

ORDINANCE NO. 2008-12

**ORDINANCE OF THE BOROUGH OF RED BANK,
COUNTY OF MONMOUTH, STATE OF NEW JERSEY
AUTHORIZING THE CONVEYANCE OF A LICENSE TO INTRUDE ON THE BOROUGH'S
RIGHT OF WAY TO
TAINA CORPORATION (T/A BUONA SERA RESTARUANT)
UPON CERTAIN PORTIONS OF THE BOROUGH OWNED RIGHT OF WAY
ALONG MONMOUTH STREET AND MAPLE AVENUE, ADJACENT TO
BLOCK 43, LOTS 5 & 6**

WHEREAS, Taina Corporation (hereinafter, "Taina") has requested permission to intrude over and upon certain portions of the Borough owned right of ways 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 those rights of way; and

WHEREAS, Taina has submitted elevations of the proposed awnings prepared by ABN Design Group, dated March 20, 2008 and last revised June 5, 2008; which generally depicts the encroachments of these new decorative awnings, which is hereby incorporated by reference; and

WHEREAS, the consideration required by RBC §25-3.4 is being held in escrow by the Borough Attorney pending final approval of this Ordinance and execution of the agreement authorized herein; and

WHEREAS, Taina shall submit a form of agreement 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 a License to intrude 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 generally depicted on the elevations prepared by the ABN Design Group, dated March 20, 2008 and last revised June 5, 2008;
- b. Notwithstanding the elevations prepared by the ABN Design Group, in no instance shall the awnings extend more than five (5') feet from the side of the Building along Monmouth Street, and along Maple Avenue, the awnings shall match their existing dimensions, except that any awnings above the building's entrance ways may extend no more than nine (9') feet from the side of the building on the Maple Avenue side and eight and one half (8' 6") on the Monmouth Street side;
- c. Tania may install no more than two supporting poles underneath a maximum of two awnings located above the building's entrance ways. Such poles shall be installed in consultation with the Construction Official;

- d. Any property, structures, or parts thereof, intruding upon the right of way, as authorized herein, shall be removed at the landowner's expense if they are a hazard to any persons, or if their removal is reasonably necessary to accommodate any improvements within the Borough's right of way;
- e. 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 and structures subject to the license approved herein. Taina shall also execute a hold harmless agreement to the Borough subject to approval by the Borough Attorney; and
- f. The agreement authorized herein, 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 license agreement 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.

First Reading: July 14, 2008

Final Reading: July 28, 2008