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June 25, 2021

Hon. Christine A. Farrington, J.S.C.
 Superior Court of New Jersey
 Bergen County Courthouse
 10 Main Street, 3rd Floor
 Hackensack, NJ 07601

Re: Red Real Estate Associates, Inc., v. Township of Teaneck, et al.
 Docket No. BER-L- 3265-21

Dear Judge Farrington:

Please accept this letter on behalf of Fair Share Housing Center (FSHC) in response to the Plaintiff Red Real Estate Associates, Inc.'s (RREA) Order to Show Cause filed yesterday. FSHC became aware of this litigation exactly one week ago. The Plaintiff neither joined FSHC to this litigation, nor did they provide us with notice that it was taking place.

FSHC has interests in this litigation, namely, the timely completion of affordable housing units on the subject property. FSHC is an indispensable party to this matter and should have been joined at the outset. We have spent the last week gathering information about what exactly transpired prior to this litigation being filed and have reached out to the parties to try to better understand when the affordable homes RREA is required to provide will be brought online. Indeed, I sent correspondence to counsel for RREA on Monday afternoon alerting them that FSHC has an interest in this matter and sought answers to basic questions. I have not received a response. Instead, regrettably, RREA has sought to compound its circumvention of FSHC's right to participate in this matter by filing another Order to Show Cause to immediately get the TCOs before FSHC has the chance to bring its views to the court's attention.

FSHC is gravely concerned that if RREA receives its TCOs for all its market-rate units before it has provided any of the required affordable housing units, the affordable homes will never be built. This grave concern is based upon learned history. This learned history is the basis for the clear and unambiguous requirements in the now thirty-year-old regulations of the Council on Affordable Housing (COAH) at N.J.A.C. 5:93-5.6(d). This regulation requires that "zoning for inclusionary development shall require low- and moderate-income housing units" to comply with a specific phasing schedule. Id. Those regulations require that a developer may only complete up to twenty-five percent of its market-rate units before providing the first affordable unit, and provides a gradual scale-up to ensure that all affordable homes are built before the developer finishes ninety percent of its market rate units. This regulation also unambiguously makes clear that "a newly constructed unit is considered complete when the certificate of occupancy is issued." N.J.A.C. 5:93-5.6(e). These clear and unambiguous requirements were codified into Borough code at Section 33-34(e)(2).

FSHC understands from the Order entered on June 11, 2021 that the court has found that the 2019 Affordable Housing Ordinance could not be imposed upon this developer through the developer's agreement because the 2019 AHO was not in place at the time of the Resolution of Approval. However, the prior ordinance which the 2019 AHO replaced was in

place in 2016 when the Resolution of Approval was adopted and clearly imposes a requirement upon the developer to abide by the appropriate phasing schedule. There is nothing in the regulations of COAH or in the Township's Ordinance that permits a developer to ignore the phasing schedule if it is providing its affordable units off-site. To the contrary, the phasing schedule is most applicable where units are built off-site. Where an inclusionary development is fully-integrating the affordable homes with the market-rate homes there is a decreased concern about phasing because in those circumstances it is unlikely, if not impossible, for the developer to build all of the market rate housing without also building the affordable homes. Whereas in instances where developers are permitted to build the affordable housing off-site there is a high likelihood that absent a clear phasing schedule the developer will, as has happened here, build all of the market rate units, promise to do the affordable homes on some other location at some unspecified time in the future.

RREA has failed to abide by this well-known phasing schedule by constructing all its market-rate units without providing any affordable housing units. RREA claims in its Verified Complaint that it has met every condition of the Resolution of Approval, including providing the affordable housing, because it has apparently purchased a property elsewhere in the Township where it will build affordable housing at some unknown point in the future. As the COAH regulations make clear – a newly constructed unit is considered complete when a CO is issued. In other words, lower-income households cannot live in a piece of paper or promissory note or a letter of credit. Thus, it is FSHC's view that the TCOs were appropriately withheld and should be withheld until RREA complies with all requirements of its approval including providing two homes for lower-income households.

FSHC intends to file a motion in the above-captioned matter as soon as possible, hopefully as soon as Monday. Our motion will likely request reconsideration of the court's June 11, 2021 Order based upon the failure of the Plaintiffs to join an indispensable party and because we think the court may not have considered the earlier Affordable Housing Ordinance in its decision.

FSHC is disturbed by what we have learned of the behavior of the Plaintiffs in this matter. They signed a developer's agreement in 2019 that they apparently never intended to abide by and never brought this to the attention of the court or FSHC. They fully-constructed their market-rate units without building any affordable homes. They filed an Order to Show Cause without noticing indispensable parties. And now, after learning that FSHC has become aware of this litigation and expressed an interest in it, they have sought a new Order to Show Cause to get their desired relief without FSHC, a Supreme Court recognized voice whose sole interest is to represent lower-income households in these types of proceedings.

We thus respectfully request that the court hold off on issuing a decision on the newest Order to Show Cause until we can file this motion, or to alternatively allow us to participate in the show cause hearing.

Thank you for your attention to this matter.

Respectfully,

A handwritten signature in black ink, reading "Joshua D. Bauers". The signature is written in a cursive style with a large initial 'J' and 'B'.

Joshua D. Bauers, Esq.
Counsel for Fair Share Housing Center

C: William F. Rupp, Esq.
Gail Price, Esq.