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November 7, 2014

Mr. Mark Neary, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 West Market Street
P.O. Box 970
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**RE: In Re the Adoption of N.J.A.C. 5:96 and 5:97 by the
New Jersey Council on Affordable Housing
Docket No. 67,126
(Response to Fair Share Housing Center Motion to
Enforce Litigant's Rights)**

Honorable Chief Justice and Associates Justices:

We represent Martin and MTAE, Inc. (MM), respondents to the motion of Fair Share Housing Center (FSHC) to enforce litigant's rights under this Court's March 14, 2014 Order. We support fully FSHC's motion. Subject to procedural safeguards of notice and the opportunity to be heard discussed by FSHC (i.e., no ex parte motions, etc.), the Court should permit exclusionary zoning and builders remedy litigation to be filed. The trial courts can be

relied on to manage these cases as they have ably done during the past 30 years.

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

MM rely on Procedural History and Statement of Facts set forth in FSHC's Brief in support of its application.

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MM rely on entirety of the Argument set forth in FSHC's Brief in support of its application. We add the following comments. The entire field of affordable housing - for the protected class; for the private sector prepared to invest in

development and build affordable housing; and for the municipalities required to provide realistic opportunities - centers on the timeliness and certainty of remedy.

This Court's admonition in FMC Stores v. Borough of Morris Plains, 100 N.J. 418, 426-27 (1985), that government must "turn square corners" should guide and inform the Court's decision making. Similar to the Court's crafting of an appropriate remedy in Kane Properties, LLC v. City of Hoboken, 214 N.J. 199 (2013), this Court should allow builders remedy suits to be filed and proceed, and give guidance to, and rely on, the trial courts, as FSHC explained.

The effectiveness of the private sector to deliver on the promise of affordable housing via builders remedy litigation is well established. As Judge Serpentelli, one of the three original Mount Laurel judges, observed in the wake of Mount Laurel II, the economic inducement of the builders remedy as an incentive for the creation of affordable housing "has produced the desired result. The experience of this court demonstrates that the level of Mount Laurel litigation has increased dramatically since Mount Laurel II and every suit has been brought by a builder rather than a nonprofit or public agency. J.W. Field v. Tp. of Franklin, 204 N.J. Super. 445, 452 (Law Div. 1985). See also Toll Brothers v. West Windsor Tp., 173 N.J.

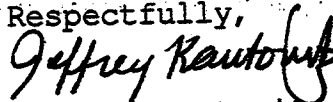
502, 803 A.2d 53, 91 (2002) (granting builders remedy and observing that circumstances and that case "demonstrate a continued need for the builder's remedy.").

Too, in connection with any applications made to the trial courts, notice via the newspaper and to all concerned stakeholders, and the elimination of ex parte applications, are important, significant procedural safeguards. See, e.g., FSHC Appendix 11, 22 (Appellate Division's March 7, 2014 Order directing that any municipality proceeding under N.J.S.A. 52:27D-313 provide notice to FSHC, NAACP, and other non-for-profit organizations dedicated to affordable housing in 10 mile radius).

CONCLUSION

With the clear evidence that Act has achieved nothing but delay, the judiciary should implement this remedy. Hills Development v. Bernards Tp., 103 N.J. 1, 23 (1986). This Court should grant FSHC's motion and allow builders remedy litigation to proceed under the framework discussed by FSHC and in this letter brief.

Respectfully,


Jeffrey Kantowitz

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