

**EXHIBIT "B"**

**BY-LAWS  
OF  
THE RESIDENCE AT MORNINGSIDE  
CONDOMINIUM ASSOCIATION, INC.**

This Instrument Prepared by:  
Timothy S. Trigilio, Esq.  
Trigilio & Stephenson, P.L.L.  
5750 Cooper Foster Park Road, Suite 102  
Lorain, OH 44053-4132  
(440) 988-9500

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**BY-LAWS OF THE RESIDENCE AT MORNINGSIDE  
CONDOMINIUM ASSOCIATION, INC.**

The within By-Laws are executed and attached to the Declaration of Condominium Ownership for The Residence at Morningside Condominiums pursuant to Chapter 5311, Ohio Revised Code, said Chapter 5311 being hereinafter referred to as the "Condominium Act" and said Declaration, and any amendment thereto, being hereinafter referred to as the "Declaration." For purposes of these By-Laws, the definitions of any and all words, terms and/or phrases which appear or are used in these By-Laws and are defined in the Declaration shall have the same meaning in these By-Laws as set forth in the Declaration and in the event any words, terms and/or phrases are not defined in the Declaration and are defined in the Condominium Act, such words, terms and/or phrases shall have the same meaning herein as is set forth in the Condominium Act. The purpose of these By-Laws is to provide for the establishment of a Unit Owners Association (hereinafter referred to as the "Association") for the government of the Condominium Property described in the Declaration in the manner provided by the Declaration and these By-Laws, all of which shall be subject to the covenants, provisions and/or regulations contained in the Declaration and these By-Laws and shall be further subject to any and all restrictions, conditions or regulations hereafter adopted by the Board of Directors of the Association. The mere acquisition or rental of any Unit or Units described in the Declaration, or the mere act of occupancy of any Unit or Units shall constitute acceptance and ratification of the Declaration and these By-Laws.

**ARTICLE I  
THE ASSOCIATION**

Section 1. **Name and Nature of Association.** The Association shall be an Ohio corporation not for profit and shall be called The Residence at Morningside Condominium Association, Inc.

Section 2. **Membership.** The membership of the Association shall consist of all the Owners of Units in the Condominium Property (hereinafter referred to as the "Members") in accordance with the respective percentages of ownership of said Owners in the Common Elements of the Condominium Property established under the Declaration. A copy of these By-Laws are attached to the Declaration as Exhibit B. Each Member shall have voting rights equal to each of their respective percentage interest in the Common Elements as set forth in the Declaration. No purchaser of a Unit shall be deemed an Owner until the sale and purchase of such Unit has been consummated by the payment of the purchase price and delivery and recording of the deed therefor.

Section 3. **Membership Not Transferable.** Except as provided herein or in the Declaration, membership in the Association shall not be transferable. The membership in the Association of each Owner shall terminate upon a sale, transfer or other disposition of the Owner's ownership interest in the Unit, accomplished in accordance with the provisions of the Declaration, and all rights and privileges of a Member in the Association, the Owner's Unit and the Condominium Property shall cease on the termination of such membership, and thereupon, the membership of such respective Owner in the Association shall automatically transfer to and vest in the new succeeding Owner. The Association may, but shall not be required to, issue certificates or other evidence of membership therein.

Section 4. **Proxies.** Members may vote or act in person or by proxy. The person appointed as a proxy need not be a Member of the Association. Designation of a proxy to vote or act on behalf of a Member shall be made in writing to the Board of Directors of the Association and shall be

revocable at any time by actual notice to the Board of Directors by the Member or Members making such designation. Notice to the Board of Directors in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized.

Section 5. Meeting of Members.

- a. Annual Meetings. The annual meeting of the Members of the Association for the election of members of the Board of Directors, the consideration of reports to be laid before such meeting, and the transaction of such other business as may be properly brought before the meeting shall be held at the offices of the Association in Lorain, Ohio, or at such other place upon the Condominium Property or at such other place as designated by the Board of Directors and specified in the notice of such meeting at 8:00 p.m. or at such other time as may be designated by the Board of Directors and specified in the notice of the meeting, which notice shall be given as provided in Section 5(c) of this Article I. Subject to the provisions and conditions specified in Article VI, Section 1, of these By-Laws, the first annual meeting of the Members of the Association at which Unit Owners other than K. Hovnanian Oster Homes, LLC (hereinafter referred to as "Declarant") have a right to elect 75% of the members of the Board of Directors shall be held as soon as practicable on the date selected by Declarant and designated in the notice after the events specified in Article VI, Section I, have occurred; provided, however, in the event that the events specified in Article VI, Section 1, have not occurred within five (5) years after the date of the filing of the Declaration for record, then in all events, the first annual meeting of the Members of the Association at which the members of the Board of Directors are elected by Unit Owners other than Declarant shall be held on the next succeeding business day following the expiration of said five year period. After the first meeting of the Members of the Association, at which the Owners other than Declarant elected all or a majority of the members of the Board of Directors the subsequent annual meetings held thereafter shall be held in succeeding years on the third (3<sup>rd</sup>) Tuesday of November.
- b. Special Meetings. Special meetings of the Members of the Association may be held on any business day when called by the President of the Association or by the Board of Directors of the Association or by Members entitled to cast at least twenty percent (20%) of the votes of the Association. Upon request in writing delivered either in person or by certified mail or registered mail to the President or the Secretary of the Association by any person or persons entitled to call a meeting of Members, such officer shall forthwith cause to be given to the Members entitled thereto written notice by personal delivery or by mail, of a meeting to be held on a date not less than seven (7) nor more than sixty (60) days after the receipt of such request as such officer may fix. If such notice is not given within thirty (30) days after the delivery or mailing of such request, the Members calling the meeting may fix the time of the meeting and give notice thereof. Each special meeting shall be called to convene at 8:00 o'clock p.m. and shall be held at the office of the Association or at such other place upon the Condominium Property or at such place as shall be specified in the notice of such meeting.
- c. Notice of Meetings. Not less than seven (7) nor more than sixty (60) days before the day fixed for any meeting of the Members of the Association, written notice

stating the time, place and purpose of such meeting shall be given by or at the direction of the Secretary of the Association or any other person or persons required or permitted by these By-Laws to give such notice. The notice shall be given by personal delivery or by mail to each Member of the Association who is an Owner of record as of the day preceding the day on which notice is given. If mailed, the notice shall be addressed to the respective Members of the Association at their respective addresses as they appear on the records of the Association. Notice of the time, place and purpose of any meeting of Members of the Association may be waived in writing, either before or after the holding of such meeting, by any Member, which writing shall be filed with or entered upon the records of the meeting. The attendance of any Member at any such meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice, shall be deemed to be a waiver by him of notice of such meeting.

- d. **Quorum - Adjournment.** Except as may be otherwise provided by law or by the Declaration, at any meeting of the Members of the Association, the Members of the Association present in person or by proxy shall constitute a quorum for such meeting. However, no action may be authorized or taken by a lesser percentage than required by law, by the Declaration or by these By-Laws. The Members entitled to exercise a majority of the voting power represented at a meeting of Members, whether or not a quorum is present, may adjourn such meeting from time to time. If any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.
- e. **Order of Business.** The order of business at all meetings of Members of the Association shall be as follows:
- (1) Calling of meeting to order;
  - (2) Proof of notice of meeting or waiver of notice;
  - (3) Reading of minutes of preceding meeting;
  - (4) Reports of officers;
  - (5) Reports of Committees;
  - (6) Appointment of Inspectors of Election by Chairman of Meeting;
  - (7) Election of Directors;
  - (8) Unfinished and/or old business;
  - (9) New business; and
  - (10) Adjournment.
- f. **Actions Without a Meeting.** All actions, except removal of a Director, which may be taken at a meeting of the Association, may be taken without a meeting with the approval of and in a writing or writings signed by Members having the percentage of voting power required to take such action if the same were taken at a meeting. Such writings shall be filed with the Secretary of the Association.
- g. **Voting Rights for Units.** The aggregate number of votes for all Owners shall be one hundred (100) and shall be divided among the respective Members in accordance with their respective percentages of ownership interest in the Common Elements of the Condominium Property. If any Unit is owned by more than one (1) person, the voting rights for such Unit shall not be divided but shall be exercised only as a Unit. Except as otherwise prohibited under the

Condominium Act, Declarant as described in the Declaration, may exercise the voting rights with respect to any Units it owns. Unless, by express statutory provision of the statutes of the State of Ohio or of these By-Laws or the Declaration, a different vote is required, each question presented at a meeting of Members shall be determined by a majority vote of those present. With respect to all elections of the Board of Directors, Members may not vote on a cumulative voting basis.

- h. **Vote by a Business Entity.** In the case of a Unit owned or held in the name of a corporation, partnership, limited liability company, trust or other entity, a certificate shall be signed and filed with the Secretary when such Unit Owner becomes a Unit Owner, which certificate shall name the person authorized to cast a vote for such Unit. Such certificate shall be conclusive until a substitute certificate is filed with the Secretary. If such certificate is not filed, the vote of such entity shall not be considered, nor shall the presence of a representative of such Unit Owner at a meeting in determining whether the quorum requirement for such meeting has been met.

## **ARTICLE II** **BOARD OF DIRECTORS**

Section 1. **Number of Qualification.** The Board of Directors of The Residence at Morningside Condominium Association, Inc. is also sometimes herein called the Board. The Board of Directors shall consist of not more than five persons except as otherwise provided in these By-Laws, all of whom must be Owners and occupiers of a Unit, except as provided otherwise in these By-Laws. Declarant shall designate all of the Directors of the first Board of Directors of the Association who shall have all of the powers, authorities and duties herein conferred upon and/or delegated to the Board of Directors until the periods of time set forth in Article I, Section 5, and Article VI, Section 1, whichever event shall first occur. The first Board of Directors shall serve until the first annual meeting of the Members of the Association, and thereafter, Declarant shall have such rights to designate and elect Directors as are provided in Article VI, Section 1 hereof. Directors shall receive no compensation for their services except as expressly provided by a resolution of the Members.

Section 2. **Powers, Authorities and Duties.** The Board of Directors (the term "Board of Directors" whenever used in these By-Laws shall include and also mean the first Board of Directors designated by Declarant) shall have the powers, authorities and duties necessary for the administration of the affairs of the Association and shall have all powers, authorities and duties referred to in the Declaration, these By-Laws, Chapter 1702 of the Ohio Revised Code, as amended from time to time here (hereinafter the "Non-Profit Corporation Law"), and the laws of the State of Ohio, and may do all acts of Directors or by the Owners collectively, except such acts or things as are by law or by these By-Laws or by the Declaration directed to be exercised and done by the Members individually. The powers of the Board of Directors shall include, but not be limited to, the following:

- a. To elect the officers of the Association;
- b. To administer the affairs of the Association and the Condominium Property;
- c. To engage the services of a manager or managing agent, if any, for the Condominium Property and to fix the terms of such engagement and the compensation and authority of such manager or managing agent;



- d. To promulgate such rules and regulations concerning the operation and use of the Condominium Property as may be consistent with the Declaration and these By-Laws and to amend such rules and regulations from time to time;
- e. To provide for the maintenance, repair and replacement of the Common Elements and the Limited Common Elements;
- f. To estimate and adopt an annual operating budget and to provide for the assessment and collection from the Owners of their respective shares of the Common Expenses; and
- g. To provide for the distribution of Common Profits, if any.

Section 3. **Election of Directors; Vacancies.** The required Directors shall be elected at each annual meeting of Members of the Association. Only persons nominated as candidates shall be eligible for election as Directors and the candidates receiving the greatest number of votes shall be elected. Each Member may vote for as many candidates as there are authorized numbers of positions to be filled in the Board of Directors, but Members may not vote on a cumulative basis. In the event that there is a vacancy or vacancies in the Board of Directors, however caused, the remaining Directors, though less than a majority of the authorized number of Directors, may, by the vote of a majority of their number, fill any vacancy for the unexpired term, provided, however, that a vacancy in the position of a representative of a lending institution as provided in Section 1 of this Article II, if any, shall be filled by such lending institution.

Section 4. **Term of Office; Resignations.** Except as specifically provided otherwise herein, each Director shall hold office for a two year term and until the annual meeting of the Members of the Association at which his successor is elected, or until his earlier resignation, removal from office or death. Any Director may resign at any time by oral statement to that effect made at a meeting of the Board of Directors or in a writing to that effect delivered to the Secretary of the Association; such resignation shall take effect immediately or at such other time as the Director may specify. Members of the Board of Directors shall serve without compensation for their services except as expressly provided by a resolution of the Members. Commencing with the first annual meeting of Members of the Association, Directors shall be elected for such terms so that the terms of office of not less than one-third of the Board Members shall expire each year. Accordingly, at the first annual meeting three (3) Directors shall be elected for a term of two (2) years and two (2) Directors shall be elected for a term of one (1) year. Thereafter, each Director shall be elected for two (2) year terms or to complete unfinished terms. Directors will not have term limits and accordingly may be re-elected from term to term.

Section 5. **Organization Meeting.** Immediately after each annual meeting of Members of the Association, the newly elected Directors and those Directors whose terms continue shall hold an organizational meeting for the purpose of electing officers and transacting any other business. Notice of such meeting need not be given.

Section 6. **Regular Meetings.** Regular meetings of the Board of Directors may be held at such times and places as shall be determined by a majority of the Directors, but at least four (4) such meetings shall be held during the fiscal year of the Association.

Section 7. **Special Meetings.** Special meetings of the Board of Directors may be held at any time upon call by the President or any two Board Members. Written notice of the time and place of such meeting shall be given to each Board Member either by personal delivery or by mail, telegram or telephone at least two (2) days before the meeting, which notice need not specify the purpose of the meeting. Attendance of any Director at any such meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice, shall be deemed to be waiver by him or

her of notice of such meeting and such notice may be waived in writing either before or after the holding of such meeting by any Director, which writing shall be filed with or entered upon the records of the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at any organization, regular or special meeting.

Section 8. **Quorum; Adjournment.** A quorum of the Board of Directors shall consist of a majority of the Board of Directors then in office; provided that a majority of the Board of Directors present at a meeting duly held, whether or not a quorum is present, may adjourn such meeting from time to time. If any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting. At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by a majority vote of those present, and the act of the majority of such Directors present is the act of the Board of Directors, except as may be otherwise expressly provided in the Declaration or in these By-Laws.

Section 9. **Removal of Directors.** At any regular or special meeting of Members of the Association duly called, at which a quorum shall be present, any one or more of the Directors, except the Director, if any, acting as a representative of a lending institution, may be removed with or without cause by the vote of Members entitled to exercise at least seventy-five percent (75%) of the voting power of the Association, and a successor or successors to such Director or Directors so removed shall then and there be elected to fill the vacancy or vacancies thus created. Any Director whose removal has been proposed by the Members of the Association shall be given an opportunity to be heard at such meeting.

Section 10. **Non-Liability of the Board of Directors.** The members of the Board of Directors shall not be liable to the Owners or to the Association or its Members for any mistake of judgment or for any acts or omissions made in good faith as such Directors. The Owners and the Association and its Members shall indemnify and hold harmless each member of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration applicable to the Units or the Condominium Property or contrary to the By-Laws of this Association. The liability of any Owner or Member arising out of the aforesaid shall be limited to such proportion of the total liability as the Owner's percentage of interest in the Common Elements and relates to the total percentage of interest of all Owners in the Common Elements.

Section 11. **Fidelity Bonds.** The Board of Directors may require that all officers, directors and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association and shall be a Common Expense.

### **ARTICLE III** **OFFICERS**

Section 1. **Election and Designation of Officers.** The Board of Directors shall elect a President, a Vice President, a Secretary and a Treasurer of the Association, each of whom shall be a member of the Board of Directors. The Board of Directors may also appoint one or more Assistant Treasurers and/or one or more Assistant Secretaries and such other officers in their judgment as may be necessary who are neither members of the Board of Directors nor Unit Owners.

Section 2. **Term of Office; Vacancies.** The officers of the Association shall hold office until the next organization meeting of the Board of Directors and until their successors are elected, except in case of resignation, removal from office or death. The Board of Directors may remove any officer from office at any time with or without cause by a majority vote of the Directors then in office. Any vacancy in any office may be filled by the Board of Directors.

Section 3. **President.** The President shall be the chief executive officer of the Association. The President shall preside at all meetings of Members of the Association and shall preside at all meetings of the Board of Directors. Subject to directions of the Board of Directors, the President shall have general executive supervision over the business and affairs of the Association. The President may execute all authorized deeds, contracts and other obligations of the Association and shall have such other authority and shall perform such other duties as may be determined by the Board of Directors or otherwise provided for in the Declaration or in these By-Laws.

Section 4. **Vice President.** The Vice President shall perform the duties of the President whenever the President is unable to act and shall have such other authority and perform such other duties as may be determined by the Board of Directors.

Section 5. **Secretary.** The Secretary shall keep the minutes of meetings of the Members of the Association and of the Board of Directors. The Secretary shall keep such books as may be required by the Board of Directors, shall give notices of meetings of Members of the Association and of the Board of Directors required by law, or by these By-Laws or otherwise, and shall have such authority and shall perform such other duties as may be determined by the Board of Directors.

Section 6. **Treasurer.** The Treasurer shall receive and have charge of all money, bills, notes and similar property belonging to the Association, and shall do with the same as may be directed by the Board of Directors. The Treasurer shall keep accurate financial accounts and hold the same open for inspection and examination by the Directors and shall have such authority and shall perform such other duties as may be determined by the Board of Directors.

Section 7. **Other Officers.** The Assistant Secretaries and Assistant Treasurers, if any, and any other officers whom the Board of Directors may appoint shall, respectively, have such authority and perform such duties as may be determined by the Board of Directors.

Section 8. **Delegation of Authority and Duties.** The Board of Directors is authorized to delegate the authority and duties of any officer to any other officer and generally to control the action of the officers and to require the performance of duties in addition to those mentioned herein.

#### **ARTICLE IV** **GENERAL POWERS OF THE ASSOCIATION**

Section 1. **Payments from Maintenance Funds.** Each owner shall pay Common Expenses and Assessments, as provided herein and in the Declaration to the Association, for the benefit of all of the Owners, and the Association shall place the funds so collected in one or more accounts of the Association (said account or accounts being hereinafter referred to as the "Maintenance Fund"), and out of the Maintenance Fund the Association shall arrange and pay for the following:

- a. **Casualty Insurance.** The premium upon a policy or policies of fire insurance, with extended coverage, vandalism and malicious mischief endorsements, as provided in the Declaration, the amount of which insurance shall be reviewed annually;

- b. **Liability Insurance.** The premium upon a policy or policies insuring the Association, the members of the Board of Directors and the Owners against any liability to the public or to the Owners, and their invitees or tenants, incident to the ownership or use of the Limited Common Elements and/or the Common Elements, as provided in the Declaration, the limits of which policy or policies shall be reviewed annually;
- c. **Worker's Compensation.** The costs of worker's compensation insurance to the extent necessary to comply with any applicable law;
- d. **Wages and Fees for Services.** The fees for services of any person or firm employed by the Association, including, without limitation, the services of a person or firm to act as a manager or managing agent for the Condominium Property, the services of any person or persons required for the maintenance or operation of the Condominium Property, any legal and/or accounting services necessary or proper in operation of the Condominium Property or the enforcement of the Declaration and these By-Laws and for the organization, operation and enforcement of the rights of the Association;
- e. **Care of Common Elements.** The cost of landscaping, gardening, snow removal, cleaning, tuck-pointing, maintenance, decorating, repair and replacements of the Common Elements which are to be maintained and repaired as Common Expenses pursuant to the Declaration (but not including the interior surfaces of the Units or the Limited Common Elements, which are not to be maintained, repaired and/or replaced by the Association as a Common Expense, which the respective Owners shall paint, clean, decorate, maintain and repair), the painting, cleaning and decorating of the exterior surfaces of the buildings and all surfaces of the driveways (whether the same are Limited Common Elements or Common Elements), and such furnishings and equipment for the Common Elements as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the Common Elements;
- f. **Certain Maintenance of Units.** The cost of the maintenance and repair of any Unit, (or Limited Common Elements associated with a Unit which is the responsibility of an Owner to repair or maintain), if such maintenance or repair is necessary, in the discretion of the Association, to protect or improve any other portion of the Condominium Property, and if the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Association to said Owner or Owners (for these purposes thirty (30) days shall be considered a reasonable time), provided that the Association shall levy special assessments against such Owner or Owners for the cost of said maintenance or repair;
- g. **Discharge of Mechanic's Liens.** Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire Condominium Property or any part thereof which may in the opinion of the Association constitute a lien against the entire Condominium Property rather than merely against the interests therein of particular Unit Owners; it being understood, however, that the foregoing authority shall not be in limitation of any statutory provisions relating to the same subject matter, and where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Association by reason of said lien or liens shall be specially assessed to said Owner or Owners; and

- h. **Additional Expenses.** The cost of any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, Common Expenses or Assessments which the Association is required to pay or secure pursuant to the terms of the Declaration and/or these By-Laws or by law or which is in opinion of the Association necessary or proper for the maintenance and operation of the Condominium Property as a first class condominium project or for the enforcement of the Declaration and these By-Laws.

Section 2. **Capital Additions and Improvements.** The Association's powers hereinabove enumerated shall be limited in that the Association shall have no authority to acquire and pay for out of the Maintenance Fund any capital additions and improvements (other than for purposes of replacing or restoring portions of the Common Elements, subject to all the provisions of the Declaration and these By-Laws) having a total cost in excess of One Thousand Dollars (\$1,000.00), nor shall the Association authorize any structural alterations, capital additions to, or capital improvements of, any Common Elements requiring an expenditure in excess of One Thousand Dollars (\$1,000.00), without in each case the prior approval of the Members of the Association entitled to exercise a majority of the voting power of the Association, provided that during the three year period following recording of the Declaration, if Declarant shall own any of the Units, Declarant's consent to such expenditure shall be required.

Section 3. **Contracts With Developer.** Anything contained in these By-Laws and the Declaration to the contrary notwithstanding, Declarant shall not enter into any contract with the Association to provide any services to the Association or the Condominium Property which is for a period in excess of one (1) year from and after the date the Unit Owners of the Condominium Property, other than Declarant, have assumed control of the Association, unless such contract is approved by the Association by a majority vote of the Unit Owners, other than Declarant, duly taken and had in accordance with the By-Laws and the Condominium Act.

Section 4. **Association's Right to Enter Units.** The Association or its agents may enter any Unit, any Limited Common Area, any Exclusive Use Area or any other part of the buildings situated on the Condominium Property when necessary in connection with any maintenance, repair, replacement, service or construction to any of the foregoing. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association, at the expense of the Maintenance Fund. The Association shall also have the right to enter any Unit, Limited Common Area or Exclusive Use Area to effect emergency repairs.

Section 5. **Rules and Regulations.** The Board of Directors may adopt rules and regulations and the Association, by vote of the Members entitled to exercise a majority of the voting power of the Association, may from time to time supplement, amend and modify such rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Condominium Property, and for the health, comfort, safety and general welfare of the Owners and occupants of the Condominium Property. Written notice of such rules and regulations shall be given to all Owners and occupants and the Condominium Property shall at all times be maintained subject to such rules and regulations. In the event any such rules and regulations shall conflict with any provisions of the Declaration or of these By-Laws, the provisions of the Declaration and of these By-Laws shall govern.

Section 6. **No Active Business to be Conducted for Profit.** Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of any or all of the Owners.

Section 7. **Special Services.** The Association may arrange for the provision of any special services and facilities for the benefit of such Owners and/or occupants as may desire to pay for the same, including, without limitation, cleaning, repair and maintenance of Units or Limited Common Elements and provision of special recreational, educational or medical facilities. Fees for such special services and facilities shall be determined by the Board of Directors and may be charged to the respective participating Owners, or paid from the Maintenance Fund and levied as a special assessment due from the respective participants.

Section 8. **Delegation of Duties.** Nothing herein contained shall be construed so as to preclude the Association, through its Board of Directors and officers, from delegating to persons, firms or corporations of its choice, including any Director or managing agent, such duties and responsibilities of the Association as the Board of Directors of the Association shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

Section 9. **Applicable Laws.** The Association shall be subject to and governed by the provisions of any statute adopted at any time and applicable to property submitted to the Condominium form of ownership (including, without limitation, Chapter 5311, Ohio Revised Code); provided, however, that all inconsistencies between or among the permissive provisions of any statute and any provisions of the Declaration and these By-Laws, shall be resolved in favor of the Declaration or these By-Laws, and any inconsistencies between any statute applicable to associations generally and to associations formed to administer property submitted to the condominium form or ownership shall be resolved in favor of the latter statute. In the event of any conflict or inconsistency between the provisions of the Declaration and the By-Laws of the Association, the terms and provisions of the Declaration shall prevail, and the Owners and all persons claiming under them covenant to vote in favor of such amendments in the By-Laws as will remove such conflicts or inconsistencies.

Section 10. **Reserves and Working Capital.** There shall be established an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Elements, which fund shall be maintained out of the Common Area Assessments.

#### **ARTICLE V** **DETERMINATION AND PAYMENT OF** **COMMON EXPENSES AND ASSESSMENTS**

Section 1. **Obligation of Owners to Pay Common Expenses and Assessments.** It shall be the duty of every Owner to pay the Owner's proportionate share of Common Expenses and any and all assessments therefor. Such proportionate share of the Common Expenses shall be in the same ratio as the Owner's percentage interest in the Common Elements as set forth in the Declaration. Payment therefor shall be in such amounts and at such times as may be determined by the Board of Directors of the Association, as herein provided.

Section 2. **Preparation of Estimated Budget.** Each year on or before December 1st, the Association shall estimate the total amount necessary to pay the cost of management fees, wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all such services in connection with the Condominium Property, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacement, and shall on or before December 15th notify each Owner in writing as to the amount of such estimate, with reasonable itemization thereof. Said estimated cash requirements (hereinafter referred to as the "Estimated Cash Requirement") shall be assessed to the Owners according to each Owner's percentage of interest in the Common Elements as set forth in the

Declaration, as the same may be amended from time to time. On or before January 1st of the ensuing year, and the 1st day of each and every month of said ensuing year, each Owner shall be obligated to pay to the Association, or as it may direct, the monthly amount determined to be payable that month as the appropriate amount of the annual Common Expenses for that year, as well as the amount of any other assessment made pursuant to the terms of these By-Laws and Declaration.

On or before the date of the annual meeting in each calendar year, the Association shall supply to all Owners, an itemized accounting of all the maintenance expenses actually incurred in the preceding calendar year, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be set aside and added to the reserve fund which is to be utilized for contingencies, repairs, replacements, extraordinary expenses and other costs. Any net shortage shall be added according to each Owner's percentage of interest in the Common Elements to the installments due in the succeeding six (6) months after rendering of the accounting. The annual budget, including the initial budget of the Association, shall be established on an annual basis, but a different amount may be due for each month during the year so that the amount of the Common Expenses per month, which each Unit Owner shall be required to pay, may be increased or decreased each month based upon the annual budget and amount then required for Common Expenses.

Each Unit Owner recognizes that the initial cost for the maintenance and operation of the Condominium Property may be less during initial operations and that it is probable that the amount of the monthly Common Expense shall increase. The monthly assessments may vary from month to month, and the annual budget shall designate the estimated amount which would be payable for each particular month during the year.

Section 3. **Reserve for Contingencies and Replacements.** The Association shall build up and maintain a reasonable reserve for contingencies, repairs, replacements, extraordinary expenses and other costs which will constitute a reserve fund. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such reserve fund. If said Estimated Cash Requirement proves inadequate for any reason, including non-payment of any Owner's assessment, the amount or amounts necessary to make it adequate shall be assessed to the Owners according to each Owner's percentage of interest in the Common Elements. The Association shall serve notice of such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessments shall become effective with the first monthly maintenance payment which occurs more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted monthly amount.

Section 4. **Budget for First Year.** The Board of Directors of the Association, when the Declaration is filed for record, shall be composed of members designated by Declarant and the members so designated by Declarant shall continue to serve as and be the members of the Board of Directors of the Association until the Unit Owners of the Condominium Property have the right to elect members of the Board of Directors of the Association as set forth and provided in Article VI, Section 1, of the By-Laws and pursuant to the provisions of the Condominium Act. The Board of Directors of the Association, as designated by Declarant shall promptly prepare an Estimated Cash Requirement which will be consistent with the Projected Budget disclosed in the Disclosure Statement which will be the basis for determining the amount of the monthly Common Expenses which each Unit Owner shall be obligated to pay. The payments made by the Unit Owners prior to the filing of the deed for record pursuant to the provisions of the certain Condominium Purchase Agreement entered into by and between Declarant as Seller of the Unit and said respective Owner

as Buyer of the Unit ("Purchase Agreement") shall be used by the Association, as set forth and provided in Article V, Section 8, of these By-Laws. Each year thereafter the Board of Directors of the Association, whether designated by Declarant or elected partially by Declarant and the Unit Owners as provided by the Condominium Act and Article VI, Section 1, of these By-Laws, shall prepare within thirty (30) days after the date of their election, an Estimated Cash Requirement for the following year. All Estimated Cash Requirements shall be made on a calendar year basis, except for the first year which may be for less than a 12-month period. All Estimated Cash Requirements shall be made on an annual basis but may be determined on a monthly basis so that the amount due and payable each month may vary.

Section 5. **Failure to Prepare Annual Budget.** The failure or delay of the Association or Board of Directors to prepare or serve the annual or adjusted estimate on the Owners shall not constitute a waiver or release in any manner of any Owner's obligation to pay the Common Expenses for maintenance costs and necessary reserves or any other charge as herein provided, whenever the same shall be determined. In the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the monthly Common Expenses at the existing monthly rate or rates established for the previous period until the first monthly Common Expense payment date which occurs more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

Section 6. **Books and Records of Association.** The Association shall keep full and correct books of account and the same shall be open for inspection by any Owner or any representative of any Owner duly authorized in writing, at reasonable times and upon request by an Owner. Upon ten (10) days notice to the Board of Directors and upon payment of a reasonable fee, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner. Further, the Association shall for a reasonable fee make available current copies of the Declaration, By-Laws and all other rules governing the Condominium Property and the other books, records and financial statements of the Association to the Owners, their lenders and the holders and insurers of the first mortgage on any Unit. The Association shall also for a reasonable fee make available to prospective purchasers of a Unit current copies of the Declaration, By-Laws, other rules governing the Condominium Property, and the most recent annual audited financial statement, if such is prepared. For purposes of this section, available shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances.

Section 7. **Status of Funds Collected by Association.** All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for special assessments as may be levied hereunder against less than all of the Owners, and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the use, benefit and account of all of the Owners in proportion to each Owner's percentage ownership in the Common Elements as provided in the Declaration.

Section 8. **Escrow Payments and Assessments.** The payment into escrow which may have been made by a respective Owner of a Unit pursuant to the provisions of the Purchase Agreement which payment is designated in the Purchase Agreement as a sum to be used in payments of operating expenses for the Condominium Property, shall be paid to the Association by the escrow agent promptly after the date the Deed to the respective Owner of his respective Unit is filed for record, and such sum so paid by said escrow agent may be used by the Association as herein provided.

Section 9. **Annual Audit.** The books of the Association shall be audited once a year by the Board of Directors, and such audit shall be completed prior to each annual meeting of the Members.



If requested by two members of the Board of Directors, such audit shall be made by a Certified Public Accountant. In addition, and at any time requested by the Owners of five (5) or more Units or Declarant, the Board of Directors shall cause an additional audit to be made.

Section 10. **Remedies for Failure to Pay Assessments and Other Violations.** If any Owner is in default in the payment of any charge or assessment for Common Expenses for more than thirty (30) days, or if any Owner (either by the Owner's actions or inactions or by the actions or inactions of any occupant of the Owner's Unit) should violate, be in default or otherwise fail to observe and perform the Owner's obligations under this Declaration or the By-Laws, said Owner shall pay to the Association, in addition to any and all other sums due, all costs and expenses incurred by the Association in connection with the enforcement thereof, including reasonable attorney fees, interest at the rate of ten percent (10%) per annum, recording fees, court costs and other litigation and arbitration expenses. Such Owner shall also be liable for any and all costs incurred by the Association in connection with the collection of any such assessment or charge, cost or fee for which the Owner is responsible, including reasonable attorney fees, recording fees, court costs and other litigation expenses, such as title reports. The Association in any such case has and shall have a lien for the foregoing and may file a lien or liens for record to protect its interest and may proceed to foreclose the lien as provided in Article 13 or the Declaration.

As provided in the Declaration, the members of the Board of Directors and their successors in office, acting on behalf of the Association and/or the other Owners, shall have the power to bid on the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Any holder of an encumbrance on a Unit may from time to time request in writing a written statement from the Board of Directors setting forth the unpaid Common Expenses and/or assessments with respect to the Unit covered by his encumbrance, and said request shall be complied with promptly. Any holder of an encumbrance holding a lien on a Unit may pay any unpaid Common Expenses and/or assessment payable with respect to such Unit, and upon such payment, such holder of said encumbrance shall have a lien on such Unit for the amounts paid at the same rank as the lien of his encumbrance.

Section 11. **Security Deposits from Certain Owners.** If in the judgment of the Board of Directors the equity interest of any Owner (whether the original Owner or a subsequent purchaser or transferee) in a Unit at any time is not sufficient to assure realization (whether by foreclosure of the lien referred to in Section 11 above, or otherwise) of all assessments, charges or other sums which may be levied by the Association, then, whether or not such Owner shall be delinquent in the payment of such levies, the Association shall have the right to require such Owner to establish and maintain a security deposit, in an amount which the Board of Directors deems necessary for such purposes, provided, however, that such security deposit shall in no event exceed an amount which, when added to such Owner's equity interest in the Unit, will equal twenty percent (20%) of the purchase price paid for the Unit in question. In the event that any Owner shall fail to pay any assessments, charges or other sums which may be due hereunder or shall otherwise violate any provisions of the Condominium Act or any covenants, terms or conditions of the Declaration or these By-Laws, the Association shall have the right, but not the obligation, to apply such security deposit in reduction of the alleged damages resulting from such failure or violation, which right shall be in addition to any and all other rights and remedies provided for in the Condominium Act, the Declaration or these By-Laws. Upon any sale by such Owner of the Owner's Unit, or at such times as such Owner's equity in the Owner's Unit is sufficiently great to dispense with the necessity of such security deposit, any unapplied balance of said security deposit remaining to the credit of the Owner shall be refunded, provided that the Owner shall not be in default of the Owner's obligations under the Condominium Act, the Declaration and/or these By-Laws. The Association shall have the right to maintain all security deposits held by it, as aforesaid, in a single savings account and shall not be

required to credit any interest to any Owner until such time, if ever, as the unapplied balance of the security deposit is refunded, as aforesaid, and then only to the extent interest, if any, has been earned on said security deposit. Said security deposit shall at all times be subject and subordinate to the lien for unpaid Common Expenses or any charges or assessments referred to in the Declaration or Section 1 of Article V of the By-Laws and all rights thereto shall inure to the benefit of the Association.

## ARTICLE VI GENERAL PROVISIONS

Section 1. **Declarant's Rights.** As set forth in the Declaration, Declarant has the right to expand the Condominium Property so that there is a maximum total of 264 Units which may become a part of the Condominium Property. Declarant shall have the right to manage and control the Association for a term of five (5) years from the date of the filing of the Declaration for record or until the first of the following events shall occur and, while Declarant has such right, all of the members of the Board of Directors may be elected and designated by Declarant: first, when Units having a 25% interest in the Common Elements have been sold, then the Unit Owners, other than Declarant, shall have the right to elect not less than one-third (1/3) of the members of the Board of Directors; and, when Units having a 75% interest in the Common Elements having been sold, then the Unit Owners, other than Declarant, shall have the right to elect all members of the Board of Directors. In all events, the Unit Owners, other than Declarant, shall have the right to elect all of the members of the Board of Directors five (5) years after the date of the filing of the Declaration for record. In determining the percentage interest in the Common Elements, the percentage interest in the Common Elements of the Condominium Property shall be computed and determined based upon the maximum number of 264 Units which may become subject to the Declaration, as provided in the Declaration.

Section 2. **Copies of Notices to Mortgage Lenders.** Upon written request to the Board of Directors, the holder of any duly recorded mortgage or trust deed against any Unit shall be given a copy of any and all notices permitted or required by the Declaration or these By-Laws to be given to the Owner or Owners whose Unit is subject to such mortgage or trust deed.

Section 3. **Service of Notices on the Board of Directors.** Notices required to be given to the Board of Directors or to the Association may be delivered to any member of the Board of Directors or officer of the Association either personally or by mail addressed to such member or officer at such person's Unit.

Section 4. **Service of Notices on Devisees, Heirs-at-Law and Personal Representatives.** Notices required to be given to any devisees, heirs-at-law or personal representative of a deceased Owner may be delivered either personally or by mail to such person at his, her or its address appearing on the records of the court wherein the estate of such deceased Owner is being administered.

Section 5. **Non-Waiver of Covenants.** No covenants, restrictions, conditions, obligations or provisions contained in the Declaration or these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 6. **Agreements Binding.** All agreements and determination lawfully made by the Association in accordance with the procedures established in the Declaration and these By-Laws shall be deemed to be binding on all Owners, their respective successors, heirs and assigns.

Section 7. **Notices of Mortgages.** Any Owner who mortgages the Owner's Unit shall notify the Association, in such manner as the Association may direct, of the name and address of the Owner's mortgagee and thereafter shall notify the Association of the full payment, cancellation or any other alteration in the status of such mortgage. The Association shall maintain such information in a book entitled "Mortgages of Units."

Section 8. **Enforceability of Covenants.** The invalidity of any covenant, restriction, condition, limitation or any other provision of these By-Laws, or any part of the same shall not impair or affect in any manner the validity, enforceability or affect the rest of these By-Laws.

Section 9. **Rule Against Perpetuities.** If any of the privileges, covenants or rights established by these By-Laws shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of William Jefferson Clinton, former President of the United States.

Section 10. **Management Contracts.** Subject to the limitation contained in Article VI, Section 1 of the By-Laws, the Board of Directors shall have the power to enter into an agreement or agreements on behalf of the Association with any third party, or with Declarant and/or one or more entities associated in any manner with Declarant, and relating to any other condominium properties and/or non-condominium properties for the common management, by one or more managing agents, of one or more of said properties and without intending hereby to limit the generality of the foregoing, such agreement or agreements may provide for the allocation of joint expenses, purchase of maintenance equipment and supplies, and jointly sharing employees and management expenses. In addition, the Board of Directors shall have the right to enter into any agreement or agreements authorized under the Condominium Act, the Declaration and/or these By-Laws.

Section 11. **Use and Occupancy Restrictions.**

- a. **Restrictions on Use of Units.** Except as hereinabove provided with respect to the uses permitted by Declarant or its agents, no Unit shall be used for any purpose other than as a private dwelling for the Owner and the Owner's immediate family or by a person and such person's immediate family to whom the Owner shall have leased the Owner's Unit subject to all the provisions of the By-Laws and the Declaration. No Owner or lessee of any Owner shall permit or suffer anything to be done or kept upon the Condominium Property which will increase the rate of insurance on the Condominium Property, or any part thereof, or on the contents thereof or which will obstruct or interfere with the rights of other occupants or annoy them by unreasonable noises or otherwise, nor shall any Owner commit or permit any nuisance or commit or suffer any immoral or illegal act to be committed anywhere in or upon the Condominium Property.
- b. **Age Restrictions.** The Condominium Property is part of a larger development known as Morningside at Martin's Run and is governed in part by the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Morningside at Martin's Run Homeowners' Association, Inc. (the "Master Declaration"), a copy of which is attached to the Declaration. The Morningside development is intended to consist of "housing for older persons" as contemplated by the exemption provided in the Federal Fair Housing Act relating to housing for older persons. Accordingly, at least eighty percent (80%) of the occupied Lots and Units [as those terms are defined in the Master Declaration] must be occupied by at least one person who is fifty-five (55) years

of age or older and no person under the age of eighteen (18) years of age shall be permitted to "occupy" a Dwelling Unit. The Units and the Condominium Property are subject to the age and other restrictions and covenants which are set forth in the Master Declaration.

- c. **Maintenance of Unit by Owner.** Each Owner shall maintain the Owner's own unit in good condition, order and repair at the Owner's own expense. No Owner shall display, hang, store or use any signs or articles whatsoever on the Owner's deck or patio, or outside the Owner's Unit other than such draperies, curtains or shades as may be permitted in accordance with the rules and regulations established by the Board of Directors. No Owner may paint, decorate or otherwise alter or modify in any way the outside of the Owner's Unit, or install outside of the Owner's Unit any canopy, awning, covering, or structure or addition of any kind whatsoever without prior written consent of the Board of Directors.
- d. **Disposal of Trash.** Trash, garbage and other waste shall be kept only in sanitary containers and shall be disposed of in such manner as may be prescribed from time to time in rules and regulations established by the Board of Directors. No articles of personal property belonging to any Owner shall be stored in any portion of the Common Elements.
- e. **Restrictions on Alterations.** No Owner shall overload the electrical wiring in the buildings or operate any machinery, appliances, accessories or equipment in such a manner as to cause, in the judgment of the Board of Directors, any unreasonable disturbance or make any alteration to or connections with the heating or air conditioning or plumbing systems without the prior written consent of the Board of Directors.
- f. **Insurance Coverage.** Each Owner shall be required to maintain in effect a comprehensive public liability insurance policy in such limits as the Board of Directors may establish from time to time insuring the Owner and the Association, the Board of Directors, the Directors and the Managing Agent, against liability in connection with such Owner's own Unit; provided, however, that the Board of Directors shall have the authority, if it shall deem such action to be in the best interest of the Owners collectively, to obtain a comprehensive public liability insurance policy insuring all of the Owners, the Association, the Board of Directors, the Directors and the Managing Agent, from liability in connection with the individual Units, and in such latter event, each Owner may, but shall not be required to, obtain individual liability insurance. The Board of Directors shall also have the authority, if it shall deem such action to be in the best interest of the Owners collectively, to require that all such individual public liability policies be placed with the same insurer.
- g. **Insurance on Contents of Units.** Each Owner shall be responsible for the Owner's own insurance on the contents of the Owner's own Unit and Owner's respective Limited Common Elements and the Owner's additions and improvements thereto and decorating and furnishings and personal property therein, and the Owner's personal property stored elsewhere on the Condominium Property, and the Owner's personal liability to the extent not covered by the liability insurance for all of the Unit Owners obtained as part of the Common Expenses as above provided. All policies maintained by the Owner under this provision shall contain a waiver of subrogation in the event of a loss for the benefit of the Association, Declarant or their respective agents.

- h. **Amendment of By-Laws.** These By-Laws may be amended or modified at any time, from time to time, by action or approval of Owners exercising seventy-five percent (75%) or more of the voting power; except the By-Laws affecting the rights or interests of Declarant or its agents shall not be amended or modified without the prior written consent of Declarant, provided further amendment may be made to these By-Laws for the reasons as provided in Article 22 of the Declaration.

Executed at Lorain, Ohio, on the 2 day of JUNE, 2006.

K. Hovnanian Oster Homes, LLC.

By: *Thomas J. Oster*  
Thomas J. Oster, Co-President

**STATE OF OHIO:  
COUNTY OF LORAIN: SS**

Before me, a notary public, in and for said County and State, hereby certify that Thomas J. Oster, Co-President of K. Hovnanian Oster Homes, LLC, an Ohio limited liability company, who acknowledged that he being authorized to do so, executed the foregoing By-Laws and the same is the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I hereunto set my hand and official seal at Lorain, Ohio, this 2 day of JUNE, 2006.

*Timothy S. Triglio*  
Notary Public

*This Instrument Prepared by:  
Timothy S. Triglio, Esq.  
Triglio & Stephenson, P.L.L.  
5750 Cooper Foster Park Road, Suite 102  
Lorain, OH 44053-4132  
(440) 988-9500*



**TIMOTHY S. TRIGILIO**  
Attorney At Law  
Notary Public, State of Ohio  
My Commission Does Not Expire  
O.R.C. 147.03