

**AGREEMENT BETWEEN WYNDHAM PLACE AT FREEHOLD CONDOMINIUM ASSOCIATION, INC. AND THE TOWNSHIP OF FREEHOLD REGARDING THE ASSESSMENT OF MAINTENANCE FEES TO AFFORDABLE UNITS**

This Agreement (the “Agreement”) is made and entered into as of the 14th, day of May, 2024, by and between Wyndham Place at Freehold Condominium Association, Inc., a New Jersey Not-For-Profit Corporation (the “Association”), and Freehold Township, a municipal corporation of the State of New Jersey (the “Township”) (collectively the “Parties”);

**WHEREAS**, the Association was established on December 9, 1987 by the recording of its Master Deed in the Office of the Monmouth County Clerk at Book 4813, Page 396 and, pursuant to Township Ordinance, developed by its sponsor, Weiner Homes (the “Sponsor”), to contain 10% low income condominium units and 10% moderate income condominium units (collectively the “Affordable Units”); and

**WHEREAS**, by way of the Master Deed, the Sponsor assigned to the Affordable Units a lesser percentage interest in the Association’s common elements than that which was assigned to market rate Units, resulting in the owners of Affordable Units paying lower Association maintenance fees than the owners of comparable market rate Units within the Association; and

**WHEREAS**, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq., promulgated by the Counsel on Affordable Housing (“COAH”) in 2004, provides, in relevant part, as follows: “The master deeds of affordable developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers[;]” and

**WHEREAS**, a 2022 reserve study obtained by the Association indicated that the Association will require over five million dollars by 2026 to repair and replace the Common Elements that are at the end of their useful life; and

**WHEREAS**, payment by the owners of Affordable Units of lower maintenance fees significantly reduces the funds available to the Association for maintaining the Common Elements; and

**WHEREAS**, Township Code section 190-223(A)(4) imposes a control period of thirty (30) years on affordable housing units within the Township, and the thirty (30) year period has expired with respect to the Association’s Affordable Units; and

**WHEREAS**, the Association cannot continue to maintain Affordable Units if the Affordable Unit owners continue paying only a fraction of the maintenance fees paid by the owners of market rate Units; and

**WHEREAS**, the Township wishes for the Affordable Units within the Association to remain designated as such.

**NOW THEREFORE**, in consideration of the mutual promises and for the good, adequate, and valuable consideration recited herein, the Parties hereby covenant and agree as follows:

**1. Income Qualification and Owner Occupancy Verification Process**

(a) Within six (6) months of the execution of this Agreement, the Township shall implement an Income Qualification and Owner Occupancy Verification Process (the “Income and Occupancy Process”) with respect to all Affordable Units to ensure that (i) each Affordable Unit qualifies as a very low-, low- or moderate-income household and (ii) each Affordable Unit is owner occupied. In no event shall any current owner, as of the date of this agreement, be re-income certified in a period of time less than 5 years from the purchase of their unit. To illustrate the intent of this provision, if an owner/household purchased a unit in March of 2020, that household cannot be income qualified until at least March of 2025.

(b) The Income and Occupancy Process shall be conducted by a qualified administrative agent, agreed upon by the Parties (the “Administrative Agent”), with the Township to bear all related costs and expenses.

(c) The Administrative Agent shall income certify households found to be beneath the moderate-income limit, and the Income and Occupancy Process shall be completed for all income certified households every five (5) years.

**2. Failure to Qualify or Occupy**

(a) Upon completion of each Income and Occupancy Process, the Association shall immediately increase the maintenance assessments for all Affordable Units of owners who (i) do not fall below the moderate-income limitation, (ii) fail to participate and cooperate fully in the Income and Occupancy Process or (iii) fail to occupy the Affordable Unit (collectively referred to as “Non-Qualifying Units”).

(b) The maintenance assessments for the Non-Qualifying Units shall be immediately increased to the assessment amount applicable to a market rate Unit of equal square footage. Thereafter, assessments for the Non-Qualifying Units shall be calculated pursuant to the formula for calculating market rate Unit assessments that is set forth in the Association's Master Deed and any amendments thereto.

(c) The Parties expressly recognize that Non-Qualifying Unit owners who become subject to market rate assessments will continue to benefit from the purchase prices at which they acquired the Affordable Units and lower taxes as a result of lower assessed values.

**3. Income Certified Owner-Occupied Units**

(a) The maintenance assessments for Affordable Units that are income certified and verified as owner occupied following the Income and Occupancy Process shall be increased at a rate of thirteen and one-third (13. 1/3%) per year for the next seven in a half (7 ½ ) years, with the maintenance assessments set to the assessment amount applicable to market rate Units of equal square footage at the expiration of the seven and one half years..

(b) Thereafter, assessments for the income certified, owner-occupied Affordable Units shall be calculated pursuant to the formula for calculating market rate Unit assessments that is set forth in the Association's Master Deed and any amendments thereto.

**4. Resale of Affordable Units**

(a) Upon resale of any Affordable Unit, the maintenance assessment shall be increased to the assessment amount applicable to a market rate Unit of equal square footage and shall thereafter be calculated pursuant to the formula for calculating market rate Unit assessments that is set forth in the Association's Master Deed and any amendments thereto.

(b) The Administrative Agent shall perform an affordability analysis at each resale. If the home is not affordable at the current mortgage rate, taxes and market assessments, the Township shall pay the seller a subsidy in the amount of the Maximum Restricted Sale Price less the "affordable price." The number of affected homes and subsidy amounts will vary based upon the prevailing interest rates, taxes and assessments. Notwithstanding these or any other variables, the Township agrees to be responsible for payment of the subsidy.

**5. Court Approval**

(a) The Township shall undertake any and all necessary steps with the Superior Court of New Jersey to protect the Township's affordable housing credits and obtain Court approval of this Agreement.

(b) At a minimum, the Parties anticipate that the Court will be required to conduct a Fairness Hearing to approve this Agreement. The Parties anticipate that, as part of that Fairness Hearing, the Court and/or its Master will provide guidance as to necessary changes to the Master Deed, attached hereto as Exhibit A. In either event, however, the Parties acknowledge that the Master Deed will need to be amended to reflect the terms of this Agreement no later than six months from the date of execution of this Agreement.

(c) The Association agrees to cooperate fully with any and all Court proceedings required to protect the Township's affordable housing credits and obtain Court approval of this Agreement.

**6. Adequacy and Sufficiency of Consideration**

The parties acknowledge the adequacy and sufficiency of the consideration provided for herein.

**7. No Admission**

This Agreement is entered into as a compromise and shall not be construed as an admission of liability on the part of the Parties.

**8. Integration**

This Agreement constitutes a single integrated contract expressing the entire understanding between and among the parties with respect to the subject hereof and the terms of this Agreement are contractual and not a mere recital. No other agreement, covenant, representation or warranty, express or implied, has been made by any party to the other, other than that which is stated in this Agreement and/or at any Fairness Hearing to be conducted by the Court. The parties agree that all prior negotiations, prior and/or contemporaneous discussions, communications, contracts or agreements, whether oral or written, and understandings between the parties have been merged herein and that this Agreement may not be amended, modified, or changed, except by a writing signed by a duly authorized representative of each party.

**9. Representation**

The Parties represent and acknowledge that they have read and accepted the terms of this Agreement and have had an opportunity to and have consulted with counsel in connection with the execution of this Agreement. The Parties further represent and acknowledge that the terms of this Agreement have been voluntarily accepted.

**10. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same agreement, notwithstanding that each party is not a signatory to the original or the same counterpart. Facsimile and e-mail signatures shall be deemed as effective as original signatures.

**11. Costs and Attorneys' Fees**

Each party is responsible for its own costs and attorneys' fees in connection with negotiation, preparation and execution of this Agreement. Notwithstanding and without waiving the foregoing, in the event that any action is instituted to enforce any term of this Agreement, to seek a declaration as to, or to enforce any term of this Agreement, the prevailing party in such action shall recover from the losing party reasonable attorneys' fees and expenses incurred in such action.

**12. Choice of Law**

This Agreement shall be governed in all respects by the laws of the State of New Jersey.

**13. Choice of Venue**

Any action at law, suit in equity, or other judicial proceeding concerning, relating to, or touching upon in any way this Agreement or the subject matter hereof, shall be brought, if at all, only in the Superior Court of New Jersey, Monmouth County. All Parties acknowledge the right of the Court to assert personal jurisdiction in any such action over the Parties and waive and release now and forever any defense to that assertion of personal jurisdiction that might otherwise exist.

**14. Severability**


If any sentence, phrase, provision, portion or clause of this Agreement should at any time be declared or adjudged invalid, unlawful, unconstitutional, or unenforceable for any reason, said adjudication or declaration shall in no way affect the other sentences, phrases, provisions, portions, or clauses of this Agreement and all remaining portions shall remain in full force and effect as if the portion adjudged or declared invalid was not originally a part hereof.

**15. Binding Nature**

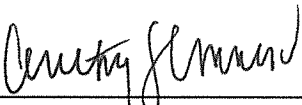
The provisions of this Agreement shall be binding upon and inure to the benefit of all parties hereto and their officers, directors, employees, agents, representatives, successors, assigns, subsidiaries, parents and affiliates.

**IN WITNESS WHEREOF**, the parties hereto have affixed, or caused to be affixed, their respective signatures, effective on the day and year first written above. All persons executing this Agreement further confirm and state that they are duly authorized to execute this Agreement, have carefully read the entire Agreement, and sign their name freely.

**Wyndham Place at Freehold Condominium Association, Inc., a New Jersey Not-For-Profit Corporation**

By:   
LARRY KRAYN

**Township of Freehold**

By:   
Anthony J. Ammifano, Mayor