ORDINANCE NO. 2687

AN ORDINANCE TO AMEND CHAPTER 103 ("TAXATION") OF THE CODE OF SUSSEX COUNTY TO INCLUDE A NEW ARTICLE VI, §§ 103-39 THROUGH 103-42 WHICH SHALL PERMIT THE IMPOSITION OF A LOCAL LODGING TAX OF NO MORE THAN 3% OF THE RENT FOR ANY ROOM IN A HOTEL, MOTEL OR TOURIST HOME IN THE UNINCORPORATED AREAS OF SUSSEX COUNTY.

WHEREAS, on July 1, 2019, the Delaware General Assembly enacted House Bill No. 228, "An Act to Amend Title 9 of the Delaware Code Relating to Taxes"; and

WHEREAS, on July 17, 2019, Governor John Carney signed HB 228 into law; and

WHEREAS, HB 228, as codified in 9 *Del. C.* § 8112(b), authorizes Sussex County to impose, by ordinance, a local lodging tax of up to 3% of the rent, in addition to the tax imposed by the State, for any room or rooms in a hotel, motel, or tourist home, as defined in 30 *Del. C.* § 6101, within the unincorporated areas of the county; and

WHEREAS, 9 *Del. C.* § 8112(c) exempts rentals by the Delaware Department of Natural Resources and Environmental Control; and

WHEREAS, it is the intent of the Sussex County Council to impose and collect the lodging tax in manner similar to the State.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. Chapter 103 ("Taxation") of the Code of Sussex County is hereby amended by adding a new Article VI, §§103-39 through 103-42 entitled "Lodging Tax," by inserting the underlined language as follows:

"**Article VI Lodging Tax**

§ 103-39 Definitions.

The definitions in 30 *Del. C.* § 6101 (Lodging Tax Definitions) are hereby incorporated by reference.

§ 139-40 Levy of Tax; Exemption; Collection; Payment

A. **A tax is hereby levied at the rate of three percent (3%) of the rent upon every occupancy of a room or rooms in a hotel, motel or tourist home within unincorporated sections of Sussex County. Such tax shall be in addition to the lodging tax imposed by the State pursuant to 30 *Del. C.* § 6102.**

B. **No lodging tax pursuant to this Article shall be imposed for reservations or contracts paid in full prior to January 1, 2020.**

C. **No lodging tax pursuant to this Article shall be imposed upon rentals by the Delaware Department of Natural Resources and Environmental Control.**

D. **The lodging tax is imposed on the occupant and shall be collected by the operator from the occupant at the time of the payment of the rent for the occupancy.**

E. **The amount of tax collected for each month shall be reported and remitted to the Sussex County Department of Finance, or its designee, not later than the fifteenth (15th) day of the month following the month of collection on forms to be prescribed by the Sussex County Department of Finance.**

§ 139-41 Late penalty; abatement

A. **A penalty at the rate of one percent (1%) per month, or fraction thereof, shall be charged on payments made after the prescribed due date.**

B. **Upon written application to the Sussex County Department of Finance, along with supporting documentation, the Finance Director hereby is authorized to abate penalty up to and including the requested amount of abatement. The Finance Director is not authorized to abate principal.**

§ 139-42 Failure to pay tax; determination; redetermination; review; additional penalty

A. **Determination.**

   If any operator fails to pay any lodging tax for which he or she is liable, the Sussex County Department of Finance may determine the additional tax and penalty due by such person or entity, based upon any information within its possession or that shall come

into its possession. All such determinations shall be made so that notice thereof shall be mailed to the person or entity against whom the determination was made within three (3) years after the date the lodging tax became due.

B. **Copy of determination to person; petition of redetermination; duty for disposition of petitions; notice of final decision.**

Promptly after the date of such determination, the Sussex County Department of Finance shall send, by certified mail to the physical address of the operator, a copy thereof to the person or entity against whom such determination was made. Within ninety (90) days thereafter, the operator may file with the Sussex County Department of Finance a petition for redetermination of such taxes. The petitioner shall state with specificity the reasons the petitioner believes justify redetermination and shall affirm under penalty of perjury that the petition for redetermination is not made for the purpose of delay and that the facts set forth therein are true. The Sussex County Department of Finance shall make a final decision within six (6) months after the date of receipt of the petition and promptly provide written notice thereof to the petitioner.

C. **Additional Penalty.**

In addition to late penalty, a one-time penalty of ten percent (10%) shall be imposed on any additional tax determined to be due by the Sussex County Department of Finance."

Section 2. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this Ordinance is found to be unconstitutional or void, all applicable former ordinances, resolutions or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 3. Effective Date. This Ordinance shall become effective January 1, 2020.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2687 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 12TH DAY OF NOVEMBER 2019.

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ROBIN A. GRIFFITH
CLERK OF THE COUNCIL