

**ORDINANCE NO. 2008-12**

**ORDINANCE OF THE BOROUGH OF RED BANK,  
COUNTY OF MONMOUTH, STATE OF NEW JERSEY  
AUTHORIZING THE CONVEYANCE OF AN EASEMENT TO  
TAINA CORPORATION (T/A BUONA SERA RESTAURANT)  
UPON CERTAIN PORTIONS OF THE BOROUGH OWNED RIGHT OF WAY  
ALONG MONMOUTH STREET AND MAPLE AVENUE, ADJACENT TO  
BLOCK 43, LOTS 5 & 6**

**WHEREAS**, on February 26, 2007, the Borough Council finally approved Ordinance No. 2007-6 conveying an Easement to Taina Corporation (hereinafter, "Taina") over and upon certain portions of the Borough owned right of way along Monmouth Street and Maple Avenue, adjacent to the Buona Sera Restaurant, Block 43, Lots 5 & 6, for the purpose of installing awnings that intruded upon the air rights above that right of way; and

**WHEREAS**, because that prior easement constituted a "minor encroachment" under the terms of Red Bank Code §25-3.4, Taina paid the required consideration of \$1,500.00 to the Borough; and

**WHEREAS**, since that time, Taina has received certain approvals from the Borough's Planning Board for an expansion of its premises, which included an expansion of the areas covered by decorative awnings, subject to approval of a new easement by the Borough Council; and

**WHEREAS**, Taina has submitted a survey prepared by Michael T. Cannon, P.E., P.L.S., entitled, "Survey of Property, Lots 5 & 6, Block 43, Borough of Red Bank", dated March 7, 2003, last revised, December 5, 2007; which depicts the encroachments of these new decorative awnings, which survey is hereby incorporated by reference; and

**WHEREAS**, the expanded awnings transformed the encroachment upon the Borough's right of way from a "minor encroachment" to a "major encroachment" under the terms of RBC §25-3.4; and

**WHEREAS**, the consideration required by RBC §25-3.4 for a "major encroachment" is \$2,000.00; and

**WHEREAS**, Taina has provided the Borough Attorney with the sum of \$500.00, the price differential between the "minor" and "major" encroachments under the Ordinance, which sum is being held in escrow by the Borough Attorney pending final approval of this Ordinance and execution of the easement; and

**WHEREAS**, Taina has also submitted a form of easement that is acceptable to the Borough Attorney;

**NOW THEREFORE BE IT ORDAINED** by the Governing Body of the Borough of Red

Bank as follows:

**SECTION 1:**

- a. The Borough of Red Bank shall grant to Taina Corporation an Easement upon certain portions of the Borough owned right of way along Monmouth Street and Maple Avenue, adjacent to the Buona Sera Restaurant, Block 43, Lots 5 & 6, for the purpose of installing awnings that will intrude upon the air rights above that right of way; as shown on the survey prepared by Michael T. Cannon, P.E., P.L.S., entitled, "Survey of Property, Lots 5 & 6, Block 43, Borough of Red Bank", dated March 7, 2003, last revised, December 5, 2007;
- b. Taina, its successors and assigns, shall designate the Borough as a named insured upon a policy of general liability insurance with limits approved by the Borough Administrator and the Borough Attorney with respect to all property subject to the easements approved herein. Taina shall also execute a hold harmless agreement to the Borough subject to approval by the Borough Attorney; and
- c. The aforementioned easement, together with the consideration paid for same, shall be held in escrow by the Borough Attorney and shall be released upon the final approval of this Ordinance and execution of the Deed of Easement by the Mayor and the Clerk.

**SECTION TWO:** Any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

**SECTION THREE:** If any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

**SECTION FOUR:** This Ordinance shall take effect immediately upon its passage and adoption according to law.