

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made this 2<sup>nd</sup> of NOVEMBER, 2006, by and between MARTIN M. WEAVER (hereinafter "Weaver"), HOVNANIAN PENNSYLVANIA, INC. (hereinafter "Hovnanian"), the ZONING HEARING BOARD OF EAST BRANDYWINE TOWNSHIP (hereinafter "Zoning Hearing Board") and the BOARD OF SUPERVISORS OF EAST BRANDYWINE TOWNSHIP (hereinafter the "Board of Supervisors or the "Township").

### BACKGROUND AND APPEALS

1. Weaver is an individual who owns a parcel of land consisting of approximately 140 acres located at the southeast corner of Bollinger Road and SR 322 in East Brandywine Township, Chester County (the "Township"), Tax Map Parcel 30-5-3, which parcel is presently improved with several farm buildings (the "Property").
2. Hovnanian, equitable owner of the Property, is a Pennsylvania corporation with its principal place of business located at 1170 Wheeler Way, Langhorne, Pennsylvania, 19047.
3. The Board of Supervisors is the governing body of East Brandywine Township, duly authorized under the Pennsylvania Municipalities Planning Code (hereinafter the "MPC"), 53 P.S. 10101 et seq., with administrative offices at 1214 Horseshoe Pike, Downingtown, Pennsylvania, 19335.
4. The Zoning Hearing Board, like the Board of Supervisors, is duly authorized under the MPC, with administrative offices at 1214 Horseshoe Pike, Downingtown, Pennsylvania, 19335.
5. On July 23, 2001, Weaver filed an appeal with the Zoning Hearing Board of East Brandywine Township (the "Zoning Hearing Board"), challenging the validity of a zoning

ordinance amendment, purportedly enacted by the Township's Board of Supervisors on June 20, 2001, which amendment purported to amend Article VII - R-3 Residential District of the Township's Zoning Ordinance (the "June Amendment"). The substance of the June Amendment included the repeal of provisions which had previously permitted planned residential developments ("PRDs") in the R-3 Residential Zoning District and a rezoning of an area of the Township from the R-3 to R-2 zoning classification. These changes had the effect of rezoning, and thereby reducing the intensity of permitted development on, some portions of the Property.

6. After a hearing in August of 2001, the Zoning Hearing Board voted, on October 16, 2001, to deny Weaver's challenge to the validity of the June Amendment.

7. Weaver timely filed a land use appeal with this Court on November 16, 2001, appealing the Zoning Hearing Board's denial of his challenge to the June Amendment, CCP Chester County Docket No. 01-9497, (the "Land Use Appeal").

8. The East Brandywine Township Board of Supervisors intervened in the Land Use Appeal which is still pending in this Court. No other parties intervened in the Land Use Appeal.

9. On October 23, 2001, Weaver filed an appeal with the Zoning Hearing Board, challenging the validity of a zoning ordinance amendment, purportedly enacted by the Township's Board of Supervisors on September 19, 2001, which, like the June Amendment, purported to amend Article VII - R-3 Residential District of the Township's Zoning Ordinance (the "September Amendment").

10. Weaver later amended his challenge to the September Amendment to include additional procedural and substantive grounds.

11. Weaver waived the requirement under the MPC that the Zoning Hearing Board hold a hearing on Weaver's challenge to the September Amendment within sixty days of his request for a hearing; Weaver's challenge to the September Amendment is still pending before the Zoning Hearing Board.

12. On or about December 19, 2001, Weaver and Hovnanian jointly filed with the Township an application for a Planned Residential Development on the Property (the "PRD Application"). If Weaver's challenges to the June Amendment and the September Amendment are successful, a Planned Residential Development will be a permitted use on the Property.

13. By way of a January 7, 2002 letter, the Township's Zoning Officer rejected the PRD Application.

14. On February 6, 2002, Weaver and Hovnanian appealed to the Zoning Hearing Board from the Zoning Officer's rejection of the PRD Application and also challenged the substantive validity of the Township's Planned Residential Development Ordinance.

15. Weaver and Hovnanian waived the requirement under the MPC that the Zoning Hearing Board hold a hearing on their appeal of the Zoning Officer's rejection of the PRD Application and their challenge to the substantive validity of the Township's Planned Residential Development Ordinance within sixty days of their request for a hearing; Weaver's and Hovnanian's appeal and validity challenge are still pending before the Zoning Hearing Board.

#### THE SETTLEMENT PLAN

16. Weaver, Hovnanian, and the Township have agreed to resolve and settle the above-referenced appeals and have arrived at an agreement for the development of the Property as an age-restricted community, which development is depicted and set forth in Hovnanian's

preliminary subdivision/land development plan, prepared by the engineering firm of Taylor Wiseman & Taylor, last revised August 7, 2006, filed with the Township on March 2, 2006, a copy of which is appended to this document and labeled Exhibit "A" (the "Settlement Plan"). The development of the Property as depicted on the Settlement Plan is hereinafter referred to as the "Proposed Development".

17. The Settlement Plan proposes development of the Property under the Clustered Residential Development Regulations of the R-3 Residential Zoning Ordinance (ZO) and Subdivision and Land Development Ordinance (SLDO) in effect on the date of preparation of the Settlement Plan on August 14, 2002.

18. The Settlement Plan proposes a total of 286 single family, detached dwelling units at an overall density of 2.20 units per net tract area.

#### SEWAGE TREATMENT FACILITIES

19. Consistent with the professional judgment of the Township engineers and other consultants, the Township shall within 90 days amend its Act 537 Plan consistent with the sewer module and related documents and exhibits submitted by or on behalf of Hovnanian. Such amendment will include the following provisions:

- (1) Alter the Township's estimate of 300 gallons per day (gpd) for an Equivalent Dwelling Unit (EDU) to 150 gpd for this project.
- (2) Reduce the requirement of a 100 percent soil absorption field replacement area for community on-lot disposal systems to a replacement area of 50 percent capacity.

The Township's obligation to so amend its Act 537 Plan shall arise only after Hovnanian provides the Township with historical evidence/documentation to reasonably satisfy the

Township that the estimate of 150 gpd is a reasonable estimate of the proposed community's usage as an age-restricted community. The 90-day period for the Township's amendment of its Act 537 Plan shall commence upon Hovnanian's preparation and submission of such amendment to the Township for its prompt review and approval, which approval the Township shall not unreasonably withhold. Hovnanian shall reimburse East Brandywine Township and East Brandywine Township Municipal Authority for all costs, including professional fees, expended by either the Township or the Municipal Authority incurred in the amendment of the Act 537 Plan.

20. The Township further agrees that it will refer such amendment (the "Amendment") to the Pennsylvania Department of Environmental Protection ("DEP"), and that it will use its best efforts to support the Amendment before DEP. The parties to this Settlement Stipulation understand that DEP's approval of the Amendment will be necessary before the Amendment can be effective.

21. Should DEP disapprove the Amendment, such disapproval shall not be treated as an unfulfilled condition of this Settlement Stipulation. Rather, should DEP disapprove the Amendment, Hovnanian will either pursue the Amendment by responding to the issues raised by DEP, or will propose an alternative amendment to the Township's Act 537 Plan (the "Alternative Amendment") that will more closely conform with the Township's current Act 537 Plan than the Amendment.

22. Pulte Homes of Pennsylvania, L.P. ("Pulte") is developing a sewage treatment plant (the "Pulte Plant") in connection with Pulte's proposed development of land adjacent to the Property (the "Pulte Development"). The planning modules submitted in connection with the Pulte Plant indicate that such plant will provide sufficient capacity for Hovnanian's Proposed

Development. Accordingly, Hovnanian's Proposed Development shall utilize the capacity available at the Pulte Plant and Hovnanian shall pay its proportionate share of the costs to construct and operate such plant.

23. Prior to Township approval of the final plan of the proposed development, Hovnanian shall execute an agreement with the East Brandywine Township Municipal Authority for the construction, operation, maintenance and dedication of the sewage facilities to be constructed by Hovnanian. The agreement shall include, but not be limited to:

- A. Specifications for the construction of the collection system, the pump station, and the absorption fields;
- B. Provisions for inspection of the sewer facilities as they are being constructed and reimbursement to the Municipal Authority for the required inspection;
- C. Provisions for financial security for the construction of the sewer improvements;
- D. Provisions for the dedication of the sewage facilities to the East Brandywine Township Municipal Authority.

24. The sewage facilities shall not be constructed in Phases, and Hovnanian shall provide financial security for the construction of the entire system prior to any construction permits being issued.

25. Prior to final approval of the proposed development, Hovnanian shall execute the Sewer Connection Agreement with the East Brandywine Township Municipal Authority, which Agreement shall specify the terms under which Hovnanian shall pay its proportionate share of the costs to construct and operate the sewage treatment plant being constructed by Pulte.

26. Hovnanian shall construct at its expense an extension to the sewer system and provide stubbed laterals which will allow the following properties to connect to the public sewer system. Hovnanian shall have no expense related to the connection other than the foregoing. These connections are not a condition precedent to the issuance of any permits for the Proposed Development of the Property.

<u>Address</u>	<u>Parcel Number</u>
221 East Reeseville Road	30-5-2
231 East Reeseville Road	30-5-2.1
131 Bollinger Road	30-5-3.4
141 Bollinger Road	30-5-3.2
151 Bollinger Road	30-5-3.3
161 Bollinger Road	30-5-3.5
1222 Horseshoe Pike	30-5-7
1224 Horseshoe Pike	30-5-6
1226 Horseshoe Pike	30-5-5
1228 Horseshoe Pike	30-5-4
275 Bollinger Road	30-5-3.1
1220 Horseshoe Pike	30-5-0008
249 East Reeceville Road	30-05-0003-01A

**WATER SERVICE**

27. Public water service will be supplied to the Property by Aqua America.

**TRAFFIC IMPROVEMENTS**

28. Hovnanian's Proposed Development of the Property will necessitate certain traffic improvements at the intersection of S.R. 322 and Bollinger Road. In connection with the

Pulte Development, Pulte has agreed to improve such intersection as required by PennDOT, which improvements will include, but will not necessarily be limited to, a separate turn lane westbound and a traffic signal. Hovnanian shall remit to Pulte its proportionate share, based on projected trip generation, of the cost of such intersection improvements (and any modifications otherwise required by PennDOT in conjunction with the referenced improvements, based upon the number of units constructed in each respective development). Hovnanian shall also widen Bollinger Road along the east side site frontage 14 feet from centerline without curbing (no shoulders) and coordinate with Pulte and the Township to avoid impacts to the existing residential properties.

29. Hovnanian has also agreed to contribute the sum of \$328,000.00 to the Township for other traffic improvements to be determined by the Township. This contribution shall be pro-rated over 286 dwelling units and payable in said pro-rated amount at the time of issuance of Use and Occupancy Permits for each dwelling unit. If, for some reason, the number of units is reduced, the contribution shall also be reduced by the pro-rata amount per lost unit.

30. Hovnanian shall not be required by the Township to make any other on-site or off-site roadway or intersection improvements or monetary traffic improvement contribution to the Township in conjunction with the Proposed Development.

31. Hovnanian shall dedicate to the Township and/or the Pennsylvania Department of Transportation, as appropriate, the portion of the Property necessary to accommodate such required traffic improvements. However, Hovnanian shall not be required to dedicate any portion of the Property, or to pay for any costs, associated with the installation of a jug handle at the referenced intersection.



32. Hovnanian acknowledges that it has received notice and a sketch plan of a proposed loop road, a portion of which is proposed to go through the Property. Although there are no immediate plans to construct the loop road, Hovnanian hereby acknowledges that the loop road is being considered.

#### RECREATION FEE CONTRIBUTION

33. The Board of Supervisors has requested, and Hovnanian has agreed, to remit the sum of \$1,500.00 per approved dwelling unit to the Township in lieu of the set-aside of land for active recreation. This fee shall be paid as follows: a \$150,000.00 lump sum payment paid upon release by the Board of Supervisors of the final land development plans for recordation and \$1,500.00 payable for each of the first 186 building permit applications upon filing of each said application.

#### ZONING ORDINANCE AND SUBDIVISION AND LAND DEVELOPMENT ORDINANCE RELIEF

The parties acknowledge that the Settlement Plan does not fully comply with all of the applicable Township ZO and/or SLDO provisions. Accordingly, this Settlement Agreement grants the following relief from the Township SLDO and ZO:

#### SLDO

34. Sections 404 and 405 detail the requirements for the submission and review of a Preliminary Plan. This Agreement and the Settlement Plan take the place of, and fulfill the requirements of, a Preliminary Plan.

35. Section 501 specifies standards and requirements for a Preliminary Plan. This Agreement and the Settlement Plan take the place of, and fulfill the requirements of, a Preliminary Plan.

36. Section 603.A requires that lot dimensions, areas, and front yard setbacks be not less than that required in the Zoning Ordinance. All lots shall have the following minimums: 6,000-square-foot area, 45-foot width (at front yard setback), 20-foot frontage, 100-foot depth, 20-foot front yard setback (from edge of right-of-way, not including bay windows), except that the following lots shall have more than a 20-foot front yard setback (distance where 45-foot lot width is provided): lots 10 (23' front yard (building) setback), 13 (22'), 27 (62'), 28 (40'), 36 (29'), 37 (29'), 50 (21'), 51(21'), 53 (39'), 73 (34'), 85 (33'), 86 (76'), 87 (52'), 88 (28'), 96 (49'), 97 (28'), 119 (47'), 129 (30'), 130 (48'), 202 (39'), 209 (37'), 210 (63'), 211 (22'), 234 (30') and 273 (25'). These lots shall have less than a 45-foot width between the edge of right-of-way and the front yard setback (building setback line).

37. Section 603.F.3. requires a 50-foot wide access strip for interior lots. Interior lots shall have access strips wide enough to accommodate a driveway, with minimum widths as follows: lot 9 (40' wide access strip), 10 (20'), 11 (45'), 12 (44'), 13 (22'), 21 (38'), 26 (45'), 27 (27'), 28 (24'), 29 (45'), 35 (45'), 36 (30'), 37 (29'), 38 (45'), 50 (29'), 51 (30'), 52 (36'), 53 (18'), 54 (37'), 69 (33'), 70 (41'), 71 (44'), 72 (47'), 73 (21'), 74 (42'), 84 (43'), 85 (25'), 86 (20'), 87 (20'), 88 (35'), 95 (36'), 96 (20'), 97 (25'), 98 (48'), 101 (48'), 102 (43'), 119 (25'), 120 (27'), 128 (48'), 129 (26'), 130 (20'), 131 (43'), 135 (48'), 136 (47'), 158 (41'), 159 (43'), 175 (46'), 176 (46'), 177 (46'), 178 (49'), 201 (39'), 202 (22'), 208 (41'), 209 (23'), 210 (14'), 211 (33'), 233 (34'), 234 (31'), 268 (44'), 272 (45'), 273 (15'), and 274 (45').

38. Section 603.H requires that no more than three (3) driveways may front on or obtain access from the bulb portion of the cul-de-sac or its return radii. Streets H and D will each have 10 lots that obtain access from the bulb portion of the cul-de-sac or its return radii. Street S will have 7 such lots.

39. Section 606.A, B, and C require major collectors to have a 50-foot right-of-way and a 26-foot cartway, minor collectors are to have a 50-foot right-of-way and a 24-foot cartway, and local roads are to have a 50-foot right-of-way and a 20-foot cartway. Street A has a variable right-of-way at least 54 feet wide, with a variable cartway at least 46 feet wide, including a 4 foot wide median. Street B and most of Street C have 34-foot right-of-way and 26-foot cartway. At the intersection with Bollinger Road, Street C widens to a 60-foot right-of-way and a 52-foot cartway with a 20-foot median. All other streets will have a 30-foot right-of-way and an 18 to 22-foot cartway. Revisions to the right-of-way and cartway widths for Streets A and C may be made to satisfy the requirements of PennDOT.

40. Section 607.B states that local streets require a 250-foot centerline radius and collector streets require a 750-foot radius. The centerline radius shall be 150 feet for entry drives, 125 feet for the central loop road, 35 feet for residential access streets, and 35 feet for greens and cul-de-sacs.

41. Section 609.D states that local and collector streets must have intersections directly across from each other or be at least 200 ft apart. Minimum intersection spacing shall be as follows: greens / cul-de-sacs on the same side of the street, 125 feet; between green clusters, 125 feet; and opposite sides of the street (entry drive to green), 65 feet.

42. Section 613.B requires the design of private streets to not vary from Township standards for public streets. Private streets are to meet the standards outlined on the Settlement Plan and noted as different from other ordinance sections as set forth herein.

43. Section 613.C requires lots fronting on private streets to meet the minimum requirements of the Zoning Ordinance. Lots are to meet the standards outlined on the Settlement Plan and noted as different from other ordinance sections and as set forth herein.

44. Section 613.D requires private streets to provide access to not more than 6 lots.

All streets are to be private, not Township streets, serving all lots within the development. The homeowners' association documents for the Proposed Development will likewise provide that the streets within the Proposed Development are private, not Township streets, and are to be maintained by the homeowners' association.

45. Section 614.B requires that driveways be 40 feet in length from the cartway edge.

Driveway lengths are based on cartway, right-of-way, and building setback and may be as short as 25 feet in length from the cartway edge.

46. Section 614.D requires that each dwelling have at least one parking space outside the right-of-way. Each dwelling is to have 2 parking spaces within the garage and 2 parking spaces in the driveway located outside the cartway but not necessarily outside the right-of-way.

47. Section 614.F requires that each driveway be provided with a turnaround area, if feasible. Houses are to have front entry garages and no driveway turnaround areas.

48. Section 614.I requires the centerline of driveways be located no less than 100 feet from intersections. The centerline of the driveways for lots 1, 20, 21, 30, 31, 66, 79, 80, 105, 106, 107, 118, 170, 171, 203, 235, 254 and 255 will be less than 100 feet from the intersections of Street B, but no less than 40 feet from the edge of the Street B cartway. No limit will be required for other streets. The centerline of driveways will be less than 100 feet from intersections for the following lots: 1, 20, 21, 30, 31, 58, 59, 43-46, 66, 79, 80, 92-97, 102-107, 113, 114, 117-120, 128-133, 143-146, 155-159, 167-174, 182, 190, 191, 193-196, 201-205, 213, 215, 216, 223, 224, 233-235, 244, 245, 248, 249, 254, 255, 259-262, 264, and 280-283. Corner lot driveways will be located to maximize visibility and minimize potential congestion at intersections.

49. Section 614.J requires sight triangles for all driveways to be indicated on the plan and considered a building setback line. Corner lot driveways will be located to maximize visibility and minimize potential congestion at intersections, but sight triangles need not be shown on the plan, and will not be considered building setback lines, except as required at the discretion of the Township Engineer.

50. Section 618.A, B, C provides that, upon recommendation of the Township Engineer, curbs may be required by the Board along any street or streets, and at the intersections thereof, where center-line grades are 5% or above, or as needed to control drainage. It is also required that all curbs be constructed of concrete and in accordance with PennDOT standards. Curbing will be required on Street A, and will be provided where all street grades are greater than 7% or where concerns with drainage or pedestrian safety are present. Wherever curbing is required, it will be Belgian block and the detail of such curbing will be provided at the time of final plan submission.

51. Section 624 provides recreation areas, open space, and for the payment of a fee in lieu of the establishment of common open space with respect to some land developments. The open space, recreation areas provided on the plan are considered sufficient and a fee in lieu of open space in the amount of \$1,500.00 per home will be paid as follows: assuming 286 homes, a \$150,000.00 lump sum payment upon release of the final plans for recordation and \$1,500.00 payable for each of the first 186 building permit applications upon filing of each said application. This fee is the same as the one set forth above in paragraph 33 of this Agreement.

52. Section 626.F.1 allows turfed drainage swales in lieu of storm sewers in residential areas where approved by the Township Engineer. Such swales are permitted for this development where approved by the Township Engineer.

53. Section 627.A.1.a requires disturbance to natural swales to be minimized.

Disturbance of the eroded stream bank (including steep slopes) is allowed but shall be minimized and shall be permitted, subject to the approval of the Township Engineer, through the PADEP NPDES Permit as may be required.

54. Section 628.B. requires street trees to be planted outside the street right-of-way but as close to the street line as possible. Where street trees are provided, they may be located in front of lots or planted in the internal greens.

### ZO

55. A portion of the Property is presently zoned R-2. This Settlement Agreement contemplates development of the Property pursuant to the R-3 zoning classification existing in the Township as of August 14, 2002.

56. Section 402.B.1 requires full compliance with Section 402. Steep slopes (greater than 20%) in wooded or environmentally sensitive areas are not to be disturbed. Retaining walls are allowed in order to limit disturbance. The disturbance of other steep slopes as shown on the plan is permitted. Disturbance of the eroded stream bank (including steep slopes) is also permitted. Any such disturbance shall be minimized and shall be subject to the approval of the Township Engineer.

57. Section 402.C.3.a requires submission of an application for land disturbance within the Steep Slope Conservation District. The disturbance shown in this plan is to be approved without additional applications.

58. Section 402.D.1.a limits grading to those items specified within Section 402. Steep slopes (greater than 20%) in wooded or environmentally sensitive areas are not to be

disturbed. Retaining walls are allowed in order to limit disturbance. The disturbance of other steep slopes as shown on the plan is permitted. Disturbance of the eroded stream bank (including steep slopes) is also permitted. Any such disturbance shall be minimized and shall be subject to the approval of the Township Engineer.

59. Section 402.D.1.b requires finished slopes of all cuts and fills in Steep Slope Conservation District be stabilized and be no steeper than 25%. Finished slopes of up to 33% (3:1) are permitted throughout the site.

60. Section 402.D.1.c requires that all lands in excess of 25% slopes remain undisturbed. Steep slopes (greater than 20%) in wooded or environmentally sensitive areas are not to be disturbed. Retaining walls are allowed in order to limit disturbance. The disturbance of other steep slopes as shown on the plan is permitted. Disturbance of the eroded stream bank (including steep slopes) is also permitted. Any such disturbance shall be minimized and shall be subject to the approval of the Township Engineer.

61. Section 402.D.3 allows single-family detached dwellings, primary road access to a use, sanitary sewer, and storm drainage to be located within the Steep Slope Conservation District by special exception. Steep slopes (greater than 20%) in wooded or environmentally sensitive areas are not to be disturbed. Retaining walls are allowed in order to limit disturbance. The disturbance of other steep slopes as shown on the plan and disturbance of the eroded stream bank (including steep slopes) is permitted without a special exception. Any such disturbance shall be minimized and shall be subject to the approval of the Township Engineer. Lots 73, 72, 70 and 53, and a small portion of lots 1, 3, 71, 27, 26, and 14 are located in the Steep Slope Conservation District.

62. Section 403.A.3 specifies permitted uses in the Water Hazard Soils Overlay District. Lots 67, 68, and 69; a small portion of lots 170, 78, 70, and 30; parts of Streets E, B, C, H, and L; and portions of the recreation area and clubhouse are located in the Water Hazard Soils Overlay District. For building construction in Water Hazard Soils Overlay District, additional information and/or special construction techniques will be provided at the time of final plan submission. This procedure is with the understanding that encroachment as shown on the plan will be permitted provided that the health and safety issues can, in the opinion of the Township Engineer, be reasonably and adequately addressed. The fact that the lots referenced in this paragraph appear on the Settlement Plan does not give Hovnanian vested rights to construct units on such lots. If, in the opinion of the Township Engineer, there is a substantial risk of flooding, Hovnanian shall design an adequate system to address said risk, said system being subject to the approval of the Township Engineer.

63. Section 403.B.2 requires sewer or pipelines to cross a wetlands on the minimum traversal distance. Wetlands crossings (including trail crossings) shown on the plan are allowed and shall be permitted through the PADEP as may be required. If these crossings cannot be permitted using the general permit process, or are not practical, then the crossings may be relocated, modified, and/or removed. Any such relocation, modification or removal shall be subject to approval of the Township Engineer, which approval shall not be unreasonably withheld.

64. Section 403.B.3 requires that any road crossing wetlands be providing access which is impossible from any other location, minimize disruption, and provide a mitigation area of twice the size of those wetlands lost to the road. Wetlands crossings (including trail crossings) shown on the plan are allowed and shall be permitted through the PADEP as may be



required. If these crossings cannot be permitted using the general permit process, or are not practical, then the crossings may be relocated, modified, and/or removed. Any such relocation, modification or removal shall be subject to approval of the Township Engineer, which approval shall not be unreasonably withheld. Mitigation shall be as required by PADEP and the US Army Corps of Engineers.

65. Section 705.A.2 states that the non-residential uses for R-3 are limited to Municipal use, post office, public or private school, and day care center. In addition to single-family dwellings, this project includes the following uses: recreation and accessory maintenance areas and storage facilities for winter storage of recreational equipment and pool chemicals.

66. Section 705.C.1 states that the maximum density for single-family dwellings is 2.0 dwelling units per acre. The permitted density shall be 2.30 dwelling units per acre, and the proposed density shall be 2.20 dwelling units per acre.

67. Section 705.E.1.a states the minimum net lot area to be 10,000 square feet. The proposed lot requirement shall be 6,000 square feet.

68. Section 705.E.1.b (1st occurrence) states the minimum lot width to be 70 feet. The proposed minimum lot width (at the building setback line) shall be 45 feet.

69. Section 705.E.1.b (2nd occurrence) states the minimum front yard to be 20 feet. The proposed minimum front yard to be 20 feet from edge of right-of-way, not including bay windows, except that the following lots shall have more than a 20-foot front yard setback (distance where 45-foot lot width is provided): lots 10 (23' front yard (building) setback), 13 (22'), 27 (62'), 28 (40'), 36 (29'), 37 (29'), 50 (21'), 51 (21'), 53 (39'), 73 (34'), 85 (33'), 86 (76'), 87 (52'), 88 (28'), 96 (49'), 97 (28'), 119 (47'), 129 (30'), 130 (48'), 202 (39'), 209 (37'), 210

(63'), 211 (22'), 234 (30') and 273 (25').. However, all such bay windows, patios, front entry landings and steps excluded from the front yard calculation shall be a minimum of 15 feet from the edge of the cartway.

70. Section 705.E.1.c states the minimum side yard to be 30 feet aggregate, with neither less than 5 feet; dwellings shall not be separated by less than 30 feet. The side yard aggregate shall be 15 feet with neither less than 5 feet. Building separation shall be further defined: building separation to be measured between outside of foundation walls (e.g. air conditioner compressors are permitted within this distance), houses shall have front and rear entrances only, with no doors on side walls for houses closer than 25 feet to one another, penetrations on side walls are to be limited to a maximum of 10% of wall area for houses closer than 20 feet to one another (the portions of the buildings that encroach shall be constructed of materials which will have a one-hour fire rating according to an underwriters laboratory). Houses closer than 15 feet to one another are to have fire sprinklers. There shall be a minimum unobstructed area of 12 feet between buildings.

71. Section 705.E.1.d states the minimum rear yard to be 35 feet. The proposed minimum rear yard shall be 20 feet.

72. Section 705.E.1.e states that the maximum impervious surface is 45% of the net lot area. The maximum impervious coverage for site is 33% (not including public facilities) of net lot area, which may be increased to 35% with Township approval. The net lot area has been determined by subtracting from the gross lot area the rights-of-way from adjoining roads and the Weaver retained parcel (farmstead).

73. Section 705.E.1.g states that the minimum amount of common open space is 40% of the net tract area. Open Space shall be provided as follows:

<i>Description</i>	<i>Area (acres)</i>	<i>Percentage of Area</i>
<i>Existing Pond</i>	<i>1</i>	<i>.77</i>
<i>Buffers &amp; Links Less Than 50 Feet Wide</i>	<i>9.8</i>	<i>7.5</i>
<i>Active Recreation Area</i>	<i>4</i>	<i>3.1</i>
<i>Islands And Greens</i>	<i>3.1</i>	<i>2.4</i>
<i>Remaining Open Space</i>	<i>50.3</i>	<i>38.6</i>
<i>Total Open Space</i>	<i>68.2</i>	<i>52.3</i>

*68.2 acres / 130.2 acres = 52.3%*

74. Section 1203 lists allowable projections into required yards. In addition to that allowed, projections into front yards may include porches, patios, bay windows and decks; projections into side yards may include air conditioner compressors and roof overhangs. All such porches, patios, bay windows, decks, air conditioner compressors and roof overhangs excluded from the required yard calculations shall be a minimum of 15 feet from the edge of the cartway. There shall be a minimum of 12 feet of unobstructed area between buildings.

75. Section 1405.B.2 states that for recreation centers one parking space is needed for every three customers (or patrons), computed on the basis of maximum servicing capacity at any one time, as shall be determined by the Township, plus one additional space for every two persons regularly employed on the premises at a peak period of use. 50 parking spaces are proposed for the clubhouse parking lot, with 7 additional overflow spaces.

#### EXISTING FARMSTEAD

76. The existing farmstead on the Property is not included as part of Hovnanian's Proposed Development of the Property; however, like the residences in the Proposed Development, the two (2) dwelling units on the farmstead will be provided access to public water and public sewer. Accordingly, two (2) Equivalent Dwelling Units ("EDUs") of sewer capacity shall be reserved for the two dwelling units on the farmstead.

#### TOWNSHIP ACCESS DRIVE

77. In conjunction with construction of the Proposed Development, Hovnanian shall construct a 16 foot wide macadam surface cartway, with a 33 foot wide right-of-way, that shall be the Township Access Drive as shown on the Settlement Plan.

#### **NO FORESTRY ON THE PROPERTY**

78. Hovnanian agrees that there shall be no (forestry) tree or firewood removal of any kind on the Property with the exception of the tree removal related to Hovnanian's construction of the Proposed Development as set forth in the project grading plans and the October 26, 2005 report prepared by J.S. Worrell Environmental Consultants (the "Woodlot Evaluation Report"). In accordance with the recommendations presented in the Woodlot Evaluation Report, Hovnanian agrees to remove the four (4) hazard trees identified in such report, and repair the erosion rill located within the woodlot as suggested. Should additional trees be identified as hazardous after this Agreement has been executed by the parties, it is agreed that those hazard trees so identified may be removed by the Developer with the prior consent of the Township.

#### **SUBMISSION OF FINAL PLANS**

79. Promptly after execution of this Agreement and issuance by the Court of the Order (hereinafter "Order") attached hereto as Exhibit "B" Hovnanian will cause its engineer (hereinafter the "Engineer") to prepare final subdivision and land development plans (hereinafter the "Final Plans") in accordance with the Settlement Plan and the Zoning Ordinance and SLDO Relief (collectively, the "Standards"). If the Final Plans are designed in accordance with the Standards referred to above and depict the Proposed Development substantially in accordance with the configuration depicted on the Settlement Plan, the Board of Supervisors will approve the Final Plans which shall be in strict conformity with this Agreement and the Settlement Plan.

80. The parties acknowledge that the Final Plans may deviate in some respects from the approved Settlement Plan. Anticipated deviations include plan modifications required by county, state and/or federal regulatory agencies in connection with their review of applicable permit applications for environmental encroachments, planning module review and road improvements requirements ("Ancillary Permits"). The modifications necessitated by said Ancillary Permits will not be construed as being inconsistent with the approved Settlement Plan or this Settlement Agreement. Likewise, the parties acknowledge that, upon engineering review by the Township Engineer and other Township consultants, certain Final Plan modifications may be suggested and implemented by Hovnanian. Slight modifications of lot line location, unit mix and road location to accommodate better engineering practices and site design shall also be deemed consistent with the approved Settlement Plan provided that same shall not alter the fundamental layout of the Proposed Development. Any such modifications are subject to the approval of the Township Engineer which approval shall not be unreasonably withheld.

81. Hovnanian and the Township have agreed that Hovnanian may choose to construct or develop the Property in phases, in which case Hovnanian will submit with its Final Plans a Construction Phasing Plan ("Phasing Plan"). Attached hereto as Exhibit "C" is a copy of a conceptual Phasing Plan prepared by Taylor Wiseman & Taylor, consisting of one sheet, dated August 17, 2005. The Phasing Plan has been prepared as a guide in the construction sequence of the Community. However, Hovnanian reserves the right to construct the phases in different sequences or to construct portions of one phase without completing the other homes within that phase. The only requirement in terms of the sequencing of the construction of homes is that the access roads to the community located at the intersection with Horseshoe Pike (S.R. 322) and Bollinger Road must be constructed during the first phase. Thereafter, Hovnanian may construct

homes only on lots 1-20 and 119-234. In order to construct homes on additional lots, Hovnanian must construct the balance of the loop road in accordance with the Settlement Plan. This paragraph shall not apply to construction of the collection, treatment and disposal system.

82. In the event that a Phasing Plan is submitted, Hovnanian may record a final plan of development for the entire Property and proceed to construct in sequence in accord with the approved Phasing Plan. In that event, a note shall be added to the Final Plans which provides that financial security for development of the Property may be posted in phases with the Township in an amount adequate to insure the completion of improvements in that particular phase and that no development in any subsequent construction phase may commence absent the posting of additional financial security for that phase of development. The amounts of said security shall be determined as set forth in §350-18 of the Zoning Ordinance.

83. Lots 67, 68 and 69, as depicted on the Settlement Plan, are proposed to be constructed within an area currently identified as containing Worsham soils. Hovnanian believes that it can safely construct these homes within this area. However, following the approval of the Settlement Plan, Hovnanian shall have a soil study prepared to determine the stability of the soil in that area. If it is determined that the soil is not or cannot be made sufficiently stable to the satisfaction of the Township Engineer, these lots shall not be developed. Further, the Township is concerned with the risk of flooding of these homes. Hovnanian will prepare a study to the satisfaction of the Township Engineer that determines the feasibility of developing these homes in this area. If there is a substantial risk of flooding, Hovnanian will explore the use of perimeter drains and slabs instead of basements. The fact that the lots referenced in this paragraph appear on the Settlement Plan does not give Hovnanian vested rights to construct units on such lots. If, in the opinion of the Township Engineer, there is a substantial risk of flooding, Hovnanian shall

design an adequate system to address said risk, said system being subject to the approval of the Township Engineer, or said lots shall not be developed.

84. Hovnanian shall use Best Management Practices in designing the stormwater management facilities for its development of the Property and shall infiltrate the increase in stormwater run-off created by the two-year storm. Hovnanian shall be permitted to disturb any steep slopes that are part of the eroded banks of the existing stream corridor on the Property subject to the approval of the Township Engineer. Hovnanian has reviewed the Township's draft Riparian Ordinance and has determined that, because the stream corridor is currently compromised, such ordinance is not entirely appropriate for Hovnanian's proposed development of the Property but shall be adhered to by Hovnanian to the greatest degree possible. Furthermore, Hovnanian shall use its best efforts to create and maintain natural-looking stormwater detention basins planted with wetlands species.

#### ADDITIONAL ACTIONS

85. The Township, the Board of Supervisors the Zoning Hearing Board, the Planning Commission, the Township Manager, the Zoning Officer, Code Enforcement Officer, Township Engineer and all other Township Consultants, representatives and employees shall use all reasonable efforts to promptly perform their duties with regard to the Final Plan, the building plans and any other aspect of the proposed development as are necessary to facilitate the prompt review and approval of the plans in accordance with this Agreement. All such officials shall act as set forth in the Subdivision and Land Development Ordinance of East Brandywine Township.

NOW, THEREFORE, in consideration of the facts set forth in the Background to this Agreement, and in consideration of the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

**86. INCORPORATION OF BACKGROUND.** Paragraphs 1 through 15 of the Background to this Agreement are incorporated as terms of this Agreement as if fully set forth in the body of this Agreement.

**87. APPROVAL OF THE SETTLEMENT PLAN.** The Board of Supervisors hereby agrees that the Property may be developed as depicted on the Settlement Plan and in accordance with the provisions of this Agreement. For purposes of this Settlement Agreement and for review of the Final Plans to be submitted for the development of the Property, compliance shall be measured against this Agreement as well as those municipal ordinances, rules, regulations, standards and fees in effect as of the date of preparation of the Settlement Plan, i.e., August 14, 2002.

**88. WITHDRAWAL OF APPEALS.** (a) Weaver hereby agrees that, within ten (10) days after the date that the Township Board of Supervisors releases the Final Plans for recordation, he will request, in writing, to East Brandywine Township that his appeal to the Zoning Hearing Board of the September Amendment be withdrawn with prejudice.

(b) Weaver and Hovnanian Pennsylvania, Inc. hereby agree that that, within ten (10) days after the date that the Township Board of Supervisors releases the Final Plans for recordation, they will request, in writing, to East Brandywine Township that their appeal to the Zoning Hearing Board of the Township's rejection of the PRD Application and their challenge to the substantive validity of the Township's Planned Residential Development be withdrawn with prejudice.



**89. SUBMISSION OF FINAL PLAN.** The procedure for Final Plan submission pursuant to this Settlement Agreement shall be as set forth in 350-15 of the SLDO of East Brandywine Township. Review of the Final Plan shall be as set forth in Section 350-16 of the SLDO. Except as specifically waived herein, the Final Plan shall conform to all the requirements contained in the Township Subdivision and Land Development Ordinance and the Township Zoning Ordinance for the R-3 Residential District, and all requirements of any other county, state, or federal regulatory agencies. Nothing herein shall be construed as a waiver of Hovnanian's right to seek additional waiver and/or variance relief at the time of final plan submission.

**90. DISPUTE RESOLUTION.** In the event that at any time following execution of this Settlement Agreement, the parties cannot agree on the provisions set forth herein, or if dispute shall arise during the course of Final Plan review regarding the applicability and/or interpretation of municipal regulations as pertaining to development of the Proposed Development, any party may submit said dispute to the Court of Common Pleas of Chester County which will retain continuing jurisdiction of this matter. The decision of the Court regarding said interpretation issues shall be binding and unappealable.

**91. VESTING.** For purposes of determining compliance with Section 508(4) of the MPC, it shall be conclusively determined that the date of Preliminary Plan approval for the Proposed Development shall be the date of Court approval of this Settlement Agreement.

**92. BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors, administrators and assigns.

93. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the parties hereto and supersedes all prior negotiations, understandings and agreements of any nature whatsoever with respect to the subject matter hereof. No amendment, waiver or discharge of any provision of this Agreement shall be effective against either party unless that party shall have consented thereto in writing. Any and all revisions to the Settlement Plan are subject to Township approval.

94. GOVERNING LAW. This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania.

95. NOTICES. All notices or other communications required or permitted to be given under the terms of this Agreement shall be in writing and shall be sent by certified mail, postage prepaid or by private carrier guarantying next day delivery, addressed as follows:

If to Hovnanian or Weaver, addressed as follows:

James Flanagan  
Hovnanian Pennsylvania, Inc.  
1170 Wheeler Way, Suite 200  
Langhorne, PA 19047

With a copy to:

Michael R. Macaninch, Esquire  
Hovnanian Pennsylvania, Inc.  
1170 Wheeler Way, Suite 200  
Langhorne, PA 19047

If to the Township, addressed as follows:

East Brandywine Township  
1214 Horseshoe Pike  
Downingtown, PA 19335

With a copy to:

John S. Halsted, Esquire  
Stacey L. Fuller, Esquire  
Gawthrop, Greenwood & Halsted

119 North High Street  
P. O. Box 562  
West Chester, PA 19381-0562

If to the Zoning Hearing Board, addressed as follows:

John H. Spangler, Esquire  
Parke, Barnes, Spangler & Bortner, P.C.  
126 W. Miner Street  
West Chester, PA 19382

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be

executed the day and year first above written.

HOVNANIAN PENNSYLVANIA, INC.

By: [Signature] 11/9/06

Attest: [Signature] 11/20/06

[CORPORATE SEAL]

MARTIN M. WEAVER

Martin M. Weaver

RACHEL WEAVER

Rachel Weaver

Witness: \_\_\_\_\_

BOARD OF SUPERVISORS OF  
EAST BRANDYWINE TOWNSHIP

By: [Signature]

By: [Signature]

By: [Signature]

ZONING HEARING BOARD OF  
EAST BRANDYWINE TOWNSHIP

By: Rebecca P. Costri

By: \_\_\_\_\_

By: \_\_\_\_\_