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ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 103 OF THE CODE OF SUSSEX COUNTY, ARTICLE IV, IMPOSING A COUNTY REALTY TRANSFER TAX.

WHEREAS, pursuant to the provisions of Title 30, Chapter 54 of the Delaware Code, Sussex County was given the power and authority to enact legislation to impose a County realty transfer tax of up to 1-1/2%, said tax to be paid to the County in connection with the transfer of any interest in real estate; and

WHEREAS, Sussex County adopted Article IV, entitled County Realty transfer tax, Sections 103-18 through 103-29.1 by adopting Ordinance No. 746 on February 26, 1991 and thereafter amended said Article with the adoption of Ordinance No. 1247 on July 1, 1992, Ordinance No. 1392 on August 29, 2000 and Ordinance No. 1672 on March 30, 2004; and

WHEREAS, it has been determined that Chapter 103 needs to be further revised to redefine the documents and transactions involving the transfer of interest in real estate which entitle the County to collect the aforesaid transfer tax; and

WHEREAS, any material that is to be deleted herein will be enclosed in brackets [] and any material to be added will be underlined.

NOW, THEREFORE THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Code of Sussex County Chapter 103, TAXATION, ARTICLE IV, County Realty Transfer Tax by amending Section 103-19, as follows:

I.A. Notwithstanding the foregoing provisions of this Section, there shall be included in the definition of "document" for the purposes of this Ordinance any contract or other agreement or undertaking for the construction of all or a part of a building, all or a portion of which contract, agreement or undertaking (or any amendment to the foregoing) is entered into, where labor or materials are supplied, either prior to the date of the transfer of the land on which the building is to be constructed or within 1 year from the date of the transfer of the land to the grantee.

B. The County shall not issue a building permit for any such building unless and until the person or persons (including corporations, other associations or entities) requesting such permit, shall demonstrate in whatever form may be specified and required by the County Director of Finance, including at the Director's discretion, a form of affidavit, certifying that:

(i) No transfer as described in this Section has occurred within the preceding year; or

(ii) No portion of the contract for construction for which the permit is being requested was entered into and no materials or labor with respect to the building have been provided within 1 year of the date on which the land was transferred; or

(iii) The required amount of the County realty transfer tax on the document, as defined in this Ordinance, has been paid.

C. In addition, the County shall not issue a certificate of occupancy relative to any building on which the transfer taxes provided or required to be paid by this ordinance unless and until the owner recertifies the actual cost of the building and improvements to the real estate and pays any additional tax due thereon as a result of such recertification.

D. "A building" for the purposes of this article shall mean any structure having a roof supported by columns or walls which structure is intended for supporting or sheltering any use or occupancy and shall not include any alteration of or addition to any existing building where the cost of said alteration or addition is less than 50% of the value of the land transferred.

Section 2. This ordinance shall become effective upon its adoption by a majority of the members elected to Council.

Synopsis:

The purpose of this ordinance is to amend the County realty transfer tax to include construction contracts which may be entered into either prior to the date of the transfer of the land or within 1 year from the date of the transfer of the land to a grantee or buyer, within the meaning of documents which require the payment of the 1-1/2% County realty transfer tax in order to ensure that the transfer taxes paid to the County includes the value of such improvements to the land. Further, this amendment makes the County transfer tax ordinance consistent with the wording of the State realty transfer tax law. The purpose of this amendment is to prevent sellers of real estate from attempting to split the improvements from the land and paying the transfer tax only on the value of the land while avoiding the payment of transfer tax on the improvements.