

RIGHT-OF-WAY AGREEMENT

THIS RIGHT-OF-WAY AGREEMENT (“**Agreement**”), dated on or as of _____, 2013 (the “**Effective Date**”), entered into by and between the Township of West Orange (“**Municipality**”) a New Jersey municipal corporation, and Bel Air at West Orange Condominium Association, Inc. (“**Association**” or “**Bel Air**”), a New Jersey nonprofit corporation.

RECITALS

1. Bel Air is proposing to install animal deterrent devices at its sole cost and expense along the public roadway commonly known as Kelly Drive, which devices are described in Appendix “A” attached (each a “**Device**” and collectively, the “**Devices**”). The Devices are intended to deter animals from crossing roadways when vehicles approach and are in furtherance of the health, safety and welfare of the residents of the Association and the traveling public generally.

2. The Municipality is empowered to enter into this in accordance with N.J.S.A. 48:17-10 through N.J.S.A. 48:17-12; and

3. It is in the best interest of the Municipality and its citizenry for the Municipality to grant consent to Bel Air to occupy said public Right-of-Way within the Municipality for this purpose; and

4. The consent granted herein is for the non-exclusive use of the public Right-of-Way specified in Appendix “B” within the Municipality for the purpose of owning, constructing, installing, operating, and maintaining the Devices.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and obligations hereinafter set forth, the Municipality and Bel Air hereby agree to and with each other as follows:

Section 1. Definitions.

- (a) “**Bel Air**” is the grantee of rights under this Agreement.

(b) “**Right-of-Way**” means the space in, upon, under, adjacent to or above only the public streets and roads specified in Appendix “B”.

(c) “**Municipality**” is the grantor of rights under this Agreement and is known as the Township of West Orange, located in the County of Essex, State of New Jersey.

Section 2. Grant of Consent.

The Municipality hereby grants Bel Air its municipal consent for the non-exclusive use of the referenced public Right-of-Way for the purpose of owning, constructing, installing, operating, and maintaining the Devices. The consent granted herein shall be for the performance of work within the referenced Right-of-Way of the Municipality only, as specified in Appendix “B” annexed hereto.

Section 3. Public Purpose.

It is deemed to be in the best interests of the Municipality and its citizenry, particularly the Municipality’s residents who may utilize this public Right-of-Way for the Municipality to grant consent to Bel Air to occupy the public Right-of-Way within the Municipality for the health, safety, welfare and benefit of the public and for the purposes specified herein.

Section 4. Project Description.

Any construction to be undertaken for the purposes described herein shall require prior notice by Bel Air to the Municipality. Bel Air shall fully describe the construction to be undertaken and shall coordinate and work with the appropriate Municipal Department(s) before scheduling and commencing any construction including obtaining any applicable permits and/or police coverage. Prior to commencing any excavation work, Bel Air or its authorized contractor shall, if required, obtain a road opening permit from the Municipality.

Section 5. Scope of Agreement.

Any and all rights expressly granted to Bel Air under this Agreement, which shall be exercised at Bel Air’s sole cost and expense, shall be subject to the prior and continuing right of the Municipality under applicable laws to use any and all parts of the applicable municipal

Right-of-Way exclusively or concurrently with any other person or persons, and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect such Municipal Right-of-Way. Nothing in this Agreement shall be deemed to grant, convey, create or vest in Bel Air a real property interest in land, including any fee, leasehold interest, easement, or any other form of interest or ownership.

Subject to obtaining the permission of the owner(s) of existing Utility Poles which may be affected by installation of the Devices, which shall be the sole responsibility of Bel Air to undertake and obtain, the Municipality hereby authorizes and permits Bel Air to enter upon the Municipality's Right-of-Way as referenced in Appendix "B", and to attach, install, operate, maintain, remove, reattach, reinstall, relocate and replace the Devices.

Section 6. No Interference.

Bel Air, in the performance and exercise of its rights and obligations under this Agreement, shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected properties, except as permitted by applicable Law or this Agreement.

Section 7. Compliance with Ordinance.

Bel Air shall comply with all existing ordinances of the Municipality as may be amended from time to time and with all future ordinances as may be enacted.

Section 8. Obtaining Required Permits and Police Coverage.

If Bel Air's use of the municipal Right-of-Way shall require any permits or police coverage or protection, Bel Air shall apply for the appropriate permits and coverage and pay any applicable fees associated therewith.

Section 9. Damage to Municipal Right of Way.

Whenever Bel Air's use of the municipal Right-of-Way permitted under this Agreement causes any municipal Right-of-Way to be damaged, Bel Air shall, at its sole cost and expense, promptly repair and return the Right-of-Way to a condition as good as or better than they were prior to the damage. If Bel Air does not repair the site as described, the Municipality will have the option, upon five (5) days written notice to Bel Air, to perform or cause to be performed such reasonable and necessary work on behalf of Bel Air, and to charge Bel Air for the actual costs incurred by the Municipality; however, in the event of an emergency, the Municipality will be authorized to take any and all steps necessary to repair or secure the premises without such notice. Upon receipt of the demand for payment, after the aforementioned procedure, Bel Air shall promptly reimburse the Municipality for such cost within ten (10) days of receipt of an invoice.

Section 10. Duration of Consent.

This Agreement shall be effective for an initial term of ten (10) years commencing on the Effective Date, unless it is earlier terminated by either party in accordance with the provisions herein. Upon the expiration of the initial term or a prior extension term, this Agreement shall automatically be extended for up to three (3) additional terms of ten (10) years each upon terms and conditions mutually agreeable to the parties hereto, unless either party hereto shall give written notice to the other party of its intent not to renew this Agreement at least twelve (12) months prior to the expiration of the initial term or then effective extension term.

Section 11. Indemnification.

Bel Air, its successors, assigns, sub-contractors, agents, servants, officers, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Municipality, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all claims, demands, suits, actions at law or equity or otherwise, judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Bel Air's actions under this Agreement and costs in

connection therewith. This indemnification shall specifically include, but is not limited to, any and all costs, reasonable attorney fees, court costs and any other expenses that may be incurred by the Municipality in connection with any and all claims, demands, suits, actions of law or equity or otherwise and/or arbitration proceedings which may arise in connections with Bel Air activities pursuant to the rights granted in this Agreement. The indemnification shall be valid throughout the term of this Agreement.

Section 12. Notices.

All notices or other correspondence required or permitted to be given in connection with this Agreement shall be in writing and delivered personally, by telecopy, by overnight carrier service or by registered or certified mail to the parties at the following addresses:

To Bel Air at: President
Bel Air Condominium Association
c/o Taylor Management
1 Whitbay Drive
West Orange, NJ 07052

To the Municipality:
Township of West Orange
66 Main Street
West Orange, NJ 07052
Attn: Municipal Clerk

With a copy to: Richard D. Trenk, Esq. Township Attorney
Trenk, DiPasquale, Della Fera, Sodono, P.C.
347 Mt. Pleasant Avenue, Suite 300
West Orange, NJ 07052

Section 13. Liability Insurance.

Bel Air shall at all times maintain a comprehensive liability insurance policy with a single amount of at least One Million Dollars (\$1,000,000.00) per occurrence, and at least Two Million Dollars (\$2,000,000.00) in the aggregate covering liability for any death, personal injury, property damage or other liability arising out of the construction and operation contemplated herein.

Prior to the commencement of any work pursuant to this Agreement, Bel Air

shall file with the Municipality Certificates of Insurance and endorsements evidencing the coverage provided by said policy. Such policy or policies shall be renewed and maintained throughout the term of this Agreement and any renewal Certificate(s) shall be provided to the Municipality within thirty (30) days of renewal. Any lapse in coverage shall render this Agreement void.

The Municipality shall notify Bel Air within fifteen (15) days after the presentation of any claim or demand to the Municipality, either by suit or otherwise, made against the Municipality on account of any of Bel Air's or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Agreement.

Section 14. Assignment.

Bel Air may not assign this Agreement without the written consent of the Municipality.

Section 15. Successors and Assigns.

Notwithstanding Section 14 of this Agreement, the terms and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 16. Governing Law.

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey.

Section 17. Incorporation of Prior Agreements.

This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior or written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.

Section 18. Modification of Agreement.

This Agreement may not be amended or modified, nor may any

obligation hereunder be waived orally, and no such amendment, modifications or waiver shall be effective for any purpose unless it is in writing and signed by the party against whom enforcement thereof is sought.

Section 19. Invalidity.

If any provision hereof shall be declared invalid by any court or in any administrative proceedings, then the provisions of this Agreement shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction herein contemplated to the extent possible. The headings are provided for purposes of convenience of reference only and are not intended to limit, define the scope of or aid in interpretation of any of the provisions hereof.

Section 20. Counterparts.

This Agreement may be executed and delivered in several counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth below.

**BEL AIR AT WEST ORANGE
CONDOMINIUM ASSOCIATION, INC.**

Attest:

By: _____
Name: _____
Title: _____

Name: _____
Title: _____

TOWNSHIP OF WEST ORANGE

Witness:

Print Name: _____
Robert D. Parisi, Mayor

Print Name: _____
Karen J. Carnevale, Municipal Clerk

Dated: _____

Dated: _____

Appendix A – Animal Avoidance Devices

[To be attached]

Appendix B – Geographical Scope of Consent

By way of this Agreement, the Municipality consents to Bel Air's use of the following rights-of-way within the Municipality only:

1. Kelly Drive from Mt. Pleasant Avenue (U.S. Highway Route 10) to Haggerty Drive (approximately 1.3 miles)