

**PERFORMANCE BOND AGREEMENT**

**THIS AGREEMENT** is entered into by and between **K. HOVNIANIAN OSTER HOMES, LLC (f.k.a. ONTARIO LAND COMPANY)**, an Ohio Limited, Liability Company, its heirs, executors, administrators, agents and assigns hereinafter referred to as "Subdivider," and the **CITY OF AVON**, Lorain County, Ohio, hereinafter referred to as "City." "Council" as referred to herein, shall refer to the City Council of Avon, Lorain County, Ohio, and "City Engineer" shall refer to the Consulting Engineer of the City of Avon, Lorain County, Ohio or the Engineer designated by City Ordinance.

**WHEREAS**, the Subdivider has agreed to construct the improvements in Arlington Place No. 7 (hereinafter "Subdivision") in accordance with the Subdivision Regulations of the City of Avon, and in accordance with a Subdivider's Agreement entered into between Subdivider and the City of Avon; and

**WHEREAS**, the Subdivision Regulations of the City of Avon contained in Avon Codified Ordinance §1244.10(d) and the Subdivider's Agreement provide that the Subdivider shall furnish financial guarantees of performance in an amount equal to 110% of the estimated construction costs, engineering and inspection fees in a form, manner of execution and surety approved by the Law Director of the City of Avon; and

**WHEREAS**, based upon the estimates of cost of construction of the improvements in the Subdivision by the Subdivider's Engineer, approved by the City Engineer, Subdivider is required to provide a financial guarantee of performance to the Finance Director of the City of Avon in the amount of One Hundred Ninety-Three Thousand Seventy-Seven (\$193,077.00) Dollars.

**NOW, THEREFORE**, in consideration of the foregoing promises and to insure the faithful performance of said Subdivider's Agreement, the Subdivider has undertaken the following:

1. Subdivider will post a surety bond with the City Finance Director in a form, manner of execution and surety acceptable to the City of Avon in the sum of One Hundred Ninety-Three Thousand Seventy-Seven (\$193,077.00) Dollars.

2. The Subdivider and its surety shall at all times keep the records of said Performance Bond open to inspection by the Engineer of the City or any other duly authorized agent of the City.

3. Upon completion of all improvements in the Subdivision to the satisfaction of the City Engineer, acceptance of dedication of Subdivision improvements, payment of all engineering and legal expenses of the City of Avon, and compliance with all provisions of the Subdivider's Agreement upon written instruction from the Director of Finance of the City of Avon, the surety shall be released from its obligations hereunder.

4. In the event of Subdivider's default, as defined in the Subdivider's Agreement, the City shall have the right to execute on the Performance Bond herein posted and to complete construction of improvements at the Subdivision; or any part thereof, and to pay any engineering or legal fees for the Subdivision over and above the Subdivider's deposit, and the surety is authorized and required to release the funds upon certification by the Director of Finance of the City of Avon that the funds will be used for completion of construction of improvements for the Subdivision and any applicable fees.

5. The surety shall accept as full and complete evidence of default and of the resulting right of the City of Avon to complete said project or any portion thereof a copy of the resolution from the City of Avon duly authenticated by the Clerk of Council declaring said default and the intention of the City of Avon to proceed to complete the performance of said Subdivision or any portion thereof.

IN WITNESS WHEREOF, the parties have affixed their signature hereto this 17<sup>th</sup> day of July, 2013.

WITNESSES:

Ethan R. Young

Ethan R. Young  
Printed Name

Sandra K. Martin

SANDRA K. MARTIN  
Printed Name

Ethan R. Young

Ethan R. Young  
Printed Name

**K. HOVANIAN OSTER HOMES, LLC**

By: [Signature]  
~~Managing Member~~

Title: Division President

**CITY OF AVON**

By: [Signature]  
James A. Smith, Mayor

By: [Signature]  
Daniel S. Zegarac, Council President

Approved as to Form

[Signature]  
John A. Gasiar, Esq.  
Law Director  
City of Avon

