ORDINANCE NO. 5005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, RELATING TO COLLECTION OF DELINQUENT ACCOUNTS; AMENDING TITLE 1 OF THE MESA CITY CODE BY ADOPTING A NEW CHAPTER TITLED "COLLECTION OF DELINQUENT AMOUNTS OWED TO THE CITY".

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. Mesa City Code Title 1 is hereby amended by the adoption of a new chapter, which shall be located at Chapter 32, and which shall be designated "Collection of Delinquent Amounts Owed to the City".

SECTION 2. The following provisions shall hereby be added to Title 1 at Chapter 32:

SEC. 1-32-1. APPLICABILITY.

THE PROVISIONS OF THIS CHAPTER SHALL APPLY UNLESS EXPRESSLY PRECLUDED BY LAW.

SEC. 1-32-2. DEFINITIONS.

FOR PURPOSES OF THIS CHAPTER, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANING SET FORTH HEREIN.

1. ***BUSINESS* MEANS ALL ACTIVITIES ENGAGED IN AND CAUSED TO BE ENGAGED IN WITH THE OBJECT OF GAIN, BENEFIT OR ADVANTAGE, EITHER DIRECT OR INDIRECT.**

2. ***COLLECTOR* MEANS THE TAX COLLECTOR OR ANY CITY OFFICER, MANAGER, OR EMPLOYEE RESPONSIBLE FOR THE COLLECTION OF AMOUNTS OWED TO THE CITY.**

3. ***ORIGINAL BUSINESS* MEANS THE BUSINESS ACTIVITY, BY WHATEVER FORM CONDUCTED, THAT CEASES OPERATION, WHETHER OR NOT SUCH CESSATION IS BY CHANGE IN LEGAL STATUS, VOLUNTARY OR INVOLUNTARY CESSATION OF ACTIVITY, OR TRANSFER OF ASSETS, CONTROL OR OWNERSHIP TO ANOTHER PERSON.**

4. ***SUCCESSOR BUSINESS* MEANS THAT PERSON WHO CONTINUES IN A SUBSTANTIALLY SIMILAR MANNER THE ORIGINAL BUSINESS ACTIVITY OF ANOTHER PERSON THROUGH THE ACQUISITION AND USE, BY ANY MEANS, OF OWNERSHIP OR CONTROL OVER THE OPERATIONAL CHARACTERISTICS OF THE ORIGINAL BUSINESS ACTIVITY SO AS TO ENABLE IT TO CARRY ON OR CONTINUE SUCH ACTIVITY.**

5. *TRANSFER* MEANS THE CHANGE IN OWNERSHIP OR CONTROL OVER THE DAY-TO-DAY ACTIVITIES OF THE BUSINESS.

6. *PERSON* MEANS AN INDIVIDUAL, PARTNERSHIP, LIMITED PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION, TRUST, JOINT VENTURE, OR ANY OTHER ASSOCIATION OF TWO OR MORE PERSONS WHO HAVE AS THEIR OBJECTIVE A COMMON GAIN, BENEFIT, OR ADVANTAGE.

7. *RELATED PARTY* MEANS ANY PERSON WHO HAS A COMMONALITY OF BUSINESS INTEREST WITH ANY OTHER PERSON THROUGH THEIR STATUS AS AN IDENTIFIED PERSON LIABLE UNDER SECTION 1-32-300(D) WITHIN SUCH OTHER PERSON.

SEC. 1-32-100. SINGULARITY OF DEBT; SET-OFF

A DEBT OWED BY A PERSON TO ANY CITY DEPARTMENT OR AREA OF OPERATION SHALL BE SUBJECT TO SET-OFF AGAINST ANY CREDIT, REFUND, DEPOSIT OR PAYMENT OWING TO SUCH PERSON BY THE SAME OR ANY OTHER CITY DEPARTMENT OR AREA OF OPERATION.

SEC. 1-32-200. LIMITATIONS ON OBTAINING NEW LICENSES, SERVICES OR BENEFITS UNTIL DEBT IS PAID.

ANY PERSON WHO HAS A CURRENT DEBT RELATED TO ANY OPEN OR CLOSED ACCOUNT MAINTAINED OR FORMERLY MAINTAINED WITH THE CITY SHALL BE INELIGIBLE TO RECEIVE ANY NEW OR ADDITIONAL LICENSES, SERVICES OR BENEFITS FROM THE CITY UNTIL SUCH DEBT HAS BEEN RESOLVED TO THE SATISFACTION OF THE CITY.

THIS LIMITATION INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING SITUATIONS:

ESTABLISHING A COMMERCIAL OR RESIDENTIAL UTILITY ACCOUNT;

OBTAINING ANY LICENSE ISSUED PURSUANT TO THE MESA CITY CODE;

OBTAINING OR EXTENDING ANY BUILDING PERMIT ISSUED PURSUANT TO TITLE 4 OF THE MESA CITY CODE;

EXTENDING ANY APPLICATION FOR A BUILDING PERMIT PURSUANT TO TITLE 4 OF THE MESA CITY CODE.

SEC. 1-32-300. PERSONAL LIABILITY; PRESUMPTIONS

(A) EVERY PERSON WITH A DUTY, AT ANY TIME, TO ACCOUNT FOR AND PAY OVER ANY TAX OR OTHER AMOUNT OWED THE CITY, EVERY PERSON WHO HAS CONTROL OR SUPERVISION OVER THE PAYMENT OF ANY TAX OR OTHER AMOUNT OWED THE CITY, AND EVERY PERSON

WHO HAS BEEN CHARGED WITH THE RESPONSIBILITY TO PAY OVER ANY TAX OR OTHER AMOUNT OWED THE CITY SHALL BE PERSONALLY LIABLE, JOINTLY AND SEVERALLY, FOR ANY ADDITIONAL MONIES NOT PAID TO THE CITY.

(B) THE DISSOLUTION, TERMINATION OR WITHDRAWAL FROM THE CITY OF ANY PERSON SHALL NOT AFFECT OR DISCHARGE THE PERSONAL LIABILITY ESTABLISHED BY SUBSECTION A.

(C) THE CESSATION OF BUSINESS BY ANY PERSON SHALL NOT AFFECT OR DISCHARGE THE PERSONAL LIABILITY CREATED BY SUBSECTION A.

(D) FOR PURPOSES OF SUBSECTION A, THERE SHALL BE A REBUTTABLE PRESUMPTION THAT THE FOLLOWING PERSONS HAVE A DUTY TO ACCOUNT FOR AND PAY OVER TAX AND ANY OTHER AMOUNT OWED THE CITY.

	BUSINESS FORM	PERSONS LIABLE
1.	SOLE PROPRIETORSHIP	THE PROPRIETOR
2.	PARTNERSHIP	EACH PARTNER
3.	LIMITED PARTNERSHIP	GENERAL PARTNER
4.	JOINT VENTURE	EACH PARTICIPANT IN THE JOINT VENTURE
5.	CORPORATION	ANY OFFICER WITH CONTROL OVER THE ACTIVITY GIVING RISE TO THE DEBT
6.	LIMITED LIABILITY COMPANY	EACH MEMBER, MANAGER, OR OFFICER
7.	TRUST	ANY TRUSTEE
8.	OTHER ASSOCIATION	ANY INDIVIDUAL WITH CONTROL OVER THE ACTIVITY GIVING RISE TO THE DEBT

SEC. 1-32-400. LIMITATION ON RELATED PARTY OBTAINING LICENSES, SERVICES, OR BENEFITS.

ANY RELATED PARTY TO ANY PERSON LIABLE FOR TAX OR ANY OTHER AMOUNT OWED TO THE CITY PURSUANT TO SECTION 1-32-300 SHALL NOT

OBTAIN ANY ADDITIONAL LICENSES, SERVICES, OR BENEFITS UNTIL ALL UNDERLYING LIABILITIES HAVE BEEN RESOLVED TO THE CITY'S SATISFACTION.

REGARDING THE ADMINISTRATION OF THE ABOVE PROVISION FOR LIMITED LIABILITY COMPANIES (LLC), ONCE THE LLC'S ACCOUNT IS DELINQUENT, NEITHER ANY MEMBER OF SUCH LLC NOR ANY OTHER LLC OF WHICH HE MAY ALSO BE A MEMBER SHALL OBTAIN NEW OR ADDITIONAL CITY LICENSES, SERVICES, OR BENEFITS.

SEC. 1-32-500. VOLUNTARY SUCCESSION; CREATION OF LIEN; TRANSFERRED LIABILITY; CONTINUED LIABILITY.

(A) IN THE CASE OF ANY SUCCESSION IN BUSINESS ACTIVITY THAT IS ACCOMPLISHED BY VOLUNTARY AGREEMENT BETWEEN THE ORIGINAL BUSINESS AND SUCCESSOR BUSINESS, THE AGREEMENT OR MUTUAL EXPRESSION OF INTENT TO AGREE SHALL OPERATE TO IMMEDIATELY CREATE A BUSINESS SUCCESSION LIEN IN FAVOR OF THE CITY IN THE TOTAL AMOUNT OF SUCH IMPOSITIONS. SUCH LIEN SHALL ATTACH TO ALL OF THE TANGIBLE AND INTANGIBLE ASSETS OF THE ORIGINAL BUSINESS.

(B) THE LIEN CREATED BY SUBSECTION A SHALL, UPON COMPLETION OF THE TRANSFER OF EFFECTIVE CONTROL FROM THE ORIGINAL TO THE SUCCESSOR BUSINESS, ATTACH TO ALL ASSETS OF THE SUCCESSOR BUSINESS TO THE EXTENT OF ANY LIABILITY REMAINING UNPAID BY THE ORIGINAL BUSINESS AS OF THE DATE OF TRANSFER.

(C) THE BUSINESS SUCCESSION LIEN CREATED BY SUBSECTION A SHALL NOT ALTER IN ANY WAY THE LIABILITY OF THE ORIGINAL BUSINESS OR THE PERSONAL LIABILITY CREATED IN SECTION 1-32-300 OF THIS CHAPTER.

(D) THE BUSINESS SUCCESSION LIEN CREATED IN THIS SECTION IS SEPARATE AND APART FROM AND IN ADDITION TO ANY TAX LIABILITY LIEN AGAINST THE ORIGINAL OR SUCCESSOR BUSINESS THAT MIGHT HAVE EXISTED OR COME INTO BEING SEPARATELY AND APART FROM THE OPERATION OF THIS CHAPTER.

(E) ALL BUSINESS SUCCESSION SHALL BE DEEMED TO BE VOLUNTARY EXCEPT AS DESCRIBED IN SECTION 1-32-600 BELOW.

SEC. 1-32-600. INVOLUNTARY BUSINESS SUCCESSION; CREATION OF LIEN

(A) THE FOLLOWING TRANSFERS OF BUSINESS ACTIVITY SHALL BE CONSIDERED INVOLUNTARY:

1. TRANSFER TO A RECEIVER OR TRUSTEE IN BANKRUPTCY

2. **TRANSFER TO A RECEIVER PURSUANT TO THE ORDER OF A SUPERIOR COURT OF THIS STATE OR EQUIVALENT ACTION BY A COURT OF GENERAL JURISDICTION IN A FOREIGN STATE.**

3. **TRANSFER TO AN EXECUTOR, ADMINISTRATOR OR PERSONAL REPRESENTATIVE BY VIRTUE OF THE DEATH OF A SOLE PROPRIETOR OR PARTNER, PROVIDED THAT THE TRANSFER BY OPERATION OF LAW OF PARTNERSHIP ASSETS TO A SURVIVING PARTNER OR PARTNERS IS CONSIDERED A VOLUNTARY TRANSFER AS TO SUCH PARTNERS' PARTNERHSIP ASSETS.**

4. **TRANSFER TO A LANDLORD BY SEIZURE OR DISTRAINT FOR RENT OR SIMILAR REMEDY WHETHER OR NOT ACCOMPANIED BY JUDICIAL PROCEEDINGS FOR RECOVERY OR REDELIVERY OF THE DEMISED PREMISES.**

5. **EXCEPT AS PROVIDED IN SECTION 5-10-595 OF THE MESA CITY CODE, TRANSFER TO A SECURED PARTY BY OPERATION OF A MORTGAGE, DEED OF TRUST OR OTHER SECURITY AGREEMENT, WITH OR WITHOUT JUDICIAL PROCEEDINGS.**

6. **VOLUNTARY OR INVOLUNTARY GUARDIANSHIP PURSUANT TO TITLE 14, ARIZONA REVISED STATUTES, OR EQUIVALENT PROCEEDINGS UNDER A FOREIGN STATUTE AND FOREIGN COURT OF COMPETENT JURISDICTION.**

(B) IN THE EVENT OF ANY TRANSFER DESCRIBED IN SUBSECTION A, A BUSINESS SUCCESSION LIEN SHALL IMMEDIATELY BE CREATED AND SHALL ATTACH AS OF THE DATE OF THE FIRST ACT OR EVENT THAT ACCOMPLISHES THE TRANSFER. THIS LIEN SHALL ATTACH TO ALL REMAINING ASSETS OF THE ORIGINAL BUSINESS ENTITY AND ANY RESULTING ESTATE. HOWEVER, LIABILITIES OWED TO THE CITY AS OF SUCH DATE COVERED BY SUCH LIEN SHALL BE PAYABLE FROM THE SUCCESSOR SOLELY FROM THE ASSETS OF THE ESTATE OF THE ORIGINAL BUSINESS, SUBJECT TO PRIOR LIENS AND COURT ORDERS, AND SUBJECT TO ANY ADDITIONAL PERSONAL LIABILITY THAT MAY BE IMPOSED PURSUANT TO SECTION 1-32-300. IN THE EVENT THAT THE DEBT OWED TO CITY EXCEEDS THE VALUE OF ASSETS TRANSFERRED, THE SUCCESSOR WILL HAVE NO LIABILITY FOR THE DIFFERENCE.

(C) ANY TRANSFEREE UNDER SUBSECTION A WHO CONTINUES TO OPERATE THE BUSINESS ACTIVITY IS LIABLE FOR ALL TAXES AND OTHER LIABILITY ARISING FROM THE BUSINESS ACTIVITY CONDUCTED OR CARRIED ON BY THE TRANSFEREE. THE TRANSFEREE SHALL BE SUBJECT TO THE PERSONAL LIABILITY PROVISIONS OF SECTION 1-32-300.

SEC. 1-32-700. NOTICE OF LIEN; RECORDING OF LIEN

UNLESS EXPRESSLY PRECLUDED BY LAW FROM RECORDING A LIEN ON THE UNDERLYING DEBT OR DEBTOR, THE COLLECTOR SHALL PROVIDE THIRTY DAYS ADVANCE WRITTEN NOTICE OF "INTENT TO FILE LIEN" TO THE NAMED DEBTOR(S). THE COLLECTOR SHALL EFFECTUATE THE FILING OF A BUSINESS SUCCESSION LIEN BY RECORDING A LIEN NOTICE IN THE OFFICE OF THE COUNTY RECORDER IN ANY COUNTY IN WHICH THE ORIGINAL BUSINESS OR SUCCESSOR BUSINESS MAY HAVE PROPERTY, ASSETS OR CONDUCT BUSINESS ACTIVITY. A LIEN MAY ALSO BE FILED WITH THE ARIZONA SECRETARY OF STATE. THE LIEN NOTICE SHALL BE LABELED "BUSINESS SUCCESSION LIEN NOTICE" AND SHALL STATE THE TYPE AND AMOUNT OF ANY IMPOSITION INCLUDING RECORDING COST. WHEN APPLICABLE, A SINGLE LIEN MAY BE FILED THAT NAMES BOTH THE ORIGINAL BUSINESS AND SUCCESSOR BUSINESS. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE AUTHORITY OF THE CITY TO FILE TAX LIENS PURSUANT TO MESA CITY CODE SECTION 5-10-590.

SEC. 1-32-800. RELEASE OF LIEN; WAIVER OF RIGHT TO LIEN AGAINST SUCCESSOR IF CERTIFICATE PRODUCED.

(A) ANY LIEN, WHETHER OR NOT RECORDED, MAY BE RELEASED IN WHOLE OR IN PART BY THE COLLECTOR, IN HIS SOLE DISCRETION. THE RELEASE OF ANY PART OF THE LIEN SHALL NOT AFFECT THE REMAINING BALANCE.

(B) THE COLLECTOR SHALL NOT RECORD ANY LIEN AGAINST SUCCESSOR BUSINESS IF, PRIOR TO THE EXPIRATION OF THE THIRTY DAY NOTICE PERIOD SET FORTH IN SEC. 1-32-700, SUCCESSOR BUSINESS PRODUCES A RECEIPT FROM THE COLLECTOR SHOWING THAT ALL AMOUNTS OWED CITY HAVE BEEN PAID OR A CERTIFICATE STATING THAT NO AMOUNT IS DUE AS THEN SHOWN BY THE RECORDS OF THE COLLECTOR. THE COLLECTOR SHALL RESPOND TO A REQUEST FROM THE SELLER FOR A CERTIFICATE WITHIN FIFTEEN (15) DAYS BY EITHER PROVIDING THE CERTIFICATE OR A WRITTEN NOTICE STATING WHY THE CERTIFICATE CANNOT BE ISSUED.

(C) IF A SUBSEQUENT INVESTIGATION SHOWS A DEFICIENCY ARISING BEFORE THE SALE OF THE BUSINESS, THE DEFICIENCY IS AN OBLIGATION OF THE SELLER AND DOES NOT CONSTITUTE A LIABILITY AGAINST A SUCCESSOR BUSINESS WHO HAS RECEIVED A CERTIFICATE FROM THE COLLECTOR.

(D) A VOLUNTARY SUCCESSOR BUSINESS WHO FAILS TO OBTAIN A CERTIFICATE AS PROVIDED BY THIS SECTION IS PERSONALLY LIABLE FOR PAYMENT OF THE AMOUNT REQUIRED TO BE PAID BY THE ORIGINAL BUSINESS ON ACCOUNT OF THE BUSINESS SO PURCHASED.

SEC. 1-32-900. CHANGE OF BUSINESS ENTITY FORM; CONTINUATION OF PRIOR LIABILITY.

IF ANY BUSINESS ENTITY CHANGES ITS FORM OF DOING BUSINESS, INCLUDING BUT NOT LIMITED TO, A CHANGE FROM SOLE PROPRIETORSHIP TO CORPORATION OR LLC, OR DISSOLUTION OF A PARTNERSHIP OR CORPORATION, WHILE CONTINUING TO DO BUSINESS UNDER SUBSTANTIALLY THE SAME MANAGEMENT AND CONTROL, THE LIABILITY OF THE ORIGINAL ENTITY SHALL REMAIN ON SUCH NEW ENTITY, AND SHALL FURTHER ATTACH AND BECOME A LIEN UPON THE ASSETS OF AND A LIABILITY OF THE NEW BUSINESS ENTITY.

SEC. 1-32-1000. COLLECTION CHARGES.

ANY PERSON WHO HAS A DELINQUENT ACCOUNT MAINTAINED BY THE CITY WILL ALSO BE RESPONSIBLE FOR ALL COSTS INCURRED BY THE CITY IN COLLECTING THOSE DELINQUENT FUNDS. THIS INCLUDES A REASONABLE CHARGE FOR STAFF TIME AND ANY DIRECT COSTS INCURRED.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 4th day of October, 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ.