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October 4, 2016

Via Overnight

Clerk
Monmouth County Superior Court
Courthouse
P.O. Box 1266
71 Monument Park
Freehold, NJ 07728-1266

Re: *Highview Homes, LLC v. Township of Hazlet, et al*
Docket No. L-4224-15

Dear Sir/Madam:

Our firm represents Plaintiff, Highview Homes, LLC in the above-referenced matter. Enclosed for filing are an original and one (1) copy of the following documents:

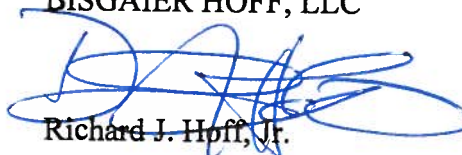
1. Brief joining in The Church of the Holy Family's Motion to Dismiss.

The motion is returnable October 14, 2016. Kindly file the original and return the stamped "filed" copy to our office in the enclosed self-addressed stamped envelope provided. Also, please bill our Superior Court account number 142320 any fees associated with this request.

Thank you for your assistance.

Very truly yours,

BISGAIER HOFF, LLC



Richard J. Hoff, Jr.

Enclosure

cc: Honorable Jamie S. Perri, J.S.C. (via overnight)
James Gorman, Esq. (via overnight and e-mail)
David M. Roskos, Esq. (via overnight and e-mail)
Gregory Vella, Esq. (via overnight and e-mail)

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VIA OVERNIGHT

Hon. Jamie S. Perri, J.S.C.
Monmouth County Superior Court
Courthouse
P.O. Box 1266
71 Monument Park
Freehold, NJ 07728-1266

**Re: *Highview Homes, LLC v. Township of Hazlet et al.*
Docket No. MON-L-4224-15**

Dear Judge Perri:

This office represents plaintiff, Highview Homes, LLC (“Highview”) in the above captioned matter. Please accept this letter brief in lieu of a more formal submission as Highview’s joinder in The Church of the Holy Family’s (“Holy Family”) Motion to Dismiss Third Party Complaint filed by the Township of Hazlet (“Township”), currently returnable September 30, 2016.

Highview joins in Holy Family’s position that Holy Family is not a “necessary and indispensable” party and builder’s remedy suits are commonly, and typically, brought by contract purchasers without the participation of property owners. See *i.e. Oceanport Holding v. Oceanport*, 39 N.J. Super. 622 (App. Div. 2007); *Sod Farm Associates v. Twp. of Springfield*, 336 N.J. Super. 116 (App. Div. 2004) (wherein contract purchaser Springco Development, LLC brought builder’s remedy suit); *Wayne Property Holdings, L.L.C. v. Township of Wayne*, 247 N.J. Super. 133 (App. Div. 2012) (wherein contract purchaser ARC Equities, Inc. brought builder’s remedy suit).

Additionally, Mount Laurel II vested in contract purchasers standing to bring builder’s remedy suits. There is a liberal approach to standing in Mount Laurel litigation, and “any individual demonstrating an interest in, or any organization that has the objective of, securing lower income housing opportunities in a municipality will have standing to sue such municipality on *Mount Laurel* grounds.” *S. Burlington County NAACP v. Mt. Laurel*, 92 N.J. 158, 337 (1983). As explained in Holy Family’s brief, this doctrine parallels the Municipal Land Use Law, which permits contract purchasers to submit applications before land use boards. See *N.J.S.A. 40:55D-3* (defining Applicant as “developer submitting an application for development”); *N.J.S.A. 40:55D-4* (defining Developer as “the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the

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

October 4, 2016

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holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land”).

Further, whether a party is indispensable is a fact sensitive issue. “As a general proposition...a party is not truly indispensable unless he has an interest inevitably involved in the subject matter before the court and a judgment cannot be made between the litigants without either adjudging or necessarily affecting the absentee’s interest.” Toll Bros., Inc. v. Township of West Windsor, 334 N.J. Super. 77, 90 (App. Div. 2000) (additional citations omitted). “Moreover, absence of an indispensable party does not deprive the court of jurisdiction to adjudicate the issues among the parties who were joined.” Id. The issues of the Township’s compliance with its Mount Laurel obligation and the details of Highview’s builder’s remedy can certainly be adjudicated without joining Holy Family, who have no interest in either issue.

Lastly, Highview is unaware of any legal authority requiring property owners to intervene, but is aware of many builder’s remedy suits brought by contract purchasers and actions arising from the Municipal Land Use Law brought by contract purchasers. The Third-Party Complaint filed by the Township seems but another attempt to distract the Court from what should be the primary focus of any exclusionary lawsuit. Specifically, has the Township provided for its fair share of the region’s need for affordable housing. Here, the Township has failed in that constitutional obligation and rather than confront and remedy that infirmity, the Township has chosen to pursue and litigate extraneous irrelevant issues. The Township’s Third-Party Complaint to draw an unnecessary property owner into litigation focused on the Township’s failures should be dismissed by this Court. Holy Family is neither necessary nor indispensable to resolution of the Township’s Mount Laurel compliance.

We thank the Court for its time and attention.

Respectfully submitted,

BISGAIER HOFF, LLC



Richard J. Hoff, Jr.

cc: James H. Gorman, Esq. (via overnight and e-mail)
David M. Roskos, Esq. (via overnight and e-mail)
Gregory Vella, Esq. (via overnight and e-mail)