-way of D Street (40 foot Right-of-Way);
8. South 01 degrees 03 minutes 51 seconds West a distance of 226.39 feet, crossing the North Alley (16 foot Right-of-Way);
9. 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);
10. South 01 degrees 24 minutes 14 seconds West a distance of 41.26 feet to the said Point of Beginning, 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.;

Leaving the said Point of Beginning the following four (4) courses and distances, along and through lands now or formerly Rockhopper LP to wit:

1. North 87 degrees 15 minutes 57 seconds East along lands now or formerly Kennett Square Realty, L.P. and Kennett Community Center, L.P. a distance of 477.66 feet to a common point with the westerly Right-of-Way of South Washington Street (54 foot Right-of-Way);
2. South 02 degrees 33 minutes 00 seconds East a distance of 25.00 feet to a point;
3. South 87 degrees 15 minutes 57 seconds West a distance of 479.39 feet to a point;
4. North 01 degrees 24 minutes 14 seconds East a distance of 25.07 feet to the said Point of Beginning.

Containing 11,963.08 square feet; 0.275 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. Sickel 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. KcKinley
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. 55th 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 Gehr
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