ORDINANCE NO. 523

BOROUGH OF BENTLEYVILLE
WASHINGTON COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE BOROUGH OF BENTLEYVILLE, WASHINGTON COUNTY, PROVIDING FOR THE LEVYING, ASSESSMENT AND COLLECTION OF A TAX FOR GENERAL REVENUE PURPOSES UPON A TRANSFER OF AN INTEREST IN REAL PROPERTY TO THE EXTENT THAT THE TRANSFERS ARE SUBJECT TO TAX IMPOSED BY THE COMMONWEALTH PURSUANT TO 72 P.S. SECTION 8101-C ET SEQ., AUTHORIZED BY ARTICLE XI-D, LOCAL REAL ESTATE TRANSFER TAX, 72 P.S. SECTION 8101-D ET SEQ., AND ADMINISTERED, COLLECTED AND ENFORCED UNDER THE LOCAL TAX REFORM ACT OF DECEMBER 13, 1988, P.L. 1121, NO. 145 (72 P.S. 4750.56, ET SEQ.)

THE COUNCIL OF BENTLEYVILLE BOROUGH, WASHINGTON COUNTY, PENNSYLVANIA, HEREBY ENACTS AND ORDAINS:

SECTION 1. TITLE.

This Ordinance shall be known as the "Realty Transfer Tax Ordinance of Bentleyville Borough".

SECTION 2. AUTHORITY.

A realty transfer tax for general revenue purposes is hereby imposed upon the transfer of real estate or interest in real estate situated within Bentleyville Borough, regardless of where the documents making the transfer are made, executed or delivered, or where the actual settlements on such transfer took place as authorized by Article XI-D, Local Real Estate Transfer Tax, 72

P.S. §8101-D et seq. Furthermore, this tax ordinance is enacted under authority of the Local Tax Reform Act of December 13, 1988, P.L. 1121, No. 145.

SECTION 3. DEFINITIONS.

ASSOCIATION - A partnership, limited partnership, or any other form of unincorporated enterprise owned or conducted by two or more persons other than a private trust or decedent's estate.

BOARD- The Council of Bentleyville Borough, Washington County, Pennsylvania.

BOROUGH - Bentleyville Borough, Washington County, Pennsylvania.

CORPORATION - A corporation, joint-stock association, business trust, or banking institution which is organized under the laws of this Commonwealth, the United States, or any other state, territory, foreign county or dependency.

DOCUMENT - Any deed, instrument or writing which conveys, transfers, demises, vests, confirms or evidences any transfer or demise of title to real estate, but does not include wills, mortgages, deeds of trust or other instruments or like character given as security for a debt and deeds or releases thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding thirty (30) years or instruments which solely, grant, vest or confirm a public utility easement. Document shall also include a declaration of acquisition required to be presented for recording under section of this Ordinance.

FAMILY FARM CORPORATION - A corporation of which at least seventy-five percent (75%) of its assets are devoted to the business of agriculture and at least seventy-five percent (75%) of each class of stock of the corporation is continuously owned by members of the same family. The business of agriculture shall not be deemed to include:

1. Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
2. The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;
3. Fur farming;
4. Stockyard and slaughterhouse operations; or
5. Manufacturing or processing operations of any kind.

MEMBERS OF THE SAME FAMILY - Any individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing. Individuals related by the half-blood or legal adoption shall be treated as if they related by the whole-blood.

PERSON - Every natural person, association, or corporation. The term "person" as applied to associations, shall include the responsible members or general partners thereof, and as applied to corporations, the officers thereof.

REAL ESTATE -

1. All lands, tenements or hereditaments within this township, including without limitation, buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees, and other improvements, immovables or interest which by custom, usage or law pass with a conveyance of land, but excluding permanently attached machinery and equipment in an industrial plant;
2. A condominium unit;
3. A tenant-stockholder's interest, in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.

REAL ESTATE COMPANY - A corporation or association which is primarily engaged in the business of holding, selling or leasing real estate ninety percent or more of the ownership in which is held by thirty five or fewer persons and which:

1. Derives sixty percent or more of its annual gross receipts from the ownership or dispositions of real estate; or
2. Holds real estate, the value of which comprises ninety percent or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and activity traded on an established market.

TITLE TO REAL ESTATE -

1. Any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of

years, including without limitation an estate in fee simple, life estate, or perpetual leasehold; or

2. Any interest in real estate enduring for a fix period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate or perpetual leasehold, including without limitation a leasehold interest or possessory interest under a lease or occupancy agreement for a term of thirty years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.

TRANSACTION - The making, executing, delivering, accepting or presenting for recording of a document.

VALUE -

1. In the case of any bona fide sale of real estate at arm's length for actual monetary worth, the amount of the actual consideration therefor, paid or to be paid, including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed, and ground rents, or a commensurate part thereof where such liens or other encumbrances and ground rents also encumber or are charged against other real estate; provided, that where such documents shall set forth a nominal consideration, the value thereof shall be determined from the price set forth in for actual consideration for the contract of sale;

2. In the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of the real estate, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio factor developed by the Pennsylvania Department of Revenue for Pennsylvania realty transfer tax base calculations;

3. In the case of an easement or other interest in real estate the value of which is not determinable under clause (1) or (2), the actual monetary worth of such interest; or

4. The actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent improvements to real estate between the grantor and other persons existing before the transfer and not remove thereby or between the grantor, the agent or principle of the grantor of a related corporation association or partnership and the grantee existing before or effective with the transfer.

SECTION 4. IMPOSITION OF TAX: Interest.

a) Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made,

executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part hereof, a tax at the rate of one percent of the value of the real estate represented by such document, which tax shall be payable at the earlier of the time the document is presented for recording or within thirty days of acceptance of such document or within thirty days of becoming an acquired company.

b) The payment of the tax imposed herein shall be evidenced by the affixing of an official stamp or writing by the Recorder of Deeds whereon the date of the payment of the tax, amount of the tax and the signature of the collecting agent shall be set forth.

c) It is the intent of this Ordinance that the entire burden of the tax imposed on a person or transfer shall not exceed the limitations prescribed in The Local Tax Reform Act, of December 13, 1988, P.L. 1127 (P.S. §4750.56 et seq.) so that if any other political subdivision or School District have imposed or hereafter shall impose such tax on the same person or transfer than the tax levied by the Borough of Bentleyville and under the authority of the Act shall during the time such duplication of the tax exists, except as hereinafter otherwise provided, by one-half of the rate and such one-half rate shall become effective without any action on the part of Bentleyville Borough provided, however, that Bentleyville Borough and any other political subdivision which impose such tax on the same person or transfer may agree that instead of limiting their respective rates to one-half of the rate

herein provided, they will impose respectively different rates, the total of which shall not exceed the maximum rate permitted.

d) Any tax imposed under this Ordinance that is not paid by the date the tax is due shall bear interest as prescribed for interest on delinquent municipal claims under the Act of May 16, 1923 (P.L. 207, No. 153) (53 P.S. §§7101, et seq.), as amended, known as "The Municipal Claims and Tax Liens Act". The interest rate shall be the lesser of the interest rate imposed upon delinquent Commonwealth taxes as provided in Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176) (72 P.S. §806), as amended, known as "The Fiscal Code", or the maximum interest rate permitted under the Municipal Claims and Tax Liens Act for tax claims.

SECTION 5. EXEMPT PARTIES.

The United States, the Commonwealth or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment or the tax imposed by this article. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

SECTION 6. EXCLUDED TRANSACTIONS.

The tax imposed by Section shall not be imposed upon:

1. A transfer to the Commonwealth or to any of its instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned by the

owner of record at the time of condemnation which reconveyance may include property fine adjustments provided said reconveyance is made within one year from the date of condemnation.

2. A document which the Borough of Bentleyville is prohibited from taxing under the Constitution or statutes of the United States.

3. The conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax delinquent property at sheriff sale or tax claim bureau sale.

4. A transfer for no nominal actual consideration which corrects or confirms a transfer previously recorded but which does not extend or limit existing record legal title or interest.

5. A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by co-tenants; however, if any of the parties take shares greater in value than their undivided interest, tax is dues on the excess.

6. A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or spouse of a brother or sister and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent

transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer.

7. A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent's devisee or heir.

8. A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries, whether or not such beneficiaries are contingent or specifically named. No such exemption shall be granted unless the Recorder of Deeds is presented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries.

9. A transfer for no or nominal actual consideration from a trustee to a beneficiary of an ordinary trust.

10. A transfer for no or nominal actual consideration from a trustee to successor trustee.

11. A transfer (I) for no or nominal actual consideration between principal and agent or straw party; or (ii) from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this article.

Where the document by which title is acquired by a grantee or statement of value fails to set forth that the property acquired by the grantee from or the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.

12. A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a non-profit corporation, except where the department reasonably determines that the primary intent for such merger, consolidation of division is avoidance of the tax imposed by this article.

13. A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two years.

14. A transfer from a non-profit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt or the grantee or a transfer to a non-profit industrial development agency or authority.

15. A transfer from a non-profit industrial development agency or authority to a grantee purchasing directly from it, but only if: (I) the grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating,

compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and (ii) the agency or authority has the full ownership interest in the real estate transferred.

16. A transfer by a mortgagor to the holder of a bona fide mortgage in default in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid to another person.

17. Any transfer between religious organizations or other bodies or person holding title for a religious organization if such real estate is not being or has not been used by such transferor for commercial purposes.

18. A transfer to a conservancy which possesses a tax exempt status pursuant to Section 501 (c)(3) of the Internal Revenue Code of 1954, (68A Stat. 3, 26 U.S.C. Section 501 (c)(3) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities.

19. A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least seventy five percent of each class of the stock thereof.

20. A transfer between members of the same family of an ownership interest in a real estate company or family farm corporation.

21. A transaction wherein the tax due is one ($1.00) dollar or less.

22. Lease for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

In order to exercise any exclusion provided in this section, the true, full and complete value of the transfer shall be shown on the statement of value. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. For leases of coal, oil, natural gas or minerals, the statement of value may be limited to an explanation of the reason such document is not subject to tax under this Ordinance.

SECTION 7. DOCUMENTS RELATING TO ASSOCIATIONS OR CORPORATIONS AND MEMBERS, PARTNERS, STOCKHOLDERS OR SHAREHOLDERS THEREOF.

Except as otherwise provided in Section 6, documents which make, confirm or evidence any transfer or demise of title to real estate between association or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purpose of this article, corporations and associations are entitles separate from their members, partners, stockholders or shareholders.

SECTION 8. ACQUIRED COMPANY.

a) A real estate company is an acquired company upon a change in the ownership interest in the company, however, effected, if the change does not affect the continuity of the company; and of itself or together with prior changes has the effect or transferring, directly or indirectly, ninety percent or more of the total ownership interest in the company within a period of three years.

b) With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation or when, because of issuance or transfer of stock or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of family farm corporation under this Ordinance.

c) Within thirty days after becoming an acquired company, the company shall present a declaration of acquisition with the Recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holdings of the acquired company in such county. A copy of the Pennsylvania Transfer Tax Declaration of Acquisition may be submitted for this purpose.

SECTION 9. CREDITS AGAINST TAX.

a) Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him within the preceding year as consideration for the purchase of other residential property, a credit for this amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax due upon the transfer.

b) Where there is a transfer by a builder of residential property which was transferred to the builder within the preceding year as consideration for the purchase of a new previously unoccupied residential property, a credit for

the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due upon the transfer.

c) Where there is a transfer of real estate which is leased by the grantor, a credit for the amount of tax paid at the time of the lease shall be given the grantor toward the tax due upon the transfer.

d) Where there is a conveyance by deed of real estate which was previously sold under a land contract by the grantor, a credit for the amount of tax paid at the time of the sale shall be given the grantor toward the tax due upon the deed.

e) If the tax due upon the transfer is greater than the credit given under this Section, the difference shall be paid. If the credit allowed is greater than the amount of tax due, no refund or carry over credit shall be allowed.

SECTION 10. EXTENSION OF LEASE.

In determining the term of a lease, it shall be presumed that a right or option to renew or extend a lease will be exercised if the rental charge to the lessee is fixed or if a method for calculating the rental charge is established.

SECTION 11. PROCEEDS OF JUDICIAL SALE.

The tax herein imposed shall be fully paid, and have priority out of the proceeds or any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made except the state realty transfer tax and sheriff or other officer conducting said sale, shall pay the tax herein imposed out of the first monies paid to

him in connection therewith. If the proceeds of the sale are insufficient to pay the entire tax herein imposed, the purchaser shall be liable for the remaining tax.

SECTION 12. DUTIES OF RECORDER OF DEEDS.

a) As provided in 16 P.S. Section 11011-6, as amended by Act of July 7, 1983 (P.L. 40, No. 21), the Recorder of Deeds shall be the collection agent for the local realty transfer tax including any amount payable to Bentleyville Borough based on a redetermination of the amount of tax due by the Commonwealth of Pennsylvania of the Pennsylvania Realty Transfer Tax, without compensation from Bentleyville Borough.

b) In order to ascertain the amount of taxes due when the property is located in more than one political subdivision, the Recorder shall not accept for recording such a deed unless it is accompanied by a statement of value showing what taxes are due each municipality.

c) On or before the tenth of each month, the Recorder of Deeds shall pay over to Bentleyville Borough all local realty transfer taxes collected, less two percent for use of the county, together with a report containing the information as is required by the Commonwealth of Pennsylvania in reporting collection of the Pennsylvania Realty Transfer Tax. The two percent commission shall be paid to the county.

d) Upon a redetermination of the amount of realty transfer tax due by the Commonwealth of Pennsylvania, the Recorder of Deeds shall re-record the deed or record the additional realty transfer tax form only when both the

state and local amounts and a re-recording or recording fee has been tendered.

SECTION 13. STATEMENT OF VALUE.

Every document lodged with or presented to the Recorder of Deeds for recording, shall set forth therein and as a part of such document the true, full and complete value thereof shall be accompanied by a statement of value executed by a responsible person in connection with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article. A copy of the Pennsylvania Realty Transfer Tax Statement of Value may be submitted for this purpose. The provisions of this subsection shall not apply to any excludable real estate transfers which are exempt from taxation based on family relationship. Other documents presented for the affixation of stamps shall be accompanied by a certified copy of the document and statement of value executed by a responsible person connection with the transaction showing such connection and setting forth the true, full and complete value thereof of the reason, if any, why such document is not subject to tax under the Ordinance.

SECTION 14. CIVIL PENALTIES.

a) If any part of any underpayment of tax imposed by this article is due to fraud, there shall be added to the tax an amount equal to fifty percent of the underpayment.

b) In the case of failure to record a declaration required under this article on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax five percent of the amount

of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding fifty percent in the aggregate.

SECTION 15. LIEN.

The tax imposed by the Ordinance shall become a lien upon the lands, tenements or hereditaments, or any interest therein, lying, being situated, wholly or in part within the boundaries of the Borough of Bentleyville which lands, tenements, hereditaments, or interest therein, are described in or conveyed by or transferred by the deed which is the subject of the tax, imposed, assessed and levied by this Ordinance, said lien to begin at the time when the tax under this Ordinance is due and payable, and continue until discharge by payment, or in accordance with the law, and the solicitor is authorized to file a municipal or tax claim in the Court of Common Pleas of Washington County, in accordance with the provision of the Municipal Claims and Liens Act in accordance with the provision of the Municipal Claims and Liens Act of 1923, 53 P.S. Section 7101 et seq., its supplements and amendments.

SECTION 16. ENFORCEMENT.

All taxes imposed by this Ordinance together with interest and penalties prescribed herein shall be recoverable as other debts of like character are recovered.

SECTION 17. SEVERABILITY.

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared invalid by a Court of competent jurisdiction, such decision shall not affect the validity of the Ordinance in its entirety or of any part thereof other than that declared to be invalid.

SECTION 18. EFFECTIVE DATE.

This Ordinance shall be effective thirty (30) days after adoption.

ORDAINED AND ENACTED INTO LAW by the Council of Bentleyville Borough, Washington County, Pennsylvania, this _____ day of _____, 2007.

BOROUGH OF BENTLEYVILLE

By: _____
Lena Greenfield, President

ATTEST:

(SEAL)

_____
Sheryl M. Hreha, Secretary

EXAMINED and APPROVED the day and year as set forth above.

By: _____
Thomas Brown, Mayor

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