

PUBLIC ACCESS EASEMENT AGREEMENT

THIS PUBLIC ACCESS EASEMENT AGREEMENT (this “**Agreement**”) is made as of the ___ day of ___, 2025, by and among **MICHAEL HARRIS AT TOWER, LLC**, a Maryland limited liability company (the “**Grantor**”), to and for the benefit of **THE MAYOR AND COUNCIL OF ROCKVILLE**, a municipal corporation organized under the laws of the State of Maryland (hereinafter referred to as the “**City**” or the “**Grantee**”).

RECITALS:

R1. Grantor is the fee simple owner of certain real property, together with all improvements thereon, legally and particularly described on **Exhibit A** (the “**Subject Property**”);

R2. The Subject Property is part of a development known as “Tower Preserve” (the “**Project**”) in the City of Rockville, pursuant to the terms and provisions of Project Plan Amendment PJT2023-00015, Site Plan STP2024-00473, and other development permits and approvals, as each of them may be amended or modified from time to time (collectively, “**Development Approvals**”);

R3. The Development Approvals authorize development of up to 82 townhouses on the Subject Property and provide for private alleys to serve a portion of the approved townhouses (the “**Private Alleys**”);

R4. Pursuant to the Development Approvals, Grantor must grant to the City a Public Access Easements for the Private Alleys.

NOW, THEREFORE, in consideration of the recitals which are incorporated herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby establishes, grants and conveys with respect to the Subject Property, and Grantee accepts, the following grant of access easements upon the terms and conditions provided herein. The easements are hereby intended to be granted and conveyed together with all the rights, privileges, appurtenances, and advantages thereto belonging or appertaining to its proper use and benefit forever by the City, its successors and assigns, and the public.

A. **Public Access Easements for Private Alleys.** Grantor does hereby grant and convey, subject to the Grantor’s reserved rights set forth in Section B below, a limited, nonexclusive access easement (“**Public Access Easement**”) in, on, along, over, across, and through the portions of the Subject Property depicted as the 20’ Public Access Easement on the Record Plats attached hereto and made a part hereof as **Exhibit B** (the “**Easement Areas**”) unto the Grantee, its successors and assigns, forever and in perpetuity, for the purpose of vehicular and pedestrian ingress and egress from the public rights-of-way in and adjacent to the Project.

B. **Grantor’s Reserved Rights.** The Grantor hereby retains and reserves for itself and its designees, successors, and assigns, the non-exclusive right: (a) to locate, survey, construct, maintain,

inspect, operate, protect, repair, alter, replace, establish, lay, install, test, substitute, renew, reconstruct, restore, abandon and remove: paving, surface improvements, and subsurface facilities within the Easement Areas in accordance with the Development Approvals and the terms of this Agreement, (b) to vehicular ingress and egress and on-street parking on, over, across and through the Easement Areas in accordance with the Development Approvals, (c) for all activities necessary for construction and maintenance of, and compliance with, the Development Approvals and any applicable law or regulations, (d) for construction activities in conjunction with the construction of the improvements on the Easement Areas, in accordance with the Development Approvals, and the right to use, enjoy, maintain, repair, replace, and operate such improvements for any purpose permitted by applicable law, (e) for crossing of utility and communication laterals and connections in accordance with the Development Approvals, (f) for penetrations with utility lines, manholes and access panels required to service the underground utilities, storm water facilities, communication, and other infrastructure facilities at locations reasonably acceptable to the City and Grantor, (g) for signage and overhead canopy projections that are subject to permits approved and issued by the City and/or the Development Approvals, (h) to install underground sheeting, shoring and tie-backs and to conduct such excavation and construction below the Easement Areas as is necessary in connection with construction of the Project, so long as such purposes do not materially interfere with the Public Access Easements and use thereof by the public pursuant to the terms of this Agreement, (i) to grant such other easements, rights or privileges to such person or entities for the installation and repair of utilities and services as Grantor may reasonably elect, so long as such purposes do not materially interfere with the Public Access Easements and use thereof by the public pursuant to the terms of this Agreement, and provided that all applicable City permits and approvals are first obtained, and (j) for any other reasonable purpose not inconsistent with the rights granted hereunder, provided that all applicable City permits and approvals are first obtained and that all activities are in accordance with the Development Approvals.

C. **Limited Rights of the General Public.** The Grantee has the right, permanently or temporarily, in its sole discretion and at any time, to designate the general public as an authorized user of the Grantee's access rights over all or any parts of the Easement Areas. Except as expressly limited in this Agreement, the Easement Areas must be available for use and enjoyment by the general public during all times when the Grantee designates the general public as an authorized user of the Easement Areas.

D. **Obligation for Construction of Improvements.** In the event the Development Approvals are implemented for the Project, and subject to the limitation in Section J below restricting transfer of initial construction obligations to Homeowners Associations, the Grantor shall be responsible for constructing the improvements within the Easement Areas for the Private Alleys in accordance with the Development Approvals. Notwithstanding the foregoing, the Grantor shall have the right to delegate the Grantor's obligations and responsibilities under this Section D to a Developer (such as "**Developer**" meaning the responsible party, which may be an affiliate of Grantor on permits to construct and complete the improvements set forth in the Development Approvals), provided that such delegation shall not, as between the Grantor and the City, relieve the Grantor from liability for such obligations and responsibilities with respect to construction of the

improvements within the Easement Areas for the Private Alleys.

E. **Obligation for Maintenance of Improvements.** Upon their completion and acceptance by the City as being in accordance with the Development Approvals, Grantor shall be responsible for maintaining, repairing and replacing the paving within the Easement Areas and for keeping such Easement Areas clear of mud, debris, ice, snow and other obstructions. Notwithstanding the foregoing, the Grantor shall have the right to delegate the Grantor's obligations and responsibilities under this Section E to an entity representing the owners of property within the Project, provided that such delegation shall not, as between the Grantor and the City, relieve Grantor from liability for the obligations and responsibilities pursuant to this Section E, except as provided in Section J below. The City will not accept the Private Alleys for maintenance by the City unless the right-of-way is dedicated.

F. The Grantee's rights to the Public Access Easements are non-exclusive and for the limited purposes stated herein.

G. Grantee understands and acknowledges that fee title to the Easement Areas is and shall remain in the Grantor, and that this Agreement confers on Grantee no rights of ownership or control of the Easement Areas, except as otherwise specifically provided herein. Unless specifically and expressly identified as such in this Agreement, there are no "third party beneficiaries" of this Agreement. The Public Access Easements may be modified or terminated with respect to the Grantor and the Grantee by the agreement of the Grantor and the Grantee hereunder and no third-party approval thereof shall be required. Although members of the general public are entitled to use the Public Access Easements pursuant to the terms of this Agreement, no person or entity other than Grantee shall be entitled to enforce or seek to enforce this Agreement against Grantor or shall be deemed to be a third party beneficiary of this Agreement or to have otherwise derived any rights under this Agreement.

H. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any part of the Easement Areas or any adjacent properties to the general public. Any public use or purpose of the Easement Areas shall be limited to those expressly permitted in this Agreement. The Grantor shall have the right from time to time to close all or any portion of the Easement Areas and any adjacent properties to the general public for construction, maintenance, repairs, replacements, inspections, and in order to prevent a dedication thereof or the accrual of any rights in any person or entity not expressly granted rights hereunder, but such closing shall not unreasonably interfere, subject to the provisions hereof, with the use and enjoyment by the Grantee of the Public Access Easements and other rights hereby created and shall be in accordance with the Development Approvals and applicable law.

I. No rights are granted under this Agreement to Grantee to enter or be or do anything inside or beneath, in or above the building(s) or other improvements constructed at any time on the Easement Areas or adjacent properties.

J. The Grantor and each successor owner of the Easement Areas shall be bound by this Agreement only during its respective periods of fee simple ownership of the Easement Areas or portion thereof, it being expressly intended that there shall be no continuing liability except for acts or omissions arising during such respective periods of ownership. If any of the Easement Areas are subjected to a Homeowners Association Declaration at any time in the future, after completion by the Developer and acceptance by the City of the improvements required by the Development Approvals within the Public Access Easements, the Grantee agrees to look solely to the Homeowners Association for all rights and benefits under this Agreement and agrees further that no owner(s) of an individual property in such Homeowners Association shall have any personal liability under this Agreement and that all liability of the Grantor and its successors and assigns shall be limited to their right, title and interest in the Easement Areas.

K. To the extent permitted by law, the easements established herein may be relocated to another portion of any property in which Grantor has fee simple or leasehold interests by a written modification of this Agreement signed by the Grantor and the City, or their successors and assigns.

L. All references in this Agreement to Grantee shall be deemed references to Grantee and its successors and assigns. All references in this Agreement to Grantor shall be deemed references to the Grantor and its successors and assigns as the then owner of the Easement Areas.

M. The Grantor will warrant specially the Public Access Easements and will execute such further assurances as may be reasonably necessary for and requested in writing by Grantee.

N. Grantor hereby certifies that, to Grantor's knowledge as of the date of this Agreement, there are no suits or liens affecting the Easement Areas that would affect Grantor's conveyance of the Public Access Easements in accordance with this Agreement and of which the Grantor has received written notice, and there are no recorded leases, mortgages or trusts affecting the Easement Areas, other than those of record and/or for which the holder in interest has signed or otherwise consented in writing to this Agreement. Grantor further certifies that all parties with an interest in the Easement Areas necessary to give full effect to this Agreement have signed, or consented in writing to, this document.

O. Grantor agrees to record (or to cause to be recorded) this Agreement among the Land Records of Montgomery County at Grantor's expense and shall provide the City with documentary proof of recordation within ten (10) days after receipt of the recorded copy of this Agreement.

P. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland without regard to conflict of laws principles.

TO HAVE AND TO HOLD unto the City, its successors and assigns forever, this grant of Public Access Easements (including all terms, conditions and restrictions contained herein) shall be binding upon the successors and assigns of the Grantor and shall constitute a covenant running with the land.

GRANTOR

MICHAEL HARRIS AT TOWER, LLC a
Maryland limited liability company

By: _____
Name: _____
Title: _____

STATE OF MARYLAND)
) to wit:
COUNTY OF MONTGOMERY)

I hereby certify that on this _____ day of _____, 2025, before me, _____, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of Michael Harris at Tower, LLC, a Maryland limited liability company, and that such individual, in such capacity and being authorized to do so, executed the foregoing and annexed instrument on behalf of such corporation for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____ [NOTARIAL SEAL]

WITNESS:

CITY:

**THE MAYOR AND COUNCIL OF
ROCKVILLE**

Print Name: _____

By: _____

Name: _____

Title: _____

Reviewed for legal sufficiency by:

Robert Dawson
City Attorney

* * *

STATE OF: _____

*

COUNTY OF: _____

*

*

I hereby certify that on this _____ day of _____, 2025, before the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, who did acknowledge that he/she, having been properly authorized, executed the same on behalf of The Mayor and Council of Rockville, Maryland in the capacity therein stated and for the purposes therein contained.

Witness my hand and official seal this _____ day of _____, 2025.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All of that certain parcel of land situated in the City of Rockville, Montgomery County, Maryland and described as follows:

EXHIBIT B

PLATS