

## **ARTICLE I Community Preservation Fund**

### § 14-1. Title.

This chapter of the Riverhead Town Code shall be known and may be cited as the "Community Preservation Fund Law."

### § 14-2. Purposes.

This chapter is adopted for the purpose of protecting and preserving open and undeveloped lands in the Town of Riverhead, including wetlands, woodlands, agricultural lands, shorelands and the other natural resources of the town; for the purpose of protecting historic places and properties within the town; and for the purpose of providing the town's visitors and residents with outdoor recreational opportunities, all in accordance with the provisions of § 64-e of the New York Town Law and as more fully set forth therein.

### § 14-3. Definitions.

As used in this chapter, the following words and terms shall have the meanings indicated: **ADVISORY BOARD** — The Riverhead Community Preservation Fund Advisory Board established and created by this chapter.

**COMMUNITY PRESERVATION** — Includes all of the following: A. Establishment of parks, nature preserves or recreational areas.

B. Preservation of open space, including agricultural lands.

C. Preservation of lands of exceptional scenic value.

D. Preservation of freshwater and saltwater marshes or other wetlands.

E. Preservation of aquifer recharge areas.

F. Preservation of undeveloped beach lands or shorelands.

G. Establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species.

H. Preservation of brooks or streams and riverine areas in natural, free-flowing condition.

I. Preservation of public access to lands for public use including stream rights and waterways.

J. Undertaking any of the aforementioned in furtherance of the establishment of a greenbelt.

**COMMUNITY PRESERVATION PROJECT PLAN** — The Riverhead Community Preservation Project Plan adopted by the Riverhead Town Board pursuant to Town Law § 64-e. Editor's Note: See Art. III, Community Preservation Project Plan.

**FUND** — The Riverhead Community Preservation Fund established and created by this chapter.

§ 14-4. Fund establishment. A. The Riverhead Community Preservation Fund is hereby established as authorized by § 64-e of the New York Town Law.

B. Deposits into the fund may include revenues of the Town from whatever source and shall include the revenues from a real estate transfer tax imposed by the Town pursuant to Article 31-D of the New York Tax Law. Editor's Note: See Art. II, Real Estate Transfer Tax.

C. The fund shall also be authorized to accept gifts of any such interests in land or funds, interest accrued by moneys deposited in the fund shall be credited to the fund.

D. In no event shall moneys deposited in the fund be transferred into any other account.

E. Nothing contained in this chapter shall be construed to prevent the financing in whole or in part, pursuant to the New York Local Finance Law, of any acquisition authorized pursuant to this chapter. Moneys from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the Local Finance Law, consistent with effectuating the purposes of this chapter.

§ 14-5. Purposes of fund. A. The purposes of the fund shall be exclusively: (1) To implement a plan for the preservation of community character as required by § 64-e(6) of the Town Law.

(2) To acquire interests or rights in real property for the preservation of community character within the town, in accordance with said plan.

(3) To establish a bank pursuant to a transfer of development rights program consistent with § 261-a of the Town Law, at the sole discretion of the Town Board.

(4) To provide a management and stewardship program for such rights and interests acquired by the fund, consistent with the provisions of this chapter and in accordance with said plan.

B. The acquisition of interests and rights in real property under the fund shall be in cooperation with willing sellers.

C. Not more than 10% of the fund shall be utilized for the management and stewardship program provided for in Subsection A(4) of this section.

D. Upon the full implementation of the Community Preservation Project Plan, and funds being no longer required for the purposes set forth in Subsection A above, any remaining moneys in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of Subsection A.

§ 14-6. Advisory Board established. [Amended 7-20-2004 by L.L. No. 25-2004]

The Riverhead Community Preservation Fund Advisory Board is hereby established to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund and to act in an advisory capacity to the Town Board with respect to the administration of the fund. The Riverhead Community Preservation Fund

Advisory Board shall be composed of the following two subcommittees: A. As to agricultural lands and real property that is in use for agricultural production, as those terms are defined in § 44-2 of the Town Code, that may be identified for potential acquisition under this fund, the duties and responsibilities of the Advisory Board shall be effectuated and implemented by the members of the Farmland Preservation Committee as created pursuant to § 44-6 of the Town Code.

B. As to all other lands identified for potential acquisition under this fund, the duties and responsibilities of the Advisory Board shall be effectuated and implemented by the members of the Open Space/Park Preserve Committee as created pursuant to § 14-40 of the Town Code.

§ 14-7. Acquisition of interests in property; public hearing and other requirements. A. No interest or right in real property shall be acquired by the fund until a public hearing is held as required by § 247 of the New York General Municipal Law. However, nothing herein shall prevent the Town Board from entering into a conditional purchase agreement before a public hearing is held.

B. Any resolution of the Town Board approving an acquisition of land pursuant to this chapter shall include a finding that acquisition was the best alternative for the protection of community character of all reasonable alternatives available to the town.

§ 14-8. Management of lands acquired. A. Lands acquired pursuant to this chapter shall be administered and managed in accordance with the following requirements: (1) Public use and enjoyment of the lands shall be allowed in a manner which is compatible with the natural, scenic, historic and open space character of such lands.

(2) The native biological diversity of such lands shall be preserved.

(3) With regard to lands acquired as open space (as opposed to lands acquired for active recreation use or public water access, or improved lands acquired for historic presentation reasons), improvements shall be limited to those designed to enhance access for passive use of such open space lands such as nature trails, boardwalk, bicycle paths and peripheral parking areas, provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat.

(4) With regard to historic properties, historic and cultural resources shall be managed and maintained in a manner which is consistent with accepted standards for historic preservation.

B. The Town may enter into agreements corporations organized under the New York Not-For-Profit Corporation Law and which engage in land trust activities, in order to provide for the management and supervision of lands acquired by the fund, including less than fee interests in land. Any such agreements shall, however, provide that such corporations shall keep the lands under management accessible to the public unless such corporations shall demonstrate to the satisfaction of the Town Board that public access would be detrimental to the lands or to any natural features associated therewith.

§ 14-9. Alienation of land acquired. A. Rights or interests in real property which are acquired with moneys from the fund shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than the purposes permitted by this chapter without the express authority of an act of the State Legislature, which is required to provide for the substitution of other lands having equal environmental and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and which may impose other requirements as well.

B. In addition to an act of the State Legislature, real property acquired with moneys from the fund shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than the purposes permitted by this chapter.

C. This section shall not apply to the sale of development rights by the Town acquired pursuant to this chapter, where said sale is made by a central bank created by the Town and pursuant to a transfer of development rights program established by the Town pursuant to § 261-a of the Town Law. However, said development rights program shall provide: (1) That the lands from which development rights are acquired shall remain preserved in perpetuity via a permanent conservation easement or other instrument that similarly preserves community character as defined in this article.

(2) That the proceeds from any such sale shall be deposited in the fund.

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ARTICLE II Real Estate Transfer Tax [Adopted 8-25-1998 by L.L. No. 14-1998 Editor's Note: This local law was subject to a mandatory referendum and received the affirmative vote of the majority of the qualified electors voting thereon at the annual election held on November 3, 1998. , Editor's Note: This local law provided that it take effect on April 1, 1999, and provided further that the real estate transfer tax thereby imposed shall expire and be deemed repealed as to any conveyance taking place after December 31, 2010. ]

§ 14-10. Purpose. A. The Town of Riverhead is characterized as a rural community with great scenic beauty and an array of natural features which include agricultural lands, woodlands, wetlands, rivers, tidal marshes, freshwater wetlands, open spaces and other natural features. Further, the Town enjoys a rich cultural heritage as one of the oldest colonial settlements in the State of New York.

B. The combination of natural and cultural features has fostered the development of a successful resort development and tourist industry, replacing traditional light industry as the major generator of tax revenue to the town.

C. In order to preserve those natural features aforementioned and to further encourage the development of a regional tourist industry, the Town Board desires, pursuant to § 64-e of the Town Law, to impose a two-percent real estate transfer tax with revenue derived to be dedicated to the community preservation fund for acquisition of interest in real property upon those properties enumerated in the adopted preservation plan. The Town Board finds this chapter will contribute towards the acquisition of important properties we achieving a balance of economic development and conservation of unique natural features.

§ 14-11. Definitions.

As used in this chapter, the following words and terms shall have the meanings indicated:

**CONSIDERATION** — The price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchased money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to. A. In the case of the creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

B. In the case of the creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

C. In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

D. In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

E. In the case of the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

**CONTROLLING INTEREST A.** In the case of a corporation, either 50% or more of the total combined voting power of all classes of stock of such corporation, or 50% or more of the capital, profits or beneficial interest in such voting stock of such corporation.

**B.** In the case of a partnership, association, trust or other entity, 50% or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

**CONVEYANCE** — The transfer or transfers of any interest in real property by any method, including but not limited to sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where the sum of the term of the lease or sublease and any options for renewal exceeds 49 years, substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage, a mortgage subordination agreement, a mortgage severance agreement or an instrument given to perfect or correct a recorded mortgage, or a release of lien of tax pursuant to this chapter or the Internal Revenue Code.

**FUND** — The Riverhead Community Preservation Fund created and established pursuant to § 64-e of the New York Town Law and Article I of this chapter.

**GRANTEE** — The person who obtains real property or an interest therein as a result of a conveyance.

**GRANTOR** — The person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest, an entity with an interest in real property, "grantor" shall mean the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

**INTEREST IN REAL PROPERTY** — Includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

**PERSON** — An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

REAL PROPERTY — Every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the town. It shall not include rights to sepulture.

RECORDING OFFICER — The County Clerk of the County of Suffolk.

TOWN — The Town of Riverhead.

TOWN SUPERVISOR — The Town Supervisor of the Town of Riverhead.

TREASURER (COUNTY TREASURER) — The treasurer of the County of Suffolk.

#### § 14-12. Imposition of tax.

There is hereby imposed in the Town of Riverhead a tax on each conveyance of real property or interest therein where the consideration exceeds \$500, the rate of such tax to be 2% of the consideration for the conveyance. Revenues from such tax shall be deposited in the Community Preservation Fund established pursuant to Article I of this chapter and may be used solely for the purposes of said fund. Such tax shall apply to any conveyance occurring on or after April 1, 1999, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the County Treasurer.

§ 14-13. Payment of tax. A. The real estate transfer tax imposed pursuant to this article shall be paid to the Treasurer, or to the recording officer acting as the agent of the Treasurer upon designation as such agent by the Treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by Article 31 of the New York Tax Law is required to be paid. Such Treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.

B. A return shall be required to be filed with such Treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by Article 31 of the Tax Law. The Treasurer shall prescribe the form of return, the information that it shall contain and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to § 1409 of the Tax Law, except that the Treasurer shall adapt said form to reflect the provisions of this article which are inconsistent with, different from or in addition to the provisions of Article 31 of the Tax Law. The real estate transfer tax returns required to be filed pursuant to this section are required to be preserved for three years and thereafter until such Treasurer or recording officer orders them to be destroyed.

C. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and unless the tax imposed pursuant to this article shall have been paid as provided in this section.

§ 14-14. Liability for tax. A. The real estate transfer tax required hereunder shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article, or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay, such tax shall be the joint and several liability of the grantee and grantor.

B. For the purpose of the proper administration of article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 14-15. Exemptions from tax. A. Exemption for government agencies. The following entities shall be exempt from payment of the real estate transfer tax imposed by this article: (1) The State of New York or any of its agencies, instrumentalities, political subdivisions or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

(2) The United Nations.

(3) The United States of America and any of its agencies or instrumentalities.

B. Exemption for certain conveyances. The real estate transfer tax imposed by this article shall not apply to any of the following conveyances: (1) Conveyances to the United Nations, the United States of America, the State of New York or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

(2) Conveyances which are or were used to secure a debt or other obligation.

(3) Conveyance which, without additional consideration, confirm, correct, modify or supplement a prior conveyance.

(4) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts.

(5) Conveyances given in connection with a tax sale.

(6) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings.

(7) Conveyances which consist of a deed of partition.

(8) Conveyances given pursuant to the Federal Bankruptcy Act.

- (9) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property.
- (10) Conveyances of real property where the entire parcel of real property to be conveyed is the subject of one or more of the following development restrictions: (a) An agricultural, conservation, scenic or other open space easement which entirely prohibits the development of the property or which restricts its use solely to agriculture.
- (b) Recorded covenants or restrictions which prohibit the development of the property.
- (c) A purchase of development rights agreement.
- (d) A transfer of development rights agreement, where the property being conveyed has had its development rights removed.
- (e) Development restrictions which result from the inclusion of the property in an agricultural district or its subjection to an individual commitment, pursuant to Article 25-aa of the New York Agriculture and Markets Law.
- (f) Development restrictions which result from the subjection of the property to a local land preservation agreement, such that the development of the property is entirely prohibited or is restricted solely to agriculture, pursuant to Chapter 44 of the Town Code.
- (11) Conveyances of real property, where the property is viable agricultural land as defined in Subdivision 7 of § 301 of the Agriculture and Markets Law and the entire property to be conveyed is to be made subject to one of the development restrictions set forth in the preceding Subsection B(10), provided that said development restrictions are evidenced by an easement, agreement or other suitable instrument which is conveyed to the Town simultaneously with the conveyance of the real property.
- (12) Conveyances of real property for open space, parks or historic preservation purposes to any not-for-profit tax-exempt corporation operated for conservation, environmental or historic preservation purposes.

§ 14-16. Additional exemptions. A. There shall be allowed an exemption of \$150,000 on the consideration of the conveyance of improved real property or an interest therein.

B. There shall be allowed an exemption of \$75,000 on the consideration of the conveyance of unimproved real property or an interest therein.

§ 14-17. Credit for prior tax paid.

A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent that tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such

date) and the denominator of which is the total value of the consideration used to compute such tax paid.

§ 14-18. Cooperative housing corporation transfers. A. Notwithstanding the definition of "controlling interest" contained in § 14-11 hereof or anything to the contrary found in the definition of "conveyance" contained in said section, the tax imposed pursuant to this article shall apply to the following: (1) The original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor.

(2) The subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in Subsection A(1) above, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in Subsection A(1) and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax on a conveyance described in Subsection A(1) below zero, nor shall any such credit be allowed for a tax paid more than 24 months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in Subsection A(1).

B. Every cooperative housing corporation shall be required to file an information return with the County Treasurer by July 15 of each year covering the preceding period of January 1 through June 30 and by January 15 of each year covering the preceding period of July 1 through December 31. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the Treasurer may deem necessary, including but not limited to the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

§ 14-19. Designation of agent by County Treasurer.

The County Treasurer is authorized by law to designate the recording officer to act as his agent for the purpose of collecting the tax imposed by this article. The Treasurer shall provide for the manner in which such person may be designated as his agent subject to such terms and conditions as he shall prescribe. The real estate transfer tax shall be paid to such agent as provided in § 14-13 hereof.

§ 14-20. Liability of recording officer.

A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to article that he shall collect so long as he shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him by the person paying the tax.

§ 14-21. Refunds.

Whenever the Treasurer shall determine that any moneys received under the provisions of this article were paid in error, he may cause such money to be refunded pursuant to such rules and regulations as he may prescribe, provided that any application for such refund is filed with the Treasurer within two years from the date the erroneous payment was made.

§ 14-22. Deposit and disposition of revenue. A. All taxes, penalties and interest imposed by the Town under the authority of this article, which are collected by the Treasurer or his agents, shall be deposited in a single trust fund for the Town and shall be kept in trust and separate and apart from all other moneys in possession of the Treasurer. Moneys in such fund shall be deposited and secured in the manner provided by § 10 of the General Municipal Law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in § 11 of the General Municipal Law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

B. The Treasurer shall retain such amount as he may determine to be necessary for refunds with respect to the tax imposed by the Town under the authority of this article, out of which the Treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

C. The Treasurer, after reserving such funds, shall on or before the 12th day of each month pay to the Town Supervisor the taxes, penalties and interest imposed by the Town under the authority of this article, collected by the Treasurer pursuant to this article during the preceding calendar month. The amount so payable shall be certified to the Town Supervisor by the Treasurer, who shall not be held liable for any inaccuracy in such certification. However, any such certification may be based on such information as may be available to the Treasurer at the time such certification must be made under this section.

D. Where the amount so paid over to the Town in any such distribution is more or less than the amount due to the town, the amount of the overpayment or underpayment shall be certified to the Town Supervisor by the Treasurer, who shall not be held liable for any

inaccuracy in such certification. The amount of the underpayment or overpayment shall be so certified to the Town Supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible, and subsequent payments and distributions by the Treasurer to such Town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the Treasurer and Town Supervisor shall consider reasonable in view of the underpayment or overpayment and all other facts and circumstances.

E. All moneys received from the Treasurer by the Town Supervisor shall be deposited in the Community Preservation Fund established pursuant to Article I of this chapter.

§ 14-23. Judicial review. A. Any final determination of the amount of any tax payable under this article shall be reviewable for error, illegality or unconstitutionality, or any other reason whatsoever, by a proceeding under Article 78 of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within four months after the giving of the notice of such final determination provided, however, that any such proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless: (1) The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by this chapter, shall be first deposited and there is filled an undertaking, issued by a surety company authorized to transact business in New York State and approved by the State Superintendent of Insurance as to solvency and responsibility, in such amount as a Justice of the Supreme Court shall approve, to the effect that, if such proceeding shall be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or (2) At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against him in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

B. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected, and application for the refund or revision thereof duly made to the Treasurer, and such Treasurer shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that: (1) Such proceeding is instituted within four months after the giving of the notice of such denial; (2) A final determination of tax due was not previously made; and (3) An undertaking is filed with the Treasurer, in such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that, if such proceeding is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 14-24. Apportionment of consideration subject to tax for property located only partly within town. A. Where real property is situated partly within and partly without the boundaries of the town, the consideration subject to tax is such part of the total consideration as is attributable to the portion of such real property situated within the Town or to the interest in such portion. If the consideration attributable to the property located in the Town is set forth in the contract, such amount may be used to compute the tax due.

B. If the contract does not set forth the amount of consideration attributable to the portion of real property or interest therein situated within the town, the consideration shall be reasonably allocated between the portion of such property or interest therein situated within the Town and the portion of such property or interest therein situated without the town. If the grantor and the grantee enter into a written agreement, signed by both the grantor and the grantee, which sets forth a reasonable allocation of consideration, that allocation of consideration may be used to compute the tax due. If the grantor and the grantee do not enter into such an agreement, or if the allocation of consideration set forth in such agreement is deemed unreasonable by the Treasurer, the allocation of consideration must be computed by multiplying the amount of consideration by a fraction, the numerator of which is the market value of the real property or interest therein situated within the town, and the denominator of which is the total fair market value of all the real property or interest therein being conveyed. Except in the case of a transfer or acquisition of a controlling interest where consideration means fair market value of the real property or interest therein, the tax shall be computed on the allocated portion of the actual consideration paid, even if that amount is greater or less than the fair market value as determined by appraisal.

C. Where the methods provided under this section do not allocate the consideration in a fair and equitable manner, the Treasurer may require the grantor and grantee to allocate the consideration under such method as he prescribes, so long as the prescribed method results in fair and equitable allocation.

§ 14-25. Determination of tax; petition to Town Supervisor. A. If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the Treasurer from such records or information as may be obtainable, including the assessed valuation of the real property or interest therein and other appropriate factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within 90 days after the giving of notice of such determination, shall petition the Town Supervisor for a hearing, or unless the Treasurer, on the Treasurer's own motion, shall redetermine the same. The Town Supervisor may designate, in writing, a hearing officer to hear such an appeal, which hearing officer shall file a written report and recommendation with the Town Supervisor. In any case before the Town Supervisor under this article, the burden of proof shall be on the petitioner. After such hearing, the Town Supervisor shall give notice of the determination to the person against whom the tax is assessed and to the Treasurer. Such determination may be reviewed in accordance with the provisions of § 14-23 of this article. A proceeding for judicial review shall not be instituted unless: (1) The amount of

any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposit with the Treasurer and there shall be filed with the Treasurer an undertaking, issued by a surety company authorized to transact business in New York State and approved by the State Superintendent of Insurance as to solvency and responsibility, in such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that, if such proceeding shall be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding; or (2) At the option of the petitioner, such undertaking filed with the Treasurer may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision, plus the costs and charges which may accrue against him in the prosecution of the proceeding; in which event, the petitioner shall not be required to deposit such taxes, penalties and interest as a condition precedent to the commencement of the proceeding.

B. A person liable for the tax imposed by this article (whether or not a determination assessing a tax pursuant to Subsection A hereof has been made) shall be entitled to have the tax due finally and irrevocably fixed prior to the ninety-day period referred to in Subsection A by filing with the Treasurer a signed statement consenting thereto, in writing and in such form as the Treasurer shall prescribe.

C. The remedies provided by this section and § 14-23 of this article shall be the exclusive remedies available to any person for the review of tax liability imposed by this article.

§ 14-26. Proceedings to recover tax due. A. Whenever any person shall to pay any tax, penalty or interest imposed by this article, the Town Attorney shall, upon the request of the Treasurer, bring or cause to be brought an action to enforce the payment of the same on behalf of the town, in any court of the State of New York or of any other state or of the United States.

B. As an additional and alternative remedy, the Treasurer may issue a warrant, directed to the Sheriff of Suffolk County, commanding him to levy upon and sell any real and personal property of a grantor or grantee liable for the tax which may be found within the county, for payment of the amount thereof, with any penalty and interest and the cost of executing the warrant, and to return such warrant to the Treasurer and the money collected by virtue thereof within 60 days after the receipt of the warrant. The Sheriff shall, within five days after the receipt of the warrant, file with the Clerk a copy thereof, and thereupon such Clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalty and interest for which the warrant is issued. Such lien shall not apply to personal property unless such warrant is filed with the Department of State. The Sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgment of a court of record; and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the Treasurer, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the county; and in the execution thereof, such officer or employee shall have all the powers conferred by law upon sheriffs but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the Treasurer shall

have the same remedies to enforce the amount due thereunder as if the County of Suffolk had recovered the judgment therefor.

§ 14-27. Interest and civil penalties. A. Any grantor or grantee failing to file a return or to pay any tax within the time required by this article shall be subject to a penalty of 10% of the amount of the tax due plus an interest penalty of 2% of such amount, for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due; such interest penalty shall not exceed 25% in the aggregate. If the Treasurer determines that such failure or delay was due to reasonable cause and not due to willful neglect, the Treasurer shall remit, abate or waive all of such penalty and interest penalty.

B. If any amount of tax is not paid on or before the last date prescribed in § 14-13 hereof for payment, interest on such amount at the rate of 10% per month shall be paid for the period from such last date to the date paid.

C. The penalties and interest provided for in this section shall be paid to the Treasurer and shall be determined, assessed, collected and distributed in the same manner as the tax imposed by this article, and any reference to tax in this article shall be deemed to include the penalties and interest imposed in this section.

§ 14-28. Confidentiality of transfer tax returns. A. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the town, or any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under this article. However, nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for the purposes of this section.

B. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Town in any action or proceeding involving the collection of a tax due under this article to which the Town or an officer or employee of the Town is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding; in any of which events the court may require the production of and may admit in evidence so much of said returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

C. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance, or to the duly authorized representative of such grantor or grantee, of a certified copy of any return filed in connection with such instrument; or to prohibit the publication of statistics so classified as to prevent the identification of particular returns or the items thereof or to prohibit the inspection by the legal representatives of the Town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

D. Any officer or employee of the Town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in the state for a period of five years thereafter.

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ARTICLE IIA Real Estate Transfer Tax Rules and Regulations [Adopted 3-29-1999]  
§ 14-28.1. Definitions.

As used in this article, unless otherwise expressly stated, the terms set forth in this section are defined as follows: **CONSIDERATION** — The price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to. A. In the case of the creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.

B. In the case of the creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew, less the value of the remaining prime lease rental payments required to be made.

C. In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

Example: An individual purchased 50% of the stock of the ABC Corporation which owned real property with a fair market value of \$300,000. The transfer tax on this conveyance of an interest in real property would be computed based upon consideration of \$150,000 (\$300,000 x 50%).

D. In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

Example: A leases real property to B for a term of 20 years. The lease does not contain any option to purchase the real property. In year five of the lease, B assigns its leasehold interest to C for \$100,000. C owes transfer tax on the assignment. The tax is computed on consideration of \$100,000.

E. In the case of the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

F. When a grantor agrees to extend the closing date of the contract in return for an additional sum of money, the additional sum of money is included as consideration unless the following criteria are met: (1) The agreement between the grantor and grantee must state that the payment is for the time delay.

(2) The amount of money must be reasonable for the length of delay.

**CONTROLLING INTEREST A.** In the case of a corporation, either 50% or more of the total combined voting power of all classes of stock of such corporation, or 50% or more of the capital, profits or beneficial interest in such voting stock of such corporation.

**B.** In the case of a partnership, association, trust or other entity, 50% or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

**CONVEYANCE** — The transfer or transfers of any interest in real property by any method, including, but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where the sum of the term of the lease or sublease and any options for renewal exceeds 49 years, substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee and the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation,

assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement or an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this article or the Internal Revenue Code. Notwithstanding the foregoing, conveyance of real property does not include a conveyance pursuant to devise, bequest or inheritance.

**FAIR MARKET VALUE** — The amount that a willing buyer would pay a willing seller for real property. It is generally determined by an appraisal based upon the value of the real property at the time of conveyance. It is not net fair market value, which is fair market value less the amount of any mortgages on the property.

**FUND** — The Riverhead Community Preservation Fund created and established pursuant to § 64-e of the New York Town Law and Article I of this chapter.

**GRANTEE** — The person who obtains real property or an interest therein as a result of a conveyance.

**GRANTOR** — The person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" shall mean the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

**IMPROVED REAL PROPERTY** — A lot improved with a principal building or a principal use. Pursuant to the Property Type Classification Code, promulgated by the New York State Office of Real Property Services, all lots included within the 100, 200, 400, 500, 600, 700, 800 and 900 categories within said classification system shall be defined as "improved" for the purposes of this article. To be considered "improved" pursuant to this article, a principal building shall be habitable. It shall be presumed that the category for a particular lot shall be as shown on the most recent tax roll approved by the town.

**INTEREST IN REAL PROPERTY** — Includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

**PERSON** — An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals and any other form of unincorporated enterprise owned or conducted by two or more persons.

**REAL PROPERTY** — Every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and

other improvements thereon, which are located in whole or in part within the town. It shall not include rights to sepulture.

RECORDING OFFICER — The County Clerk of the County of Suffolk.

TOWN — The Town of Riverhead.

TOWN SUPERVISOR — The Town Supervisor of the Town of Riverhead.

TREASURER (COUNTY TREASURER) — The Treasurer of the County of Suffolk.

UNIMPROVED REAL PROPERTY — A lot with no principal building or use. Pursuant to the Property Type Classification Code, promulgated by the New York State office of Real property Services, all lots included within the 300 category within said classification system shall be defined as "unimproved" for the purposes of this article. It shall be presumed that the category for a particular lot shall be as shown on the most recent tax roll approved by the town.

#### § 14-28.2. Imposition of tax.

The real estate transfer tax is imposed on each conveyance of real property or interest therein, including the conveyance of shares in a cooperative housing corporation, when the consideration exceeds \$500. The rate of tax is 2% of such consideration or value.

§ 14-28.3. Liability for tax. A. The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to Article 31-D of the Tax Law of the State of New York and Local Law No. 14 of 1998, or if the grantee is exempt from such tax, the grantor will have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay, the tax is the joint and several liability of the grantee and grantor.

B. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 14-28.4. Grandfathered conveyances. A. A conveyance of real property occurring on or after April 1, 1999, is subject to the tax imposed pursuant to Article 31-D of the Tax Law and Local Law No. 14 of 1998 and described in § 14-28.2 of this article, unless the conveyance was made pursuant to a binding written contract entered into before April 1, 1999. The date of execution of the contract must be confirmed by independent evidence, such as the recording of the contract, payment of a deposit, a notarized contract or

evidence that the taxpayer has engaged in other actions such as seeking a zoning approval or obtaining an environmental impact statement, or such other facts and circumstances as may be determined by the Treasurer.

B. Where a contract for the conveyance of real property was entered into before April 1, 1999, and is later amended, the conveyance is still considered to be made pursuant to a contract entered into before April 1, 1999, so long as the amendment to the contract is of a nonsubstantial nature. The determination of what constitutes a nonsubstantial change will be made on a case-by-case basis. However, any change in the amount of consideration for the real property will be considered a substantial change to the contract and, thus, such conveyance is taxable.

C. Where the closing date provided for in a grandfathered contract is postponed, with additional payments by the grantee, the conveyance will be considered to be made pursuant to a contract entered into before April 1, 1999, if it is shown that the additional payments do not constitute additional consideration. (See Subsection F of the definition of "consideration" in § 14-28.1). (1) Example 1: A, the owner of real property, executed a binding written contract on February 1, 1999, to lease the property with an option to purchase to B for \$1,000 a month for 10 years. B paid \$1,000 as a deposit on the lease on that date. The final closing of the transaction occurred on July 10, 1999. The creation of the lease with the option to purchase is a grandfathered conveyance which is not subject to tax since it was made pursuant to a binding written contract entered into before April 1, 1999, and the date of the execution of the contract was confirmed by independent evidence (payment of the deposit by B).

(2) Example 2: Assume the same facts as in Subsection C(1), Example 1, except that on May 1, 1999, the contract was amended to provide that B would pay \$500 semimonthly instead of \$1,000 monthly. This amendment is considered to be of a nonsubstantial nature and, therefore, the conveyance is still considered to be a grandfathered conveyance not subject to tax.

(3) Example 3: Assume the same facts as in Subsection C(1), Example 1, except that on June 11, 1999, the contract was amended to provide that B would pay \$1,200 each month instead of \$1,000. This is a change in the amount of consideration for an interest in the real property. Therefore, the conveyance is subject to tax since it no longer qualifies as a grandfathered conveyance.

§ 14-28.5. Controlling interest. A. In the case of a corporation which has an interest in real property, the transfer or acquisition of a controlling interest in the corporation, as defined in § 14-28.1, occurs when a person, or group of persons acting in concert, transfers or acquires a total of 50% or more of the voting stock in such corporation. In the case of a partnership, association, trust or other entity having an interest in real property, the transfer or acquisition occurs when a person, or group of persons acting in concert, transfers or acquires a total of 50% or more of the capital, profits or beneficial interest in such entity.

B. Acting in concert. (1) Persons are acting in concert when they have a relationship such that one person influences or controls the actions of another. For example, if a parent corporation and a wholly owned subsidiary each sells or purchases a twenty-five-percent

interest in an entity, the two corporations will be considered to have acted in concert to transfer or acquire a controlling interest (i.e., 50%) in the entity.

(2) Where the individuals or entities are not commonly controlled or owned, persons will be treated as acting in concert when the unity with which the sellers or purchasers have negotiated and will consummate the transfer of ownership interests indicates that they are acting as a single entity. If the transfers or acquisitions are completely independent, each grantor selling or grantee buying without regard to the identity of the other grantors or grantees, then the transfers or acquisitions will be treated as separate transfers or acquisitions. The grantors or grantees may be required to provide a sworn statement that their transfers or acquisitions are independent of each other. Factors that will indicate whether persons are acting in concert include the following: (a) The transfers or acquisitions are closely related in time.

(b) There are few grantors or grantees.

(c) The contracts of sale contain mutual terms.

(d) The grantors or grantees have entered into an agreement in addition to the sales contract binding themselves to a course of action with respect to the transfer or acquisition.

(3) Example 1: A owns 100% of X corporation, the only asset of which is real property. B, C, D and E, as a group, negotiate to buy all of A's interest, with B, C, D and E each buying 25% of A's interest. The contracts of B, C, D and E are identical and the purchases are to occur simultaneously. B, C, D and E have also negotiated an agreement binding themselves to a course of action with respect to the acquisition of X corporation and the terms of a shareholders agreement which would govern their relationship as owners of X corporation. The acquisitions by B, C, D and E would be treated as a single acquisition which is subject to the real estate transfer tax.

(4) Example 2: Corporation X has 2 stockholders. Individual A owns 90 shares of stock (90%) and individual B owns 10 shares of stock (10%). Corporation X owns 60% of the stock of corporation Y, which owns real property. Individual A, by virtue of owning 90% of the stock of corporation X, has a fifty-four-percent interest in corporation Y (ninety-percent interest in corporation X multiplied by the sixty-percent interest corporation X has in corporation Y equals the fifty-four-percent interest individual A has in corporation Y.) Individual A sells his 90 shares of stock in corporation X to individual G. Individual A, by selling his 90 shares of corporation X stock, has transferred a controlling interest (54%) in an entity that owns real property (corporation Y), which transfer is subject to the real estate transfer tax. The consideration used to determine the transfer tax due would be equal to fifty-four-percent of the fair market value of the real property owned by corporation Y.

(5) Example 3: Assume the same facts as in Subsection B(4), Example 3, except that corporation X owns 50% of the stock of corporation Y. Since A has not transferred, nor has G acquired, a controlling interest in corporation Y ( $90\% \times 50\% = 45\%$ ), the tax would not apply. If, however, corporation X had transferred its fifty-percent interest in corporation Y, the transfer would be subject to tax.

(6) Example 4: Corporation X is a publicly held corporation, the stock of which is owned by many unrelated shareholders. X owns an interest in real property. D, E, F and G, pursuant to a plan to gain control of X, make a tender offer of \$100 per share to the

public shareholders to acquire such control. As a result of the tender offer, D, E, F and G acquire, in total, 80% of the stock of X, with each getting 20%. D, E, F and G would be treated as acting in concert to acquire a controlling interest, and the tax would apply to this transaction as an acquisition of a controlling interest.

C. For purposes of determining whether a controlling interest is transferred or acquired, only transfers or acquisitions of interest occurring on or after April 1, 1999, are added together. A transfer or acquisition made on or after April 1, 1999, does not have to be included, for purposes of determining whether a controlling interest is transferred or acquired, if the transfer or acquisition is made pursuant to a binding written contract which was entered into before April 1, 1999, the date of which is confirmed by independent evidence such as the recording of a contract, payment of a deposit or other facts and circumstances as determined by the Treasurer. (See § 14-28.4.)

D. Where there is a transfer or acquisition of an interest in an entity that has an interest in real property, on or after April 1, 1999, and subsequently there is a transfer or acquisition of an additional interest or interests in the same entity, the transfers or acquisitions will be added together to determine if a transfer or acquisition of a controlling interest has occurred. Where there is a transfer or acquisition of a controlling interest in an entity on or after April 1, 1999, and the real estate transfer tax is paid on that transfer or acquisition and there is a subsequent transfer or acquisition of an additional interest in the same entity, it is considered that a second transfer or acquisition of a controlling interest has occurred, which is subject to the real estate transfer tax. No transfer or acquisition of an interest in an entity that has an interest in real property will be added to another transfer or acquisition of an interest in the same entity if they occur more than three years apart, unless the transfers or acquisitions were so timed as part of a plan to avoid the real estate transfer tax. An example of this would be if a shareholder acquired 40% of the stock in a corporation and simultaneously contracted for the purchase of 20% in three years and one day.

E. The tax is imposed only once when there is both a transfer and an acquisition of a controlling interest in the same conveyance.

§ 14-28.6. Leases and subleases. A. Creation of a taxable lease or sublease not coupled with an option to purchase. The creation of a lease or sublease is a conveyance subject to tax only where: (1) The sum of the term of the lease or sublease and any options for renewal exceeds 49 years; and

(2) Substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee; and

(3) The lease or sublease is for substantially all of the premises constituting the real property. "Substantially all" means 90% or more of the total rentable space of the premises, exclusive of common areas. For the purpose of determining whether a lease or sublease is for substantially all of the premises constituting the real property, premises shall include, but not be limited to, the following: (a) An individual building, except for space which constitutes an individual condominium or cooperative unit.

(b) An individual condominium or cooperative unit.

(c) Where a lease or sublease is of vacant land only, any portion of such vacant land.

B. Consideration in the case of the creation of a taxable lease or sublease. (1) In the case of the creation of a lease which constitutes a conveyance subject to tax, the consideration used to compute the tax is the present value of the right to receive rental payments or other payments attributable to the use and occupancy of the real property. Such consideration also includes the present value of rental or other payments attributable to any renewal term. In the case of the creation of a taxable sublease, the consideration is computed in the same manner as in the creation of a taxable lease, except that the value of the remaining prime lease rental payments must be subtracted.

(2) A discount rate equal to 110% of the federal long-term rate compounded semiannually, which is determined pursuant to Section 1274(d) of the United States Internal Revenue Code, is required to be used in determining the present value of such payments which constitute consideration in the case of the creation of a taxable lease or sublease. Such federal long-term rate in effect 30 days prior to the date of transfer shall be used when computing such discount rate. If the taxpayer establishes that a discount rate which is greater than 110% of the federal long-term rate is appropriate in his or her particular circumstances and that using a discount rate equal to 110% of the federal long-term rate results in the computation of consideration which exceeds the fair market value of the real property subject to the lease or sublease then, the Department will allow the use of a discount rate that results in a computation of consideration that is equal to the fair market value of such real property. The discount rate is applied to net rents. "Net rents" means the amount by which gross rents exceed the lessor's or sublessee's operating costs. Such operating costs include amounts paid for heat and gas, electricity, furnishings, insurance, maintenance, management and real estate taxes.

(3) When net rents are tied to unknown factors, a reasonable estimate thereof must be made by the taxpayer. Such estimate shall reflect the probability that an amount of income will be received or expense incurred, as well as the factors affecting the range on contingent amounts.

(4) Operating expenses paid directly to third parties by the lessee or sublessee, for example, under a net lease, are not included in gross rents, nor are they deductible as operating costs.

(5) If the lease specifies that the lessor will pay a fixed amount of operating expenses, the lessor may deduct such amount from gross rents in computing net rents. If there is no itemization of the operating costs paid by the lessor and, according to the terms of the lease, the lessor must pay such costs, the lessor may make a reasonable estimate of such costs in accordance with Subsection B(3) of this section. If the lessor pays one or more of the following operating costs and there is no itemization in the lease for such costs and no reasonable estimate is made, then the following percentages of gross rentals will be presumed attributable to the following costs:

Operating Costs	Percentage of Gross Rentals
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Heat and gas	
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15%

Electricity

5%

Furnishings

5%

All of the above

25%

(6) Example 1: (a) A, as lessor, creates a lease with B as lessee. The lease is for a term of 60 years and covers an entire office building owned by A. The terms of the lease allow B to make substantial capital improvements to the building. The gross rents to be received by A over the term of the lease total \$5,000,000. Operating costs are estimated to be \$2,000,000. Net rents total \$3,000,000 (gross rents of \$5,000,000 less operating costs of \$2,000,000 paid by A). The present value of net rents is \$550,000.

(b) Since all three conditions set forth in Subsection A of this section are met, the creation of the lease constitutes a conveyance subject to tax. The taxable consideration is \$550,000, the present value of the net rents. The total tax due, at the rate of \$2 for each \$500 of consideration, is \$2,200.

(7) Example 2: Assume the same facts as in Subsection B(6), Example 1, except that this lease is for a term of 30 years with no option to renew included. Since the lease is for a term of less than 49 years, the creation of the lease is not a conveyance subject to the transfer tax.

(8) Example 3: Assume the same facts as in Subsection B(6), Example 1, except that the lease created between A and B has a fixed term of 30 years and B is granted an option to renew the lease at the end of the fixed term for another 30 years. This would be treated as the creation of a sixty-year lease and, therefore, would be a taxable conveyance. The consideration used to compute the tax includes the present value of the net rental payments to be received during the fixed term and the renewal term.

(9) Example 4: Corporation Z owns a ten-story building. Corporation Z creates a sixty-year lease with corporation Y as tenant, such lease covering five floors of the building (50% of the premises). Since the lease covers less than 90% of the rentable space of the premises, the creation of the lease is not a conveyance subject to the transfer tax.

C. Creation of a lease for less than 49 years coupled with the granting of an option to purchase. (1) An option to purchase real property is an interest in real property. Where an option to purchase real property is coupled with the granting of the right to use and occupancy of the real property, a conveyance subject to the transfer tax has occurred.

Therefore, the creation of a lease coupled with the granting of an option to purchase the real property, regardless of the term of the lease, is a conveyance subject to the transfer tax.

(2) In the case of the creation of a lease for less than 49 years, coupled with the granting of an option to purchase, the consideration is the present value of the net rental payments under the lease plus the consideration paid for the granting of the option to purchase. Rental payments for periods that occur after the last date that the property may be purchased, if the option is exercised, are not included in the calculation of the present value of the rental payments.

(3) Example: A, as lessor, creates a lease of a building with B as lessee. The term of the lease is 20 years. The lease contains an option to purchase the building which is exercisable through the 10th year of the lease. If the option is exercised, the lease provides that the property will be transferred to B not later than six months after the option is exercised. B paid \$10,000 specifically for the granting of the option. Since this is the granting of an option with use and occupancy, the transaction is subject to the transfer tax. The consideration used to compute the tax would be the present value of the net rental payments to be received from the effective date of the lease through the expiration of the first 10 years and six months of the lease, which is the period during which the property may be purchased pursuant to the option to purchase, plus the \$10,000 paid for the granting of the option.

D. Assignments and surrenders of leases, options and contracts. (1) An interest in real property includes a leasehold interest or an option or contract to purchase real property. Therefore, the transfer of a leasehold interest, regardless of the term, or the transfer of an option or contract to purchase real property, by assignment or surrender, is a conveyance subject to tax.

(2) The consideration in the case of an assignment of a leasehold interest or an option or contract to purchase real property is the amount paid for the assignment by the assignee to the assignor, i.e., the lessee under the lease or the person who is assigning his rights to purchase the property under the option or contract. The consideration in the case of a surrender of a leasehold interest or option or contract to purchase real property is the amount paid for the surrender by the lessor to the lessee or by the owner of the real property to the person who is surrendering his rights to purchase the property under the option or contract. However, no tax will be imposed in the case of an assignment of a leasehold interest or an option or contract to purchase real property if the assignor pays consideration to the assignee to accept the assignment. Further, no tax will be imposed in the case of a surrender of a leasehold interest or an option or contract to purchase real property if the lessee or the person who is surrendering his rights to purchase the property under the option or contract pays consideration to the lessor or owner of the real property to accept the surrender.

(3) Example 1: A, a lessee under a thirty-year lease, enters into an agreement to assign the leasehold interest to B, who will replace A as tenant under the lease. B agrees to pay A \$500,000 for the leasehold interest. The assignment of A's leasehold interest to B is subject to tax.

(4) Example 2: X is the owner of a building which is leased to Z under a twenty-year lease which has 10 years remaining under the terms of the lease. X wishes to cancel the

lease before it expires and, therefore, enters into an agreement with Z whereby X will pay Z \$400,000 to surrender the lease. The surrender of the leasehold interest by Z is subject to tax.

(5) Example 3: Assume the same facts as in Subsection D(4) Example 2, except that Z is the party motivating the cancellation of the lease and, therefore, Z agrees to pay X to accept the surrender of the lease. No tax would be due since Z, the grantor, is not receiving consideration for the conveyance.

(6) Example 4: A is the purchaser/contract vendee under a contract to purchase real property. A agrees to assign all rights under the contract, including the right to use and occupancy of the property, to B for \$100,000. The assignment of the contract is subject to tax.

§ 14-28.7. Cooperative housing corporation transfers. A. Notwithstanding the definition of a "controlling interest" contained in § 14-28.1 of this article, or anything to the contrary contained in § 14-28.1. of this article, the real estate transfer tax applies to: (1) The original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative housing corporation or cooperative plan sponsor; and (2) The subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof.

B. Transfers of shares in a cooperative housing corporation pursuant to contracts dated before April 1, 1999. Transfers of cooperative shares pursuant to a binding written contract (e.g., a written agreement to purchase shares) entered into before April 1, 1999, are not subject to tax. The fact that the real property (the building containing the cooperative units) was transferred before April 1, 1999, or that the contract to transfer such property was entered into prior to such date is irrelevant for purposes of determining if the transfer of shares in a cooperative corporation is subject to tax. Also, the transfer of the real property to the cooperative housing corporation is subject to tax whether or not the transfer occurred pursuant to a binding written contract entered into on or before April 1, 1999.

Example: The sponsor of a cooperative housing corporation transferred a building containing 10 apartments to the cooperative corporation on January 30, 1999, and took back 100 shares of cooperative stock (the unsold shares as of the date of transfer to the cooperative housing corporation). As of February 1, 1999, the sponsor had entered into subscription agreements for 50 shares in connection with the granting of proprietary leases to five apartments. On May 1, 1999, the sponsor entered into subscription agreements for the remaining 50 shares. However, the 100 shares were not transferred until July 3, 1999. The 50 shares transferred pursuant to the subscription agreements entered into as of February 1, 1999, would not be subject to tax. The 50 shares transferred pursuant to subscription agreements entered into on May 1, 1999, are subject to tax.

C. Credit for tax previously paid. (1) In the case of conveyances described in Subsection A(1) of this section, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not change in the beneficial ownership of such property.

(2) The amount of the credit is determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property and then multiplying the result by a fraction, the numerator of which is the number of shares of stock conveyed in a transaction described in Subsection A(1) of this section and the denominator of which is the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation).

(3) The credit will not reduce the tax below zero. The credit will not be allowed for a tax paid more than 24 months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares as described in Subsection A(1) of this section.

Example: The A/B partnership, as sponsor, conveyed a building containing 10 apartments to cooperative housing corporation C in exchange for the unsold shares of stock of C and paid a real estate transfer tax of \$5,000. Each of the 10 apartments in the building is allocated five shares of C's stock and, on the date of the conveyance of the building to C, the partnership sold shares of stock relative to two of the apartments (10 shares) which were transferred directly from C to the unit purchasers, and the partnership took back the remaining 40 unsold shares. The transfer of the building to C is considered to constitute a 100% mere change of identity with no change in beneficial interest, since the 10 shares sold are considered to be first taken back by the partnership and then sold to the unit purchasers. Therefore, the credit available when the partnership sells its share of C is \$5,000 (100% x \$5,000.).

D. Information return. Every cooperative housing corporation must file an information return with the Treasurer by July 15 of each year covering the preceding period of January 1 through June 30 and by January 15 of each year covering the preceding period of July 1 through December 31. The first information return is due by January 15, 2000, for the period of April 1, 1999, to December 31, 1999. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the Treasurer may deem necessary, including, but not limited to, the names, addresses and employer identification numbers or social security numbers of the grantor and grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

§ 14-28.8. Exemptions and nontaxable transactions. A. The following shall be exempt from the payment of the real estate transfer tax: (1) The State of New York or any of its agencies, instrumentalities, political subdivisions or public corporations (including a public corporation created pursuant to an agreement or compact with another state or Dominion of Canada).

(2) The United Nations, the United States of America or any of its agencies or instrumentalities.

B. The tax shall not apply to any of the following conveyances: (1) Conveyances to the United Nations, the United States of America, the State of New York or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).

(2) Conveyances which are or were used to secure a debt or other obligation.

(3) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded.

(4) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts.

(5) Conveyances given in connection with a tax sale.

(6) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings.

(7) Conveyances which consist of a deed of partition.

(8) Conveyances given pursuant to the Federal Bankruptcy Act.

(9) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property.

(10) Conveyances of real property where the entire parcel of real property to be conveyed is the subject of one or more of the following development restrictions conveyed to the State of New York, a town, a village, a county or a not-for-profit tax exempt organization operated for conservation, environmental or historic preservation purposes and where the Town Attorney or other official designated by the Town Board has determined that the restrictions imposed prohibit the use of the property for any purpose except agriculture, recreation or conservation in order to comply with this subsection: (a) An agricultural, conservation, scenic or open space easement.

(b) Covenants or restrictions prohibiting development.

(c) A purchase of development rights agreement.

(d) A transfer of development rights agreement, where the property being conveyed has had its development rights removed.

(e) Said real property is subject to the development restriction of an agricultural district or individual commitment, pursuant to Article 25-AA of the Agriculture and Markets Law.

(f) Real property subject to any town-adopted land preservation agreement.

(11) Conveyances of real property where the property is viable agricultural land as defined in Subdivision 7 of § 301 of the Agriculture and Markets Law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for in Subsection B(10)(b) of this section provided that said development restriction precludes the conversion of the property to a nonagricultural use for a least three years from the date of transfer, and said development restriction is evidenced by an easement, agreement or other suitable instrument which is to be conveyed to the Town simultaneously with the conveyance of the real property.

(12) Conveyances of real property for open space, parks or historic preservation purposes to any not-for-profit tax-exempt corporation operated for conservation, environmental or historic preservation purposes.

C. An exemption of \$150,000 shall be allowed on the consideration for the conveyance of improved real property or an interest therein, and an exemption of \$75,000 shall be allowed on the consideration for the conveyance of unimproved real property. [Amended 5-4-2004 by L.L. No. 10-2004]

D. Examples. (1) Example 1: A sells 100 acres of farmland to B. Said farmland is subject to a perpetual agricultural easement. This transaction is not taxable under § 14-28.8B(10)(a).

(2) Example 2. A sells his house and a two-acre lot to B. The lot had a one-hundred-foot buffer scenic easement along the street frontage. The transaction is taxable since the easement covers only a portion of and not the entire property.

(3) Example 3. A conveys a fifty-acre parcel located in an agricultural district under Article 25-AA of the Agriculture and Markets Law. The transaction is not subject to tax, under § 14-28.8B(10)(e).

(4) Example 4: A conveys viable agricultural land to B. Said land is fully developable. However, B files a term conservation easement of five years precluding development at the same time as he files the deed for the agricultural land. The transaction is not taxable under § 14-28.8B(11) since a development restriction has been filed which is three years or greater.

(5) Example 5: A conveys a 1,000 acres of land to the Nature Conservancy for open-space purposes. The transaction is not taxable under § 14-28.8B(12).

(6) Example 6: A sells his home to B for \$500,000. Under § 14-28.8C, the first \$150,000 is exempt from consideration. Thus, the tax paid at a rate of 2% of the remaining \$350,000 of consideration is \$7,000. [Amended 5-4-2004 by L.L. No. 10-2004]

(7) Example 7. Assume the same as Subsection D(6), Example 6, except that the consideration is \$150,000. No tax is due since the exemption is the same as the consideration. [Amended 5-4-2004 by L.L. No. 10-2004]

(8) Example 8. A sells his vacant lot to B for \$125,000. The first \$75,000 of consideration is exempt under § 14-28.8C. Thus, the tax paid at a rate of 2% on the remaining \$50,000 of consideration is \$1,000. [Amended 5-4-2004 by L.L. No. 10-2004]

(9) Example 9. Assume the same as Subsection D(8), Example 8, except that the consideration is \$75,000. No tax is due since the exemption is the same as the consideration. [Amended 5-4-2004 by L.L. No. 10-2004]

(10) Example 10. Assume the same as Subsection D(8), Example 8, with consideration of \$125,000, except that the land is improved with a shed and a fence. The transaction is taxable since neither a shed or a fence is a principal building or use.

§ 14-28.9. Mere change of identity.

To the extent that a conveyance effectuates a mere change of identity or form of ownership or organization, and there is no change in beneficial ownership, the real estate transfer tax does not apply. Examples of transactions where the issue of change in beneficial ownership would arise include the following: A. The conveyance by tenants-in-common of their interest in real property to a partnership or a corporation, the partnership or corporation interests being in the same pro rata shares as the tenants-in-common held prior to conveyance. Such conveyance is not taxable as there is no change in beneficial ownership.

B. The conveyance by a corporation to its shareholders who will hold the real property as tenants-in-common in the same pro rata share as they own the corporation. Such conveyance is not taxable as there is no change in beneficial ownership.

C. The conveyance by a corporation to its wholly-owned subsidiary, from a wholly-owned subsidiary to its parent or from one wholly-owned subsidiary to another. Such conveyance is not taxable to the extent that there is no change in beneficial ownership.

D. The conveyance by a person to a partnership in exchange for an interest in the partnership. Such conveyance is not taxable to the extent of the grantor's interest in the partnership.

§ 14-28.10. Examples of taxable and nontaxable conveyances. A. The following are examples of conveyances which are subject to the real estate transfer tax: (1) A conveyance in exchange for other property is taxable. If the other property is real property or an interest therein, the tax will apply to both conveyances.

(2) A conveyance by a defaulting mortgagor or debtor to the mortgagee or lienor, or its agent, nominee or an entity owned in whole by such mortgagee or lienor, in lieu of an action to foreclose a mortgage or lien, is subject to tax. (a) In the case of nonrecourse debt, where the grantee is the mortgagee or lienor, or its agent, nominee or an entity wholly owned by such mortgagee or lienor, and the amount of any other liens or encumbrances as described in Subsection A(2)(a)[2] secures nonrecourse debt only, consideration includes, but is not limited to, the sum of the following: [1] The unpaid balance of the debt secured by the mortgage.

[2] The total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to.

[3] The sum of any other amount paid by the grantee for the real property. This shall not include any state or local transfer taxes paid by the grantee in connection with the conveyance, provided that the grantee has not contractually assumed the liability for the

payment of such taxes or has not released its right to seek recovery of the payment from the grantor.

(b) In the case of recourse debt, where the grantee is the mortgagee or lienor, or its agent, nominee or an entity wholly owned by such mortgagee or lienor, and the amount of any other liens or encumbrances as described in Subsection A(2)(a)[2] secures recourse debt only, consideration includes, but is not limited to, the sum of the amounts described in Subsection A(2)(a)[1] through [3]; provided, however, that where the sum of the amounts described in Subsection A(2)(a)[1] and [2] exceeds the fair market value of the real property as of the date of conveyance, such consideration shall be the fair market value of the real property plus the amount described in Subsection A(2)(a)[3], as the aggregate amount of debt canceled, assumed or taken subject to in connection with the conveyance is limited to the fair market value of the real property. For purposes of this subsection, a debt is recourse debt to the extent that, as of the date of conveyance, the grantor or a person related to the grantor, including any guarantor, bears the economic risk of loss for the debt beyond any loss attributable to the value of the property securing the debt.

(c) Example 1: Bank A made a nonrecourse loan of \$10,000,000 to individual X, secured by a mortgage on New York State real property owned by X. X also provided a personal recourse guaranty of the last \$1,000,000 of the debt; that is, if the value of the mortgaged real property decreased to less than \$10,000,000, X would be obligated to pay the difference between \$10,000,000 and the value of the mortgaged real property to bank A up to a maximum amount of \$1,000,000. X defaulted on the loan. The real property was conveyed to bank A in lieu of foreclosure and, at the time of the conveyance, the real property had a fair market value of \$8,000,000. As a result of the conveyance, the nine-million-dollar nonrecourse component of the loan is discharged. Simultaneously, bank A discharged X from any obligation under the personal guarantee. The consideration for the conveyance consists only of the nine-million-dollar nonrecourse component of the loan that was discharged, as no part of the excess personal obligation of \$1,000,000 can be satisfied by the conveyance of the real property.

(d) Example 2. Assume the same facts as Subsection A(2)(c), Example 1, except that instead of the personal guarantee being on the last \$1,000,000, X guaranteed the first \$1,000,000; i.e., X would be liable for any deficiency only if the mortgaged real property was worth less than \$1,000,000. Since the fair market value of the real property at the time of the conveyance was \$8,000,000, there was no continuing recourse exposure to X, and, therefore, the consideration for the conveyance is equal to \$10,000,000, which was the full amount of the nonrecourse indebtedness discharged as a result of the conveyance of the real property. Debt that was originally nonrecourse and which was converted to recourse debt will be so treated as recourse debt, provided that the conversion to recourse debt and the conveyance of the real property are not, in substance, integrated steps or part of a plan to decrease the consideration for the conveyance so as to decrease the tax for the conveyance.

(3) A conveyance pursuant to a mortgage foreclosure or any other action governed by the provisions of the Real Property Actions and Proceedings Law, such as the enforcement of a mechanic's lien pursuant to Article 3 of the Lien Law, is subject to tax. The consideration is determined as follows: (a) In the case of a nonrecourse debt, where the

grantee is the mortgagee or lienor, or its agent, nominee or an entity wholly owned by such mortgagee or lienor, and the amount of any other continuing liens or encumbrances secures nonrecourse debt only, consideration includes, but is not limited to, the higher of the following: [1] The sum of: [a] The price paid by the grantee (the bid price); and [b] The total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to; or

[2] The sum of: [a] The amount of the judgment of foreclosure; and [b] The total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to; provided, however, that in the case where the amounts described in Subsection A(3)(a)[1] and involve recourse debt only and the higher of such amounts exceeds the fair market value of the real property at the time of the conveyance, then the consideration is equal to the fair market value of the real property as of the date of conveyance, since the aggregate amount of the debt canceled, assumed or taken subject to in connection with the conveyance is limited to the fair market value of the real property.

(b) Where a person unrelated to the mortgagee or the lienor is the grantee, and regardless of whether the debt is recourse or nonrecourse, consideration includes, but is not limited to, the sum of: [1] The amount of the bid price; and [2] The total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to. For the purposes of this subsection and Subsection A(2), (15) and (16), a grantee is related to the mortgagee or lienor to the extent that the mere change of identity or form of ownership exemption would apply to a conveyance by the mortgagee or lienor to the grantee.

(c) Where the grantee is an entity beneficially owned in part by the mortgagee or lienor and a person unrelated to the mortgagee or lienor and the debt held by such mortgagee or lienor is nonrecourse debt and any continuing liens or encumbrances secure nonrecourse debt only, consideration includes, but is not limited to, the sum of Subsection A(3)(c)[1] and as follows: [1] The higher of the sum of the following multiplied by the percentage which represents the mortgagee's or lienor's beneficial ownership interest in the grantee: [a] The bid price; and [b] The total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to; or [c] The amount of the judgment of foreclosure; and [d] The total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to.

[2] The sum of the bid price and the total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness

is assumed or taken subject to, multiplied by the percentage which represents such unrelated person's beneficial ownership interest in the grantee.

(d) Where the grantee is an entity beneficially owned in part by the mortgagee or lienor and in part by a person unrelated to the mortgagee or lienor and the debt held by such mortgagee or lienor is recourse debt and any continuing liens or encumbrances secure recourse debt only, consideration includes, but is not limited to, the sum of Subsection A(3)(c)[1] and [2]; provided, however, that where the higher of the amounts described in Subsection A(3)(c)[1] exceeds the fair market value of the real property multiplied by the percentage which represents the mortgagee's or lienor's beneficial ownership interest in the grantee, then such portion of consideration as described in Subsection A(3)(c)[1] is equal to the fair market value of the real property multiplied by such percentage since the aggregate amount of the debt canceled, assumed or taken subject to in connection with the conveyance, is limited to the fair market value of the real property multiplied by such percentage. (See Subsection A(2)(b) of this section for further information on recourse debt.)

(4) A conveyance to a corporation in exchange for shares of its capital stock is subject to tax to the extent that there is a change in beneficial ownership.

(5) A conveyance by a corporation in liquidation or in dissolution to its shareholders is subject to tax to the extent that there is a change in beneficial ownership.

(6) A conveyance of standing timber and mines is subject to tax.

(7) A conveyance by the United Nations, the United States of America, the State of New York or any of their agencies, instrumentalities or political subdivisions is subject to tax unless the grantee is another of such governmental organizations or entities.

(8) A conveyance by a partner to the partnership as a contribution of partnership assets is subject to tax to the extent that there is a change in beneficial ownership.

(9) A conveyance of a perpetual easement, or an easement for a term of years or part of a year, except for conservation easements exempt under § 14-28.8B(10), is subject to tax.

(10) A conveyance from one spouse to the other, pursuant to the terms of a divorce or separation agreement, is subject to tax. (There is a rebuttable presumption in such case that the consideration for the conveyance, which includes the relinquishment of marital rights, is equal to the fair market value of the interest in the real property conveyed.)

(11) A conveyance to partners upon the termination and liquidation of a partnership is subject to tax to the extent that there is a change in beneficial ownership.

(12) A conveyance by a sponsor to a cooperative housing corporation is subject to tax. (Consideration in such case includes the amount of cash received by the sponsor, the amount of any mortgages, liens or encumbrances on the real property and the fair market value of the shares in the cooperative housing corporation which are transferred to the sponsor.)

(13) A conveyance of real property to an industrial development agency (IDA) by a person who is not the beneficiary of the IDA financing, at the direction of such beneficiary, with such beneficiary subsequently leasing the property from the IDA, is subject to tax. In such a conveyance, the beneficiary of the IDA financing and not the IDA is deemed to be the grantee and therefore, the exemption does not apply.

(14) A conveyance of real property by an IDA to a person who is not the beneficiary of the IDA financing where such conveyance is made at the direction of such beneficiary is subject to tax.

(15) Conveyance of real property upon default by debtor and in the case of recourse debt.

(a) A conveyance of real property pursuant to a secured party's enforcement of a lien, security interest or other rights on or in shares of stock in a cooperative housing corporation and/or associated proprietary lease, upon default by a debtor, is subject to tax. In such a conveyance, the grantor is the defaulted debtor and the grantee is the secured party or its agent, nominee or an entity wholly owned by such secured party who enforces such lien, security interest or other rights on or in such shares and/or associated proprietary lease(s). Consideration, in the case of nonrecourse debt, where the grantee is the secured party, or its agent, nominee or an entity wholly owned by such secured party, includes, but is not limited to, the sum of the following: [1] The unpaid balance of the debt secured by the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s).

[2] The total amount of any other liens, security interests or other obligations remaining on the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s) after the conveyance, whether the underlying indebtedness is assumed or taken subject to.

[3] A pro rata portion of the total amount of any other liens or encumbrances that remain on the real property of the cooperative housing corporation after the conveyance. However, see Subsection E of the definition of "consideration" in § 14-28.1 of this article for information on the treatment of liens or encumbrances on the real property of the cooperative housing corporation.

[4] Any other amount paid by the grantee for the real property. This amount shall not include any state or local transfer taxes paid by the grantee in connection with the conveyance, provided that the grantee has not contractually assumed the liability for the payment of such taxes or has not released its right to seek recovery of the payment from the grantor.

(b) Consideration in the case of recourse debt, where the grantee is the secured party, or its agent, nominee or an entity wholly owned by such secured party, includes, but is not limited to, the sum of the amounts described in Subsection A(15)(a)[1] through [4]; provided however, that where the sum of the amount described in Subsection A(15)(a)[1] and [2] exceeds the fair market value of the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s) as of the date of the conveyance, consideration shall be the fair market value of the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s) being conveyed, plus the amounts described in Subsection A(15)(a)[3] and [4]. (See Subsection A(2)(b) for further information on recourse debt.)

(c) Example 1: A is the owner of 30 shares of stock in a cooperative housing corporation related to a proprietary lease of a commercial unit. The 30 shares represent 5% of the total number of shares in the cooperative housing corporation. The building of the cooperative housing corporation is encumbered by the lien of a mortgage having a current unpaid balance of \$2,500,000. A's 30 shares have a fair market value of \$1,200,000. A pledged its 30 shares to C as security for a loan of \$1,600,000. The debt

owed by A to C is nonrecourse indebtedness. The current unpaid balance of the debt is \$1,740,000, including accrued interest. C is presently enforcing its security interest against A's shares of stock in the cooperative housing corporation. The consideration for the resulting conveyance is computed as follows:

Unpaid balance of debt  
\$1,740,000

Pro-rata portion of mortgage indebtedness

$(\$2,500,000 \times 5\%)$   
+ 125,000

Consideration for conveyance  
\$1,865,000

(d) Example 2. Assume the same facts as in Subsection A(15)(c), Example 1, except that the debt owed from A to C is recourse indebtedness. The fair market value of A's shares of stock in the cooperative housing corporation is less than the sum of the unpaid balance of the debt (\$1,740,000). The consideration for the resulting conveyance is computed as follows:

Fair market value of the

cooperative shares  
\$1,200,000

Pro rata portion of mortgage indebtedness

$(\$2,500,000 \times 5\%)$   
+ 125,000

Consideration for conveyance  
\$1,325,000

(16) A conveyance of real property pursuant to a secured party's enforcement of a lien, security interest or other rights on or in shares of stock, partnership interests or other instruments, upon default by a debtor (i.e., the transfer or acquisition of a controlling interest in an entity with an interest in real property), is subject to tax. In such a conveyance, the grantor is the defaulted debtor and the grantee is the secured party, or its agent, nominee or an entity wholly owned by such secured party who enforces such lien, security interest or other rights on or in such shares, partnership interests or other instruments. The consideration for such conveyances, where the grantee is the secured party, or its agent, nominee or an entity wholly owned by such secured party, regardless of whether the debt is recourse or nonrecourse, is the lesser of the following: (a) The fair market value of the real property as of the date of conveyance multiplied by the percentage in the entity being transferred or acquired; or

(b) The sum which includes, but is not limited to, the following: [1] A reasonable apportionment to the interests in real property owned by the entity of the unpaid balance of the debt secured by the ownership interest in the entity.

[2] A reasonable apportionment to the interests in real property owned by the entity of the amount of any liens, security interests or other obligations remaining on the ownership interest in the entity after the conveyance, whether the underlying indebtedness is assumed or taken subject to.

[3] A reasonable apportionment to the interests in real property owned by the entity of the amount of any liens or encumbrances remaining on the real property of the entity multiplied by the percentage in the entity being transferred or acquired.

[4] A reasonable apportionment to the interests in real property owned by the entity of the amount of any other debt or obligation of the entity multiplied by the percentage in the entity being transferred or acquired.

[5] A reasonable apportionment to the interests in real property owned by the entity of any other amount paid by the grantee for the conveyance. Such amount shall not include any state or local transfer taxes paid by the grantee in connection with the conveyance, provided that the grantee has not contractually assumed the liability for the payment of such taxes or has not released its right to seek recovery of the payment from the grantor.

(c) Example 3: X is the owner of 100% of the voting stock in Y corporation. Y corporation's only asset is a parcel of real property located in Riverhead. The fair market value (FMV) of the real property is \$2,000,000. The real property is encumbered by the lien of a mortgage having a current unpaid balance of \$1,500,000, held by B Bank. X pledged 60% of its Y voting stock to Z as security for a debt of \$400,000. The current unpaid balance of the debt is \$450,000, including accrued interest. Z is presently enforcing its security interest in the voting stock of X. Z's enforcement of its security interest in the voting stock of X results in both a transfer and acquisition of a controlling

interest. The consideration for the conveyance is computed as follows: [1] Computation 1:

Unpaid balance of debt  
\$ 450,000

Pro rata portion of mortgage indebtedness

$(\$1,500,000 \times 60\%)$   
+ 900,000

Total  
\$1,350,000

[2] Computation 2: FMV of real property  $(\$2,000,000 \times 60\%) = \$1,200,000$ .

The amount computed in Subsection A(16)(c)[2] (\$1,200,000) is the consideration for the conveyance, as it is less than the amount computed in Subsection A(16)(c)[1] (\$1,350,000).

(d) Example 4: S is the owner of 100% of the voting stock of K corporation. K corporation's assets consist of a parcel of real property located in New York State and other tangible assets. The fair market value of the parcel of real property is \$2,100,000 and the fair market value of the other assets is \$300,000. The real property is encumbered by the lien of a mortgage having a current unpaid balance of \$700,000. Also, K corporation has other debts totaling \$300,000. S pledged 60% of its voting stock to J as security for a debt of \$500,000. The current unpaid balance of the debt owed to J is \$550,000, including accrued interest. J is presently enforcing its security interest in the voting stock owned by S. J's enforcement of its security interest in the voting stock of S results in both a transfer and an acquisition of a controlling interest. The consideration for the conveyance is computed as follows: [1] Computation 1:

Unpaid balance of debt  
\$ 550,000

Part of mortgage indebtedness includable in amount to be apportioned

$(\$700,000 \times 60\%)$   
420,000

Part of other debt of entity includable in amount to be apportioned

$(300,000 \times 60\%)$   
+ 180,000

Amount to be apportioned  
\$1,150,000

Reasonable apportionment based on the fair market value of assets owned by K corporation:

$\$1,150,000 \times (\$2,100,000/\$2,400,000) = \$1,006,250$

[2] Computation 2: FMV of real property  $(\$2,100,000 \times 60\%) = \$1,260,000$ .

The amount computed in Subsection A(16)(d)[1] (\$1,006,250) is the consideration for the conveyance, as it is less than the amount computed in Subsection A(16)(d)[2] (\$1,260,000).

B. The following are examples of conveyances which are not subject to the real estate transfer tax: (1) A conveyance of real property by the beneficiary of the industrial

development agency (IDA) financing to the IDA, in connection with the receipt of such financing, is not subject to tax.

(2) A conveyance of real property by the IDA, as grantor, to the beneficiary of the IDA financing, as grantee, is not subject to tax.

§ 14-28.11. Real property situated partly within and partly without the town. A. Where real property is situated partly within and partly without the boundaries of the town, the consideration subject to tax is such part of the total consideration as is attributable to the portion of such real property situated within the Town or to the interest in such portion. If the consideration attributable to the property located in the Town is set forth in the contract, such amount may be used to compute the tax due.

B. If the contract does not set forth the amount of consideration attributable to the portion of real property or interest therein situated within the town, the consideration must be reasonably allocated between the portion of such property or interest therein situated within the Town and the portion of such property or interest therein situated without the town. (1) If the grantor and the grantee enter into a written agreement, signed by both the grantor and the grantee, which sets forth a reasonable allocation of consideration, that allocation of consideration may be used to compute the tax due.

(2) If the grantor and the grantee do not enter into such an agreement, or if the allocation of consideration set forth in such agreement is deemed unreasonable by the Treasurer, the allocation of consideration must be computed by multiplying the amount of consideration by a fraction, the numerator of which is the fair market value of the real property or interest therein situated within the Town and the denominator of which is the total fair market value of all the real property or interest therein being conveyed. Except in the case of a transfer or acquisition of a controlling interest where consideration means fair market value of the real property or interest therein, the tax is computed on the allocated portion of the actual consideration paid even if that amount is greater or less than the fair market value as determined by appraisal.

(3) Example 1: A conveys to B real property which is situated partly within Riverhead and partly within Southampton. The consideration attributable to the portion of the property situated within Riverhead was not specified in the contract of sale or in a written agreement signed by both A and B. B pays A \$500,000 consideration for the property. An appraisal of the property, made just prior to the sale, indicates that the total fair market value of the property is \$500,000 and that the fair market value of the portion of the property situated within Riverhead is \$250,000. The amount of the consideration used to compute the tax is \$250,000.

(4) Example 2: Assume the same facts as Subsection B(3), Example 1, except that the appraisal indicates that the total fair market value of the property is \$750,000 and the fair market value of the portion of the property situated within Riverhead is \$375,000. The amount of consideration used to compute the tax is determined by multiplying the amount of consideration paid by B (\$500,000) by 50%. Fifty percent equals the fair market value of the property situated within Riverhead (\$375,000) divided by the total fair market value of the property (\$750,000). The amount of consideration used to compute the tax is \$250,000.

(5) Example 3: Corporation A owns property which is situated partly within Riverhead and partly within Southampton. This is the only asset of corporation A. One hundred percent of the stock of corporation A is sold to corporation B for \$300,000. Since a controlling interest in corporation A was transferred to corporation B, there was a taxable conveyance of the real property owned by corporation A to corporation B. An appraisal of the real property indicates that the total fair market value of the property is \$250,000 and that the fair market value of the property situated within Riverhead is \$200,000. The amount of consideration used to compute the tax is \$200,000. The appraised fair market value is used rather than an allocated portion of the amount paid for the stock.

C. Where the methods provided under this section do not allocate the consideration in a fair and equitable manner, the Treasurer may require a grantor and grantee to allocate the consideration under such method as he prescribes, as long as the prescribed method results in a fair and equitable allocation.

§ 14-28.12. Credit for prior transfer tax paid. A. A grantee is allowed a credit against the tax due on a conveyance of real property to the extent that tax was paid by the grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same property.

B. The credit is computed by multiplying the tax paid on the creation of the leasehold or on the granting of an option or contract by a fraction, the numerator of which is the value of the consideration used to compute the tax paid which is not yet due to the grantee on the date of the subsequent conveyance (and which the grantor will not be entitled to receive after such date) and the denominator of which is the total value of the consideration used to compute the tax paid.

Example: A, the owner of real improved property, leased the property to B for \$400,000 consideration, which was to be paid to A over the term of the lease. Under the terms of the lease, B was provided an option to purchase the property. B paid a real estate transfer tax of \$3,000 based upon the \$400,000 consideration. Several years later, before the expiration of the lease, B exercised the option and purchased the property from A. Up to the date of the sale, A had received \$300,000 of the total \$400,000 consideration. As a result of the sale, A was not entitled to receive the remaining \$100,000 of consideration. B is entitled to a credit against the transfer tax due on the sale of the property computed as follows:  $\$100,000/\$400,000 \times \$3,000 = \$750$  credit.

§ 14-28.13. Returns. A. Joint returns. (1) Except as provided in Subsection A(2), of this section, the grantor and grantee must file a joint return for each conveyance whether or not tax is due. The return must be made on a form prescribed by the Treasurer.

(2) The filing of a joint return by the grantor and grantee, as described in Subsection A(1) of this section, is not required for a conveyance of an easement or license to a public

utility as defined in Subdivision 2 of § 186-a of the Tax Law, if each of the following conditions is met: (a) The consideration for the easement or license is \$2 or less.  
(b) Such consideration is clearly stated in the instrument of conveyance.

B. Except as provided in Subsection A(2), of this section, if a conveyance is to be recorded, the return must be filed with the recording officer. The recording officer cannot record a conveyance unless the transfer tax return has been filed and any tax due has been paid. The recording officer is authorized to collect the tax and accept returns only in those cases where an instrument effecting a conveyance of real property is presented for recording. The recording officer must indicate the amount of tax paid on the return and on the instrument presented for recording. If a conveyance is not recorded, or if the conveyance will be recorded after the time has expired for paying the tax, the tax return, together with any tax due, must be filed with the Treasurer at the time indicated in Subsection C of this section. Upon receiving the return and any tax due, the Treasurer will issue, upon request, a receipt to the person filing the return evidencing the filing of the return and the payment of tax. For purposes of recording the instrument effecting the conveyance, the recording officer shall handle such receipt in the same manner as a return filed with the recording officer.

C. The return is due and the tax must be paid not later than the 15th day after the date on which the instrument effecting the conveyance is delivered by the grantor to the grantee. For purposes of this article, the date of the instrument is presumed to be the date of the delivery of the instrument. This presumption may be rebutted by the person liable for payment of the tax.

D. Both the grantor and the grantee are required to sign the return. If the conveyance has more than one grantor or grantee, all grantors and grantees shall sign the return. Nonetheless, if any one of the grantors or grantees signs the return, it will be accepted as a valid return by the recording officer and by the Treasurer. However, those grantors and grantees not signing the return are not relieved of any liability for the tax due and the period of limitations for determination of tax due provided for by law does not apply to anyone who does not sign the return.

E. For good cause shown, the Treasurer may grant an extension of time not exceeding three months within which to file a return. An application for such extension must be made in writing prior to the due date of the return. Where an extension of time is granted, the taxpayer is nevertheless required to file a tentative return on or before the due date of the return. A final return must be filed on or before the expiration date of the additional period of time granted. The balance of the tax due plus interest thereon at the underpayment rate of interest prescribed by this article must be paid at the time of the filing of the final return.

F. Any tax return filed with the Treasurer pursuant to Subsection B of this section should be mailed to the Town Supervisor.

G. Where a taxpayer is claiming an exemption from the tax, pursuant to § 14-28.8B(10), the tax return shall be signed by the Town Attorney or other Town official designated by the Town Board approving said exemption.

§ 14-28.14. Determination of tax. A. If the required return is not filed, or if a filed return is incorrect or incomplete, the Treasurer will determine the tax due from whatever records and information are available, including the assessed valuation of the real property or interest therein and other appropriate factors. Notice of such determination will be given to the person liable for the payment of the tax.

B. The provisions of the Civil Practice Law and Rules, or any other law relative to limitations of time for the enforcement of a civil remedy, do not apply to any proceeding or action taken by the Town to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by Article 31-D of the Tax Law and Local Law No. 14 of 1998. No determination of tax due shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law or in the case of a willfully false or fraudulent return, the tax may be assessed at any time.

C. Where, before the expiration of the period prescribed for the determination of tax due, a taxpayer has consented in writing that such period be extended, the amount of any tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

D. The notice of determination finally and irrevocably fixes the tax unless the person assessed petitions the Town Supervisor for a hearing within 90 days from the date of the notice or the Treasurer redetermines the amount of tax due. In any case before the Town Supervisor, the burden of proof is on the petitioner. After a hearing has been held, the Town Supervisor shall provide copies of the determination to the petitioner and to the Treasurer.

E. Before the petitioner can initiate a proceeding for judicial review, the petitioner must first deposit the tax, penalties and interest due with the Department and also file with the Treasurer an undertaking in such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that if such proceeding is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding. At the option of the petitioner, such undertaking filed with the Treasurer may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination plus the costs and charges which may accrue in the prosecution of the proceeding, in which event, the petitioner shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

F. A person liable for the tax may consent to have the tax due finally and irrevocably fixed, prior to the ninety-day period referred to in Subsection D of this section, by filing with the Treasurer a signed consent statement on such form as the Treasurer prescribes. The signed consent statement may be filed whether or not a determination of tax, pursuant to Subsection A of this section, has been issued by the Treasurer.

§ 14-28.15. Refunds. A. A grantor or grantee, claiming to have erroneously paid the tax imposed pursuant to Article 31-D of the Tax Law and Local Law No. 14 of 1998, or some other person designated by such grantor or grantee, may file an application for refund within two years from the date of payment. If a taxpayer has consented in writing to the extension of the period for determination of tax due, as provided in this article, the

period for filing an application for a refund will not expire prior to six months after the extended period in which a determination of tax due may be made. The application for refund must be filed on a form prescribed by the Treasurer.

B. The application for refund may be granted or denied in whole or in part by the Town Supervisor. The Town Supervisor shall notify the applicant of the determination by mail. Within 90 days after the mailing of the determination of tax, the taxpayer must petition the Town Supervisor for a hearing. After a hearing, the Town Supervisor shall mail a notice of the determination to the applicant and to the Treasurer. The applicant may petition for judicial review of the decision of the Town Supervisor, provided that the applicant files an undertaking with the Treasurer for such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that, if such proceeding is dismissed or the tax confirmed, the applicant will pay all costs and charges which may accrue in the prosecution of the proceeding.

C. A person shall not be entitled to a refund of tax, interest or penalty determined to be due where the person has had a hearing or an opportunity for a hearing or has failed to take advantage of the remedies provided. However, a person filing a signed statement with the Treasurer consenting to the tax due, before a determination assessing tax is issued to that person, may apply for a refund within the time provided in Subsection A of this section. Tax, interest or penalty determined to be due by the Treasurer may be refunded only if the determination is found to be erroneous, illegal, unconstitutional or otherwise improper after review by the Town Supervisor or in a proceeding under Article 78 of the Civil Practice Law and Rules.

D. Interest amounting to one dollar or more shall be allowed upon any refund. Interest at the overpayment rate shall be paid from the date when the tax, penalty or interest refunded was paid to a date preceding the date of the refund check by not more than 30 days. For purposes of this subsection, any tax paid before the last day prescribed for its payment shall be deemed to have been paid on such last day.

E. All claims for refund must be filed with the County Treasurer.

#### § 14-28.16. Remedies exclusive.

The remedies provided by sections of this article are the exclusive remedies available to any person for the review of tax liability imposed by Article 31-D of the Tax Law. No determination or proposed determination of tax or determination on any application for refund may be enjoined or reviewed by any action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding under Article 78 of the Civil Practice Law and Rules.

#### § 14-28.17. Liability of recording officer.

A recording officer, or any other person designated to act as an agent, is not liable for any inaccuracy in the amount of tax collected so long as the tax is computed and collected on the amount of consideration, or the value of the interest conveyed, as stated on the return required to be filed pursuant to this article.

§ 14-28.18. Interest and civil penalties. A. If it is determined that there has been an underpayment of tax, interest is due at the underpayment rate on the amount of tax not paid. If any amount of tax is not paid on or before the last date prescribed for payment, such interest on the tax not paid is due for the period from such last date to the date paid. B. Any grantor or grantee who fails to file a return or pay any tax due within the time required by this article is subject to a penalty of 10% of the amount of tax due. In addition, there is imposed an interest penalty of 2% of the amount of tax due per month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due. Such interest penalty may not exceed 25%. If the Treasurer determines that the failure to timely file a return or pay any tax was due to reasonable cause and not due to willful neglect, the Treasurer shall remit, abate or waive all of such penalty and interest penalty.

§ 14-28.19. Reasonable cause; grounds. A. Where a person fails to file any return on or before the last day prescribed for filing or fails to pay the taxes imposed pursuant to Article 31-D of the Tax Law on or before the last day prescribed for paying, the penalty and, where applicable, the interest penalty must be imposed unless it is shown that such failure was due to reasonable cause and not due to willful neglect. In the event that such penalty and interest penalty have been imposed and it is later determined that failure to timely file the return or timely pay the tax was due to reasonable cause and not due to willful neglect, all of the penalty and interest penalty will be canceled. The absence of willful neglect alone is not sufficient grounds for not imposing the penalty and interest penalty or for canceling such penalty and interest penalty. B. All of the facts alleged as a basis for reasonable cause for failure to timely file a return or for failure to timely pay any tax due may be required to be affirmatively shown in a written statement made by the person liable for the penalty and interest penalty. Where such person is unable to provide the statement described in this subsection or does not have a personal knowledge of the facts, a showing of reasonable cause may be made on behalf of the person by an individual with a personal knowledge of the facts. In determining whether reasonable cause exists, in addition to an evaluation of the facts, such person's previous compliance record with respect to all of the taxes imposed pursuant to the Tax Law may be taken into account. C. The following exemplify grounds for reasonable cause, where clearly established by the person liable for the penalty and interest penalty or established on such person's behalf: (1) The death or serious illness of such person, or any other person acting in a fiduciary or representative capacity for such person, or such person's unavoidable absence from the usual place of business, which precluded timely compliance, may constitute reasonable cause, provided that, in the case of the failure to file any return, the applicable return is filed or, in the case of the failure to pay any tax, such amount is paid within a justifiable period of time after death, illness or absence. A justifiable period of time is that period which is substantiated by such person, or such person acting in a fiduciary or representative capacity, as a reasonable period of time for filing the return and/or paying any tax based on the facts and circumstances in each case. (2) The destruction of such person's place of business or business records, or the destruction of the place of business or business records of any other person acting in a

fiduciary or representative capacity for such person with respect to the conveyance, by a fire or other documented casualty, which precluded timely compliance to file a return or to pay the tax due, may constitute reasonable cause, provided that, in the case of the failure to file any return, the applicable return is filed or, in the case of the failure to pay any tax, such amount is paid within a justifiable period of time after the casualty has taken place. A justifiable period of time is that period which is substantiated by such person, or such person acting in a fiduciary or representative capacity, as a reasonable period of time for filing the return and/or for paying any tax, based on the facts and circumstances in each case.

(3) The inability for reasons beyond such person's control to timely obtain and assemble essential information recruited for the preparation of a complete return, despite the exercise of reasonable efforts, may constitute reasonable cause, provided that a return is timely filed and the tax due, if any, is paid with the return based on the information that is known. A statement of facts shall accompany the return setting forth the reasons why all the essential information cannot be presently obtained. When such essential information is ascertained, an additional return must be filed immediately, and any further tax due must accompany such return.

(4) Example 1: X contracts to sell Y five acres of land. The contract stipulates that the consideration for the conveyance of the real property is \$1,200,000, plus 10% of the net profit realized on any subsequent sale of the real property by Y. X timely filed a return and paid the tax due based on the information that was known along with a statement of facts attached setting forth the reason why all the essential information cannot be presently obtained. As soon as X was cognizant that Y had sold the land and building and determined the net profit realized, X immediately filed an additional return together with the payment of any further tax due. This constitutes reasonable cause for failure to pay the entire tax due on or before the 15th day following the date of conveyance.

(5) Any other cause for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be reasonable cause. Ignorance of the law, however, will not be considered as a basis for reasonable cause.

§ 14-28.20. Saturdays, Sundays and legal holidays.

When the last day prescribed (including the last day covered by an extension of time) for filing a document, making a payment or performing any acts falls on a Saturday, Sunday or a day which is a legal holiday in the State of New York, the performance of such acts will be considered timely if performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

§ 14-29. Legislative findings; purpose. A. The Town of Riverhead enjoys an array of lands containing scenic and natural resources which are vital to the town's rural character and its development as a resort and farming community. The lands which comprise these features are rapidly being lost to development and there exists a particular danger that the character of the Town will be fundamentally altered. In furtherance of its adopted land use policy of preserving the town's natural resources, the Riverhead Town Board finds it necessary to adopt a plan as authorized by § 64-e of the Town Law as the basis for the expenditure of revenue resulting from a two-percent real estate transfer tax which is further authorized by § 64-e of the Town Law.

B. It is the purpose of this article to establish and create the Riverhead Community Preservation Project Plan to aid in the town's efforts to preserve natural features and to implement the requirements of Town Law § 64-e.

§ 14-30. Plan adopted.

For the reasons set forth in § 14-28 hereof, the Town Board of the Town of Riverhead hereby approves and adopts the Community Preservation Project Plan, as prepared by the Town Planning Department on August 4, 1998, and its amendments, said plan being intended to constitute the Community Preservation Project Plan which is required by § 64-e of the Town Law and the Riverhead Town Code.

§ 14-31. Effective date.

This article shall take effect immediately upon filing with the Secretary of State as required by law.

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ARTICLE IV Extension of Effective Date for Peconic Bay

§ 14-32. Legislative findings. A. The Town Board hereby finds that in 1998, the New York State Legislature adopted Chapter 114 of the Laws of 1998 which authorized towns in the Peconic Bay Region to establish community preservation funds for the purpose of preserving land for open space, farmland preservation, historic preservation, and parks and recreation purposes. The revenue for said fund was to be derived from a two-percent real estate transfer tax. This Town Board, by Local Law No. 14 of 1998, did implement the provisions of Chapter 114 of the Laws of 1998. Editor's Note: See Art. I of this chapter. Said local law was approved by the electors of the Town in a mandatory referendum on November 3, 1998. Pursuant to the provisions of said local law, the Town Community Preservation Fund went into effect on April 1, 1999.

B. The Town Community Preservation Fund has been an unparalleled success in preserving land for parks and conservation purposes. From April 1, 1999, through May 2002, the Community Preservation Fund in the Peconic Bay Region towns has generated \$99.28 million for land preservation. The result has been the acquisition of thousands of acres of land for the public benefit.

C. Authorization for the two-percent real estate transfer tax will expire at the end of the year 2010. The state has enacted Chapter 250 of the Laws of 2002, which authorizes the towns to extend the expiration date of the tax until December 31, 2020.

D. The Town Board finds that such an extension is critical to the continued success of the Town's land preservation goals. It is estimated that an additional 10 years of the program, at current rates of revenue generation, will provide more than \$300,000,000 in additional revenue for the Peconic Bay towns for land preservation. Further, by utilizing the Town Community Preservation Fund program in conjunction with state revolving loan programs or other conservation strategies, the Town can buy more land now before it is lost to development and before values escalate further.

E. The additional 10 years will provide the necessary revenue stream to fund such preservation strategies. This article implements the ten-year extension.

#### § 14-33. Extension of expiration date of real estate transfer tax.

Notwithstanding any other provision of law to the contrary, the real estate transfer tax imposed by Local Law No. 14 of 1998 originally set to expire on December 31, 2010, shall be extended to December 31, 2020, and shall expire and be deemed to be repealed after December 31, 2020.

#### § 14-34. Proposition.

Pursuant to Section 2 of Chapter 250 of the Laws of 2002, this article is subject to mandatory referendum. The following proposition shall be submitted to the electors of the Town at the general election to be held on November 5, 2002:

"Shall Local Law No. 27 of 2002, entitled 'A Local Law Amending Local Law No. 14 of 1998 in Relation to Extending the Expiration Date of the Two-Percent Real Estate Transfer Tax from December 31, 2010, to December 31, 2020, Imposed in Connection with the Town Community Preservation Fund' be Approved?"

#### § 14-35. Severability.

If any clause, sentence, paragraph, section, or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

#### § 14-36. Effective date.

This article shall take effect after filing with the Secretary of State and after approval at the general election to be held on November 5, 2002, by the affirmative vote of the qualified electors of the Town upon the proposition set forth in § 14-34 of this article.

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ARTICLE V Acquisition and Use of Open Spaces, Parks and Park Preserves [Adopted 7-20-2004 by L.L. No. 25-2004]  
§ 14-37. Definitions.

As used in this article, the following terms shall have the meanings indicated: **OPEN SPACE** — Undeveloped and essentially unimproved land that is important to conserve and maintain either for the quality and character of the lives of Town residents or for the preservation of their common heritage.

**PARK** — A use of land owned by the Town kept for ornament and/or recreation, including but not limited to parks, park preserves, playgrounds, athletic fields, swimming pools, beaches, boardwalks, entrances, broaches and facilities, together with structures and buildings under the jurisdiction of the Recreation Department.

**PARK PRESERVE** — Land owned by the Town, found to possess rare or endangered species habitats and/or breeding areas, unique flora or fauna, geological formations, marine wetlands, freshwater wetlands, shorelines or scenic values or any other features that may qualify for recognition or protection.

§ 14-38. Purpose.

The preservation of open space or the dedication of land as a Town park preserve shall provide that all or a specified portion of the Town land being preserved or dedicated shall be kept forever wild, or in its natural state, or that it may be used only for the purposes specified in this article. Any lands or interest in real property acquired by the Town as nonagricultural open space shall be eligible for dedication as Town park preserve. Due to the nature of a park preserve and its importance to the environmental and economic character of the community, recommendations concerning plans for and use of those designated areas will be made by the Open Space/Park Preserve Committee as hereinafter created by § 48-26.

§ 14-39. Procedure for dedication of land. A. The Town may dedicate real property, Town parklands or a portion of parkland owned by the Town to the Town park preserve. B. The Town park preserve may also include lands acquired through philanthropy. C. Unless authorized by the Town Board, after mandatory referendum, land owned by the Town and dedicated under this article as open space or as Town park preserve shall not be taken or otherwise disposed of, nor shall it be used for any purpose not specified in the

ordinance by which the land was preserved as open space or dedicated to the Town park preserve.

§ 14-40. Open Space /Park Preserve Committee. A. The Town of Riverhead Open Space/Park Preserve Committee shall consist of five members appointed by the Town Board for staggered two-year terms including representatives from the community at large, the Recreation Committee and Conservation Advisory Council.

B. The Town of Riverhead Open Space/Park Preserve Committee shall have the following advisory responsibilities: (1) Identify, review and recommend to the Town Board lands that should be acquired by the Town and preserved as open space or incorporated into the Town park system or dedicated as Town park preserve. (2) Develop and recommend for adoption by the Town Board an open space conservation plan for the utilization, maintenance and management of lands owned or acquired by the Town.

C. The Town of Riverhead Open Space/Park Preserve Committee shall use the following guidelines to classify open space, parklands and park preserves in a fashion which will be equally applicable in every frame of reference, since the desired use of and plans for acquired open space and parklands vary: (1) Fragile areas: protection of rare or endangered species; shall not have paths, buildings or other man-made uses constructed on said property; research groups, by appointment only, to undertake scientific research: ecology, zoology, geology, botany or other natural science disciplines. (2) Preservation areas: nature centers providing outdoor laboratories in ecology, conservation and educational programs shall have guided walks; may cut some selective trails; no large buildings shall be constructed; no collecting of materials. (3) Conservation areas: nature centers; may have trails for native plant and wildlife study; may have buildings for interpretive classes; parking facilities may be available on a limited basis; to provide educational and cultural programs. (4) Buffer areas: areas between fragile, preservation, conservation areas or separating the park preserve area from active recreation areas or existing zoned land uses.