

TRADEMARK AND COPYRIGHT LICENSE AGREEMENT

THIS TRADEMARK AND COPYRIGHT LICENSE (the “Agreement”) dated this ____ day of November 2022 (the “Agreement Date”), *nunc pro tunc* to October 4, 2012, by and between the Suzanne Anan, an individual with an address at 406 5th Avenue, Belmar, NJ 07719 (“Licensor”) and The Borough of Belmar, New Jersey, with an address at 601 Main Street Belmar, NJ 07719 (“Licensee”). Licensor and Licensee may each be referred to herein as a “Party” and, collectively, as the “Parties.”

Recitals

WHEREAS, Licensor is an independent artist;

WHEREAS, Licensee is a municipality that provides Municipal Services (as defined herein) to its residents including fire department services, library services, police services, public works, and more;

WHEREAS, in or around 2011, Licensor designed a stylized wave design including literal elements “Belmar Beautiful Sea” beneath the stylized wave (hereinafter the “Belmar Logo”) (See Exh. A) to promote The Borough of Belmar, New Jersey;

WHEREAS, Licensor owns all common law trademark rights in and to the Belmar Logo, as well as United States Trademark Registration No. 6,455,909, which covers the Belmar Logo for use with clothing, namely hoodies, tops as clothing and wrap-arounds; and for promoting tourism in Jersey Shore area (the “Registered Goods/Services”),

WHEREAS, Licensor also owns United States Copyright Registration No. VA0002102787 for the Belmar Logo (See Exh. B), as described therein.

WHEREAS, subsequent to Licensor’s creation of the Belmar Logo, Licensee requested a license to use the Belmar Logo in connection with its Municipal Services, and Licensor agreed; and

WHEREAS, the Parties now wish to memorialize their license relationship pursuant to which Licensee, during the Term (as defined herein) of this Agreement, may use the Belmar Logo in connection with its Municipal Services, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged by the Parties, Licensor and Licensee covenant and agree as follows:

1. **Recitals**. The Parties acknowledge and agree the foregoing recitals are true and correct.

2. **Definitions.** The following terms, when capitalized and used in this Agreement, shall have the following meanings:

- a. “**Municipal Services**” means fire department services, library services, mayoral and council services, fire prevention services, construction services, law enforcement services, court services, public works services, election services, records services, water and sewer services, and any other services Licensor and Licensee mutually agree to, now and in the future, that may qualify as Municipal Services.
- b. “**Belmar Logo**” means the stylized logo set forth on Exhibit A, which shall only be displayed as shown in Exhibit A with respect to font styles, proportions and colors, and which must always be accompanied by the ® symbol to provide notice to the public the logo is a federally registered trademark.
- c. “**Person**” means any natural or legal person, including, but not limited to, associations, companies, corporations or trusts.
- d. “**Term**” means the two-year period beginning on the Agreement Date of this Agreement.

3. **Grant of Limited, Non-Transferable, Non-Exclusive Trademark and Copyright License.** Subject to the restrictions set forth herein, including, but not limited to, the payment of compensation described in Section 6, and right of first refusal described in Section 7, Licensor hereby grants to Licensee for the Term of this Agreement, a limited, non-transferable, non-sublicensable, non-exclusive trademark and copyright license to use the Belmar Logo in connection with providing Municipal Services, including but not limited to using the Belmar Logo on signs and displays, on uniforms, on letterhead, and on water towers, and the like.

4. **Quality Control.**

- a. **Acknowledgment.** Licensee acknowledges and is familiar with the high standards, quality, style, and image of Licensor, and Licensee at all times shall conduct its business and use the Belmar Logo in a manner consistent with these standards, quality, style, and image.
- b. **Compliance with Licensor Specifications.** Licensee shall comply with the specifications, standards, and directions relating to use of the Belmar Logo as provided herein or otherwise provided by Licensor in writing from time to time.

- c. Compliance with Laws. In exercising its rights under this Agreement, Licensee shall comply with all applicable Laws. Licensee shall promptly provide Licensor with copies of all communications with any governmental, regulatory, or industry authority relating to the Belmar Logo.
- d. Audit Rights. Licensee shall permit, and shall obtain permission for, Licensor at all reasonable times and on reasonable notice to audit any use by Licensee of the Belmar Logo to ensure compliance with the quality standards or any other specifications or requirements set forth in this Agreement.
- e. Submission of Materials for Approval. At any time at Licensor's request, Licensee shall, at its own expense, supply production samples to Licensor of any materials relating to the Registered Goods/Services on or in connection with which Licensee wishes to use the Belmar Logo for approval, which may be given or withheld in Licensor's sole discretion. If Licensor rejects any sample, it shall use reasonable efforts to give written notice of such rejection to Licensee within thirty (30) days of Licensor's receipt of the sample. Licensee shall immediately cease production and/or distribution of such material(s) and shall not recommence until Licensor confirms in writing that it may do so.

5. **Term.** This Agreement is effective as of October 4, 2012, and, unless terminated earlier in accordance with Section 13, continue for two years from the Agreement Date. The Term will automatically renew for additional two-year terms, unless either Party provides written notice of termination at least sixty (60) days prior to the end of the current Term.

6. **Compensation.** In consideration of the license granted in this Agreement, Licensee shall pay Licensor a one-time license fee of Ten Dollars (\$10), due upon execution of this Agreement.

7. **Right of First Refusal.** In consideration of the license granted in this Agreement, if Licensee intends to order or produce apparel, promotional items, t-shirts, sweatshirts, hoodies, tank tops, pants, vests, hats, jackets, sweat pants, shorts, swimsuits, caps, towels, polo shirts, totes, printed or embroidered apparel, which includes the Belmar Logo on or in connection with such items, other than municipal vehicles and signage,, Licensor shall have the first right of refusal to produce such items and sell them to Licensee for fair market wholesale prices. Licensee shall notify Licensor of such intention along with a purchase order request. Licensor shall have thirty (30) days from the receipt of such notice and purchase order request to provide Licensee with written acceptance to produce and sell the requested items.

8. **Intellectual Property Rights.** The Belmar Logo is and shall remain the sole and exclusive property of Licensor. Licensee shall acquire no rights therein, including, but not limited to, any interest in any copyrights, patents, trademarks, trade secrets or other intellectual

property of Licensor (collectively, “Licensor’s IP”) except as expressly granted to Licensee in this Agreement. Licensor shall have the sole and exclusive right to derive, secure, register, renew, license and/or enforce Licensor’s rights in and to Licensor’s IP and Licensee shall immediately advise Licensor of any infringement or violation of Licensor’s IP of which it becomes aware.

9. **Disclaimer of Warranties by Licensors.** LICENSOR DISCLAIMS ANY WARRANTY, WHETHER EXPRESS, IMPLIED, THROUGH COURSE OF DEALING, OR OTHERWISE, UNDER OR RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT.

10. **Limitations of Damages.** Neither Licensor nor Licensee shall be liable to the other for consequential, special, punitive or exemplary damages regarding any claims related, in whole or part, to this Agreement. Any claim not made the subject of litigation within two (2) years of the date upon which it accrued, shall be conclusively deemed to have been waived.

11. **Indemnification.** Notwithstanding Section 10 of this Agreement, Licensee shall indemnify and hold Licensor harmless (including, as to attorneys’ fees, costs and expenses) from any claims, damages or demands by third parties related to the provision of the Municipal Services by Licensee, including any claims or liabilities made against Licensor, based on allegations of infringement related to Licensee’s use of the Belmar Logo (“Claim(s)”). Licensee shall defend all Claims at its sole expense but shall not have the authority to resolve Claims without Licensor’s consent, which shall not be unreasonably withheld. Licensor shall provide Licensee with notice of any Claim within sufficient time for Licensee to satisfy its indemnity and defense obligations hereunder.

12. **Assignment.** Licensee shall not assign, transfer or encumber any of its rights or obligations under this Agreement without the prior, written consent of Licensor. Any attempted assignment, transfer or encumbrance in violation of this Section 12 shall be void.

13. **Termination.**

- a. **Termination Without Cause.** Either Party may terminate this Agreement, with or without cause, at any time during the Term by giving the other Party written notice at least sixty (60) days before the date set forth in such notice to be the effective date for such termination.
- b. **Termination for Cause.** Licensor may terminate this Agreement immediately on written notice to Licensee if:

- i. Licensee does not strictly comply with any of its obligations or restrictions related to its permitted or prohibited uses of the Belmar Logo, which Licensee understands and agrees constitute an immediate material breach that shall not be curable; Licensee stipulates if it breaches any obligation in this Agreement, it will cause irreparable harm to Licensor without the need for further proof by Licensor of such harm, and will entitle Licensor to immediate temporary relief (TRO) and preliminary injunctive relief;
- ii. Licensee breaches this Agreement (in any manner other than as set forth above) and (if such breach is curable) fails to cure such breach within seven (7) days of being notified in writing to do so, although Licensor shall, at its sole discretion, have autonomy and authority to determine whether the breach was fully cured to its satisfaction; or
- iii. Licensee – either directly or indirectly – in any way challenges the validity or Licensor's ownership of the Belmar Logo, which Licensee hereby agrees it will not do.

14. Post-Termination Rights and Obligations.

- a. Effect of Termination. On the expiration or termination of this Agreement for any reason and subject to any express provisions set out elsewhere in this Agreement:
 - i. all rights and licenses granted pursuant to this Agreement cease;
 - ii. Licensee shall immediately cease all use of the Belmar Logo, including on or in connection with the Municipal Services, marketing and promotional materials, social media handles and content, trade names, and domain names; and
 - iii. within sixty (60) days after the date of expiration or termination, Licensee shall promptly deliver to Licensor or any other Person designated by Licensor, or at Licensor's option, destroy, at Licensee's expense, all signage, apparel, marketing and promotional items bearing the Belmar Logo.
- b. Surviving Rights. The rights and obligations of the parties set forth in this Section 14 and Licensee's obligations set forth in Section 11, and any right, obligation, or required performance of the parties in this Agreement, which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

15. Governing Law. This Agreement shall be construed under the laws of the State of New Jersey, save the laws relating to conflict of laws. The federal and state courts situated in the

State of New Jersey shall have exclusive jurisdiction to resolve all claims between Licensor and Licensee. Licensor shall have the right to obtain injunctive and other equitable relief to prevent threatened violations of this Agreement and redress violations of this Agreement. Licensor shall be relieved of any obligation to post a bond or any security as a condition to the imposition of any such relief. The prevailing Party in any litigation between the Parties shall be entitled to recover its reasonable attorneys' fees and costs.

16. **Miscellaneous**. The following provisions shall also be part of this Agreement:

- a. **Relationship of the Parties**. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- b. **Notices**. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and addressed to the Parties at the addresses first set forth or as subsequently requested by a Party, in writing, and shall be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by electronic mail or facsimile (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.
- c. **Headings**. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- d. **Entire Agreement**. This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, whether written or oral, with respect to each subject matter.
- e. **No Third-Party Beneficiaries**. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature, under or by reason of this Agreement.

- f. Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
 - g. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
17. **Severability.** If any part, term or provision (or portion thereof) of this Agreement is found by a Court of competent jurisdiction to be illegal, in conflict with any law or otherwise invalid, the remaining portion or portions shall be considered severable and not be affected by such determination, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provisions held to be illegal or invalid.

WHEREFORE, the Parties enter into this Agreement, agreeing to be bound by all of its terms and conditions.

AGREED AND ACCEPTED:

SUZANNE ANAN

Suzanne Anan, individually

Dated: _____

THE BOROUGH OF BELMAR NEW JERSEY

By: _____

Name: _____

Title: _____

Dated: _____

EXHIBIT A



EXHIBIT B

