

Parent Parcel Id Nos. \_\_\_\_\_

## LICENSE AND MAINTENANCE AGREEMENT

### Private Stormwater Management System

THIS LICENSE AND MAINTENANCE AGREEMENT (the “**Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between **THE MAYOR AND COUNCIL OF ROCKVILLE**, a Maryland municipal corporation (hereinafter referred to as the “**City**”) and **MICHAEL HARRIS AT TOWER, LLC**, a Maryland limited liability company (“**Michael Harris**” or “**Owner**”), its successors and assigns.

### RECITALS:

R1. Michael Harris is the owner of those certain lots together with all improvements thereon, legally and particularly described as \_\_\_\_\_, as established in that certain plat (the “**Plat**”) recorded as Plat No. \_\_\_\_\_ among the land records of Montgomery County, Maryland (the “**Michael Harris Property**”), a copy of which plat is attached hereto as **Exhibit A**.

R2. The Michael Harris Property is part of a development known as the “**Tower Preserve**” project (“**Project**”) in the City of Rockville pursuant to the terms and provisions of Project Plan PJT2023-00015, as amended (the “**Project Plan**”).

R3. Site Plan STP2024-00473 for the Project and other development permits and approvals, as each of them may be amended or modified (collectively, the “**Site Plan Approval**”) have been issued for the development of the Michael Harris Property and the Project.

R4. The Site Plan Approval includes a condition that the streets to be constructed on the Michael Harris Property must be dedicated as public rights-of-way. The Plat includes the dedication of the rights-of-way for Streets A, B, and C to satisfy that condition. The Street A, B, and C rights-of-way are referred to in this Agreement as the “**City Property**”.

R5. Certain stormwater management facilities are planned to be located within the City Property to serve the Project as approved by the Site Plan Approval (“**Private Stormwater Management System**”). The Private Stormwater Management System consists of the improvements listed in **Exhibit B**, attached hereto. The improvements located within the City Property that are not part of the Private Stormwater Management System are also listed on **Exhibit B**.

R6. The City requires a license and maintenance agreement to be entered into between the City and the Owner governing the rights and obligations to construct, inspect, operate, maintain, repair, and replace the Private Stormwater Management System for the benefit of the Michael Harris Property for the life of the development on the Plat as part of the Site Plan Approval within the rights-of-way of public streets under the terms set forth in this Agreement. The City further requires stormwater management easements and maintenance agreements providing access

and other rights in the City to private stormwater facilities on the Michael Harris Property immediately adjoining the right-of-way and connected to the Private Stormwater Management System under terms set forth in those certain Stormwater Management Easement and Stormwater Management Inspection and Maintenance Agreements of same date herewith between the City and Michael Harris.

R7. In reliance on this Agreement to permit the Private Stormwater Management System to be located within the City Property to service the Michael Harris Property for the life of the development on the Plat as part of the Site Plan Approval, Owner is proceeding to implement the Site Plan Approval, and its lenders and partners are proceeding to lend and invest money to construct the Project.

NOW, THEREFORE, for the purpose of complying with the Site Plan Approval, in compliance with the requirements of Chapter 19, in consideration of the issuance by the City of a Stormwater Management Permit and the foregoing recitals and attached exhibits, each of which are incorporated in and made a substantive part of this Agreement, the sum of One Dollar (\$1.00), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City hereby grants and declares, and the Owner and City hereby covenant and agree, as follows:

1. Private Stormwater Management System License. Subject to the reservations and conditions set forth in Paragraph 6 below, the City hereby grants, establishes, and declares to Owner, its successors and assigns, a revocable license in, through, over, and across the area shown as “Stormwater Management License Area” on the plan attached as **Exhibit C (“Stormwater Management License Area”)**, for the purpose of construction, operation, inspection, housekeeping, maintenance, repair, restoration, and replacement of the Private Stormwater Management System to serve the Project on the Michael Harris Property and proposed Rights-of-Way, together with a right of entry for all proper purposes associated with such construction, operation, inspection, housekeeping, maintenance, repair and replacement and together with all the rights, privileges, appurtenance, and advantages thereto belonging or appertaining to their proper use and benefit by Owner, its successors and assigns.

The Owner, without the prior written consent of the City, will neither perform nor permit upon or within the Stormwater Management License Area: (i) removal or alteration of the Private Stormwater Management System, (ii) the erection or installation of any structure, building or other improvements, (iii) the excavation or filling of land, or (iv) the installation of trees, shrubs, or other landscaping, unless shown on the issued Stormwater Management Permit or other City issued permit. The Owner will not block access in the right-of-way without the prior written consent of the City by permit or otherwise.

2. Obligation for Construction of Private Stormwater Management System. In the event the Site Plan Approval is implemented on the Michael Harris Property, and all necessary permits and bonds have been obtained and posted, Owner shall be responsible to construct the Private Stormwater Management System in accordance with City permits within the Stormwater Management License Area and shall further provide for annual inspection and necessary maintenance of the Private Stormwater Management System to ensure that it is and remains in proper working condition in accordance with the approved design standards of applicable laws,

rules, and regulations. City issuance of the Stormwater Management Permit for the Private Stormwater Management System shall constitute necessary consent for the construction of the Private Stormwater Management System within the Stormwater Management License Area. All costs associated with such construction shall be borne solely by Owner. Owner and/or its contractors shall be responsible for all warranty repair and replacement work arising out of the initial construction.

3. Maintenance Agreement After Construction. Upon satisfactory completion of construction of the Private Stormwater Management System as determined by final inspection and release of any bonds, Owner shall be responsible for inspecting and maintaining the Private Stormwater Management System in a good state of repair in accordance with Chapter 19, City Code and in a safe and orderly condition. The Owner shall not be responsible for the inspection or maintenance of the improvements excluded from the Private Stormwater Maintenance System as listed in **Exhibit B**. Owner's housekeeping, maintenance, inspection, operation, repair and replacement responsibility is limited to only the Private Stormwater Management System under this Agreement. If the City damages the Private Stormwater Management System in the course of maintaining the City's public infrastructure within the footprint of the Private Stormwater Management System, then Owner shall be responsible for repairing the damage to the Private Stormwater Management System, unless such damage is the result of the gross negligence or intentional misconduct of the City or its agents, employees or contractors.

Owner shall notify the City in writing, c/o the Director of Public Works, seventy-two (72) hours prior to performing any inspection, maintenance, repair, or replacement of any improvements in the Stormwater Management License Area, except for regularly occurring landscaping and maintenance of the above-grade portions of the Private Stormwater Management System. Appropriate Department of Public Works permits will be required for such work. Provided, however, that Owner shall not be required to notify the City or obtain a permit in advance in cases where emergency repairs to protect the public safety are required. Owner shall be required, however, to obtain a permit for the emergency repairs, as required by the Department of Public Works, after such emergency repairs are made. Failure of Owner to properly inspect, maintain, repair and/or replace the Private Stormwater Management System as required by the City Code may result in the City seeking any remedy afforded by State law and City Code, as well as issuance of a City citation and fine. The obligations and remedies set forth in this paragraph are in addition to other obligations and remedies contained in this Agreement. In no event, however, shall Owner be liable for any indirect, consequential or punitive damages for any breach, default or other matter related to this Agreement or the Private Stormwater Management System.

4. Clean-Up and Restoration. Upon the completion of any work by Owner and/or its contractors in the Stormwater Management License Area, the entity performing the work shall remove any construction debris and shall restore the City Property to a condition as close to its condition prior to performance of the work as is reasonably possible and as approved by the City. In addition, if any damage is caused by Owner, its contractors or agents, to the City Property at any time during the term of this Agreement, Owner shall immediately notify the City of the damage, and shall repair such damage according to a schedule as determined by the Department of Public Works. Should Owner not perform the work within the time determined by the Director of the Department of Public Works, the City may, in its sole discretion, perform the necessary work and shall bill Owner for the reasonable cost of said work. Owner must reimburse the City

for said costs within sixty (60) days of the date of said bill delivered to Owner with supporting documentation, or in accord with any alternative payment schedule that may be agreed upon in writing by the City and Owner. In the event that Owner fails to timely reimburse the City for said costs, such costs shall constitute a lien, collectible in the same manner as City property taxes, or in such other manner permitted by law. Such reimbursement obligations shall survive termination of this Agreement.

5. City Rights. The City may, but is not obligated to, inspect the Private Stormwater Management System. The City shall have the right, in its sole discretion but without obligation, to provide emergency repairs to the Private Stormwater Management System when public safety is at risk. Notice of the City's performance of emergency repairs shall be provided as soon as reasonably practicable. Owner shall reimburse the City for the reasonable costs of emergency repairs performed by the City within sixty (60) days of delivery of an invoice with supporting documentation for such repair, or in accord with any alternative payment schedule that may be agreed upon in writing by the City and Owner.

If after reasonable notice by the City, the Owner shall fail to construct, inspect, maintain, repair, replace, or operate the Private Stormwater Management System in accordance with the approved design standards and with all applicable laws, rules and regulations, the City may, but is not obligated to, access the Private Stormwater Management System and perform all necessary inspection, construction, repair, replacement, maintenance, and/or operating work, and may assess the Owner for the cost of the work. Notice of the failure to adequately inspect, maintain, operate, repair, replace and/or restore the Private Stormwater Management System to City standards after initial construction shall be provided to Owner with at least thirty (30) days or such reasonable period of time to obtain a permit and commence a cure. If the Private Stormwater Management System is not adequately inspected, maintained, operated, repaired or restored to City standards within such stated cure period, then the City shall deliver a notice of City's intention to perform work after ten (10) days at the Owner's expense. Owner shall reimburse the City for the reasonable costs of work performed by the City within sixty (60) days of delivery of an invoice with supporting documentation for such work or in accord with any alternative payment schedule that may be agreed upon in writing by the City and Owner. If Owner fails to timely reimburse the City, the costs shall be a lien against the Michael Harris Property and may be placed on the property tax bill and collected in the same manner as property taxes by the City or in any other manner permitted by law. Such reimbursement obligations shall survive the termination of this Agreement.

The City shall have the right to improve, inspect, maintain, repair, or replace the public streets rights-of-way on the City Property, including within the Stormwater Management License Area, and it may do so at any time with no notice to Owner except where such City activities will, or have the potential to, impact, interfere, obstruct, and/or damage the Private Stormwater Management System. If the City activities will, or have the potential to, impact, interfere, obstruct, and/or damage the Private Stormwater Management System, the City shall provide Michael Harris Property with thirty (30) days' notice of such activity, except in the event of an emergency necessitating such work, in which case no notice to Owner is required.

6. Ownership and Insurable Interest. Notwithstanding who constructed and installed the Private Stormwater Management System, upon its completion, the ownership of, the insurable

interest in, and responsibility to replace the Private Stormwater Management System shall be held by the Owner, and its successors and assigns.

7. Binding Effect. All provisions of this Agreement, including the benefits and burdens, shall touch, concern, and run with the land and be binding upon and inure to the benefit of the Owner and the City, and their respective successors and assigns. Notwithstanding anything to the contrary in this Paragraph 7 or elsewhere in this Agreement, at such time as the homeowners association for the Michael Harris Property (the “**HOA**”) is legally created, the HOA shall be solely responsible for (i) maintaining, inspecting, operating, repairing and replacing the Private Stormwater Management System, (ii) reimbursing the City for any costs incurred pursuant to Sections 4 and 5 of this Agreement, as applicable, and (iii) performing all other obligations and liabilities of the Owner under this Agreement. The obligations set forth in this Agreement shall be included in the governing documents of the HOA, and only the real property owned by the HOA and/or Michael Harris (or any successor developer of the Michael Harris Property) shall be subject to a lien for failure to pay any costs which may be due and payable by the Owner under this Agreement from and after the HOA is established. In no event shall any owners of the individual lots and dwelling units thereon be responsible for the performance of the obligations of the Owner under this Agreement, nor shall any of the costs described under Sections 4 and 5 be assessed against, or become a lien upon, such homeowner's individual or dwelling unit. Prior to the legal creation of the HOA, the Owner shall remain liable for all obligations under this Agreement. Owner shall give the City prompt written notice at such time as the HOA is legally created, with contact information for the HOA.

8. Limitations with Respect to Michael Harris. The obligations and liabilities of Michael Harris shall apply with respect to the period during which Michael Harris owns an interest in any part of the Michael Harris Property which utilizes the Stormwater Management License Area. When Michael Harris ceases to own an interest in the Michael Harris Property, or with respect to any part thereof, the obligations and liabilities thereafter accruing shall be the obligations of the successors in ownership or interest of Michael Harris as to such whole or part (excluding third party homebuyers per Paragraph 7 above).

9. Limitations with Respect to the City. The obligations and liabilities of the City shall apply with respect to the period during which the City owns an interest in the City Property. When the City ceases to own an interest in the City Property, the obligations and liabilities thereafter accruing shall be the obligations of the successors in ownership or interest of the City.

10. Revocation. The City acknowledges that the Private Stormwater Management System: (i) is an integral part of the Project, (ii) satisfies certain required State and City stormwater management regulations and permits; (iii) that in reliance on this Agreement, Owner is proceeding to implement the Site Plan Permits, its lenders and partners are proceeding to lend and invest money to construct the Property; (iv) that the cost of initial construction of the public streets and the Private Stormwater Management System is significant; and (v) that the Project is a benefit to the City and the general public; and therefore, although this License is a revocable license and not an easement because the Private Stormwater Management System will lie within a dedicated public right-of-way, it is the intention of the City that this be a long term license to service the Michael Harris Property so long as the Project improvements thereon operate in accordance with the Site Plan Approval, and shall not be revoked except as expressly provided in this paragraph.

The City may revoke this Agreement and remove, abandon, or cause to cease functioning, the Private Stormwater Management System improvements located in the Stormwater Management License Area only under the following circumstances: (1) if the City determines that the Private Stormwater Management System is, or is likely to become, an immediate safety hazard due to Owner's material breach of this Agreement, and/or (2) Owner repeatedly breaches in a material way and fails to cure such breaches within a reasonable cure period (such period to be determined by the City in its sole discretion as prescribed in its written notice of breach) or other additional period agreed to by the City; and then only after one hundred twenty (120) days' notice to Owner, and if appealed, exhaustion of any public and court appeal process. During such one hundred twenty days' notice to Owner, the City shall have the right to inspect, operate, maintain, repair, restore, and/or replace the Private Stormwater Management System and shall bill the Owner for the reasonable costs incurred. In the event that Owner fails to timely reimburse the City for such costs, such costs shall constitute a lien, collectible in the same manner as City property taxes, or in such other manner permitted by law. Such reimbursement obligations shall survive termination of this Agreement.

In the event the City revokes this Agreement and/or removes the Private Stormwater Management System as permitted under this Agreement, Owner shall reimburse the City for all reasonable costs associated with the removal and area restoration within sixty (60) days after receipt of an invoice with supporting documentation for such costs. In the event that Owner fails to timely reimburse the City for such costs, such costs shall constitute a lien, collectible in the same manner as City property taxes, or in such other manner permitted by law. Such reimbursement obligations shall survive termination of this Agreement.

Monetary defaults are expressly not material breaches giving rise to the remedy of revocation as the City has enforcement rights for collection of monies through the judicial system, liens and tax collection. Notwithstanding the foregoing, the City shall not take any action which causes the Project to violate the State and City stormwater regulations and shall not remove the Private Stormwater Management System until replacement facilities to service any operating buildings of the Project have been designed, approved, permitted, and constructed.

11. Indemnification. Owner shall indemnify and save harmless the City and all of its officers, contractors, employees, agents, representatives, servants, and assigns from any and all liability, loss, damages, claims, causes of action, judgments, and expenses, including reasonable attorney's fees, in connection with Owner's performance and the performance of their contractors, employees, agents, officers, and servants, of its responsibilities, or failure to perform their responsibilities, under this Agreement, except for any liability or claims for damage caused by the negligence, omission, or malfeasance of the City. In no event, however, shall Owner be liable for any indirect, consequential or punitive damages. At any time after release by the City of all bonds for the construction of the Private Stormwater Management System, and within 15 days of a written request by the City, Owner shall provide the City with evidence of insurance coverage for the Stormwater Management License Area naming the City as an insured so as to protect the City against any and all claims for personal and property injuries, including death, arising solely from Owner's use of the Stormwater Management License Area for the Private Stormwater Management System, in the amount of One Million Dollars (\$1,000,000.00) per occurrence. At the request of the City, but at least annually, Owner shall provide the City with a certificate and endorsement evidencing that the insurance required herein is in effect.

12. Notice of Transfer. The Owner shall notify the City of the legal and/or equitable transfer of any of the Owner's responsibilities for the Private Stormwater Management System within thirty (30) days of such transfer, and shall supply the City with a copy of any executed documents of said transfer, including contact information for a representative of the transferee. The Owner shall provide all subsequent owners, successors, and any other party responsible for the maintenance of the Private Stormwater Management System with a copy of this License and Maintenance Agreement with accurate as-built construction plans detailing the Private Stormwater Management System and its appurtenances.

13. Remedies. The remedies set forth herein are not exclusive. In addition to any other remedy available to the Owner and/or the City for breach of this License and Maintenance Agreement, Owner and/or the City shall have the right to bring an action for legal or equitable relief, and/or municipal citations necessary to enforce the provisions of this agreement. In no event, however, shall Owner be liable for any indirect, consequential or punitive damages.

14. Other Improvements. Nothing in this Agreement shall be deemed to authorize Owner to install any additional improvements in the Stormwater Management License Area without the approval of, and appropriate permits from, the City. The City and Owner acknowledge that notwithstanding the foregoing, a condition of the Site Plan Approval and Permits is that Owner is responsible for the initial construction of Streets A, B, and C and nothing herein modifies or limits the rights and obligations under the Site Plan Approval and Permits.

15. Notices. Any notice required to be given by this Agreement shall be in writing and shall be sent by hand delivery (with signed receipt), commercial overnight courier (which requires a signed receipt), or certified mail – return receipt requested to the following:

If to the City:

Director of Public Works  
Rockville City Hall  
111 Maryland Avenue  
Rockville, Maryland 20850

With a copy to:

Office of the City Attorney  
Rockville City Hall  
111 Maryland Avenue  
Rockville, Maryland 20850

If to the Owner:

Harris Schwalb  
Michael Harris Development, Inc.  
6345 Executive Boulevard  
Rockville, Maryland 20852

With a copy to:

Erin E. Girard, Esq.  
Lerch, Early & Brewer, Chtd.  
7600 Wisconsin Avenue  
Suite 700  
Bethesda, Maryland 20814

Either party may change its address by written notice to the other party in the manner described above. If Owner transfers the Michael Harris Property to a successor developer, such new Owner shall promptly notify the City of the Owner's new address. In addition, at such time as the Owner transfers its obligations under this Agreement to the HOA, the HOA shall promptly notify the City of its address for notice purposes.

16. No Waiver. No restriction, condition, obligation, or provision of this License and Maintenance Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

17. Modifications. This License and Maintenance Agreement shall not be modified or amended except by an instrument duly executed by Owner and the City, or their respective successors, which instrument shall be recorded among the Land Records.

18. Severability. The terms and provisions of this Agreement are severable and in the event that any term or provision is invalid or unenforceable for any reason, the remaining terms and provisions hereof shall remain in full force and effect.

19. Effective Date and Applicable Law. This License and Maintenance Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, and shall be effective upon recordation among the Land Records.

20. Stormwater Management Responsibilities. This License and Maintenance Agreement does not relieve the Owner of responsibility for providing stormwater drainage in addition to the Private Stormwater Management System as may be deemed necessary by the City or other appropriate agency.

21. Authorization and Consents. Owner hereby certifies that there are no suits, liens, leases, mortgages or trust affecting the Michael Harris Property, other than those for which the holder in interest has signed this document or otherwise consented in writing, to this License and Maintenance Agreement. Owner further certifies that all parties with an interest in the Michael Harris Property necessary to give full effect to this License and Maintenance Agreement have signed, or otherwise consented in writing to, this document.

22. Recordation. Owner agrees to record this License and Maintenance Agreement in the land records of Montgomery County, Maryland, at the Owner's expense within ten (10) days of the date of this Agreement and shall provide the City with documentary proof of recordation within five (5) days of said recordation.



23. Assignment. Owner shall not assign this Agreement or its rights hereunder, without the prior written consent of the City, except that this Agreement may be assigned by Owner to any subsequent owner of the Michael Harris Property or to any property owners association with respect to the Michael Harris Property without City's consent.

[SIGNATURE PAGES FOLLOW]



IN WITNESS WHEREOF, this License and Maintenance Agreement has been executed and sealed by the parties on the day and year indicated above.

WITNESS:

OWNER:

**MICHAEL HARRIS AT TOWER, LLC**  
a Maryland limited liability company

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DISTRICT / STATE OF \_\_\_\_\_ )  
\_\_\_\_\_) ss:  
CITY / COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that \_\_\_\_\_, who is named as \_\_\_\_\_ of Michael Harris at Tower, LLC, a Maryland limited liability company named in the foregoing instrument, personally appeared before me in said jurisdiction, and acknowledged himself to be the \_\_\_\_\_ of Michael Harris at Tower, LLC and further acknowledged that he, in such capacity and being authorized so to do, executed the foregoing instrument for the purposes therein contained and that he acknowledged said instrument to be the act and deed of Michael Harris at Tower, LLC, and that he delivered the same as such.

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

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## CONSENT OF TRUSTEES

The undersigned trustee(s) named in a certain deed of trust dated \_\_\_\_\_, securing repayment of a loan from \_\_\_\_\_, and recorded among the Land Records of Montgomery County, Maryland, in Liber \_\_\_\_\_, Folio \_\_\_\_\_, with the consent of the holder of the note secured by said deed of trust, does hereby consent to the foregoing grant of License and Maintenance Agreement and agree that his/her interest in the Subject Property shall be subordinate and subject thereto.

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Date

STATE OF MARYLAND;

SS:

COUNTY OF MONTGOMERY:

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2025, before me, the undersigned officer, personally appeared \_\_\_\_\_ known to me (or satisfactorily proven) to be the person whose name is subscribed to the within License and Maintenance Agreement and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

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

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT “A”**

**PLATS**

## **EXHIBIT B**

### **PRIVATE STORMWATER MANAGEMENT SYSTEM**

#### **Improvements and Facilities Included in the Private Stormwater Management System**

- Micro Bioretention
- Planting Media
- Underdrain
- Landscaping within facility footprint
- Mulch
- Sand
- Gravel
- Concrete Walls
- Overflow Structure/ Cleanout
- Fall Protection (if necessary)
- Storm Drain Pipe to Wall
Conveyance Inlets (Precast or Nyloplast)
Surge Stone

#### **Improvements and Facilities Excluded from the Private Stormwater Management System**

- Micro Bioretention Facility (Planter Box)
- Storm Drain Pipe from Overflow Structure to Street
- Other Utility Crossings



**ATTORNEY'S CERTIFICATION**

I HEREBY CERTIFY that the within instrument has been prepared by or under the supervision of the undersigned attorney.

Date: \_\_\_\_\_

**INFORMATION FOR RECORDING:**

Record Legal Description: \_\_\_\_\_

Parties: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Parcel Identification No.: \_\_\_\_\_  
\_\_\_\_\_

AFTER RECORDATION, PLEASE MAIL TO:

Erin E. Girard  
Lerch, Early & Brewer, Chtd.  
7600 Wisconsin Avenue  
Suite 700  
Bethesda, MD 20814