

SETTLEMENT AGREEMENT

BETWEEN

**HERITAGE MINERALS, INC,
HOVSONS, INC. AND
HOMELAND CORPORATION
("HOVSONS"),**

**TOWNSHIP OF MANCHESTER, TOWNSHIP
COUNCIL OF THE TOWNSHIP OF
MANCHESTER
("TOWNSHIP")**

**AND THE PLANNING BOARD OF THE
TOWNSHIP OF MANCHESTER
("REGULATORY BODIES")**

DATED: November 18, 2005

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SETTLEMENT AGREEMENT

THIS AGREEMENT is made as of this 18th day of November, 2005 by and between **HERITAGE MINERALS, INC., HOVSONS, INC.** and **HOMELAND CORPORATION**, all being New Jersey Corporations with offices located at H. Hovnanian Industries, One Hovchild Plaza, 4000 Route 66, Tinton Falls, New Jersey 07753 (collectively "**Hovsons**"); **TOWNSHIP OF MANCHESTER** and the **TOWNSHIP COUNCIL OF THE TOWNSHIP OF MANCHESTER**, in the County of Ocean, a municipal corporation of the State of New Jersey (collectively the "**Township**"); and the **PLANNING BOARD OF THE TOWNSHIP OF MANCHESTER** (the "**Planning Board**"); all three with offices located at 1 Colonial Drive, Manchester, New Jersey and all three collectively referred to herein as the "**Regulatory Bodies**").

RECITALS:

WHEREAS, Heritage Minerals, Inc., is the owner of (i) Block 75.01, Lots 1, 2, 4, 6, 11, 37, 40 and 55, as shown on the official tax map of the Township of Manchester, Ocean County, New Jersey and (ii) Block 4.304, Lots 14.06, 15 and 16 as shown on the official tax map of the Township of Berkeley, Ocean County, New Jersey which, together total approximately 4,087.4 acres of land (the "**CAFRA Lands**"); and

WHEREAS, Heritage Minerals, Inc., also owns an additional approximately 3,087.7 acres of undeveloped land located immediately west of and adjacent to the aforementioned CAFRA Lands, which 3,087.7 acres are located in

Manchester Township (Block 70, Lots 24 and 27; Block 70.55, Lot 1; Block 73, Lots 1 and 20; Block 73.09, Lot 6; Block 73.10, Lot 16; Block 73.28, Lot 16; Block 74, Lot 5; Block 77, Lots 1 and 23 and Block 77.01, Lot 1 as shown on the official tax map of Manchester Township, Ocean County, New Jersey) and in Lakehurst Borough (block 47, Lots 24.01, 24.02, 25 and 26 as shown on the official tax map of Lakehurst Borough, Ocean County, New Jersey) which lands lie within the direct jurisdiction of the New Jersey Pinelands Commission and are subject to compliance with the Commission's Comprehensive Management Plan (the "Pinelands Lands"); and

WHEREAS, the two above-described lands of Hovsons are shown and designated on that certain map entitled "Heritage Properties Map" prepared by Flannery, Webb & Hansen, P.A. dated November 20, 2002, and last revised April 24, 2003, which map is attached hereto and made a part hereof as **Exhibit 1** (hereinafter referred to as the "**Hovsons Property**"); and

WHEREAS, Hovsons has entered a certain Federal Court Stipulation as defined in Paragraph 11 herein; and

WHEREAS, Hovsons has agreed to develop only the "**Development Area**" as defined in the Federal Court Stipulation, in addition to two access roads and utilities located outside of the Development Area, and as such Development Area is shown on that certain map entitled "Heritage Development Area Map" prepared by Flannery, Webb & Hansen, P.A. dated November 7, 2002, and last

revised March 24, 2003 attached hereto and made a part hereof as **Exhibit 2**; and

WHEREAS, in accordance with the Federal Court Stipulation, Hovsons has also agreed to deed restrict certain remaining lands and convey such remaining lands to the New Jersey Department of Environmental Protection or other entities designated by NJDEP which deed restricted lands are shown on **Exhibit 1** hereto (hereinafter referred to as "**Deed Restricted Lands**"); and

WHEREAS, Hovsons, Stavola Construction Materials, Inc. ("Stavola") and Manchester Development Group, LLC and Manchester 571, L.L.C. (collectively "MDG") have previously filed separate Mount Laurel builder's remedy actions in the Law Division of the Superior Court of New Jersey, venued in Ocean County (the "**Court**"), bearing the following captions and docket numbers:

- (a) Hovsons, Inc. v. Township of Manchester, Docket No. OCN-L-3457-93PW (the "**Hovson Action**");
- (b) Manchester Development Group, LLC v. Township of Manchester, Docket No. OCN-L-2226-00PW (the "**MDG Action**");
- (c) Stavola Construction Materials, Inc. v. Township of Manchester, Docket No. OCN-L-2891-00PW (the "**Stavola Action**");

which Hovsons Action, MDG Action and Stavola Action are hereinafter collectively referred to as the "**Subject Litigation**".

WHEREAS, Pulte Homes of NJ, Limited Partnership ("**Pulte**") although not a plaintiff in a Mount Laurel builders remedy action against the Township, has participated in the settlement discussions with the Regulatory Bodies, simultaneously with Hovsons, MDG & Stavola concerning land development,

zoning, affordable housing and potable water issues and has entered into a separate settlement agreement with MDG, Stavola, the Township and Planning Board, collectively; and

WHEREAS, MDG, Stavola and Pulte individually or collectively, as the context may imply, are referred to in this Water Agreement as the "**Other Developers**"; and

WHEREAS, Hovsons filed the Hovson's Action prior to the filing of the MDG Action and prior to the filing of the Stavola Action and thus has priority to a builder's remedy; and

WHEREAS, for purposes of trial, the cases comprising the Subject Litigation have been consolidated; and

WHEREAS, Hovsons in the Subject Litigation seeks a builders' remedy from the Court, alleging that the Township has failed to meet its mandated requirement for the production of low and moderate income housing as mandated by the Mount Laurel doctrine and the New Jersey Fair Housing Act (N.J.S.A. 52-27D-301, et seq.) ("**Affordable Housing**") as enforced by the Court and/or the Council On Affordable Housing ("**COAH**"); and

WHEREAS, in order to amicably settle and terminate the Hovsons Action, the Regulatory Bodies do hereby join with Hovsons in this Agreement and agree to be bound by all terms and conditions hereinafter set forth; and

WHEREAS, the Federal Court Stipulation establishes the fact that the Hovson's Property is available, approvable, developable, and suitable, as those

terms are defined in N.J.A.C. 5:93-1.1 et seq., for the development of the Project on the Development Area; and

WHEREAS, the MDG Action and the Stavola Action are the subject of a separate settlement agreement with the Township and the Planning Board pursuant to which MDG and Stavola have dismissed their claims; and

NOW, THEREFORE, it is hereby stipulated by all Parties as follows:

1. **Recitals Incorporated.** The recitals set forth above are hereby incorporated by reference.

2. **Developer's Obligations.** Hovsons agrees and acknowledges that nothing contained in this Agreement shall be deemed to exempt Hovsons from, or otherwise constitute a waiver of, compliance with all of the regulatory requirements of the Regulatory Bodies as set forth in the Ordinance, herein defined and attached as **Exhibit 4** governing the preparation, submission and approval of development plans. No provisions of any ordinance, law, rule and/or regulation, present or future, shall apply to the Project if it is contradictory to, or in conflict with, the Ordinance or this Agreement. Further, no such provisions shall apply to the Project if their effect would reduce the number of 2205 dwelling units on lot sizes as shown on the Concept Plan or if their effect would reduce the Development Area or if their effect would prohibit or diminish development of the area between the two lakes.

3. **The Project.**

(a) Project: Hovsons shall be entitled to develop the Development Area as a planned retirement community under the provisions of the Ordinance. Pursuant to the Federal Court Stipulation, the Project shall include 2,450 units, including affordable housing units. Pursuant to this Agreement, the parties hereto agree that 2,205 age-restricted market units shall be constructed on the Development Area in accordance with the Concept Plan, defined below (the "**Project**") and that the Hovsons' Affordable Housing Obligation, defined below, shall not be built on the Development Area but shall be satisfied pursuant to the Affordable Housing Obligation set forth herein in paragraph 5 below;

(b) Concept Plan: The Project shall be as set forth on that certain map entitled "Concept Land Development Sketch – Heritage Property" prepared by Flannery, Webb & Hansen, P.A. dated December 17, 2004, attached hereto and made a part hereof as **Exhibit 3** (herein defined as "**Concept Plan**"). The Concept Plan has been revised from that version of the concept plan which is attached to the Federal Court Stipulation as Exhibit 3 to reflect changes necessitated by the removal of on-site affordable housing units from the Development Area, and thus by the rearranging of the market unit lots. The Regulatory Bodies have reviewed the Concept Plan and find same to be generally acceptable, with the exception of stormwater management issues, with the exception of the design of the Project entrance road at Colonial Drive and the high school, with the exception of the design of the intersection of

Colonial Drive and Route 37 and with the exception of the design of the intersection of the Project spine road with Route 70, which excepted items have been neither approved nor disapproved by the Regulatory Bodies. The Regulatory Bodies agree that the "land between the lakes" can be developed from a planning standpoint; however, Hovson's must demonstrate, as part of Hovson's application for GDP or preliminary subdivision approval, that the "land between the lakes" can be developed in accordance with sound engineering standards. The foregoing general acceptance of the Concept Plan shall not constitute a Municipal Land Use Law approval by the Manchester Township Planning Board which will be granted only after Planning Board hearings conducted in accordance with the Municipal Land Use Law.

4. Hovsons Contribution to the Open Space Fund.

(a) OSF Contribution. Hovsons acknowledges and agrees that the substantial size of the Project and the totality of other age-restricted developments contemplated by the Township at the time of entry of this Agreement, upon full development, will have a substantial impact upon the township, mandating fair share contributions pursuant to N.J.S.A. 40:55D-42 and applicable case law. While the Township acknowledges that the Development Area is suitable for development of the Project, the Township is concerned that there are other substantial environmentally-sensitive lands elsewhere in the Township not yet proposed for development which mandate preservation for conservation and active and passive recreation, and protection from future

development pursuant to the State Development and Redevelopment Plan ("SDRP"), the planning objectives of the Office of Smart Growth, and the planning and preservation objectives in the Manchester Master Plan. Accordingly, the Township desires to create an open space acquisition/preservation fund (the "OSF") through which the Township may fund the voluntary acquisitions of said environmentally-sensitive lands for the purpose of preservation or public use as either passive or active recreational areas consistent with the environmental conditions of said lands. Accordingly, Hovsons agrees to make a voluntary donation to the OSF in the amount of Five Million Dollars (\$5,000,000.00) less the "Credit for Other Developers' Costs," defined in Paragraph 4(b) below (the "**OSF Contribution**") provided that the Regulatory Bodies abide by all the provisions of this Agreement.

(b) Credit for Other Developers' Costs: The "**Credit for Other Developers' Costs**" referenced in Paragraph 4(a) above shall be equal to the amount which is 32.65% (as such Other Developers Percentage is calculated in Paragraph 4(c) below) of the Total Infrastructure Cost as that term is defined below in Paragraph 4(d). It is hereby agreed that the originally contemplated contribution to the open space fund by Hovsons in the amount of \$5,000,000.00 shall be reduced by that amount which the Other Developers would have contributed toward Total Infrastructure Cost had the Other Developers paid their pro rata share in the amount of 32.65% of Total Infrastructure Cost and had the Other Developers not been removed as parties to the Water Agreement. As an

example only, if Total Infrastructure Cost is Four Million Five Hundred Thousand (\$4,500,000.00), then the OSF Contribution shall be Three Million Five Hundred Thirty Thousand Seven Hundred Fifty (\$3,530,750.00) Dollars calculated as Five Million (\$5,000,000.00) Dollars minus \$1,469,250.00 (i.e., 32.65% of Four Million Five Hundred Thousand (\$4,500,000.00) Dollars) = Three Million Five Hundred Thirty Thousand Seven Hundred Fifty (\$3,530,750.00) Dollars.

(c) Other Developers Percentage. The Other Developers projects include residential developments on their respective parcel as follows: MDG – 300 market dwelling units plus 15 AHU's ("MDG Project"); Stavola – 350 market dwelling units plus 17 AHU's ("Stavola Project"); and, Pulte – 400 market dwelling units plus 20 AHU's ("Pulte Project"). The projects of the Other Developers, collectively, include 1050 market dwelling units plus 52 AHU's for a total of 1102 units (collectively the "**Other Developers Projects**"). Hovsons' Project includes 2,205 market dwelling units plus 68 AHU's for a total of 2,273 units. Therefore, the number of units for Hovsons and the Other Developers totals 3,375 units. The "**Other Developers Percentage**" is equal to 32.65% calculated as the total number of units in the Other Developers Projects as a percentage of the total units in both the Project and the Other Developers Projects (i.e., $1102 \div (3375 = 32.65\%)$).

(d) Water Infrastructure Improvements and Total Infrastructure Costs. "**Water Infrastructure Improvements**" shall be defined to include: (1) One or more new wells and appurtenances, (2) One water treatment facility, (3) One

elevated storage tank, (4) Water trunk and main lines, together with any and all necessary easements to be acquired from third parties, to connect the above mentioned facilities to Manchester's existing water supply network as such Water Infrastructure Improvements are necessary to provide sufficient capacity for the needs of the Project and the Other Developers Projects less Existing Capacity as defined in Paragraph 13(a)(1). **"Total Infrastructure Cost"** shall be defined as those costs associated with the design, engineering, permitting, governmental fees, approvals, bidding, supervision, management, overhead, construction of the Water Infrastructure Improvements and the acquisition of Lands and easements from third parties owners acquired pursuant to Paragraph 13(a)(7).

(e) Payment Schedule. The OSF Contribution shall be made in partial payments payable after All Development approvals from all applicable governmental authorities are issued and upon the issuance of building permits pursuant to the following schedule:

Issuance of Building Permit	Partial OSF Contribution Due
1 st Building Permit	\$1,000,000.00 (less Credit for Other Developers' Costs)
401 st Building Permit	\$1,000,000.00 (less remainder of Credit for Other Developers' Costs, if any)
801 st Building Permit	\$1,000,000.00 (less remainder of Credit for Other Developers' Costs, if any)
1,201 st Building Permit	\$1,000,000.00 (less remainder of Credit for Other Developers' Costs, if any)
1,601 st Building Permit	\$1,000,000.00 (less remainder of Credit for Other Developers' Costs, if any)
<hr style="width: 20%; margin-left: 0;"/>	
Total OSF Contribution	\$5,000,000.00

(f) Voluntary Payment. Hovsons agrees and acknowledges that the OSF Contribution is voluntary and has been agreed to as part of this Agreement in settlement of the Hovsons Action, and is not to be considered by the Regulatory Bodies in their review of and determination on the development plans for the Project which shall be submitted by Hovsons.

5. **Affordable Housing Obligations.**

(a) Fair Share Obligation. Hovsons acknowledges that the Hovsons Action and the Subject Litigation were initiated to secure builder's remedies under the Mount Laurel doctrine which, when granted, would have made provision for the development of Affordable Housing within the Township. The Standing Master in the Subject Litigation has confirmed that, as of the date of this Agreement, the second cycle of Affordable Housing requirements specified by COAH, calls for the Township to provide 405 Affordable Housing units ("AHUs"). After giving credit for 35 rehabilitated AHUs, there remains an unsatisfied 370 new construction and/or prospective new AHUs to be met by the Township (the "**Township 2nd Cycle Obligation**").

(b) Affordable Housing Obligation. The "**Affordable Housing Obligation**" shall be 8.88% of the total number of market units in the Project. This Affordable Housing Obligation shall be comprised of 5.80% of the total number of market units being satisfied by an "**RCA Funding Component**" and 3.08% of the total number of market units being satisfied by an "**Off-Tract Construction**

Component". The Affordable Housing Obligation translates to 196 AHU of which 128 AHU shall be satisfied by an RCA Funding Component and of which 68 AHU shall be satisfied by an Off-Tract Construction Component. Hovsons shall have no obligation with regard to affordable housing other than the Affordable Housing Obligation defined herein.

(c) RCA Funding Component:

(1) Payment Amount. Provided that Hovsons secures All Development Approvals for the Project to permit construction of 2,205 age-restricted market units on the Development Area, which approvals are defined in paragraph 16 below, Hovsons shall make a monetary contribution to the Township by funding a Regional Contribution Agreement ("**RCA**") for 128 AHU in the amount of \$25,000.00 per AHU totaling \$3,200,000.00 ("**RCA Funding Component**").

(2) Payment Schedule. The RCA Funding Component shall be payable by Hovsons on a "per age-restricted market unit" basis at the rate of \$1451.25 per market unit. This figure is arrived at by dividing the amount of \$3,200,000.00 by 2205 age-restricted market units. The RCA Funding Component shall be due and payable as follows: (A) Hovsons shall pay fifty (50%) percent of the \$1451.25 per age-restricted market unit to the Township at the issuance of building permit for each age-restricted market unit; and, (B) Hovsons shall pay the remainder of the \$1451.25 per

age-restricted market unit to the Township at the issuance of Certificate of Occupancy for each age-restricted market unit.

(3) Accelerated Payment Schedule. Notwithstanding the Payment Schedule set forth in Paragraph 5(c)(2) above to the contrary, Hovsons shall pay the RCA Funding Component on an accelerated payment schedule provided that the Township timely executes an RCA which requires installment payments to a receiving municipality over a period of at least five (5) years from the date of the RCA, and provided Hovsons has received all those development approvals defined in paragraph 16 below. In the event foregoing conditions are satisfied then Hovsons shall pay the RCA Funding Component on the same schedule as that set forth in the RCA with Hovsons making payments to the Township which parallel the Township's payment obligations under the RCA. Hovsons shall make such payments fifteen (15) days prior to the payment due date under the RCA.

(4) Payment Held Constant. Hovsons RCA Funding Component shall be payable at the rate of \$25,000.00 per AHU, which rate shall be held constant regardless of future regulatory increases in RCA payment amounts. The Township shall enter an RCA(s) within one (1) year of the Effective Date of this Agreement which one year period was set forth by the Court Appointed Master during the June 22, 2004 court proceeding (referred to herein) before the Honorable Eugene D. Serpentelli, A.J.S.C.

The Township shall expeditiously enter an RCA(s) so as to "lock-in" a \$25,000.00 per unit payment, to avoid an escalation in RCA payments and to assure that the Township's RCA payment obligation does not exceed the RCA Funding Component. In the event Township fails to timely enter an RCA(s), any regulatory increase in RCA payments shall be borne by the Township. The failure of the Township to enter an RCA(s) shall not affect this Agreement or its validity.

(d) Off-Tract Construction Component.

(1) Constructed AHUs: Provided that Hovsons secures All Development Approvals for the Project to permit construction of 2,205 age-restricted market units on the Development Area, which approvals are defined in paragraph 16 below, Hovsons shall construct 68 non-age restricted AHUs on the "**Affordable Housing Site**", hereinafter defined ("**Off-Tract Construction Component**"). Hovsons may seek governmental funding and/or tax credits to assist in the construction of the Off-Tract Construction Component; however, the absence of funding on tax credits shall not relieve Hovsons of the Off-Tract Construction Component obligation.

(2) Affordable Housing Site: Township shall expeditiously and with all due diligence assist Hovsons in locating, and acquiring by eminent domain if necessary, a site in the Township of Manchester which is appropriate to accommodate the Off-tract Construction Component

("Affordable Housing Site"). The Affordable Housing Site shall be subject to the review and approval of the Court Appointed Master. The Affordable Housing Site shall accommodate the Off-tract Construction Component only and shall not include development by any other developer. However, Hovsons shall cooperate, if necessary, with the Other Developers as to the provision of primary road, sewer and water access.

(3) Timing: Hovsons shall have three (3) years from the Effective Date to acquire title to the Affordable Housing Site. Hovsons shall have no obligation to commence construction of the Off-Tract Construction Component until such time as Hovsons has commenced construction of market units in the Project. Hovsons shall complete construction of fifty (50%) percent of the Off-tract Construction Component (i.e., 34 AHU's) three (3) years after the commencement of construction of market units in the Project. Hovsons shall complete construction of the remaining fifty (50%) percent of the Off-Tract Construction Component (i.e., 34 AHU's) five (5) years after the commencement of construction of market units in the Project.

(4) Zoning of Affordable Housing Site: Pursuant to the Ordinance, the Township shall zone the Affordable Housing Site so as to reasonably accommodate, as a permitted use without the need for variances,

waivers and/or exceptions, the construction of 68 non-age restricted AHUs.

(5) Low/Moderate Split: The AHUs on the Affordable Housing Site shall be split such that fifty (50%) percent (i.e., 34 AHU) shall be affordable to low income families and fifty (50%) percent (i.e., 34 AHU) shall be affordable to moderate income families.

(6) COAH Rules: To the extent the COAH rules and regulations do not contradict any provision in this Agreement, COAH rules and regulations (N.J.A.C. 5:93-1, et seq.) shall govern all aspects of the AHUs including but not limited to marketing, affordability, and bedroom mix.

(7) Waiver of Development Fees/Escrows. There shall be no application fees, inspection fees, review fees and application escrows paid to the Township for the Off-Tract Construction Component approvals process. However, any such fees and escrows to outside Township consultants, including fees and escrows generated by the Manchester Township Utilities Department, shall be paid by Hovsons for the Off-Tract Construction Component approvals process.

(e) Application to Second Cycle. The parties acknowledge and agree that, the Hovsons RCA Funding Component and the Off-Tract Construction Component shall be applied to the Township 2nd Cycle Obligation.

6. **Master Plan Amendment**. The Planning Board shall prepare and adopt appropriate amendments to the Township's Master Plan, pursuant to the

Municipal Land Use Law, which amendments to the Master Plan shall be consistent with the provisions of this Agreement and shall recommend the Ordinance. The Master Plan amendments referenced herein shall be adopted by the Planning Board within thirty-five (35) days of the Effective Date of this Agreement.

7. **Zoning Amendment.** The Regulatory Bodies acknowledge that this Agreement is entered into by Hovsons which has agreed to terminate and dismiss the Hovsons Action in order to assure the right and entitlement to develop the Project on the Development Area. Township covenants and agrees to adopt an Ordinance which shall include all the zoning, land use, subdivision, developmental and construction provisions and standards according to which the Project will be approved by the Regulatory Bodies and constructed by Hovsons (hereinafter the "**Ordinance**"). The Ordinance is attached hereto and made a part hereof as **Exhibit 4**. The Ordinance shall create a separate zone for the Development Area. The Ordinance shall allow the Project as a permitted use generally in accordance with the Concept Plan. The Regulatory Bodies shall not change, amend or alter the Ordinance or adopt new ordinances which would affect the Project and/or any land development approvals granted to the Project pursuant to this Agreement. Any such changes, amendments, alterations or new ordinances shall not apply to the Project. However, the Regulatory Bodies may make such changes, amendments, alterations or new ordinances which affect health and safety

provided that such health and safety related changes do not alter the Development Area, the total Project yield of 2205 single family units, on lot sizes as shown on the Concept Plan, and the development of the "land between the lakes". Notwithstanding the foregoing, the Regulatory Bodies, consistent with COAH regulations and policies and *Mount Laurel* precedent, shall have a continuing and affirmative duty to adopt such future ordinances as will facilitate the development of the Project. Further, in order to minimize costs and to eliminate undue cost generative requirements and provisions, variances and waivers may be requested by Hovsons and shall be reasonably granted. Hovsons hereby retains the right to seek variances, waivers, exceptions and/or similar relief provided same reasonably fulfill the intent and purpose of this Agreement and the Concept Plan. The Planning Board shall comply with N.J.A.C. 5:93-10.1(b) in granting variances, waivers and/or exceptions.

8. **Time for Zoning Amendment Adoption.** The Township agrees to (i) introduce the Ordinance on first reading, (ii) refer the Ordinance to the Planning Board for recommendation pursuant to N.J.S.A. 40:52-26, and (iii) conduct a public hearing on, and thereafter adopt, the Ordinance not later than sixty (60) days of the Effective Date of this Agreement. In the event that any litigation is initiated by anyone whatsoever appealing the adoption of the Ordinance, the Regulatory Bodies shall vigorously defend the Ordinance with such defense to include all levels of appeal. Hovsons shall have the right and the obligation to join in that defense as an intervenor. In the event such appeal results in the

invalidation of the Ordinance or part thereof, the Regulatory Bodies agree to revise, reintroduce and re-adopt the Ordinance in a manner consistent with the court decision in order to assure its validity in the event of a further appeal. Notwithstanding the foregoing, any such re-adopted ordinance shall be reasonably acceptable to Hovsons.

9. **Developers' Representations.** The person signing below on behalf of Hovsons represents that (i) he is duly authorized to execute this Agreement and to bind Hovsons; (ii) Hovsons has capacity and authority to enter into this Agreement; and (iii) Hovsons has entered into this Agreement voluntarily and without reservation or any agreement or understanding beyond the terms and conditions contained in this Agreement.

10. **Regulatory Bodies Representations.** The persons signing below on behalf of the Regulatory Bodies represent that, pursuant to duly adopted resolutions that, (i) they are duly authorized to execute this Agreement and to bind the Regulatory Bodies, respectively; (ii) the Regulatory Bodies have the capacity and authority to enter into this Agreement; and (iii) the Regulatory Bodies have entered into this Agreement voluntarily and without reservation or any agreement or understanding beyond the terms and conditions contained in this Agreement.

11. **Federal Court Stipulation of Settlement.** The parties acknowledge that Hovsons has entered that certain Stipulation of Settlement dated as of May 14, 2004 by and among Heritage Minerals, Inc., Hovsons, Inc., Homeland

Corporation, NJDEP and New Jersey Pinelands Commission in the matter of Hovsons, Inc., et al. v. Bruce Babbitt, et al., Docket No. 00-3943 (MLC). The Stipulation of Settlement is the subject of the following court orders: (a) Order Dismissing Litigation (Without Prejudice) entered by the Hon. Mary L. Cooper, U.S.D.J. on September 5, 2003; (b) Consent Order Extending Plaintiff's Right to Re-Open entered by the Hon. Tonianne J. Bongiovanni, J.S.D.J. on February 27, 2004; and (c) The Third Consent Order Extending Plaintiffs' Right to Re-Open entered by The Hon. Tonianne J. Bongiovanni, J.S.D.J. on May 19, 2004 and such further extensions as the Court may order. The Stipulation of Settlement incorporates ten (10) Exhibits. The Stipulation of Settlement resolves all pertinent issues regarding the development of the Hovsons Property (the "**Federal Court Stipulation**"). The Federal Court Stipulation has been provided to the Regulatory Bodies and is incorporated herein by reference. The Regulatory Bodies hereby acknowledge receipt of the said Federal Court Stipulation and agree to not file any appeals of the Federal Court Stipulation. The Regulatory Bodies agree to be bound by the Federal Court Stipulation; however, such agreement shall not obviate the Planning Board's review (subject to the provisions of Paragraph 17 below) of land development applications pursuant to the Municipal Land Use Law. The Regulatory Bodies shall reasonably cooperate with and support Hovsons and all federal, state, county and municipal agencies, commissions and/or bodies in the performance of the terms of the Federal Court Stipulation so as to expeditiously facilitate the implementation of the Federal Court

Stipulation. The Regulatory Bodies shall support, in writing, the planning area amendment, the Water Quality Management Plan amendment and the CAFRA and other NJDEP applications. The Regulatory Bodies acknowledge that the amendments, All Development Approvals, permits, and the like anticipated by the Federal Court Stipulation include, but are not limited to, CAFRA and all other NJDEP permits and approvals; State Development and Re-development Plan amendments; Water Quality Management Plan amendments; Ocean County Planning Board approvals; Ocean County Utilities Authority approvals; Ocean County Soil Conservation Service approvals; FEMA amendments and approvals; Pinelands Commission approvals and, NJDOT permits and approvals.

12. **Fast Track Approvals.**

(a) Fast Track Generally. The development of the Hovson's Property shall be subject to preliminary and final subdivision and/or site plan approval proceedings (and at Hovsons option to general development plan approval) governed by the MLUL as well as sewer and water applications and shall be fast-tracked pursuant to COAH regulations and consistent with the procedures set forth herein. The Township and Planning Board agree that Hovsons' development applications shall be reviewed consistent with the provisions of N.J.A.C. 5:93-10.1 et seq., with the terms of this Agreement and with the standards and judicial precedents applicable to review of inclusionary developments. Court approval of this Agreement shall permit the immediate submission and processing of development applications for the Hovsons

Property, including completeness review, pre-application conferences, informal work sessions, technical review and comment and special meetings. The Township, as to sewer, water and other municipal applications, and the Planning Board shall expedite all approvals regarding such applications filed by Hovsons.

(b) General Development Plan, Preliminary Subdivision and Preliminary Site Plan Approval. The Planning Board agrees to fast track development applications for General Development Plan, Preliminary Subdivision and Preliminary Site Plan Approvals on the following basis:

(1) Given the scope and nature of the Project, all public meetings and hearings shall be conducted at special meetings devoted exclusively to the Project.

(2) All filings by Hovsons with the Planning Board shall also be filed directly with the Planning Board's Planner and Engineer and any other relevant Planning Board consultant, professional or municipal entity, who has the authority and/or duty to review the development application. Within two months of the Effective Date of this Agreement, the Planning Board shall notify Hovsons of such additional consultants and/or municipal entities, if any.

(3) Plans and application documents and waiver requests shall be submitted to the Planning Board in accordance with the Ordinance.

(4) In accordance with N.J.S.A. 40:55D-10.3, Hovsons shall within forty-five (45) days of submission be provided with a written determination

as to whether its application is complete. If the application is considered incomplete, Hovsons shall be notified in writing as to the specific additional items required.

(5) Upon resubmission of incomplete items, the same procedure as set forth above in sub-paragraph (4) shall apply except that the forty-five (45) day time period shall be reduced to twenty (20) days.

(6) Within sixty-five (65) days from the date an application is deemed complete, municipal entities and the municipal consultants shall file all technical review letters with the Planning Board and deliver same to Hovsons. All technical review letters shall be sent to Hovsons by nationally recognized next day overnight courier or by certified mail with return receipt requested. Once such technical review letters have been submitted, no issues shall be raised in subsequent technical review letters which had not been raised in prior technical review letters, unless such issues arise from changes by Hovsons in the development plans or arise from facts or circumstances discovered subsequent to the prior technical review letters and which facts and circumstances were not included in any of Hovsons application submissions.

(7) The Planning Board shall schedule the public hearing for a date not more than eighty (80) days after the date on which the application was deemed complete. Hovson's shall be responsible for providing appropriate notices in accordance with law. The public

hearing(s) will be conducted at special meetings, devoted solely to Hovsons application.

(8) The Planning Board shall conduct the public hearing process in an expeditious manner. In the event the public hearing on an application is not concluded in one meeting, then subsequent special meetings shall be conducted as expeditiously as possible until the public hearing is concluded. The Planning Board shall make appropriate announcements of continued hearing dates so that no new notice shall be required.

(9) The Planning Board shall vote on the application immediately after the closing of the public hearing but in no event later than fourteen (14) days from said closing.

(10) The Planning Board shall adopt a written resolution during a special meeting setting forth its decision on the application within seven days of the date of the vote by the Planning Board.

(11) The Planning Board shall act on the development application within ninety-five (95) days of the date on which the application was deemed complete, pursuant to N.J.S.A. 40:55D-48.

(c) Final Subdivision and Final Site Plan Approval. The Planning Board agrees to fast track development applications for Final Subdivision and Final Site Plan Approvals on the following basis:

(1) Given the scope and nature of the Project, all public

meetings and hearings shall be conducted at special meetings devoted exclusively to the Project.

(2) All filings by Hovsons with the Planning Board shall also be filed directly with the Planning Board's Planner and Engineer and any other relevant Planning Board consultant, professional or municipal entities, who has the authority and/or duty to review the development application. Within two months of the Effective Date of this Agreement, the Planning Board shall notify Hovsons of such additional consultants and/or municipal entities, if any.

(3) Plans and application documents and waiver requests shall be submitted to the Planning Board in accordance with the Ordinance.

(4) In accordance with N.J.S.A. 40:55D-10.3 within forty-five (45) days of submission be provided with a written determination as to whether its application is complete. If the application is considered incomplete, Hovsons shall be notified in writing as to the specific additional items required.

(5) Upon resubmission of incomplete items, the same procedure as set forth above in sub-paragraph (4) shall apply except that the forty-five (45) day time period shall be reduced to twenty(20) days.

(6) Within thirty (30) days from the date an application is deemed complete, municipal entities and the municipal consultants shall file all technical review letters with the Planning Board and deliver same to

Hovsons. All technical review letters shall be sent to Hovsons by nationally recognized next day overnight courier or by certified mail with return receipt requested. Once such technical review letters have been submitted, no issues shall be raised in subsequent technical review letters which had not been raised in prior technical review letters, unless such issues arise from changes by Hovsons in the development plans or arise from facts or circumstances discovered subsequent to the prior technical review letters and which facts and circumstances were not included in any of Hovsons application submissions.

(7) The Planning Board shall schedule a special meeting for a date not more than thirty-five (35) days after the date on which the application was deemed complete. The meeting shall be conducted at a special meeting, devoted solely to Hovson's application.

(8) The Planning Board shall conduct the special meeting in an expeditious manner so that the application is concluded and voted upon within one meeting, to the extent reasonably practicable.

(9) The Planning Board shall adopt a written resolution during a special meeting setting forth its decision on the application within seven days of the date of the vote by the Planning Board.

(10) The Planning Board shall act on the final development application within forty-five (45) days of the date on which the application was deemed complete, pursuant to N.J.S.A. 40:55D-50.

(d) Water and Sewer Applications. Applications to the Township for preliminary water and sewer approvals shall follow the schedule set forth in Paragraph 12(b) above for preliminary subdivision and preliminary site plan approvals. Applications to the Township for final water and sewer approvals shall follow the schedule set forth in Paragraph 12(c) above for final subdivision and final site plan approvals.

(e) Special Meeting Fee. Hovsons shall be charged the normal fees for the special meetings referred to above.

(f) Construction in lieu of Performance Guarantees. In accordance with applicable case law, Hovsons shall have the right, but not the obligation, in Hovsons' sole discretion to perform all site improvements, including but not limited to environmental improvements, clearing of trees and earth moving, subsequent to obtaining preliminary subdivision and/or site plan approval and prior to and without the necessity of obtaining final subdivision and/or site plan approval, any other permits and approvals, the posting of performance guarantees or the filing of a final map; however, restoration guarantees in the event of abandonment of the Project may be required.

(g) Simultaneous Applications. Nothing herein shall prohibit Hovsons from submitting a simultaneous application for preliminary and final approval (subject to compliance with all requirements for both approvals), in which event the time schedule for preliminary approval shall apply.

13. **Water and Sewer.**

(a) Further Agreement. The Township has determined that in order to satisfy the water needs for Hovsons and the Other Developers, beyond the Existing Capacity, it will be necessary to construct the Water Infrastructure Improvements. Hovsons and the Regulatory Bodies shall enter into a separate **"Water Agreement"** which shall include the following essential elements to which Hovsons and the Regulatory Bodies have agreed as well as additional material and substantial terms to be agreed upon and approved by the Court with the assistance of the Master:

(1) **"Existing Capacity"** is defined as 900,000 GPD. The Existing Capacity shall be reserved by the Township for Hovsons and the Other Developers. The Existing Capacity shall be allocated 57% to Hovsons and 43% collectively to Other Developers, for which connection fees will be paid by all developers at the prevailing rate at time of obtaining a Utility Permit for the connection of each dwelling unit.

(2) Hovsons, at its sole cost and expense, will fund the design, permitting, test well drilling, and construction of the Water Infrastructure Improvements to serve the Hovsons Project and the Other Developers Projects and will also fund the easement acquisition set forth in Paragraph 4(d).

(3) In recognition of Hovsons' willingness to pay for the expansion of the water system for the Other Developers, Hovsons' originally

contemplated open space contribution of \$5 million will be reduced from Hovsons first payments to the Township by an amount equal to the Other Developers' pro rata share in the amount of 32.65% of the Total Infrastructure Costs. The open space contribution of each of the Other Developers shall be increased from the originally anticipated \$1 million to \$2 million for each of the Other Developers payable upon receipt of each of the first building permits issued to each of the Other Developers. The increase in the Other Developers' contributions to the open space fund shall be in lieu of the payment of their respective shares of the Total Infrastructure Cost.

(4) Neither Hovsons nor the Other Developers shall pay any connection fees for the Additional Capacity that is made available by the Water Infrastructure Improvements.

(5) Hovsons and the Regulatory Bodies, without the Other Developers, shall enter into a formal Water Agreement addressing the essential elements set forth herein and other material and substantial issues.

(6) Hovsons agrees to fund the design, permitting, and well drilling upon execution of this Agreement, completion of the Fairness Hearing, and the entry of a formal Water Agreement between Hovsons and the Regulatory Bodies incorporating the essential elements as set forth above and other material and substantial issues. Hovsons agrees to

fund the construction of the Water Infrastructure Improvements upon obtaining All Development Approvals and, thereafter, to proceed without interruption or delay with the design and construction of the Water Infrastructure Improvements. The Regulatory Bodies shall cooperate with Hovsons in accomplishing such design and construction.

The Water Agreement shall be entered by Hovsons and the Regulatory Bodies as soon as is reasonably possible and the Court shall retain jurisdiction over the Water Agreement and the negotiations associated therewith to assure that the Water Agreement is expeditiously executed. The Fairness Hearing on this Agreement shall be conducted by the Court notwithstanding the fact that the Water Agreement has not been executed.

(7) The parties acknowledge that approximately 1.5 to 2 acres of property will be required to serve the well and treatment components of the Water Infrastructure Improvements and approximately one-half of an acre of property will be required to serve the elevated storage tank (such properties hereinafter collectively referred to as the "Lands"). The Lands shall be contributed and/or acquired utilizing the following alternatives in the following order of priority:

A) First, the parties shall exhaust the below listed municipally owned properties to satisfy the Lands and shall seek approval by NJDEP of such properties for the Lands. In the event such municipally

owned properties are not rejected by NJDEP for use for the Lands and the Water Infrastructure Design Engineer determines the sites are hydraulically and hydrogeologically suitable locations for the Water Infrastructure Improvements, then the Township shall contribute such Lands at no cost or expense to Hovsons. In addition, in the event that NJDEP rejects the municipally owned sites listed below, the Township shall, within the time period of sixty (60) days from the date of the last rejection, solely have the right to substitute any other property which it owns or acquires. The municipally owned properties include:

(i) For the Lands to serve the elevated storage tank, the parcel to be considered for NJDEP approval shall be Block 3, Lot 2279.

(ii) For the Lands to serve the well or wells and water treatment plant, the four parcels to be considered for NJDEP approval shall be:

(a) Block 51.15 Lot 14; Block 51.16 Lot 44; Block 51.20 Lot 1; and Block 51.21 Lot 21, collectively

(b) Block 51.04 Lot 66; and Block 51.05 Lot 85, collectively

(c) Block 47, Lot 1

(d) Block 38.107, Lot 26.01

In the event NJDEP rejects the above listed municipally owned parcels and any other parcels the Township may propose pursuant to this

paragraph 13(a)(7)(A), the parties shall confer and endeavor to identify alternate municipally owned parcels for the review and approval of NJDEP. In the event the parties cannot agree upon alternative municipally owned parcels for review and approval by NJDEP, then the court utilizing the services of the court appointed master, shall conduct mediation with the parties regarding the identification of appropriate municipally owned parcels.

B) Second, in the event the NJDEP rejects all of the municipally owned properties listed in Paragraph 13(a)(7)(A) above and the above referenced mediation is unsuccessful in identifying additional suitable municipally owned parcels, then the Township shall make good faith efforts to enter an agreement with the owner of the Hess Landfill property whereby the elevated storage tank of the Water Infrastructure Improvements shall be sited at the Hess Landfill property without charge to the Township or Hovsons.

C) Third, in the event the NJDEP rejects all of the municipally owned properties listed in Paragraph 13(a)(7)(A) above and the above referenced mediation is unsuccessful in identifying additional suitable municipally owned parcels and the Township is unsuccessful in entering the agreement with the owner of the Hess Landfill property referenced in Paragraph 13(a)(7)(B) above, then Hovsons, with the cooperation and participation of the Township, shall, at Hovson's sole cost

and expense, locate and acquire the Lands from third parties which Lands shall be subject to approval by the Township and NJDEP. The Township, at no cost and expense to the Township, shall, if necessary, utilize its powers of eminent domain to acquire the Lands and shall re-zone said Lands to allow the Water Infrastructure Improvements as a permitted use. In the event of such acquisition by the Township, Hovsons shall fund the cost of the Lands, appraisals, legal services and all other costs related to the Township's acquisition of Lands by eminent domain.

In the event a subdivision approval is required to achieve any one or more of the alternatives set forth in sub-paragraph A, B and/or C above in order to subdivide said Lands from other lands not intended to be purchased, then the Regulatory Bodies will cooperate in accomplishing such subdivision.

Easements necessary to serve the Water Infrastructure Improvements, if any, shall be contributed and/or acquired in the same manner and in the same order of priority as set forth in this Paragraph 13(a)(7) for the contribution and/or acquisition of the Lands.

(b) General Provisions. The Regulatory Bodies shall provide allocation and reserve sufficient sewer and water capacity to serve the Project pursuant to the water agreement referenced in paragraph 13(a) above. The Regulatory Bodies agree, on a timely basis, to take all action which is necessary and appropriate and consistent with their obligations under *Mount Laurel II*, the Fair

Housing Act and COAH regulations to provide Hovsons with adequate utility services, potable water and sewage treatment and conveyancing capacity for the Project and shall cooperate with Hovsons in its efforts with regard thereto. The Project shall be treated as an inclusionary project. If easements are necessary or appropriate for the purpose of providing for such infrastructure and site access in an economical manner consistent with *Mount Laurel II*, the Fair Housing Act and COAH regulations and if Hovsons is unable after diligent efforts to obtain such easements, the Township agrees to undertake by eminent domain the acquisition of such easements at the sole cost and expense of Hovsons.

14. **Utility Connection Fees.** Water connection fees and sewer connection fees shall be governed by the water agreement referenced in paragraph 13(a) above.

15. **No Contributions or Impact Fees.** The Regulatory Bodies covenant, warrant and agree that, other than Hovson's Affordable Housing Obligation and other than the OSF Contribution above defined, there shall be no other impact fees, exactions and/or off-tract contributions of whatever kind or nature imposed upon Hovson's and the Project, by the Regulatory Bodies or by any other Township entities. The foregoing provisions of this paragraph 15 notwithstanding, the parties acknowledge and agree that any costs involved in the provision of potable water to service the Project shall be governed by the water agreement referenced in paragraph 13(a) above.

16. **Development Approvals.**

(a) As used in this Agreement, the term "**All Development Approvals**" shall be defined as all required approvals from all governmental entities having jurisdiction, with all appeal periods having elapsed without an appeal having been filed, or, if such appeal has been filed, then the appeal having been decided favorable to Hovsons and shall be further defined as Hovsons having the availability to draw building permits for the Project.

(b) However, for purposes of sub-paragraphs 5(c)(1), 5(c)(3) and 5(d)(1) of this Agreement, the term "All Development Approvals" shall not include final subdivision, sewer and water approvals from the Planning Board, the Township and the Ocean County Planning Board for sections of the Project other than for the first section or those sections for which Hovsons has submitted application. In the event Hovsons has not made application for All Development Approvals as defined in this sub-paragraph 16(b) within eighteen (18) months of the adoption of the Ordinance, then Hovsons shall be required to fulfill the obligations under sub-paragraphs 5(c)(1), 5(c)(3) and 5(d)(1).

17. **EIS.** The Regulatory Bodies acknowledge and agree that substantial environmental investigation, analyses and determinations have been made by NJ DEP during the course of the negotiation and entry of the Federal Court Stipulation. In light thereof, the Regulatory Bodies shall rely upon the prior work of NJ DEP with regard to the environmental impact of the Project so as to avoid time consuming, costly and duplicative effort and analysis. Therefore, the

Regulatory Bodies waive any and all requirements that Hovsons submit an environmental impact statement, environmental impact assessment and any environmental reporting requirements. The Regulatory Bodies agree that Hovsons' sole environmental obligations have been determined and shall be those obligations set forth in, and shall be governed by the environmental conclusions set forth in the Federal Court Stipulation and in particular that certain report entitled "Heritage Minerals Tract Habitat Enhancement Plan" prepared by Habitat Management & Design, Inc. and dated November 2002 (last revised August 2003) which is attached to the Federal Court Stipulation as Exhibit 10.

18. **Mine Tailings Area.** The area where the mine tailings remaining from the past mining operation on the Property will be remediated by Hovsons pursuant to the terms of the Federal Court Stipulation. The Regulatory Bodies agree that sole jurisdiction over the remediation process, methods and procedures implemented by Hovsons vests with State and/or Federal agencies and not with the Regulatory Bodies.

19. **Extended Vesting.** The Regulatory Bodies hereby acknowledge and agree that the Project is substantial in size and scope and will take considerable time to complete even if market conditions are favorable. The parties agree that because of the size of the Development Area and the number of units in the Project the criteria for a twenty (20) year extended vesting for general development approval pursuant to N.J.S.A. 40:55D-45.2(d), for preliminary major

subdivision approval pursuant to N.J.S.A. 40:55D-49 and for final major subdivision approval pursuant to N.J.S.A. 40:55D-52(b) have been met.

20. **Defense of Agreement and Approvals.** In the event litigation is initiated by anyone whatsoever challenging the validity of this Agreement and/or challenging the validity of land development approvals granted to Hovsons, then the Regulatory Bodies shall vigorously defend this Agreement and such land development approvals, as the case may be. In any such event all parties shall be responsible for their respective legal fees and costs.

21. **Access to Berkeley Property.** As set forth in Exhibits 1 and 5 of the Federal Court Stipulation, Hovsons shall utilize a fifty (50') foot wide strip of land located in Manchester Township along the Berkeley Township border, in order to provide access to a property located in Berkeley Township owned by Hovsons by constructing a public road connecting Pine Valley Drive to the Berkeley property for the purposes of serving future development on the Berkeley property. The Regulatory Bodies consent to the creation of this new road and shall expedite the approval of the road provided that an appropriate application has been filed with the Planning Board by Hovsons. All costs of approvals and construction of such public road connection shall be borne by Hovsons.

22. **No Objections.** The MDG Action and the Stavola Action have been settled with the terms of the settlement set forth in an executed settlement agreement which settlement agreement was the subject of a fairness hearing

before the Honorable Eugene D. Serpentelli, A.J.S.C., on June 22, 2004. The salient features of the Hovsons settlement which is the subject of this Agreement were also set forth on the record before Judge Serpentelli at the June 22, 2004, fairness hearing at which time MDG and Stavola agreed to waive any and all objection to the Hovsons settlement and the approval of the Project provided that the Hovsons settlement is approved by the Court at a future fairness hearing.

23. **Captions.** The captions contained herein are for convenience only and are not a part of this Agreement.

24. **Entire Agreement.** This Agreement, including the Exhibits attached hereto, contains the entire agreement among the parties, and all other representations, negotiations and agreements, written and oral, which pre-date the Effective Date hereof, with respect to the Hovsons Property or any portion thereof, are superseded by this Agreement and are of no force and effect. This Agreement may be amended and modified only by instrument, in writing, executed by the parties hereto. The foregoing notwithstanding the parties acknowledge the incorporation by reference of the Federal Court Stipulation.

25. **Agreement Runs with Land.** All Parties covenant, agree and acknowledge that all terms and conditions of this Agreement run with the land and shall be applicable to the Hovsons Property and Hovsons' successors and/or assigns.

26. **Parties Bound.** This Agreement shall be binding upon the parties, their successors and assigns.

27. **Applicable Law.** This Agreement shall be construed by and controlled under the laws of the State of New Jersey.

28. **Construction of Agreement.** The parties hereto acknowledge that they have had the benefit of independent counsel with regard to this Agreement and that this Agreement has been prepared as a result of the joint efforts of the parties and their respective counsel. Accordingly, the parties agree that the provisions of this Agreement shall not be construed or interpreted for or against any party hereto based upon authorship.

29. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

30. **Effective Date.** The "**Effective Date**" or the "**Date**" hereof shall be the date that the Court enters an order of dismissal without prejudice of the Hovsons Action (the "**Dismissal Order**") based upon, and incorporating by reference this Agreement, as described in paragraph 33 below.

31. **Parties.** The rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, administrators, and assigns. The use of any gender shall be deemed to refer to the appropriate gender, whether masculine, feminine or neuter, and the

singular shall be deemed to refer to the plural where appropriate, and vice versa.

32. **Regulatory Bodies Approval.** The Township by the Council and the Planning Board shall submit this Agreement to, and secure its consent and execution by, the Council and Planning Board not later than October 11, 2005, (the "**Regulatory Body Approval**"). In the event that either the Council and/or the Planning Board shall refuse to approve this Agreement or fail to act by the above deadline, then this Agreement shall become null and void and the Hovsons Action shall continue nunc pro tunc in the position of the parties prior to the settlement.

33. **Dismissal of Subject Litigation.** Upon (i) receipt of the Regulatory Bodies' Approval (defined above), (ii) completion of a Fairness Hearing upon adequate notice to the public as per Morris Co. Fair Housing Council v. Boonton and East/West Venture v. Fort Lee, scheduled for November 18, 2005 at 1:30 PM, and (iii) such other actions as the court may require to ensure the enforceability of this Agreement, the parties shall submit the Dismissal Order to the Court without prejudice or costs. The Hovsons action shall be initially dismissed without prejudice and shall be dismissed with prejudice upon Hovsons obtaining preliminary major subdivision and site plan approval for the Project and Off-Tract Construction Component, as well as preliminary and tentative sewer and water approvals for the Project without an appeal having been filed or if an appeal has been filed same having been successfully defended.

34. **Reinstatement of Hovsons Action.** In the event the master plan amendments are not timely adopted (or are the subject of a successful appeal challenging same) or the Ordinance is not timely adopted (or is the subject of a successful appeal challenging same, and is not re-adopted in accordance with Paragraph 8 hereof) or the Planning Board denies a land development application of Hovsons for 2205 age-restricted market units (or an approval by the Planning Board is successfully challenged), then Hovsons shall have the right to terminate this Agreement and to reinstate the Hovsons Action in which event the parties shall be placed nunc pro tunc in the position of the parties prior to the settlement.

35. **Settlement Independent.** The parties agree that this Agreement and the respective rights set forth herein shall be effective independent of whether or not the Township ultimately obtains approval of its housing element, fair share plan and compliance package and whether or not the Township ultimately obtains a Judgment of Repose. It is hereby agreed that Hovsons shall be entitled to proceed pursuant to this Agreement regardless of the status of the remainder of the Township's compliance plan. Hovsons will not challenge the above referenced housing element, fair share plan and compliance package provided that same incorporate this Agreement, provided that the Regulatory Bodies perform their obligations under this Agreement and provided that there are no challenges to this Agreement or any provision thereof.

36. **Default.** In the event that any of the parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived by all of the other parties for whose benefit such obligation is intended, such failure to perform shall constitute a default of this Agreement. Upon the occurrence of such a default, the part(y)(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including those remedies expressly set forth elsewhere in this Agreement and the right of specific performance. Without limiting the foregoing, this Agreement shall be enforceable by a motion in aid of litigant's rights.

37. **Notices.** Notices hereunder shall be given to the parties at the addresses set forth below and shall be accomplished by overnight delivery by a nationally recognized overnight courier and notice shall be deemed to have been given on the day which next follows the deposit of the notice with the overnight courier. Time shall run only on business days which, for purposes of this Agreement shall be any day other than a Saturday, Sunday or New Jersey State legal holiday. Notices shall be addressed as follows:

If to Hovsons:

Hirair Hovnanian
Hovsons, Inc.
One Hovchild Plaza
4000 Route 66
Tinton Falls, New Jersey 07753

With a Required Copy to:

Ronald L. Shimanowitz, Esq.
c/o Hutt & Shimanowitz, P.C.
459 Amboy Avenue, P.O. Box 648
Woodbridge, New Jersey 07095

Also if to Hovsons:

Vram Yegparian
DynaManage Corp.
9 Boxwood Terrace
Toms River, New Jersey 08755

If to Township:

Marie S. Pellecchia
Manchester Township Clerk
1 Colonial Drive
Manchester, New Jersey 08759

If to Planning Board:

Laura Wilmoth, Secretary
1 Colonial Drive
Manchester, New Jersey 08759

If to the Standing Master:

Philip Caton, P.P.
Clarke, Caton & Hintz
400 Sullivan Way
Trenton, New Jersey 08628

With a Required Copy to:

Steven Secare, Esq.
Russo, Secare, Ford, Delanoy &
Martino
616 Washington Street
Toms River, New Jersey 08753

With Required Copy to:

Edward F. Liston, Jr., Esq.
207 Hooper Avenue, P.O. Box 1056
Toms Rivers, New Jersey 08754

38. **Role of the Master.** The court appointed master shall be available to assist the parties in implementing this Agreement and specifically during the application process for any approvals relating to development of the Hovsons Property. The court appointed master's involvement may be requested by any of the parties without the consent of the other. In addition to the role as set forth above, the court appointed master shall be available to mediate any dispute which arises between the parties hereafter. The request for mediation may be

made by any of the parties. The master shall issue a report of findings with regard to any such dispute, which report shall be submitted to the court, and the master shall be available to give testimony in any related judicial proceeding. The fees of the Master for services provided by the Master pursuant to this paragraph shall be split and paid equally by Hovsons (50%) and the Township (50%).

39. **Attorney's Fees.** In the event litigation is required by any Party to enforce the terms of this Agreement, the prevailing Party of such action shall, in addition to all other relief granted or awarded by the court, be entitled to judgment for reasonable attorney's fees incurred by reason of such action and all costs of suit and those incurred in preparation thereof at both the trial and appellate levels.

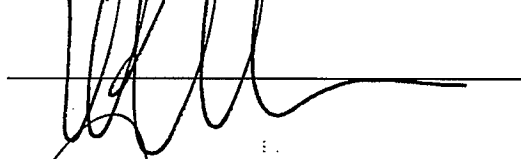
40. **Good Faith Conduct.** The parties hereto agree to advance the purposes of this Agreement in good faith and as expeditiously as possible.

41. **Other Developers Non-Parties.** The Other Developers, although mentioned and referenced in this Agreement for background purposes, are neither parties to nor third party or constructive beneficiaries of this Agreement. The obligations of Hovsons in this Agreement run solely to and are enforceable solely by the Regulatory Bodies. Hovsons acknowledges and agrees that Hovsons, shall provide to the Township, to the extent permitted by NJDEP pursuant to applications by the Township, Water Infrastructure Improvements sufficient to include the water needs of the Other Developers Projects which

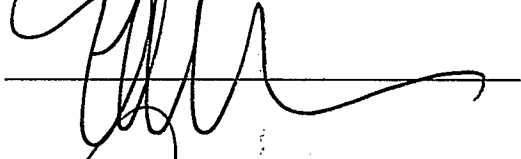
water needs are calculated at approximately 0.267 MGD. Any agreement between the Other Developers and the Regulatory Bodies regarding water for the Other Developers Projects shall be set forth in a separate agreement between the Other Developers and the Township.

IN WITNESS WHEREOF, each of the Parties has hereunto caused these presents to be signed by its authorized officers and representatives the day and year first above written.

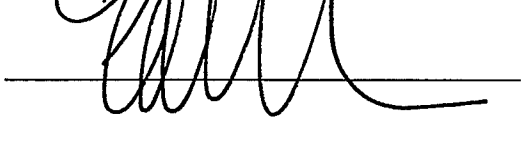
ATTEST/WITNESS



ATTEST/WITNESS



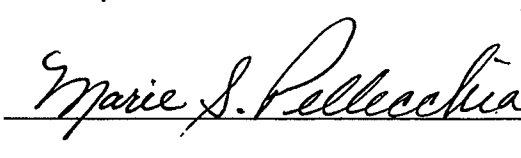
ATTEST/WITNESS



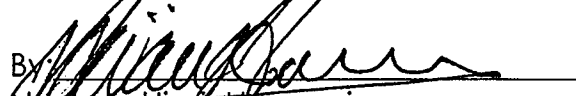
ATTEST/WITNESS



ATTEST/WITNESS



HERITAGE MINERALS, INC.

By: 
Name: Hirair Hovnanian
Title: President

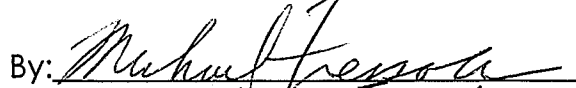
HOVSONS, INC.

By: 
Name: Hirair Hovnanian
Title: President


HOMELAND CORPORATION

By: 
Name: Hirair Hovnanian
Title: President

TOWNSHIP OF MANCHESTER

By: 
Name: Michael Fressola
Title: Mayor

TOWNSHIP COUNCIL OF THE
TOWNSHIP OF MANCHESTER

By: 
Name: Kenneth H. Vanderziel

Title: Council President

ATTEST/WITNESS

Laura E. Wilmoth

**PLANNING BOARD OF THE
TOWNSHIP OF MANCHESTER**

By: Craig A. Wallis

Name: CRAIG A. WALLIS

Title: CHAIRMAN

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EXHIBIT 4

ORDINANCE 05 - 053

AN ORDINANCE AMENDING CHAPTER XXXV, LAND USE AND DEVELOPMENT REGULATIONS, OF THE REVISED GENERAL ORDINANCE OF THE TOWNSHIP OF MANCHESTER, COUNTY OF OCEAN AND STATE OF NEW JERSEY

BE IT ORDAINED by the Township Council of the Township of Manchester, County of Ocean, and State of New Jersey as follows:

I

PURPOSES: The purposes of this Ordinance are to amend Chapter XXXV, Municipal Land Use and Development Regulations and the Zoning Map:

(1) to create a new Retirement Community zone and development regulations in conformance with a Builder's Remedy Consent Order and Stipulation of Settlement (hereinafter referred to as the "Manchester Settlement") in the matter of Hovsons, Inc. v. Township of Manchester (Docket No. OCN-L-4357-93PW. The new zone would be located on a portion of Block 75.01 Lot 1 commonly referred to as the Heritage Minerals Tract consisting of a 995.4 acre "Development Area" with additional acreage associated with accessways from N.J. Routes 70 and N.J. Route 37/Colonial Drive;

(2) to create zoning and development regulations for a new zone to be known as MF-AF Multi-Family Affordable Housing, that will provide for the development of affordable housing units on one or more sites to accommodate the required number of affordable housing units from builder remedy lawsuits including Hovsons, Inc., MGD and Stavola and affordable housing to be built by Pulte Homes of New Jersey;

(3) to amend development regulations pertaining to affordable housing requirements consistent with New Jersey Council on Affordable Housing Rules and the Manchester Settlement Builder's Remedy and Order approving the Manchester Settlement; and

(4) to amend the Municipal Land Use and Development Regulations consistent with the New Jersey Residential Site Improvement Standards and revisions to the Municipal Land Use Law.

NOTE: Deletions are shown with [~~strikethroughs in brackets~~] and additions are underlined.

II

Article 1, Intent and Purposes, Section 35-6, New Jersey Residential Site Improvement Standards, is hereby amended as follows:

35-6. NEW JERSEY RESIDENTIAL SITE IMPROVEMENT STANDARDS. The New Jersey Residential Site Improvement Standards (RSIS) approved on January 6, 1997 and effective on June 3, 1997, as may be amended, prepared in accordance with N.J.S.A. 40:55-40.4 as contained in the New Jersey Administrative Code under N.J.A.C. 5:21 are hereby adopted by reference. The provisions of the Residential Site Improvement Standards shall supersede any and all contrary or inconsistent provisions of this Chapter.

III

Article 2, Definitions, Section 35-8, Lot Frontage, is hereby amended to read as follows:

Lot Frontage shall mean the distance measured on a horizontal plane between the side lot lines measured along the street line. The minimum lot frontage shall not be less than the required lot frontage except that on curved alignments with an outside radius of less than five hundred (500) feet, the minimum distance between the side lot lines measured at the street line shall not be less than seventy (70%) percent of the required minimum lot frontage. Where the lot frontage is so permitted to be reduced, the lot width at the building setback line shall not be less than the required minimum frontage of the zone district. [~~and further provided that no lot shall have a frontage less than seventy five (75) feet~~] For the purpose of this Chapter, only continuous uninterrupted lot lines shall be accepted as meeting the frontage requirements.

IV

Article 2, Definitions, Section 35-8, Definitions, is hereby amended to add definitions for "Planned Retirement Community", "Moderate Income Household" and "Low Income Household" as follows:

Planned Retirement Community (P.R.C.) shall mean a land area to be used as a development which, through its corporation or homeowners association, restricts the property therein with by-laws, rules, regulations and restrictions of record, to use by permanent residents of the age indicated as follows: All dwelling units within a Planned Retirement Community shall be occupied by at least one person fifty-five (55) years of age or older, however, in no event shall a child nineteen (19) years of age or under reside in the PRC in conformance with the United States Fair Housing Act of 1988, PL 100-430 USC 3601 et seq. . Ownership of the residential units may be in any form recognized under the laws of the State of New Jersey.

Low Income Housing shall mean housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to fifty (50) percent or less of the median gross household income for households of the same size within the housing region (as defined by the New Jersey Council on Affordable Housing) in which the housing is

located. (Manchester Township is located in COAH Housing Region # 4 consisting of Ocean, Monmouth and Mercer Counties).

Moderate Income Housing shall mean housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region (as defined by the New Jersey Council on Affordable Housing) in which the housing is located. (Manchester Township is located in COAH Housing Region # 4 consisting of Ocean, Monmouth and Mercer Counties).

V

Article 2, Definitions, Section 35-8, Definitions, the word "Recharge Basin" is hereby amended to read as follows:

Recharge Basin shall mean a detention and/or retention basin designed not only to release water gradually into a natural or man-made outlet but also to percolate into the ground consistent with subsurface strata. [~~and designed in accordance with the Manchester Township Master Storm Drainage Plan~~].

VI

Article 4, Zoning, Section 35-24, Zoning Districts, Subsection 35-24.2, CAFRA Area and Pinelands National Reserve Area Zoning Districts, is hereby amended to add the following new zones:

- RC-2 Retirement Community - 2
- MF-AF Multi-Family-Affordable

VII

Article 4, Zoning, Section 35-25, Zoning Map and Zone Boundaries, Subsection 35-25.1, Zoning Map, is hereby amended to include the applicable ordinance number and adoption date:

35-25.1 Zoning Map.

<u>Ordinance No.</u>	<u>Adoption Date</u>
97-008	May 22, 1997
97-038	January 26, 1998
99-001	February 22, 1999
00-019	August 14, 2000
00-044	January 22, 2001
05-053	November 28, 2005

VIII

Article 4, Zoning, Section 35-32, CAFRA Area and Pinelands National Reserve Area Zoning Districts and Regulations, Subsection 35-32.2, Schedule A, CAFRA Area & Pinelands National Reserve Area Zoning Districts Schedule, is hereby amended as follows:

1. Under the column "ZONE" delete "RC/RCL" delete the following sentence under the columns establishing development requirements: (Same as R-40 Also See Section 35-72, Planned Retirement Communities; Section 35-77 Senior Citizen Light Care; and Section 35-79 Continuing Care for the Elderly)
2. Under the column "ZONE" under "RC" add "RC-2" and add the following sentence under the columns establishing development requirements: (See Section 35-32.8, RC-2 Planned Retirement Community-2)
3. Under the column "ZONE" under "MF" add "MF-AF" and add the following sentence under the columns establishing development requirements: (See Section 35-32.8.1, MF-AF Multi-Family-Affordable Housing)

IX

Article 4, Zoning, Section 35-28.5, General Sign Regulations, subsection o, Number of Signs, is hereby amended as follows:

1. One (1) ground sign, as defined, is permitted per site on sites of fifty acres or less, two (2) ground signs are permitted on sites of 50.1-100 acres, two (2) ground signs are permitted on sites of 100.1-200 acres three (3) ground signs are permitted on sites of 200.1-300 acres and four (4) ground signs are permitted on sites greater than 300 acres, subject to the following limitations:

(a) – (f). No Change.

2. No Change.

X

Article 4, Zoning, Section 35-32, CAFRA Area and Pinelands national Reserve Area Zoning Districts and Regulations, Section 35-32.8, RCL Residential Cluster, is hereby deleted and a new Section 35-32.8, RC-2 Retirement Community-2 is hereby added as follows:

35-32.8 RC-2 Retirement Community-2

a. Purpose and Intent. Development of a Planned Retirement Community, as defined in Article 2, Definitions, Section 35-8, Definitions, within the RC-2 Retirement Community Zone shall be a permitted use providing for an inclusionary development of 2,205 age-restricted market housing units on the designated "Development Area" in accordance with the

Manchester Settlement for a Builder's Remedy and the Order approving the Manchester Settlement in the matter of Hovsons, Inc. v. Township of Manchester, Docket No. OCN-L-4357-93PW. The RC-2 Zone is located on a 995.4 acre portion of Block 75.01 Lot 1 referred to in the Manchester Settlement as the "Development Area" which development area is within the property commonly referred to as the Heritage Minerals Tract together with additional acreage associated with accessways between the "Development Area" and N.J. Route 70 and N.J. Route 37/Colonial Drive. This zone is intended to permit, effectuate and implement the Heritage project as it is described in the Manchester Settlement and the Federal Court Stipulation in the matter of Hovsons, Inc. and Homeland Corporation vs. Bruce Babbitt, Secretary of the United States Department of the Interior, Robert C. Shinn, Jr., Commissioner of the NJDEP and Annette Barbaccia, Executive Director of the New Jersey Pinelands Commission (Civil Action No. 00-3943). The Manchester Settlement provides for an inclusionary development of 2,205 age-restricted market housing units within the Development Area together with the construction off tract of 68 affordable housing units and a monetary contribution toward affordable housing. In the event of a conflict between this Ordinance and any other municipal law, regulation or ordinance, the provisions of this Ordinance shall prevail.

b. Permitted Uses.

1. Single-family Detached Dwellings.

2. Senior Citizen Recreational and Cultural Facilities for the sole use of the residents of the community and their guests, including the following: clubhouse, shuffleboard courts and picnic grounds. In particular, requirements for the foregoing are more specifically enumerated hereinafter. Recreational and cultural facilities shall not be limited to the foregoing, so that an applicant may propose additional facilities with its submission. All such facilities shall be subordinated to the residential character of the area, and no advertising shall be permitted.

3. Commercial and Service Facilities. The following uses will be permitted provided that the total square footage does not exceed 20,000 square feet and the standards for B-1 Zone are adhered to.

(a) Professional offices for doctors, dentists, chiropractors, opticians, accountants and attorneys.

(b) Medical clinics and first aid facilities.

(c) Offices for banks, insurance agencies, real estate agencies, financial investment counselors and brokers, and such other similar services.

(d) General merchandise stores, food stores, eating places and similar such facilities.

(e) Barber shops, beauty and hairdresser shops, laundry and dry cleaning and similar such facilities.

4. Houses of worship. Houses of worship shall be permitted on a minimum lot area of two (2) acres).

5. Model Homes and/or Sales Office in accordance with N.J.S.A. 40:55D-66 and any retail home decoration and furnishings sale facility operated by the developer of the Planned Retirement Community solely for the use of purchasers of dwelling units therein.

6. Accessory Vehicle Storage Area. A screened, fenced, unpaved, graveled area for the parking of accessory vehicles not normally utilized for transportation such as recreational vehicles, campers, boats and boat trailers at a location and of such size approved by the Approving Agency. Such area shall not be used in computing green area.

7. Maintenance and Administration Area. A screened area reserved for storage and care of maintenance equipment and administration of the community.

b. Permitted Accessory Uses. As defined in Article 2, Definitions, of this Chapter.

c. Development Standards. No building permits shall be issued or construction commenced within the area except in accordance with a Site Development Plan herein prescribed. Such Site Development Plan shall meet the following requirements.

1. Minimum Area and Development Area. The minimum area for a P.R.C. in the RC-2 Zone shall be one hundred (100) contiguous acres under one ownership or control. The "Development Area" shall be 995.4 acres. The areas of access roadways and rights-of-way to and from N.J. Route 70 and N.J. Route 37/Colonial Drive shall be in addition to the "Development Area".

2. Density. The permitted density shall be two and three-tenths (2.3) dwelling units per gross acre of the "Development Area".

3. Residential Building Coverage. Not more than twenty (20%) percent of the "Development Area" area shall be covered by buildings.

4. Set-backs. No building or structure shall be located closer than twenty (20) feet from a local street provided that all driveways fronting on said street shall be twenty-five (25) feet or more in length.

5. Distance Between Residential Buildings.

(a) There shall be a minimum distance of twenty (20) feet between single family residential structures and a minimum separation of forty (40) feet at the rear of the structures with a minimum of twenty (20) feet of rear yard area for each residential structure. Single family fee simple residential lots shall have the following minimum setbacks:

Front Yard - 20 feet for residential structure and 25 feet for any garage structure.

Side Yard - 10 feet

Rear Yard - 20 feet

(b) The maximum height of any single-family dwelling building in a Planned Retirement Community shall be two (2) stories but not exceed thirty five (35) in height.

d. Open Space. For the purposes of the RC-2 Zone, "open space" shall be that portion of the Development Area which is not covered by buildings, a paved street and paved areas, but including the areas of those facilities which are part of the designated open space within the Development Area. Not less than fifty (50%) percent of the Development Area shall be devoted to natural and/or planted vegetation. Open Space shall also include wetlands, wetlands transition areas, storm water management basins, bodies of water, lakes, undeveloped regulated areas, lands serving the clubhouse and active/passive recreation facilities and yard areas in individual building lots not covered by structures or driveways.

e. Off Street Parking. Two (2) spaces for each single family detached dwelling unit in accordance with the N.J. Residential Site Improvement Standards. A parking space is hereby defined as a space of ten (10) feet by twenty (20) feet, except that a driveway fronting on a street shall be twenty five (25) feet in length as measured from the curb face on the street or twenty-two from the street line if the street is a public street. Driveways shall be designed so that parked vehicles do not overhang sidewalks or common pedestrian ways.

f. Roads, Cul-de-Sacs, Curbs and Sidewalks. Roads, cul-de-sacs, driveways and sidewalks shall be designed in accordance with the N.J. Residential Site Improvement Standards and, where applicable, with the Americans with Disabilities Act Design Guidelines.

g. Buffers. There shall be provided a fifty (50) foot wide screening strip where non-residential facilities including storage areas abut a residential lot. If the residential and non-residential uses are separated by a street, no buffer shall be required at that location. No perimeter buffer shall be required along the boundaries of the Development Area.

h. Driveways, Walks and Parking Areas. There shall be provided and designed a safe and convenient system of driveways, sidewalks and parking areas in accordance with Americans with Disabilities Act Design Guidelines.

i. Cul-de-sac Islands. Landscaped islands in the center of cul-de-sacs shall be permitted provided that the islands are designed in accordance with the minimum standards of the Residential Site Improvement Standards and their maintenance and upkeep is not the responsibility of the Township.

j. Roads. Roads in the P.R.C. may be private or public at the election of the developer. In the event the roads are private then such private roads shall be the responsibility of a homeowners association. In the event such roads are public, then such public roads shall be the responsibility of the Township of Manchester including the maintenance of drainage facilities in such public roadways.

k. Clubhouse and Recreation Facilities.

1. Clubhouse. There shall be provided at least one (1) clubhouse or community to serve residents of the PRC. The minimum area of the clubhouse or clubhouses shall be computed on the basis of habitable area equal to fifteen (15) square feet for each dwelling unit to be built in the PRC. In computing the "interior habitable area", all space reserved for mechanical equipment and storage shall be excluded. The developer shall have the right to construct the clubhouse in stages commensurate with the following: The initial stage of the clubhouse shall consist of the minimum habitable area required for one-third (1/3) of the total dwelling units to be built in the PRC and shall be completed and in operation before the two hundred fiftieth (250th) dwelling has been completed and a Certificate of Occupancy issued therefor. The second one-third (1/3) of the required clubhouse habitable area shall be completed before the nine hundred fiftieth (950th) dwelling unit has been completed and a Certificate of Occupancy issued. The final one-third (1/3) of the required clubhouse habitable area shall be completed before the one thousand six hundred and fiftieth (1,650th) dwelling unit has been completed and a Certificate of Occupancy issued. Said clubhouse or clubhouses shall have an adjoining off-street parking area(s) at a ratio of one (1) parking space for each eight (8) dwelling units utilizing the clubhouse or clubhouses.

2. Recreation Facilities.

(a) There shall be provided recreational facilities consisting of active facilities suitable for and compatible with residents of a retirement community.

(b) For developments of more than three hundred (300) persons, active recreation or park space shall be provided at the rate of 2.75 acres per one thousand (1,000) population.

3. Landscaping. All grounds surrounding clubhouse, recreational and administrative facilities shall be attractively landscaped, provided with appropriate walkways and provided with an adequate irrigation system.

l. Development Schedule. A development schedule shall be required in accordance with subsection k.1 above and Section 35-72.8.

m. Dedication of Land for Public Use. Land offered for dedication, if any, to Manchester Township shall be in conformance with Section 35-72.9 and applicable Statutes.

n. Covenants, Deed Restrictions and Homeowner Association Bylaws. All covenants, deed or other restrictions and homeowner association bylaws and any amendments thereto shall be filed with the Township Clerk.

o. Exceptions to Provisions of Chapter XXXV. The following provisions of Chapter XXXV shall be applicable as clarified below and only to the extent that same do not restrict, impede and/or conflict with the Manchester Settlement and/or other provisions of this Ordinance.

1. Section 35-86.1, Site Analysis.
2. Section 35-86.2, General Design Requirements.
3. Section 35.86.3, Architectural and Building Requirements.
4. Section 35-86.4, Environmental Design Requirements. The provisions of this section shall not apply to the RC-2 Zone. Environmental studies have been performed, and appropriate analyses and determinations have been made by the NJ DEP and the Pinelands Commission, prior to and during the course of the negotiation and entry of the Federal Court Stipulation substantiating that the "Development Area" is developable. These studies shall be deemed to address submission checklist requirements contained in Appendix 5. Any and all requirements that Hovsons, Inc. submit an environmental impact statement, environmental impact assessment and any environmental reporting requirements to the Township of Manchester have been satisfied by the environmental studies previously performed for the NJDEP and the Pinelands Commission. Hovsons' environmental obligations, as set forth in the Federal Court Stipulation, shall be enforced exclusively by the NJDEP and the Pinelands Commission.
5. Section 35-86.5. Circulation Design Requirements.
6. Section 35-86.6. Landscaping Design Requirements
7. Section 35-86.7
 - (a) Amount of Common Open Space Required.
 - (b) Circulation Plan – the reference to path system therein shall mean sidewalks.

- (d) Undeveloped Common Open Space,
 - (e) Deed Restrictions (Open Space and Recreation Requirements).
 - (f) Common Open Space Ownership. The provisions of Section 35-86.7 (f) shall be applicable, subject to the terms of the Federal Court Stipulation and DEP requirements set forth therein. The open space located within the Development Area shall be deeded to and owned by a Homeowners Association.
8. Article 7, Procedures and Requirements for Request for Relief from the Zoning Article, Section 35-62, Expiration of Variance. Any variance granted to the Heritage Project shall have the same protective vesting period as that granted pursuant to a general development plan, preliminary subdivision/site plan and final subdivision/site plan approval.
9. Article 11. Affordable Housing Regulations Sections 35-94 through 35-97.7. Notwithstanding the provisions of this Article, the affordable housing obligation for the RC-2 Development Area shall be as set forth in the Manchester Settlement and in the event of any discrepancy or conflict between the provisions of Article 11 and COAH Regulations, the provisions of the COAH Regulations set forth in N.J.A.C. 5:93-1.1 et seq. shall apply. Since Heritage is an inclusionary development, development fees shall not be required.
10. Steep Slopes. Notwithstanding anything to the contrary in this Chapter or other Township ordinances and regulations, man-made slopes and grades shall not be considered "steep slopes" within the Development Area in this zone. Applicant shall have the right to build within any portion of the Development Area, regardless of steep slopes, by performing appropriate grading and landscaping.
11. Off-Street Parking for Clubhouse. Notwithstanding requirements for Section 35-92-29.2, Number of Spaces, the required number of off-street parking for the clubhouse within the RC-2 Zone shall be in accordance with 35-32.8k, Clubhouse and Recreation Facilities.
12. Submission Procedures. Notwithstanding requirements in Section 35-39, Submission Procedures, for subdivisions; Section 35-50, for site plans; and Section 35-11, Applicant's General Submission Procedures, applications for development in the RC-2 Zone shall be processed in accordance with the Manchester Settlement Agreement with respect to general development plan, subdivisions and site plans approvals.
13. Shade Trees. The provisions of 35-85.8, Shade Trees and Streetscape Planting Strips, subsections b and c shall not be applicable to development within the

Development Area. The provisions of 35-85.8 shall be applicable to the access road from N.J. Route 37/Colonial Drive.

14. Floor Area Ratio. Floor area ratios shall not apply to the RC-2 Zone.

XI

Article 4, Zoning, Section 35-32, CAFRA Area and Pinelands National Reserve Area Zoning Districts and Regulations, is hereby amended to add a new Section 35-32.8.1, MF-AF Multi-Family - Affordable, as follows:

Section 35-32.8.1 MF-AF Multi-Family -- Affordable Housing

- a. Purpose. The purpose of the MF-AF Multi-Family -- Affordable Zone is to provide for multi-family housing for low and moderate income households required in accordance with the Manchester Settlement in Hovsons, Inc. et al vs. Manchester Township and the Settlement Agreement governing Manchester Development Group, L.L.C. vs. Manchester Township; Stavola Construction Materials, Inc. and Stavola Realty Company vs. Manchester Township; as well as affordable housing provided by Pulte Homes of NJ, Limited Partnership.
- b. Permitted Uses.
 1. Multi-family residential units including garden apartments.
 2. Attached housing units.
- c. Minimum Lot Size. Six (6) acres.
- d. Maximum Density:
 1. Multi-family residential: Twelve (12) dwelling per acre.
 2. Attached single-family; Eight (8) dwelling units per acre.
- e. Minimum Front Yard Setback:
 1. State highways: One hundred (100) feet.
 2. County highway: Sixty (60) feet.
- f. Minimum Side Yard setback measured from the exterior boundaries: thirty (30) feet.
- g. Minimum Rear Yard setback measured from the exterior boundaries: forty (40) feet.
- h. Minimum Width of any apartment unit or attached single family housing unit: eighteen (18) feet.
- i. Maximum Building Height: Thirty-five (35) feet.

j. Maximum Number of Stories: Two and one-half (2 1/2 stories)

k. Maximum Number of Units Per Structure:

1. Multi-family Residential: Sixteen (16)

2. Attached single family: Eight (8)

l. Minimum Distance Between Buildings:

1. For multi-family residential buildings oriented essentially at ninety (90) degrees to each other, the minimum distance between same shall be a minimum of thirty (30) feet or one times the maximum height of the buildings whichever is greater.

2. For multi-family residential buildings oriented essentially end to end to each other, the minimum distance between same shall be a minimum of thirty (30) feet or one and one-half (1.5) times the maximum height of the buildings, whichever is greater.

3. For multi-family residential buildings oriented essentially with parallel axis facing each other, the minimum distance between same shall be a minimum of forty (40) feet or two (2.0) times the maximum height of the building, whichever is greater.

m. No portion of any dwelling unit shall be lower than the outside finished grade (excluding the basement portion of the dwelling unit). No depressed siting shall be permitted.

n. Recreation Requirement. A playground area or areas shall be provided at the rate of five hundred (500) square feet per four (4) dwelling units. All recreation areas shall be fully landscaped or grassed.

o. Off-Street Parking Requirements. Off-street parking requirements for residential structures shall be governed by the New Jersey Residential Site Improvement Standards N.J.A.C. 5:21.

p. Utility Requirements. The applicant for the site plan approval shall arrange with the serving utility for the underground installation of the utilities distribution supply lines and service connections in accordance with the provisions of the applicable standard terms and conditions incorporated as part of its tariff on file with the State of New Jersey Board of Public Utility Commissioners. All multi-family and attached single family development shall be served by public sewer and public water in accordance with the requirements of the Manchester Township Municipal Utilities Department.

q. Landscaping and Buffer Requirements. All areas of multi-family and attached single family development not used for construction of buildings, roads, accessways, parking areas or sidewalks shall be reasonably landscaped or grassed. All trees within twenty (20) feet of the perimeter boundary of the affordable housing site shall be preserved. When no trees exist within twenty (20) feet of the perimeter boundary of the affordable housing site, or when the

existing trees must be removed for grading purposes, the developer shall plant trees within such twenty foot perimeter at the rate of one (1) tree per two hundred (200) square feet.

r. Interior Roads and Driveway Location. Roads. Roads may be private or public at the election of the developer. In the event the roads are private then such private roads shall be the responsibility of a homeowners association. In such event the provisions of the Municipal Services Act shall be applicable. In the event such roads are public, then such public roads shall be the responsibility of the Township of Manchester including the maintenance of drainage facilities in such public roadways.

s. Permitted Accessory Uses. Permitted Accessory Uses usually incidental to the above uses, as specified below:

1. Non-commercial garage for the exclusive use of site residents only.
2. Non-commercial swimming pools for exclusive use of site residents

XII

Article 4, Zoning, 35-26, General Regulations, Subsection 35-26.1, Application of Regulations to Structures, Yards and Open Space, Schedule D, CAFRA Area and Pinelands National Reserve Area, is hereby amended as follows:

- a. The column entitled "RC/RCL" is hereby deleted.
- b. Two new columns entitled "RC-2" and "MF-AF" are hereby added and Schedule D is amended to include the following:

**SCHEDULE D
MANCHESTER TOWNSHIP
CAFRA & PINELANDS NATIONAL RESERVE AREA
RESIDENTIAL ZONING DISTRICTS
PERMITTED AND CONDITIONAL USES**

SIC CODE	USE	RC-2	MF-AF	RC/RCL
(2)	SINGLE-FAMILY DETACHED DWELLINGS	P	P	P
(2)	SINGLE-FAMILY ATTACHED DWELLINGS		P	P
(2)	MULTI-FAMILY DWELLINGS		P	P
1	AGRICULTURAL PRODUCTION - CROPS			P
8	FORESTRY			P
866	RELIGIOUS ORGANIZATION	P	P	P
90-97	FEDERAL, STATE, COUNTY, MUNICIPAL GOVERNMENT/PUBLIC ADMINISTRATION			P

XIII

Article 9, Improvements, Requirements and Design Standards, Section 35-85, Streets, is hereby amended as follows:

“35-85. STREETS. The following requirements for streets shall be applicable only to the extent such requirements are not in conflict with Residential Site Improvement Standards (N.J.A.C. 5:21), for streets within residential developments.

35-85.1 – 35-85.12. No Change.

35-85.13. Street Lights.

a. – b. No Change.

c. Street lights on private streets shall be designed and located consistent with the guidelines for street lights on public streets in a and b above. Operation and maintenance of street lights shall be in conformance with N.J.S.A. 40:67-23.2 et seq., Municipal Services Act.

35-85.14 – 35-85.16. No Change.

XIV

Article 9, Improvements, Requirements and Design Standards, Section 35-87. Stormwater Management is hereby amended as follows:

Section 35-87. STORMWATER MANAGEMENT. Stormwater management within residential developments shall conform to the requirements of N.J.S.A. 40:D55-93 and N.J.A.C. 5:21, Residential Site Improvement Standards.

35-87.1 – 35-87.14. No Change.

XV

Article 9, Improvements, Requirements and Design Standards, Section 35-88, Lighting, is hereby amended as follows.

35-88. LIGHTING

a. Street lighting shall be provided in accordance with a plan designed by the electric utility company, or using as a guideline the standards set forth by Illuminating Engineering Society of North America (IES) Lighting Handbook shown in the construction specifications.

b and c. No Change.

d. The maximum height of light standards, other than street lights approved by the applicable electric utility company, shall not exceed the maximum building height permitted, or twenty-five (25) feet, whichever is less.

e. - f. No Change.

XVI

Article 10, Performance Guarantees, is hereby amended as follows:

ARTICLE 10, PERFORMANCE and MAINTENANCE GUARANTEES

35-90. SHORT TITLE. This Article shall be known and may be cited as: [~~Improvement~~] Performance and Maintenance Guarantees Article of the Township of Manchester Municipal Land Use and Development Regulations Chapter.

35-91. No Change.

35-92. PERFORMANCE GUARANTEES.

35-92.1. No Change.

35-92.2. Posting of Performance Guarantee. Performance guarantees shall be submitted [~~in the following form~~] in accordance with the standardized form adopted by the New Jersey Department of Community Affairs pursuant to N.J.S.A. 40:55D-53a.

a. Ten (10%) percent of the performance guarantee must be posted in cash in accordance with N.J.S.A. 40:55D-53.3 or an irrevocable letter of credit in accordance with N.J.S.A. 40:55D-53.5.

b. The remaining ninety (90%) percent of the performance guarantee amount may be posted in cash, certified check, irrevocable letter of credit or surety bond in accordance with N.J.S.A. 40:55D-53.5 in the favor of the Township.

c. The reference at the end of the first sentence to "~~Section 35-92-2-1~~ above" is hereby amended to read "Section 35-92.1 above".

d-h. No Change.

35-92.3 Release of Guarantees.

a. No Change.

1-3. No Change.

4. Water mains, [~~gas mains and underground electric, telephone and community antenna television (C.A.T.V.) conduits (plans and profiles) for facilities~~] in roads and easements.

5. No Change.

[NOTE: the position of the following sentence shall be realigned with "a" above.]

Thereupon the Township Engineer shall inspect all improvements covered by the obligor's request and shall file a detailed list and report, in writing, with the Township Council, and shall simultaneously send a copy thereof to the obligor not later than forty five (45) days after the receipt of the obligor's request.

b - f. No Change.

35-92.4 Maintenance Guarantees.

a. Any release of performance guarantees will be conditioned upon the provision of a maintenance guarantee to be posted with the Township Council, in an amount equal to fifteen (15%) percent of the [~~performance guarantee amount~~] cost of the improvement, which cost shall be determined by the Township Engineer in accordance with N.J.S.A. 40:55D-53.4 and in a form approved by the Township Attorney. In the event that other governmental agencies or public utilities will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Township for such utilities or improvements.

b. The maintenance guarantee shall [~~state that all improvements will remain in satisfactory condition~~] be for a period of [at least] two (2) years after acceptance of the improvement.

35-92.5 -35-93. No Change.

XVII

Appendix 3, Application Checklist and Documents to be Submitted, items B-24 and B-27 in the checklist are hereby amended as follows:

B-24. Location of natural slopes of 15% or greater, streams, flood plains, wetlands [or] and other environmentally sensitive area on or within 200 feet of the project site. "Natural slopes", for checklist purposes, shall not include areas previously cleared and/or graded in gravel and mineral mining areas. (Note: [~~Variance~~] Applications for bulk variances need only show these features on-site.

B-27. a. No Change.

b. ~~[Timetable and]~~ Phasing sequences.

XVIII

Appendix 4, Letter of Credit Forms for Performance and Maintenance Bonds, Irrevocable Standby Letter of Credit (Maintenance), paragraph 2, is amended to read as follows:

2. This Letter of Credit shall be valid for a period of ~~[thirty (30)]~~ twenty-four (24) months commencing on the date set forth above and expiring on the ~~[initial]~~ expiration date set forth above.

XIX

Article 3, Administrative Procedures, Section 35-19, Reserved, is hereby amended to read as follows:

35-19. ~~[RESERVED]~~ General Development Plans: Applications, Processing and Approvals. An applicant for the development of one hundred (100) acres or greater, may submit a general development plan prior to the granting of a preliminary approval of that development by the planning board pursuant to N.J.S.A. 40:55D-46 and/or N.J.S.A. 40:55D-48. In the event application is made for general development plan approval, then the application and other requirements shall be governed by N.J.S.A. 40:55D-45 through 45.8.

XX

Article 8, Conditional Use Permits, Procedures And Requirements, Section 35-72.2, Definition of Planned Retirement Communities, is hereby amended as follows:

35-72.2. Definition of Planned Retirement Community (P.R.C). A "planned retirement community", hereinafter referred to as P.R.C., is defined as one (1) or more parcels of land having a contiguous total acreage of at least fifty (50) acres, as permitted in the WTRC Zones, Section 35-34.16, and at least one hundred (100) acres in the RC Zone and PR-A Zones, forming a land area to be used as a Planned Retirement Community as defined in Article 2, Definitions, Section 35-8, Definitions. ~~[; said land shall, through its corporation, association or owners, restrict use of the property therein, by laws, rules, regulations and restrictions of record, to use by permanent residents of the age indicated below, except as otherwise provided herein. Ownership of the residential units may be in any form recognized under the laws of the State of New Jersey.]~~

a. Lands shall be considered contiguous so long as said lands are not separated by existing public streets, or railroad rights-of-way presently used, provided, however, that where an applicant is able to demonstrate to the satisfaction of the Approving Agency that the lands so separated lend themselves to an integrated community plan, without any substantial detriment to the public health, safety or welfare, the Approving Agency may waive the contiguity requirement.

b. Age of Residents. The permanent residents of said Planned Retirement Communities shall be restricted to residents whose ages are in conformance with the age restrictions specified in the definition of a "Planned Retirement Community" in Article 2, Definitions, Section 35-8, Definitions.

~~[who are at least fifty five (55) years of age or over, provided, however, no child nineteen (19) years of age or under may reside with an occupant. The Approving Agency shall have the right to deviate from this Section pursuant to provisions in the Administrative Article provided that the deviation shall be in conformance with the United States Fair Housing Act of 1988, PL 100-430 USC 3601 et seq.]~~

XXI

All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed.

XXII

If any section, subparagraph, sentence, clause, or phase of this Ordinance shall be held to be invalid, such decision shall not invalidate any remaining portion of this Ordinance.

XXIII

Pursuant to the provisions of N.J.S.A. 40:69A-181 (b), this Ordinance shall take effect twenty (20) days after its final passage by the Township Council and approval by the Mayor where such approval is required by law and in accordance with any other laws which may be applicable. Copies of this Ordinance shall be filed with the Manchester Township Tax Assessor, Zoning Officer, Planning Board, Board of Adjustment, Planner and Engineer, the Ocean County Planning Board, the Pinelands Commission, the Honorable Eugene D. Serpentelli, A.J.S.C., and Hovsons, Inc. c/o Ronald L. Shimanowitz, Esq.

NOTICE

PUBLIC NOTICE is hereby given that the foregoing ordinance was introduced at a meeting of the Township Council of the Township of Manchester, in the County of Ocean and State of New Jersey on the 24th day of October, 2005 and was then read for the first time. The said ordinance will be further considered for final passage by the Township Council in the Town Hall at 7:00 p.m. on November 28th, 2005. At such time and place or any time or place to which said meeting may be adjourned; all persons interested will be given an opportunity to be heard concerning said ordinance.

MARIE S. PELLECCIA
Township Clerk