

**BOROUGH OF AVALON**

**COMMONWEALTH OF PENNSYLVANIA**

**RESOLUTION No. 992**

A RESOLUTION OF BOROUGH OF AVALON ("TAXING AUTHORITY"), COMMONWEALTH OF PENNSYLVANIA, AUTHORIZING JORDAN TAX SERVICE, INC., IN CONNECTION WITH THE COLLECTION OF CERTAIN REVENUES ON BEHALF OF TAXING AUTHORITY TO UTILIZE COUNSEL TO ACT IN THE NAME OF AND ON BEHALF OF TAXING AUTHORITY, TO COLLECT REASONABLE ATTORNEY FEES, CHARGES, EXPENSES, AND FEES, AND TO PURSUE THE ENFORCED COLLECTION OF TAXING AUTHORITY'S REVENUES PURSUANT TO AND WITH THE FULL BENEFIT OF ALL APPLICABLE LOCAL, STATE, AND FEDERAL LAWS, INCLUDING BUT NOT LIMITED TO, THE MUNICIPAL CLAIM AND TAX LIEN LAW OF 1923, THE PENNSYLVANIA LOCAL TAX COLLECTION LAW, THE LOCAL TAX ENABLING ACT, THE PENNSYLVANIA RULES OF CIVIL PROCEDURE, THE UNITED STATES BANKRUPTCY CODE AND ANY AND ALL ORDINANCES AND RESOLUTIONS ADOPTED BY TAXING AUTHORITY IN CONNECTION WITH THE COLLECTION OF TAXING AUTHORITY'S REVENUES INCLUDING THE TAX, TAX CLAIM, TAX LIEN, MUNICIPAL CLAIM AND MUNICIPAL LIEN ATTORNEY FEES AND SERVICING CHARGES, EXPENSES, AND FEES ORDINANCE OR RESOLUTION..

**WHEREAS**, Jordan Tax Service, Inc. (hereinafter referred to as "JTS"), provides collection and other related services for and on behalf of the Taxing Authority, and, as Taxing Authority's Agent, collects all or some of the following on behalf of Taxing Authority: taxes, tax claims, tax liens, municipal claims, municipal liens, service charges and charges, expenses, and fees related thereto (hereinafter collectively referred to as "Revenues").

**WHEREAS**, JTS uses its best efforts to collect both current and delinquent Revenues for Taxing Authority through various means, all in compliance with applicable laws.

**WHEREAS**, JTS, in addition to its collection functions on behalf of Taxing Authority, also provides various recordkeeping services for Taxing Authority including, but not limited to, the filing, revival, and satisfaction of liens and claims and the maintenance of Taxing Authority's collection records.

**WHEREAS**, despite JTS's best efforts to collect Taxing Authority's current and delinquent Revenues through various means, some Revenues remain unpaid.

**WHEREAS**, third-party collection proceedings, including but not limited to, bankruptcies, foreclosures, and real estate transfers, to name a few, effect the collection of Taxing Authority's Revenues and require JTS to act to protect, preserve, collect, defend, and enforce Taxing Authority's Revenues.

**WHEREAS**, Pennsylvania Law provides for the collection of Taxing Authority's Revenues through various actions including, but not limited to, filing claims and liens and pursuing enforced collection through both In Rem and In Personam collection proceedings ("Enforced Collection").

**WHEREAS**, in order to pursue Enforced Collection of Taxing Authority's Revenues, JTS must utilize legal counsel to act on behalf of Taxing Authority (hereinafter referred to as "Counsel").

**WHEREAS**, JTS has established an in-house legal department comprising of paralegals and clerks, and has retained Counsel, Michael G. McCabe, Esquire, a Shareholder in the Pittsburgh Law Firm of Goehring, Rutter & Boehm, P.C., (both Attorney McCabe and his firm are hereinafter collectively referred to as "Counsel") said Counsel being licensed to practice law in the Commonwealth of Pennsylvania with significant collection experience, with an emphasis on tax and municipal claim collection cases as well as tax and municipal claim recordkeeping matters.

**WHEREAS**, JTS will utilize its legal department and Counsel to assist JTS in all aspects of its collection and recordkeeping services on behalf of Taxing Authority including Enforced Collection.

**WHEREAS**, Pennsylvania Law provides for the recovery of costs, attorney fees, penalties, interest, charges, expenses, and fees as part of the Revenue owed.

**WHEREAS**, Counsel will provide legal services to Taxing Authority at no cost to Taxing Authority for attorney fees related to collection of Taxing Authority's Revenues, except as otherwise provided herein.

**NOW, THEREFORE**, it is hereby **RESOLVED** and **ENACTED** by Borough of Avalon, Commonwealth of Pennsylvania, as follows:

## ARTICLE I.

### Short Title.

**This Resolution shall be known as the Revenue Enforcement Resolution.**

## ARTICLE II.

### **Enforcement Through Legal Staff And Counsel Approved:**

1. Counsel and JTS are authorized to pursue the Enforced Collection of the Taxing Authority's Revenues.
  
2. Taxing Authority shall adopt a schedule of reasonable attorney fees in accordance with Act 1 of 1996 and/or Act 20 of 2003, 53 P.S. §7106 and a schedule of other charges, expenses, and fees in accordance with §§1, 2, and 3 of the Municipal Claim and Tax Lien Law, as amended, 53 P.S. §§7101, 7103 and 7106 in a form and for amounts acceptable to JTS and Counsel. The Attorney Fee Ordinance or Resolution adopted by Taxing Authority is incorporated herein by reference as Exhibit "A" the same as if set forth herein at length. Taxing Authority authorizes Counsel to charge and collect such reasonable attorney fees, and JTS to charge and collect such charges, expenses, and fees in accordance with Exhibit "A" and pursuant to applicable laws.
  
3. Counsel shall be permitted to bring collection proceedings by and on behalf of the Taxing Authority, in the name of the Taxing Authority, in both state and federal courts, including but not limited to, notices, correspondence, agreements, claims, liens, pleadings, motions, and petitions, and In Rem and In Personam proceedings pursuant to

applicable laws. Such representation shall include vacant property sales initiated at the request of authorized interested purchasers.

4. Taxing Authority authorizes JTS and Counsel to exercise all of Taxing Authority's rights as a creditor pursuant to applicable provisions of local, state, and federal law including pursuing collection in response to third-party actions which might affect Taxing Authority's Revenues.

5. Counsel and JTS shall have sole discretion to select properties or delinquent property owners for Enforced Collection on all matters where reimbursement of attorney fees and charges, expenses, and fees is contingent upon collection of the Revenue due.

6. Counsel is authorized to execute any and all tax and municipal claims, bankruptcy claims, liens, satisfactions, revivals, pleadings, correspondence, notices, and any other documents relating to the Enforced Collection of Taxing Authority's Revenues, in the name of and on behalf of Taxing Authority as Counsel and/or as Solicitor for Taxing Authority in matters relating solely to the collection of Taxing Authority's Revenues in any applicable local, state, or federal department, office, or court.

7. Taxing Authority shall provide assistance and shall cooperate with Counsel and JTS in all reasonable ways to assist in the collection of Taxing Authority's Revenues.

8. JTS shall advance all applicable fees imposed by the Prothonotary, Sheriff, and any other relevant local, state, or federal agency in connection with the collection of Taxing Authority's Revenues, subject to reimbursement of such advanced costs and fees by Taxing Authority on a monthly basis and thereafter subject to reimbursement to Taxing Authority after collection by JTS. In instances where such fees are excessive because of voluminous filings on behalf of Taxing Authority, JTS may request that such fees be advanced by Taxing Authority.

9. All attorney fees collected in accordance with Act 1 of 1996 and/or Act 20 of 2003 shall serve solely and exclusively as compensation of Counsel and to reimburse JTS for its actual expenses incurred in connection with maintaining its in-house legal staff for pursuing Taxing Authority's enforcement proceedings.

10. Taxing Authority shall not be liable for payment of any attorney fees where Act 1 or Act 20 apply unless Taxing Authority directs JTS or Counsel to cease collection in any case where fees have been incurred including any refusal of the Taxing Authority to permit the sale of real estate free and clear of liens under the Municipal Claim and Tax Lien Law. In that event, Taxing Authority shall reimburse JTS and Counsel for all attorney fees and expenses associated with the enforcement proceeding and all costs, charges, expenses, and fees due. Thereafter, any recovery of these amounts by JTS or Counsel shall be paid to the Taxing Authority. In the event that Counsel chooses not to pursue an enforcement proceeding on a contingent fee basis but Taxing Authority directs Counsel to file and pursue such proceeding, then Taxing Authority shall reimburse Counsel within thirty (30) days of invoice for attorney

fees incurred in prosecuting such claim or claims. The attorney fees charged shall be equal to those fees set forth on Exhibit "A" for actions pursuant to the Municipal Claim and Tax Lien Law. In the event that such action results in collection of all or a portion of Taxing Authority's revenues, then, after payment of any amount still due Counsel and JTS, Taxing Authority shall be reimbursed for any attorney fees paid to Counsel, if there is sufficient revenue available to do so. In all other actions directed by Taxing Authority, attorney fees shall be as agreed to by Counsel and approved by Taxing Authority.

11. All charges, expenses, and fees adopted by Taxing Authority in Exhibit "A" shall be included as part of the Revenue collected and shall be recovered and retained by JTS as compensation to JTS or to any third-party service provider retained by JTS or Counsel such as a title searcher, process server, or investigator, to name a few, for services provided to Taxing Authority in the collection of Revenues.

12. Taxing Authority shall not unreasonably object to any future request by JTS or Counsel to seek a judicial compromise of any Tax or Municipal Claim or Lien or to pursue any reduction of the Upset Price at Sheriff's Sale of any Property subject to such Tax or Municipal Claim or Lien if it is determined that the value of said Property subject to each Tax or Municipal Claim or Lien is exceeded by the Upset Price at Sheriff's Sale. In the event of a Sheriff's Sale for less than the "Upset Price", Counsel shall be entitled to reimbursement of attorney fees and JTS shall be entitled to reimbursement of all costs, charges, expenses, and fees as set by Taxing Authority in Exhibit "A" prior to any distribution to Taxing Authority.

13. In pursuing collection through In Personam (“Assumpsit”) proceedings for tax collection in accordance with the Local Tax Collection Law, 72 P.S. §5511, et seq., or pursuant to the Local Tax Enabling Act, Counsel shall be paid monthly by Taxing Authority at rates agreed to by Counsel and approved by Taxing Authority, except as otherwise provided herein. All such rates are chargeable at 1/10<sup>th</sup> of an hour increments and are reimbursable by Taxing Authority within thirty (30) days of invoice. Counsel is authorized to collect and retrieve from Defendant(s), in each assumpsit Judgment obtained pursuant to the Local Tax Collection Law, 72 P.S. §5511.21, the statutorily authorized additional penalty which shall be paid over to Taxing Authority to offset the compensation paid Counsel for legal services in connection with such proceedings. No Assumpsit proceeding shall be initiated by Counsel without the consent of Taxing Authority. Nothing herein shall prohibit JTS from utilizing Counsel at JTS’s sole expense to represent Taxing Authority in the collection of Taxing Authority’s Revenues. In that event, no additional approvals shall be required by Taxing Authority. If counsel pursues an assumpsit action on behalf of Taxing Authority pursuant to the Local Tax Collection Law, 72 P.S. §5511.21 without expense to Taxing Authority, then Counsel shall be permitted to retain, as sole compensation for services rendered the statutory additional penalty incurred on any judgment obtained.

14. Except as otherwise provided herein, to the extent that Taxing Authority shall direct Counsel to provide services not reimbursable under Exhibit “A” or Paragraph 13, hereof, Counsel shall provide such additional services only upon approval of Taxing Authority for a rate approved by Taxing Authority.

15. Installment payment agreements shall be at the discretion of JTS and Counsel absent a specific policy of Taxing Authority.

16. Payments received by Counsel or JTS in connection with the collection of Taxing Authority's Revenues shall first be applied to attorney fees and then to costs, charges, expenses, and fees advanced or otherwise due and owing. Partial payments shall be applied to attorney fees first and then to costs, charges, expenses, and fees before being applied to Taxing Authority's Revenues.

17. JTS and Counsel shall act as agent for Taxing Authority in the collection of Taxing Authority's Revenues as provided herein and as provided in any other agreement between JTS and Taxing Authority. In the event that any provision of this Resolution shall conflict with the provision of any agreement between Taxing Authority and JTS, then the provision of this Resolution shall apply. Taxing Authority shall adopt or amend appropriate Ordinances and/or Resolutions and shall approve and execute appropriate Powers of Attorney and any other documents which may be necessary to assist JTS and Counsel in the collection of Taxing Authority's Revenues and otherwise performing under this Resolution and pursuant to applicable laws.

18. Counsel shall be permitted to view, inspect, and utilize Taxing Authority's Revenue information including earned income information and any other similar information or data whether or not considered to be confidential under applicable laws to carry out Counsel's representation of Taxing Authority.

**ARTICLE III. Severability.**

If any one or more of the provisions or terms of this Resolution shall be held invalid for any reason whatsoever, then, unless such provision or term is material to this Resolution as to render this Resolution impractical to perform, such provision or terms shall be deemed severable from the remaining provisions or terms of this Resolution and shall in no way affect the validity or enforceability of any other provision hereof.

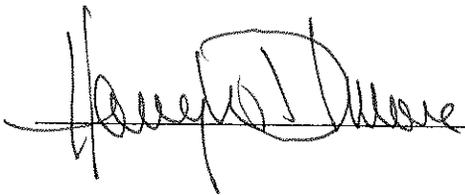
**ARTICLE IV. Repealer:**

All prior resolutions or ordinances are hereby Repealed in whole or in part to the extent inconsistent herewith.

RESOLVED and ENACTED this 18<sup>th</sup> day of May, 2004.

ATTEST:

BOROUGH OF AVALON



By: 

Approved ~~as to form~~ this 18<sup>th</sup> day of May 2004  
  
~~Secretary~~ MAYOR