

“GOD BLESS AMERICA”

REGULAR MEETING

JULY 1, 2014

A regular meeting of the Mayor and Council of the Borough of Belmar held on the above date at 6:00 PM at the Belmar Municipal Building, 601 Main Street.

PRESENT: Mayor Doherty, Councilwoman Nicolay, Councilman Bean, Councilman Magovern, Councilwoman Keown-Blackburn, Borough Attorney Michael DuPont, Esq., Business Administrator Colleen Connolly, and Borough Clerk April Claudio

The Borough Clerk stated “Adequate notice of this meeting has been provided to The Coast Star, the official newspaper of the Borough of Belmar, and the Asbury Park Press on April 30, 2014 notice of this meeting was prominently posted on the bulletin board of the Municipal Building and filed with the Clerk of the Borough of Belmar.

PLEDGE OF ALLEGIANCE

MOMENT OF SILENCE: Our troops and their families

SPECIAL PRESENTATIONS:

- Employee of the Month
- Historical Society Document
- Special Resolutions Honoring Jane Preville, Teri Hennessey, and Haley Behre

WORKSHOP DISCUSSION:

- Maclearie Park Playground
- Lake Como Outfall

PETITIONS:

REPORTS OF MAYOR AND COUNCIL:

APPROVAL OF MINUTES:

PUBLIC SESSION: Public Session on resolutions only on the Agenda. We will continue to have a Public Session at the end of this meeting.

RESOLUTIONS:

- **RESOLUTION PERMITTING SPECIAL PERMITS FOR SOCIAL AFFAIRS FOR THE FRIENDLY SONS OF THE SHILLELAGH**
- **RESOLUTION AUTHORIZING PAYMENT OF BILLS**
- **RESOLUTION AUTHORIZING THE SIGNING OF AN ACCESS AGREEMENT BETWEEN THE BOROUGH OF BELMAR AND MB1 LLC**
- **RESOLUTION ESTABLISHING THE POSITION OF LOCAL HISTORIAN**

CONSENT AGENDA:

All matters listed in the Consent Agenda are considered to be routine by the Borough Council and will be enacted by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

RESOLUTIONS BY CONSENT:

- **RESOLUTION AUTHORIZING THE SUBMISSION OF A RECYCLING**

TONNAGE GRANT APPLICATION FOR THE BOROUGH OF BELMAR

- **RESOLUTION OPPOSING SENATE BILL NO. 2171 AND ASSEMBLY BILL NO. 1956**
- **RESOLUTION AUTHORIZING ISSUANCE OF PLENARY RETAIL CONSUMPTION NO. 1306-33-014-004 FOR JOBIL, INC., T/A JACK'S TAVERN FOR PERIOD ENDING JUNE 30, 2015**
- **RESOLUTION PROVIDING FOR THE INSERTION OF A SPECIAL ITEM OF REVENUE IN THE BUDGET OF THE BOROUGH OF BELMAR PURSUANT TO N.J.S.A. 40A:4-87 (CHAPTER 159, P.L. 1948)**
- **RESOLUTION PURSUANT TO N.J.A.C. 5:30-14.4 ET SEQ. CHANGE ORDER NUMBER ONE FOR THE WATERWORKS GROUND STORAGE TANK PAINTING AND REPAIRS PROJECT**
- **RESOLUTION APPROVING MEMBERSHIP APPLICATIONS FOR HOOK & LADDER FIRE COMPANY**

ORDINANCES:

First Reading & Introduction

ORDINANCE NO. 2014-12

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER XX, LICENSES OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF BELMAR SECTION 5-1, DESIGNATION OF AMUSEMENT OR ENTERTAINMENT AREAS

First Reading & Introduction

ORDINANCE NO. 2014-13

AN ORDINANCE AMENDING CHAPTER XL (Development Regulations) REVISE GENERAL ORDINANCES OF THE BOROUGH OF BELMAR

First Reading & Introduction

ORDINANCE 2014-14

ORDINANCE OF THE BOROUGH OF BELMAR, COUNTY OF MONMOUTH, NEW JERSEY VACATING A PORTION OF A PUBLIC ROAD IN THE SEAPORT REDEVELOPMENT AREA IN FURTHERANCE OF THE REDEVELOPMENT PROJECT AT BLOCK 57, LOT 4.

PUBLIC SESSION:

MEETING ADJOURNED

HONORING HALEY BEHR

WHEREAS, for the past 24 months Haley Behr has been reporting on all activities and events in the Borough of Belmar for the Coast Star newspaper; and

WHEREAS, during this time Haley has written weekly articles about Mayor and Council meetings, Zoning and Planning Board meetings, beach, recreation and library activities and events, as well as all other volunteer groups, events and activities throughout the Borough of Belmar; and

WHEREAS, Haley has always been cooperative and willing to write about anything that would promote Belmar as well as anything happening in Belmar; and

WHEREAS, Haley has decided to resign from the Coast Star to pursue her Master's Degree at Carnegie Mellon University in Pennsylvania; and

WHEREAS, the Borough of Belmar is extremely grateful for all of her hard work and all of the many hours she spent attending events and meetings;

NOW THEREFORE, BE IT RESOLVED, the Mayor and Council, all of the employees and residents of the Borough of Belmar say "Thank You" Haley for your dedication and interest in Belmar, and wish you well in all of your future endeavors.

RESOLUTION 2014-

RESOLUTION ESTABLISHING THE POSITION OF LOCAL HISTORIAN

Whereas, The Borough of Belmar, by resolution, may establish the position of local historian; and

Whereas, The local historian shall serve without compensation and serve a four year term; and

Whereas, The local historian shall have the power and responsibility to carry out a historical program, including but not restricted to collecting, preserving and making available materials relating to the history of the local unit; and

Whereas, The historian shall store such materials in such manner as to insure their preservation, and shall notify the State Archivist, New Jersey Historical Commission, county local historian and local governing body of any materials which should be acquired for preservation and

Whereas, Upon leaving the position, the local historian shall turn over all materials and records and reports into the possession of the successor, if then appointed, or to the governing body until a successor shall be appointed.

Now therefore be it resolved, that the Borough of Belmar establishes the position of local historian; and

Be it further resolved, that the Brian Magovern is appointed to the position of local historian.

offered the above resolution and moved its adoption.

Seconded by and adopted by the following vote on roll call:

Council members:	AYES	NAYS	ABSENT	ABSTAIN
Mrs. Deicke				
Mr. Magovern				
Mr. Bean				
Mrs. Nicolay				
Mayor Doherty				

Adopted:

RESOLUTION 2014-

**RESOLUTION AUTHORIZING THE SIGNING OF AN ACCESS AGREEMENT
BETWEEN THE BOROUGH OF BELMAR AND MB1 LLC**

BE IT RESOLVED that the Mayor and Council of the Borough of Belmar hereby authorize the Business Administrator to sign an "Access Agreement" with MB1 LLC for the sidewalk area behind 801 Main Street for completion of their site improvements.

offered the above resolution and moved its adoption.

Seconded by and adopted by the following vote on roll call:

Council members:	AYES	NAYS	ABSENT	ABSTAIN
Mrs. Deicke				
Mr. Magovern				
Mr. Bean				
Mrs. Nicolay				
Mayor Doherty				

Adopted:

ACCESS AGREEMENT

This ACCESS AGREEMENT (the "Agreement") is made and entered into as of _____, by and between the Borough of Belmar, with municipal offices at 601 Main Street, Belmar, New Jersey 07719 (hereinafter referred to as "Owner") and MB1 Belmar, LLC., with offices at 803 Main Street, Belmar, New Jersey 07719 (hereinafter "Licensee"). Owner and Licensee may hereinafter be referred to individually as "Party" or collectively as "Parties."

W I T N E S S E T H

WHEREAS, the parties desire to provide in writing to permit Licensee access upon the municipal parking lot located to the west side and adjacent to the improvement at 803 Main Street, Belmar, New Jersey as depicted in the attached Exhibit "A" (the "Property") for the purpose of (i) Constructing on the municipal parking lot an access ramp to the building and a decorative restaurant dining, paver and bench area adjacent to the building; (ii) to install two (2) handicap spaces in the municipal parking lot and construct an access ramp from the parking lot to the adjoining sidewalk and (iii) to improve a section of the Property to permit the operation of a restaurant style dining area ("i", "ii" and "iii" together shall be known as the "Work"). The engineering plans and details of the proposed Work are available upon request.

NOW THEREFORE, in consideration of the mutual covenants and agreements described below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Owner does hereby grant to Licensee and its agents, employees, contractors and subcontractors (collectively its "Representatives") reasonable non-exclusive access for the sole purpose of allowing Licensee to enter the Property to complete the Work. Such access shall be limited to hours that do not unreasonably interfere with Owner's operation of its business at the Property.
2. Owner shall have the right to have its representatives present at all times of Licensee's and its Representatives' entry upon the Property. Licensee shall provide \$10,000.00 to be placed in an escrow account to be used by the Owner's professionals to oversee the Work. Should the balance of the escrow account fall below \$2,000.00, Licensee shall place an additional \$5,000.00 into the escrow account. The maximum amount that Licensee is required to place into the escrow account shall be \$15,000.00 in total. Any unused portion of the escrow account shall be returned to the Licensee at the completion of the Work.
3. Licensee shall obtain, at its sole cost and expense, all permits and authorizations of whatever nature from any and all governmental agencies as are necessary for conducting the Work. The Owner agrees to diligently review, respond to, and/or provide design input where applicable to any design submissions or permit applications made to the Owner. In connection therewith, Licensee will comply and will cause its Representatives to comply with any and all applicable laws and regulations.
4. Licensee shall require its Representatives to obtain and maintain in force and shall deliver to Owner (upon request) certificates of insurance evidencing at a minimum the following insurance coverage:
 - (A) Worker's Compensation, according to applicable statutory requirements.
 - (B) Comprehensive General Liability Insurance covering operations, automobiles (including owned, non-owned or hired vehicles) and subcontractors, with a minimum limit applicable to Bodily Injury Liability (including, but not limited to, wrongful death) and Property Damage Liability of \$1,000,000 single limit per incident or occurrence and in the aggregate.
5. Upon request by Owner, Licensee shall provide to Owner, a schedule setting forth the days on which Work will be performed at the Property. Licensee shall promptly notify Owner in writing, of any changes to such schedule. All notices regarding this Agreement shall be sent in writing to the following parties:

If to Owner:

Michael R. DuPont, Esq.
McKenna, DuPont, Higgins & Stone, P.C.
229 Broad Street, P.O. Box 610
Red Bank, New Jersey 07701
Email: DuPont@RedBankLaw.com

If to Licensee:

MB1 Belmar, LLC
Attn: Joel Brudner
3350 Highway 138, Suite 224
Wall, New Jersey 07719
Email: jsbrudner@mb1capital.com

With Copy to:

Giordano Halleran & Ciesla, PC
Attn: John Giunco, Esq.
125 Half Mile Road, Suite 300
Red Bank, New Jersey 07719
Email: Jgiunco@ghclaw.com

6. All activities conducted by Licensee and its Representatives shall be conducted in a workmanlike manner and the Property shall be kept free of all debris to the extent practicable. Licensee and its Representatives shall not unreasonably interfere with the use of the Property and shall not damage the Property. Licensee agrees that the Work will not impact the use of the municipal parking lot on weekday evenings, Saturdays or Sundays. If any portion of the Property suffers damage by reason of the access of Licensee or its Representatives to the Property, including but not limited to damage arising from the Work, Licensee shall, at its sole cost and expense, immediately repair all such damage or replace any damaged portion of the Property and restore the Property to its condition prior to the occurrence of such damage. Licensee shall secure a performance bond for the cost of restoring the Property, to its condition prior to the commencement of the Work, from its contractor and/or subcontractor.
7. Licensee its successors and assigns and/or related or affiliated partnerships or corporations shall be responsible for the maintenance of Work area depicted in Exhibit A, which maintenance shall include landscaping, snow removal and ice removal. Owner shall continue to provide governmental services to the Work area depicted in Exhibit "A".
8. Owner represents that it has disclosed and provided to Licensee, all information in its possession regarding any underground utilities. Notwithstanding the above, when applicable, Licensee or its Representatives shall contact New Jersey One Call prior to commencement of Work at the Property, if applicable.
9. Licensee and its Representatives shall be solely responsible for the proper handling, storage, treatment and/or disposal of all wastes or other material generated or used as a result of the Work. On-Property disposal of waste material shall be prohibited. Owner will not be identified as the generator of any non-pre-existing waste material relating to the Work which is generated at or transported from the Property.
10. Licensee, all of its subsidiaries, predecessors, successors, assigns, related or affiliated partnerships or corporations or other forms of business venture, parent corporations, divisions, officers, directors, partners, general partners, limited partners, agents, employees, stockholders (in their capacity as such) and representatives, past, present and future shall indemnify (including reasonable costs incurred) Owner, and Owner's subsidiaries, predecessors, successors, assigns, related or affiliated partnerships or corporations or other forms of business venture, parent corporations, divisions, officers, directors, partners, general partners, limited partners, agents, employees, stockholders (in their capacity as such), attorneys-in fact, attorneys at law, and representatives, past, present and future, from and against any and all claims, suits, damages and liabilities, penalties, fines and judgments, that are specifically caused by the Work

conducted by Licensee or Licensee's Representatives. This provision does not relate to any pre-existing conditions on the Property. This provision does not indemnify Owner from any environmental liabilities that exist on the Property that are not the responsibility of the Licensee.

11. Should Owner determine that Licensee is in breach of any of the terms herein, Owner shall provide written notice of said breach to Licensee. Owner may terminate this Agreement for any breach not cured after written notice specifying the breach is received by Licensee, which termination shall not relieve Licensee of any damages or liability. Notice under this paragraph shall be provided to:

Michael R. DuPont, Esq.
McKenna, DuPont, Higgins & Stone, P.C.
229 Broad Street, P.O. Box 610
Red Bank, New Jersey 07701
Email: DuPont@RedBankLaw.com

12. This is an access agreement, not an easement, and shall not be recorded.
13. This Agreement constitutes the entire agreement between the parties, may not be modified or amended except in a writing signed by both parties and the rights and obligations hereunder may not be transferred or assigned without the prior written consent of the parties hereto.
14. This Agreement shall be binding on and inure to the benefit of the heirs, successors or assigns of the parties hereto.
15. This Agreement and all issues arising hereunder shall be governed by the laws of the State of New Jersey.
16. The undersigned represent that they are duly authorized to legally bind their respective business organizations to the terms of this Agreement.
17. This Agreement shall be constructed without regard to any presumption or to any law requiring construction against the party causing this Agreement to be drafted.

(Signatures on Next Page)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Borough of Belmar

By: _____ (Signature)

Name (print):

Company (if applicable):

Date:

MB1 Belmar, LLC.

By: _____ (Signature)

Name (print):

Company (if applicable):

Date: