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MEMBERS NJ AND NY BARS

November 23, 2015

BY USPS PRIORITY MAIL  
Clerk, Civil Law Division  
Superior Court of New Jersey  
Monmouth County - Law Division  
71 Monument Park  
Room 101 West  
Freehold, New Jersey 07728

**RE: In the Matter of the Application of the Township of  
Manalapan, County of Monmouth  
Docket No. MON-L-2518-15  
(Mount Laurel Declaratory Judgment action - Motion to  
intervene)**

Dear Sir/Madam:

We represent Manalapan 37, LLC, a proposed defendant-intervenor in the captioned matter. We enclose for filing an original and two (2) copies of:

1. Notice of Motion for Order granting intervention;
2. Certification of David Meiskin in support of intervention;
3. Certification of Jeffrey Kantowitz in support of intervention;
4. Letter in lieu of brief;
5. Proposed form of Order granting intervention;
6. Certification of service.

Please charge any fees associated with this motion to this firm's Superior Court account, #140498.

Please stamp these papers "filed" and return a filed copy in the enclosed, self-addressed, stamped envelope.

By copy of this letter, we are forwarding copies of these papers to persons/entities set forth in the Certification of Service, and forwarding a courtesy copy to the Hon. Jamie S. Perri, J.S.C., the judge to whom this Mount Laurel Declaratory Judgment action has been assigned and by whom it is being managed.

We appreciate your time and efforts. If you have any questions, please contact me.

Very truly yours,



Jeffrey Kantowitz

Enclosures

Cc: Hon. Jamie S. Perri, J.S.C. BY USPS PRIORITY MAIL (w. enc.)  
Andrew Bayer, Esq. BY USPS PRIORITY MAIL (w. enc.)  
Service List (w. enc.)

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EMAIL: JEFFREY.KANTOWITZ@GMAIL.COM

ATTORNEY ID# 017141982

ATTORNEYS FOR INTERVENOR-DEFENDANT

MANALAPAN 37 LLC

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY  
DOCKET NO.: MON-L-2518-15

IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP OF  
MANALAPAN, COUNTY OF MONMOUTH,

Plaintiff/Petitioner

:  
:  
:  
:  
:

Civil Action

(Mount Laurel Action)

**NOTICE OF MOTION TO  
INTERVENE OF PROPOSED  
INTERVENOR DEFENDANT  
MANALAPAN 37 LLC**

TO: Clerk - Civil Division  
Superior Court of New Jersey  
Monmouth County Courthouse  
71 Monument Park  
Freehold, NJ 07728

Andrew Bayer, Esq.  
Gluck Walrath LLP  
428 Riverview Plaza  
Trenton, NJ 08611  
Attorneys for Plaintiff/Petitioner  
Township of Manalapan

Attached Service List

SIRS/MADAM:

PLEASE TAKE NOTICE THAT on Friday, December 18, 2015, at 9:00 AM, or as soon thereafter as counsel may be heard, the undersigned, counsel for proposed intervenor-defendant Manalapan 37, LLC, will move before the Honorable Jamie S. Perri, J.S.C., or her designee, at the Monmouth County Courthouse, 71 Monument Park, Freehold, New Jersey 07728, for an Order granting intervenor defendant status to Manalapan 37, LLC and permitting Manalapan 37, LLC to file an Answer in the form submitted with this motion (see Exhibit A to Certification of Jeffrey Kantowitz).

PLEASE TAKE FURTHER NOTICE that in support of this motion, Manalapan 37, LLC shall rely on this notice of motion, certifications of David Meiskin and Jeffrey Kantowitz, a letter in lieu of brief, and its proposed form of Order.

PLEASE TAKE FURTHER NOTICE oral argument under R. 1:6-2 is requested if opposition is filed to this motion, or if requested by the Court.

PLEASE TAKE FURTHER NOTICE that in accord with R. 1:6-2, a proposed form of order is attached.

Respectfully,  
ABE RAPPAPORT, Attorney at Law  
Attorneys for Manalapan 37,  
LLC

By:   
Jeffrey Kantowitz

Dated: November 22, 2015

SERVICE LIST: IMO APPLICATION OF TOWNSHIP OF MANALAPAN, ET AL., DOCKET  
NO. MON-L-2518-15

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Village at Manalapan Properties

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ATTORNEY ID# 017141982

ATTORNEYS FOR INTERVENOR-DEFENDANT

MANALAPAN 37, LLC

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY  
DOCKET NO.: MON-L-2518-15

IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP OF  
MANALAPAN, COUNTY OF MONMOUTH,

Plaintiff/Petitioner

:  
:  
:  
:  
:

Civil Action

(Mount Laurel Action)

**CERTIFICATION OF JEFFREY  
KANTOWITZ IN SUPPORT OF  
MOTION TO INTERVENE OF  
PROPOSED INTERVENOR  
DEFENDANT MANALAPAN 37, LLC**

JEFFREY KANTOWITZ, of full age, certifies:

1. I am an attorney at law of the State of New Jersey, and I am of counsel to the Law Firm of Abe Rappaport, attorneys for Manalapan 37, LLC. I am personally familiar with the facts set forth in this certification. I make this certification in support of the application of Manalapan 37, LLC to intervene in this matter.

2. Attached as Exhibit A are true copies of the proposed Answer (without any counterclaim) and Case Information Statement (CIS) of Manalapan 37, LLC in this action.

3. By Order of October 9, 2015, this Court granted the motion of intervenor-defendant K. Hovnanian Shore Acquisitions, LLC to intervene in this action, while describing the parameters of its Answer and its intervention in connection with the order and accompanying statement of reasons. A true copy of the October 9 Order, with the attached statement of reasons, is attached as Exhibit B.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.



---



JEFFREY KANTOWITZ

Dated: November 23, 2015

# EXHIBIT A



Appendix XII-B1

	<b>CIVIL CASE INFORMATION STATEMENT (CIS)</b>		<b>FOR USE BY CLERK'S OFFICE ONLY</b>		
	Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> <b>Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>.</b> If information above the black bar is not completed or attorney's signature is not affixed		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA	CHG/CK NO.:	
				AMOUNT:	OVERPAYMENT:
				BATCH NUMBER:	
	ATTORNEY / PRO SE NAME Jeffrey Kantowitz, Esq.		TELEPHONE NUMBER (973) 785-1799	COUNTY OF VENUE Monmouth <input type="checkbox"/>	
FIRM NAME (if applicable) Abe Rappaport, Attorney at Law		DOCKET NUMBER (when available) MON-L-2518-15			
OFFICE ADDRESS 195 Route 46 West, Suite 6 Totowa, NJ 07512		DOCUMENT TYPE Answer			
		JURY DEMAND <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
NAME OF PARTY (e.g., John Doe, Plaintiff) Manalapan 37, LLC, Defendant Intervenor		CAPTION In the Matter of the Application of the Township of Manalapan, County of Monmouth			
CASE TYPE NUMBER (See reverse side for listing)  303	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.			
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS			
DO YOU ANTICIPATE ADDING ANY PARTIES (ansing out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN			
<b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>					
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION					
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS			
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION This Mount Laurel Declaratory Judgment action is filed under In re Adoption of NJAC 5:96 and 5:97, 221 N.J. 1 (2015), and it is under the supervision and management of the Hon. Jamie S. Perri, J.S.C.					
 Do YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION				
Will AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, FOR WHAT LANGUAGE?				
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .					
ATTORNEY SIGNATURE: <i>Jeffrey Kantowitz</i>					



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

## CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

### Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

### Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

### Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

### Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

### Multicounty Litigation (Track IV)

- |  |   |
|--|---|
| 271 ACCUTANE/ISOTRETINOIN              | 289 REGLAN  |
| 274 RISPERDAL/SEROQUEL/ZYPREXA         | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION                |
| 278 ZOMETA/AREDIA                      | 291 PELVIC MESH/GYNECARE                                  |
| 279 GADOLINIUM                         | 292 PELVIC MESH/BARD                                      |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 293 DEPUY ASR HIP IMPLANT LITIGATION                      |
| 282 FOSAMAX                            | 295 ALLODERM REGENERATIVE TISSUE MATRIX                   |
| 285 STRYKER TRIDENT HIP IMPLANTS       | 298 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 286 LEVAQUIN                           | 297 MIRENA CONTRACEPTIVE DEVICE                           |
| 287 YAZYASMIN/OCELLA                   | 601 ASBESTOS  |
| 288 PRUDENTIAL TORT LITIGATION         | 623 PROPECIA  |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category  Putative Class Action  Title 59

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973-785-1799

BY: JEFFREY KANTOWITZ, ESQ.

EMAIL: JEFFREY.KANTOWITZ@GMAIL.COM

ATTORNEY ID# 017141982

ATTORNEYS FOR DEFENDANT INTERVENOR

MANALAPAN 37, LLC

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION MONMOUTH COUNTY  
DOCKET NO. MON-L-2518-15

IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP OF  
MANALAPAN, COUNTY OF MONMOUTH,

Plaintiff

:  
:  
Civil Action

:(Mount Laurel)

:

**ANSWER OF DEFENDANT  
MANALAPAN 37, LLC TO  
COMPLAINT FOR DECLARATORY  
JUDGMENT, ETC.**

Defendant-Intervenor Manalapan 37, LLC, a limited liability company of the State of New Jersey, with an address at 43 West Prospect Street, East Brunswick, New Jersey 08816, by way of answer to the complaint for declaratory relief pursuant to N.J.S.A. 52:237D-313 of the Township of Manalapan, Monmouth County, says:

Background

1. Defendant-intervenor Manalapan 37, LLC admits the allegations set forth in paragraph 1 of the complaint.

2-5. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraphs 2-5 of the complaint, except to admit that the cited law and case speaks for themselves, and leaves Manalapan Township to its proofs.

6-7. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraphs 6-7 of the complaint, except that the cited cases and laws speak for themselves, and leaves Manalapan Township to its proofs.

8. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of the complaint, except that the cited cases laws speak for themselves, and leaves Manalapan Township to its proofs.

9. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the complaint, except that the cited regulations speak for themselves, and leaves Manalapan Township to its proofs.

10. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth of the

allegations set forth in paragraph 10 of the complaint, except that the cited cases speak for themselves, and leaves Manalapan Township to its proofs.

11. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the complaint, except that the cited executive action speaks for itself, and leaves Manalapan Township to its proofs.

12. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of the complaint, except that the cited cases speak for themselves, and leaves Manalapan Township to its proofs.

13. Defendant-intervenor Manalapan 37, LLC admits the allegations set forth in paragraph 13 of the complaint.

14. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of the complaint, and leaves Manalapan Township to its proofs.

15-19. Defendant-intervenor Manalapan 37, LLC admits the allegations set forth in paragraph 1 of the complaint.

20. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the

allegations set forth in paragraph 20 of the complaint, and it leaves Manalapan Township to its proofs.

21. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 21 of the complaint, and it leaves Manalapan Township to its proofs.

22. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 22 of the complaint, and it leaves Manalapan Township to its proofs.

23. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 23 of the complaint, and it leaves Manalapan Township to its proofs.

24. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 24 of the complaint, and it leaves Manalapan Township to its proofs.

25. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 25 of the complaint, and it leaves Manalapan Township to its proofs.

25. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the

allegations set forth in paragraph 25 of the complaint, and it leaves Manalapan Township to its proofs.

26. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 26 of the complaint, except that the cited cases speak for themselves, and it leaves Manalapan Township to its proofs.

27. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 27 of the complaint, and it leaves Manalapan Township to its proofs.

28. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 28 of the complaint, and it leaves Manalapan Township to its proofs.

#### COUNT ONE

(Temporary Immunity)

29. Defendant-intervenor Manalapan 37, LLC incorporates and repeats its answers to the preceding paragraphs as if set forth at length herein.

30. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 30 of the complaint, and it leaves Manalapan Township to its proofs.

31. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 31 of the complaint, and it leaves Manalapan Township to its proofs.

COUNT TWO

(Declaratory Judgment of Compliance and Judgment of Repose)

32. Defendant-intervenor Manalapan 37, LLC incorporates and repeats its answers to the preceding paragraphs as if set forth at length herein.

33. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 33 of the complaint, and it leaves Manalapan Township to its proofs.

COUNT THREE

(Declaratory Judgment and Trust Fund Injunction)

34. Defendant-intervenor Manalapan 37, LLC incorporates and repeats its answers to the preceding paragraphs as if set forth at length herein.

35-40. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraphs 35-40 of the complaint, except to state that the cited cases and laws speak for themselves, and it leaves Manalapan Township to its proofs.



41. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 41 of the complaint, and it leaves Manalapan Township to its proofs.

42. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 42 of the complaint, except to state that the cited cases and laws speak for themselves, and it leaves Manalapan Township to its proofs.

43. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 43 of the complaint, and it leaves Manalapan Township to its proofs.

44. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 44 of the complaint, and it leaves Manalapan Township to its proofs.

45. Defendant-intervenor Manalapan 37, LLC lacks information and knowledge sufficient to form a belief as to the truth the allegations set forth in paragraph 45 of the complaint, and it leaves Manalapan Township to its proofs.

WHEREFORE, Manalapan 37, LLC requests that the Court grant the following relief:

a. Denying all of the relief sought in the Complaint, except for the grant of temporary immunity for a 5 month period to run from the filing of the complaint, or as determined by the Court;

b. Declaring that the Township of Manalapan is in violation of its constitutional duty to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low and moderate income families to satisfy the Township's fair share of the unmet regional need for such housing;

c. Ordering the Township to submit to the Court, within a time and under procedures to be set by the Court, a compliance plan and zoning ordinances that will bring the Township into compliance with the requirements of the New Jersey State Constitution;

d. Appointing a Special Master to oversee the implementation of the foregoing remedies;

e. Denying the Township's request for immunity from exclusionary zoning lawsuits, including builder's remedy suits, except for a 5 month period to run from the filing of the second amended complaint, or as determined by the Court;

f. Ordering such additional relief as the Court deems just and equitable.

#### AFFIRMATIVE DEFENSES

#### FIRST AFFIRMATIVE DEFENSE

The Township of Manalapan's (Township or Manalapan) land use regulations fail to create a realistic opportunity for its fair share of affordable housing as required by the New Jersey Constitution and the Mount Laurel doctrine.

SECOND AFFIRMATIVE DEFENSE

The Township must be required to remove all unnecessary undue cost generating requirements in its land use regulations.

Respectfully,

Abe Rappaport, Attorney at Law  
Attorneys for Defendant-Intervenor  
Manalapan 37, LLC

By: Jeffrey Kantowitz  
Jeffrey Kantowitz  
Attorney ID # 017141982

Dated: November 22, 2015

DESIGNATION OF TRIAL COUNSEL UNDER R. 4:25-4

Under R. 4:25-4, Jeffrey Kantowitz, Esq., is hereby designated as trial counsel for defendant-intervenor Manalapan 37, LLC.

Abe Rappaport, Attorney at Law  
Attorneys for Defendant-intervenor  
Manalapan 37, LLC

By: Jeffrey Kantowitz  
Jeffrey Kantowitz

Dated: November 22, 2015

CERTIFICATION UNDER R. 4:5-1

Defendant Manalapan 37, LLC, through its attorneys, hereby certifies that the matter in controversy is not the subject of any other action pending in any court, or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated, except as set forth below. Defendant intervenor Manalapan 37, LLC, through its attorneys, further certifies that it is not currently aware of any other parties that should be joined in this action under R. 4:28, except for other municipal and private entities who are parties to declaratory judgment actions filed in the Monmouth County vicinage pursuant to In re Adoption of N.J.A.C. 5:96 and 5:97 by COAH, 221 N.J. 1 (2015), and which actions were consolidated for purposes of a methodology hearing, as memorialized by the Court during in a September 24, 2015 Order in this and those other Monmouth County vicinage declaratory judgment cases.

Abe Rappaport, Attorney at Law  
Attorneys for Defendant-intervenor  
Manalapan 37, LLC

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

*Jeffrey Kantowitz*  
Jeffrey Kantowitz

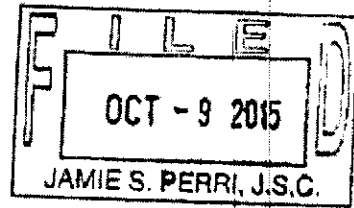
Dated: November 22, 2015

EXHIBIT B

RECEIVED  
10/13/15

K005.0008

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K. Hovnanian Shore Acquisitions, LLC



IN THE MATTER OF THE APPLICATION OF TOWNSHIP OF MANALAPAN TOWNSHIP, COUNTY OF MONMOUTH,	SUPERIOR COURT OF NEW JERSEY MONMOUTH COUNTY LAW DIVISION  DOCKET NO: L-2518-15  <u>CIVIL ACTION</u>  MOUNT LAUREL  ORDER
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**THIS MATTER** having been opened to the Court by proposed Intervenor/Defendant, K. Hovnanian Shore Acquisitions, LLC ("K. Hov"), by way of Motion for Intervention Pursuant to Rule 4:33-1 or Rule 4:33-2 and the Court having considered the moving papers and any opposition submitted thereto, and for good cause having been shown:

IT IS ON THIS 9<sup>th</sup> day of October, 2015, ORDERED that:

1. The motion of K. Hov seeking intervention in this matter is hereby **GRANTED**.

2. K Nov. is hereby granted leave to file the Answer in the form submitted with this motion.

3. A true and correct copy of this Order be served upon all counsel/interested parties within (7) seven days of the date hereof.

  
\_\_\_\_\_  
HON. JAMIE S. BERRI, J.S.C.

**NO OPPOSITION RECEIVED**

**SEE ATTACHED RIDER**

10/15/15

**RIDER TO ORDER DATED**  
**In the Matter of the Application of the Township of Manalapan, Monmouth County**  
**Docket No. MON-L-2518-15**

*The court makes the following findings of fact and conclusions of law regarding the motion(s) identified in the attached Order(s):*

On June 8, 2015, the Township of Manalapan ("the Township") filed a Verified Complaint for Declaratory Judgment and Order to Show Cause seeking injunctive relief pursuant In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), (hereafter "Mount Laurel IV"). On September 4, 2015, this court granted the Township's motion for temporary immunity from constitutional compliance claims and builder's remedy litigation pending final determination of the Township's constitutional affordable housing obligation and compliance therewith under the Fair Housing Act of 1985 ("FHA"), N.J.S.A. 52:27D-301, et seq. On September 24, 2015, this court issued Omnibus Order #1 which provided that "any person or entity wishing to submit an expert report must be a party to these proceedings and must move to intervene, which motion shall be accepted by the court on short notice, or intervene by consent, no later than October 9, 2015. On September 23, 2015, K. Hovnanian Shore Acquisitions, LLC ("Hovnanian") filed this motion to intervene on short notice.

Hovnanian is the contract purchaser of properties identified on the tax maps of the Township as Block 30, Lots 2, 3.01 and 3.02 ("Site 1"), consisting of approximately 13 acres, Block 78, Lot 22 ("Site 2"), consisting of approximately 45 acres, and Block 72, Lot 6.01 ("Site 3"), consisting of approximately 101 acres (collectively the "Properties"). Hovnanian desires to construct inclusionary developments within the Township and has previously advised the Township of the same. Hovnanian's proposed Answer in Intervention does not seek to assert any counterclaims against the Township.

R. 4:33-1 states that anyone shall be permitted to intervene as of right:

if the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The movant must show an interest in the subject matter of the litigation, an inability to protect that interest without intervention, lack of adequate representation of that interest, and timeliness of the application. DYFS v. D.P., 422 N.J. Super. 583, 590 (App. Div. 2011); Sutrer v. Horizon Blue Cross, 406 N.J. Super. 86, 106 (App. Div. 2009). A motion for leave to intervene should be liberally viewed. Atlantic Employers v. Tots & Toddlers, 239 N.J. Super. 276 (App. Div.), certif. den. 122 N.J. 147 (1990).

The court has the discretion to determine the timeliness, under all of the circumstances, of the intervention application, and may deny the application if deemed untimely. State v. Lanza, 39 N.J. 595 (1963). "Whether intervention as of right should be granted may be determined by evaluating the extent to which a grant 'of the motion will unduly delay or prejudice the rights of the original parties.'" American Civil Liberties Union of New Jersey, Inc. v. County of Hudson, 352 N.J. Super. 44, 70 (App. Div.), certif. den. 174 N.J. 190 (2002).

The test for determining whether the movant has an interest in the matter of the litigation is whether "disposition of the action may, as a practical matter, impair or impede [the movant's] ability to protect [its] interest." ACLU, at 68, citing Atlantic Employers, supra, at 280. A motion



for intervention may be denied if the applicant's interest is already being represented in the litigation. White v. White, 313 N.J. Super. 637 (Ch. Div. 1998).

In its decision in Mount Laurel IV, the Supreme Court envisioned the participation of interested parties beyond the municipalities themselves. In this regard, the Court stated:


If a municipality seeks to obtain an affirmative declaration of constitutional compliance, it will have to do so on notice and opportunity to be heard to FSHC and "interested parties." Courts assessing the notice requirement should understand that the term 'interested parties' presumptively includes, at a minimum, the entities on the service list in this matter. Ex parte applications, even for initial immunity pending review, shall not be permitted under any circumstances. Mount Laurel IV, 221 N.J. 23 (2015).

Although the Court did not explain the anticipated parameters of such participation, it did address the scope of the litigation to be entertained by the courts in these matters:

After that ninety-day period expires [in which municipalities may file actions to affirmatively demonstrate constitutional compliance], a challenge to a town's constitutional compliance may be filed against a municipality by FSHC or any other interested party. Only constitutional compliance actions may proceed initially as against a town with substantive certification from COAH. No builder's remedy shall be authorized to proceed against any such town unless a court determines that the substantive certification that was granted is invalid, no constitutionally compliant supplementing plan is developed and approved by the court after reasonable opportunity to do so, and the court determines that exclusionary zoning actions, including actions for a builder's remedy, are appropriate and may proceed in a given case. Id. at 26-27.

Permitting intervener status to Hovnanian is consistent with the Court's intent to provide court access to "parties concerned about municipal compliance with constitutional affordable housing obligations" as well as "municipalities that believe they are constitutionally compliant or that are ready and willing to demonstrate such compliance." Id. at 5. This process is best served by permitting representative interested parties to participate in the adversarial process of establishing the Third Round Rules and determining a town's constitutional compliance. Thus, the court finds that the appropriate mechanism for permitting interested parties to be heard is as an intervener pursuant to R. 4:33-1. Accordingly, the motion to intervene, which is unopposed is granted.

Hovnanian is bound by the Orders previously entered in this matter, including but not limited to the obligation to contribute to the Special Master's fees and the time lines established for the submissions of expert reports.

  
\_\_\_\_\_  
JAMIE S. PERRI, J.S.C.

**ABE RAPPAPORT**

**ATTORNEY AT LAW**

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**MEMBERS NJ AND NY BARS**

November 23, 2015

Hon. Jamie S. Perri, J.S.C.  
Superior Court of New Jersey  
Monmouth County Courthouse  
71 Monument Park  
Freehold, NJ 07728

**RE: In the Matter of the Application of the Township of  
Manalapan, County of Monmouth  
Docket No. MON-L-2518-15  
(Mount Laurel Declaratory Judgment action; Motion of  
proposed intervenor defendant Manalapan 37, LLC to  
intervene to file Answer)**

Dear Judge Perri:

We represent Manalapan 37, LLC, a proposed intervenor-defendant in the captioned matter. We submit this letter in lieu of brief in support of its application to intervene and file an Answer in this action. Cognizant of this Court's September 24, 2015 Omnibus Order #1 in IMO Declaratory Judgment Actions filed in the County of Monmouth, etc., which advised in paragraph 10, that any party wishing to submit an expert's report must be a party and must move to intervene, which motion shall be accepted by this Court, including on short notice until October 9, 2015,

Manalapan 37 LLC will not seek to submit its own expert report on the issue of methodology and allocation of affordable housing obligation. Rather, as the Monmouth County vicinage cases have been consolidated for the purpose of determining methodology and allocation obligations, it will rely on the reports that have been submitted for that phase of this action.

As reflected in the supporting certifications of David Meiskin, a member of Manalapan 37, LLC, and Jeffrey Kantowitz, counsel to Manalapan 37, LLC, and as reflected in facts pertinent to this action, the motion should be granted under R. 4:33-1 and 4:33-2, under the provisions of the Declaratory Judgments Act, N.J.S.A. 2A:16-51 et seq., and under the Mount Laurel doctrine.

In addition, as reflected below and in the proposed answer of Manalapan 37, LLC, the proposed Answer under R. 4:33-3, attached as Exhibit A to the Kantowitz certification, hews to the conclusions and directions of this Court's October 9, 2015 Order and accompanying statement of reason, attached as Exhibit B to the Kantowitz certification (granting motion to intervene of K. Hovnanian Shore Acquisitions, LLC). Thus, Manalapan 37 LLC's proposed Answer does not contain any counterclaim. (Such claims are reserved.) Manalapan 37 LLC's proposed Answer does not contest the Court's grant of temporary immunity to date to Manalapan.

### Procedural History

In or around July 6, 2015, the Township of Manalapan (Township) filed a declaratory judgment action seeking a judgment of compliance and temporary immunity, as directed by the Supreme Court in In re Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015). Its filing of the declaratory judgment action included a notice of motion for entry of an order of temporary immunity.

By Order of August 19, 2015, this Court granted the Township five months of temporary immunity, to run from July 8, 2015.

By Order dated September 24, 2015, the Court issued Omnibus Order #1 and a separate order in this matter, both dated September 24, setting forth certain procedural and substantive benchmarks in accord with this court's management of this case pursuant to In re Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV). Richard Reading was appointed as a regional master for methodology, and Ms. Elizabeth McKenzie was named special court-master for this case.

Thereafter, the court entered an October 9, 2015 Order granting the motion of K. Hovnanian Shore Acquisitions, LLC to intervene. The Order was accompanied by a statement of reasons which explained the court's reasoning and set forth the terms of the intervention.

## Statement of Facts

As reflected in the text of its complaint, the Township's declaratory judgment action, inter alia, seeks temporary immunity from builder's remedy suits and a determination of compliance with its affordable housing obligation.

As reflected in the certification of David Meiskin, a member of Manalapan 37, LLC, whose certification is incorporated by reference herein, Manalapan 37, LLC has an interest, as a contract purchaser, in real property - approximately 37 acres - in the Township of Manalapan, identified as Block 79.02, Lots 4.01, 4.02, and 7, and Block 79, Lots 4.01, 4.02, and 7 on the Township of Manalapan's tax maps, and located along Highway 33 near the intersection of Yates Road, in the Township. Further, as reflected in the Meiskin certification, Manalapan 37, LLC seeks to develop the Property, which is currently zoned for office, business and other sundry uses, excluding multi-family housing, at a higher density of development than currently permitted, for multi-family residential housing with an inclusionary component for low and moderate income housing units.

In addition, the proposed Answer of Manalapan 37, LLC, see Exhibit A attached to Kantowitz Certification, challenges the allegations respecting the Township's claim of compliance with its constitutional affordable housing obligations for the third

round. As well, *no counterclaim is included in the proposed Answer*, as this Court's October 9 Order and statement of reasons, and many rulings to date by Mount Laurel-assigned judges among the State's vicinages have explained that the Supreme Court's In re N.J.A.C. 5:96 and 5:97 opinion preclude, at this juncture of this action, such counterclaims seeking affirmative, builder's remedy for a developer's property. Too, the proposed Answer does not contest the 5 month temporary immunity granted to date to Manalapan by the Court.

In sum, in a manner similar to Highview Homes, LLC, whose motion to intervene was granted in an August 19 Order, and in a manner similar to K. Hovnanian Shore Acquisitions, LLC, whose recently filed motion was granted by Order of October 9, Manalapan 37, LLC has a recognizable interest in real property in the Township of Manalapan, it challenges the allegations of the Township's compliance, it seeks to develop an inclusionary development on its property and help provide affordable housing in the Township, and its participation is early in this action and timely.

#### Legal Argument

##### The Motion to Intervene of Manalapan 37, LLC Should Be Granted.

First, Manalapan 37, LLC meets the criteria of R. 4:33-1, Intervention as of Right. Its application is timely, insofar as

it does not now assert a counterclaim, and it does not seek to name and rely on its own expert for purposes of methodology and allocation of Manalapan's fair share housing obligation. As a contract purchaser seeking to develop its property for an inclusionary development, it has a legally recognizable interest in the property and in this action. See Oceanport Holding LLC v. Borough of Oceanport, 396 N.J. Super. 622 (App. Div. 2007) (contract purchaser of property has standing in Mount Laurel action); see also Mount Laurel II, 92 N.J. 158, 201, 294, 337 (1983); J.W. Field v. Franklin Tp., 204 N.J. Super. 445 (Law Div. 1985). It also has an interest in the subject matter of this litigation, i.e., municipal provision of affordable housing, and it is situated such that the disposition of this action will impair or impede its ability to protect its interest, unless it is a party to this action. No other party in this action speaks for, or protects, its interests. See Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (App. Div. 1998). Furthermore, applications to intervene are to be viewed liberally. Employers v. Tots and Toddlers, 239 N.J. Super. 276 (App. Div.), certif. denied, 122 N.J. 147 (1990).

Second, Manalapan 37, LLC meets the criteria of R. 4:33-2, Permissive Intervention. The issues raised by Manalapan 37, LLC - municipal compliance and the provision of affordable housing - are identical to those raised by Township's complaint. Too,

Manalapan 37, LLC's intervention will not delay the proceedings. Its proposed Answer adheres to the Court's directives expressed in earlier decisions on motions to intervene. Its motion resembles closely the recently granted motion of K. Hovnanian Shore Acquisitions, LLC. It does not seek to use a separate expert with respect to methodology and allocation. Its Answer, without any counterclaim, resembles the Answers of intervenor Highview Homes, LLC and of intervenor K. Hovnanian Shore Acquisitions, LLC. Too, Manalapan 37, LLC does not contest the temporary immunity for 5 months from the filing of the complaint in this action.

With regard to its intervention, and the requirement of R. 4:33-3, Manalapan 37, LLC proposes to file the Answer attached as Exhibit A to the Kantowitz Certification.

Third, under the Declaratory Judgments Act, "all persons having or claiming any interest which would be affected by the declaration shall be made parties to the proceeding." N.J.S.A. 2A:16-56. Manalapan 37, LLC's interests will be affected by the declaration sought by Township.

Fourth, in addition to case law liberally construing the Rules Governing the Courts in favor of intervention, Mount Laurel jurisprudence is liberally disposed to permit intervention in Mount Laurel actions to parties, such as developers, seeking to vindicate the rights of low and moderate



income persons. See Oceanport Holding, supra; In re N.J.A.C. 5:96 and 5:97, supra, 221 N.J. at 20 ("The relief authorized is remedial of constitutional rights. It will provide an avenue for low- and moderate-income New Jersey citizens, and **entities acting on their behalf**, to challenge any municipality that is believed not to have developed a housing element and ordinances that bring the town into compliance with its fair share of regional need and prospective need for affordable housing." [emphasis added]). Indeed, the Supreme Court's Mount Laurel IV decision stressed that trial courts would be aided by the participation and position of interested parties on all issues, especially issues of compliance. Mount Laurel IV, 221 N.J. at 23, 29.

Moreover, the relief that an objector had under COAH's procedural rules (N.J.A.C. 5:91 et seq.) are available only if Manalapan 37, LLC is granted party status. Those rights as objectors included: motions seeking relief, 5:91-12.1; adjudicatory hearing with the right of cross-examination, 5:91-7.6, -8.1, and the right to call witnesses and introduce evidence in an adjudicatory, evidentiary hearing as to constitutional compliance; and the right to appeal to the Appellate Division, R. 2:2-3(a)2. Those very rights are available only to a party, under the Rules Governing the Courts of New Jersey.

Thus, Manalapan 37, LLC's motion to intervene should be granted.

Conclusion

Manalapan 37, LLC meets the criteria for intervention as of right, R. 4:33-1, and permissive intervention, R. 4:33-2. Too, it should be joined as a party under the Declaratory Judgments Act. Furthermore, Mount Laurel jurisprudence supports its standing as a party in this Mount Laurel action.

Manalapan 37, LLC's motion to intervene should be granted in order for it to file and serve its proposed Answer and participate as a party going forward in this action.

Respectfully,

  
Jeffrey Kantowitz

Cc: Manalapan 37, LLC  
Andrew Bayer, Esq.  
Service List

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ATTORNEYS FOR INTERVENOR-DEFENDANT

MANALAPAN 37, LLC

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY  
DOCKET NO.: MON-L-2518-15

IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP OF  
MANALAPAN, COUNTY OF MONMOUTH,

Plaintiff/Petitioner

:  
:  
:  
:  
:

Civil Action

(Mount Laurel Action)

**ORDER GRANTING MOTION TO  
INTERVENE OF INTERVENOR  
DEFENDANT MANALAPAN 37, LLC**

THIS MATTER HAVING BEEN opened to the Court by way of motion of Abe Rappaport, Attorney at Law, attorneys for proposed intervenor-defendant Manalapan 37, LLC (Jeffrey Kantowitz, Esq., appearing), on notice to the parties/entities listed on the notice of motion and attached Service List, for an order granting the motion of Manalapan 37, LLC to intervene in this matter and granting permission to Manalapan 37, LLC to file the Answer in the form submitted with the motion, and the Court having reviewed papers submitted in connection with this motion,

having heard the arguments of counsel, and for the reasons set forth by the Court on the record on \_\_\_\_\_, 2015, and for good cause shown,

IT IS ON THIS \_\_\_\_\_ day of December, 2015 ORDERED as follows:

1. The application of Manalapan 37, LLC to intervene is granted.

2. Manalapan 37, LLC is granted leave to file its Answer in the form submitted with this motion.

3. Manalapan 37, LLC shall file and serve its answer, in the form submitted with this motion, within \_\_\_\_\_ days of the entry of this Order.

4. A copy of this Order shall be served on all parties in this action within \_\_\_\_\_ days of the entry of this Order.

\_\_\_\_\_  
Hon. Jamie S. Perri, J.S.C.

\_\_\_\_\_ Opposed

\_\_\_\_\_ Unopposed

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ATTORNEYS FOR INTERVENOR-DEFENDANT

MANALAPAN 37, LLC

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY  
DOCKET NO.: MON-L-2518-15

IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP OF  
MANALAPAN, COUNTY OF MONMOUTH,

Plaintiff/Petitioner

:  
:  
:  
:  
:

Civil Action

(Mount Laurel Action)

**CERTIFICATION OF SERVICE**

JEFFREY KANTOWITZ, of full age, certifies:

1. I am an attorney at law of the State of New Jersey and am of counsel to the Law Office of Abe Rappaport, attorneys for proposed Intervenor-defendant Manalapan 37, LLC. I have personal knowledge of the facts set forth in this certification.

2. On November 23, 2015, I caused to be served the following papers on the following persons in the manner set forth, and on the persons on the attached service list via electronic and regular mail:


1. Cover Letter to Clerk;
2. Notice of Motion for Order granting intervention;
3. Certification of David Meiskin in support of intervention;
4. Certification of Jeffrey Kantowitz in support of intervention;
5. Letter in lieu of brief;
6. Proposed form of Order granting intervention;
7. Certification of service.

Clerk, Civil Law Division            BY USPS PRIORITY MAIL  
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Hon. Jamie S. Perri, J.S.C. BY USPS PRIORITY MAIL  
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Freehold, NJ 07728

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.

  
\_\_\_\_\_  
Jeffrey Kantowitz  
Attorney ID# 017141982

Dated: November 23, 2015

SERVICE LIST: IMO APPLICATION OF TOWNSHIP OF MANALAPAN, ET AL., DOCKET  
NO. MON-L-2518-15

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