

**Tax Identification Numbers:** 04-03903443, 04-03903454, 04-03903465, 04-03903578, 04-03903580, 04-03903591, 04-03903693, 04-03903705, 04-03903738, 04-03903740, 04-03903864, 04-03903911, 04-03903922

**AFTER RECORDING RETURN TO:**

Office of the Rockville City Attorney  
111 Maryland Avenue, 3<sup>rd</sup> Floor  
Rockville, Maryland 20850  
Attn: Robert E. Dawson, City Attorney  

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(For Recorder's Use)

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**DEED OF DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS**  
**For**  
**The Mayor and Council of Rockville's**  
**Moderately Priced Dwelling Unit (MPDU) Homeownership Program**

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**THIS DEED OF DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS FOR THE MAYOR AND COUNCIL OF ROCKVILLE'S MODERATELY PRICED DWELLING UNIT (MPDU) HOMEOWNERSHIP PROGRAM** (this "**Declaration**") is made this \_\_\_\_\_ day of \_\_\_\_\_ 2025 (the "**Effective Date**"), by **MICHAEL HARRIS AT TOWER, LLC**, a Maryland limited liability company, qualified to conduct business in the State of Maryland, having a principal address at 6345 Executive Blvd., Rockville, Maryland 20852 (the "**Declarant**"), in order to comply with Chapter 13.5 of the Rockville City Code (the "**MPDU Ordinance**") and the associated City of Rockville, Maryland Moderately Priced Housing Regulations (the "**MPDU Regulations**").

**RECITALS**

**WHEREAS**, the Declarant is the fee owner of those certain parcels of land located in the City of Rockville, Maryland, as more particularly described in **Exhibit A** (the "**Tower Preserve Townhomes Real Property**"), which Tower Preserve Townhomes Real Property are part of a residential community located in the City of Rockville consisting of, among other things, eighty-two (82) lots on which residential townhouse dwelling units with space for two (2) cars will be constructed, with public use space and open space, and private alleys (the "**Tower Preserve Development**"); and

**WHEREAS**, the Declarant was formed and organized as a Maryland limited liability company for the purpose of, among other things, developing, financing, constructing, owning and selling eighty-two (82) residential townhouse dwelling units with space for two (2) cars within the Tower Preserve Development, including thirteen (13) Moderately Priced Dwelling Units; and

**WHEREAS**, on July 24, 2024, the Planning Commission for the City of Rockville approved Level 2 Site Plan Application #2024-00473 ("**STP #2024-00473**"), permitting, subject

to certain conditions of approval, the development of, among other things, the Tower Preserve Development; and

**WHEREAS**, in accordance with the MPDU Ordinance, a minimum of thirteen (13) townhouse units developed and constructed on the Tower Preserve Townhomes Real Property are required to be designated as Moderately Priced Dwelling Units (“**MPDUs**”) that must be reserved for sale to and occupancy by Eligible Households; and

**WHEREAS**, in order to comply with the MPDU Ordinance, the Declarant has agreed to designate, construct, administer, and offer for sale thirteen (13) Tower Preserve Townhouse Units to be constructed on the Tower Preserve Townhomes Real Property in the Tower Preserve Development as Moderately Priced Dwelling Units, listed in Section 1 below (the “**MPDU Townhouse Units**”), that will be reserved and designated for purchase and occupancy by Eligible Households pursuant to the terms and conditions of this Declaration, and Article II of that certain Moderately Priced Dwelling Unit Program Agreement (For Sale Units), by and among the Declarant and The Mayor and Council of Rockville, a body corporate and politic and municipal corporation of the State of Maryland (the “**Mayor and Council**”), dated as of the date of this Declaration (the “**MPDU Program Agreement**”); and

**WHEREAS**, the Declarant shall by this Declaration impose upon each MPDU Townhouse Unit listed herein certain restrictive covenants, conditions and requirements for the benefit of the Mayor and Council and Eligible Households who desire to reside in the City of Rockville, Maryland and purchase available MPDU Townhouse Units in the Tower Preserve Development; and

**WHEREAS**, the Declarant is required to record this Declaration among the land records of Montgomery County, Maryland in order to provide notice that the Tower Preserve Townhomes Real Property and the MPDU Townhouse Units constructed thereon are subject to the restrictive covenants, conditions and requirements set forth below to maintain the long-term affordability of the MPDU Townhouse Units for the duration of the MPDU Townhouse Unit Compliance Control Period; and

**WHEREAS** the Declarant has agreed to execute all necessary documents in order to evidence compliance with the MPDU Ordinance, which this Declaration is intended to evidence, as more particularly set forth below; and

**WHEREAS**, all capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the MPDU Program Agreement.

**NOW, THEREFORE**, the Declarant hereby declares that the Tower Preserve Townhomes Real Property and each of the MPDU Townhouse Units constructed thereon shall be held, transferred, conveyed, and sold subject to the following restrictive covenants, conditions and requirements which are for the purpose of offering for sale moderately priced dwelling units to Eligible Households for the duration of the MPDU Townhouse Unit Compliance Control Period,

as further described herein, and such restrictive covenants, conditions and requirements shall run with the Tower Preserve Townhomes Real Property submitted to this Declaration and each MPDU Townhouse Unit constructed thereon and shall be binding on all parties having any right, title, or interest in the Tower Preserve Townhomes Real Property and each MPDU Townhouse Unit constructed thereon, their respective heirs, successors, successors-in-title and assigns.

## **DECLARATIONS**

1. **Designation of Moderately Priced Dwelling Units.** In compliance with the MPDU Ordinance, the Declarant covenants, declares, and agrees to designate the following MPDU Townhouse Units to be constructed on the Tower Preserve Townhomes Real Property as Moderately Priced Dwelling Units, solely for sale to and occupancy by Eligible Households during the MPDU Townhouse Unit Compliance Control Period, in accordance with the terms of this Declaration and Article II of the MPDU Program Agreement:

Address	Tax Identification Number	Initial Maximum Sale Price
1. 2124 Towler Street	04-03903443	\$340,000
2. 2120 Towler Street	04-03903454	\$195,000
3. 2116 Towler Street	04-03903465	\$245,000
4. 2221 Hillpark Lane	04-03903578	\$340,000
5. 2225 Hillpark Lane	04-03903580	\$245,000
6. 2229 Hillpark Lane	04-03903591	\$340,000
7. 2317 Rosefield Lane	04-03903693	\$245,000
8. 2321 Rosefield Lane	04-03903705	\$195,000
9. 2333 Rosefield Lane	04-03903738	\$245,000
10. 2337 Rosefield Lane	04-03903740	\$195,000
11. 2240 Towler Street	04-03903864	\$340,000
12. 2220 Towler Street	04-03903911	\$340,000
13. 2216 Towler Street	04-03903922	\$195,000

2. **Initial MPDU Sale Price Restrictions.**

- (a) In accordance with the MPDU Ordinance, the Declarant covenants, declares, and agrees that the initial sale price for each of the MPDU Townhouse Units shall not exceed the initial maximum sale price established by the Mayor and Council, as listed in Section 1 above. The initial maximum sale price shall include closing costs and brokerage fees (if any).
- (b) The Declarant covenants and agrees that the owners of the MPDU Townhouse Units shall have full access to all amenities provided to owners of the market-rate Tower Preserve Townhouse Units, if any, subject to the rules, regulations and conditions governing the use of these facilities for all owners as reasonably established by the Declarant, its agent, or a home owners association created for the Tower Preserve Development (“**HOA**”). For the duration of the MPDU

Townhouse Unit Compliance Control Period, each owner of a MPDU Townhouse Unit shall pay no more than fifty percent (50%) of the regular monthly HOA assessment charged to owners of the market-rate Tower Preserve Townhouse Units. The fifty percent (50%) cap on regular monthly HOA assessments for each owner of a MPDU Townhouse Unit will not apply to special HOA assessments charged to such owner.

**3. Initial Sale of MPDUs.**

- (a) Offering to the General Public. The Declarant covenants, declares, and agrees to offer each of the MPDU Townhouse Units for sale to an Eligible Household purchaser pursuant to the MPDU Ordinance and the terms of the MPDU Program Agreement.
- (b) Notice must be included in any agreement of sale which fully and completely discloses the resale price restrictions and controls established in this Declaration. A copy of the agreement signed by all parties shall be delivered to the DHCD Director no later than thirty (30) days prior to settlement.
- (c) The deed from Declarant to the initial purchaser of each MPDU Townhouse Unit shall contain the following language setting forth that the townhouse unit is subject, for the duration of the MPDU Townhouse Unit Compliance Control Period, to this Declaration, and that all future deeds transferring the MPDU Townhouse Unit shall be subject to this Declaration.

*THIS TOWNHOUSE UNIT IS SUBJECT TO THAT CERTAIN DEED OF DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS FOR THE MAYOR AND COUNCIL OF ROCKVILLE'S MODERATELY PRICED DWELLING UNIT (MPDU) HOMEOWNERSHIP PROGRAM, RECORDED IN DEED BOOK \_\_\_\_\_, PAGE \_\_\_\_\_ AMONG THE MONTGOMERY COUNTY LAND RECORDS. This provision shall run with the property and bind upon the property and shall bind Grantee(s) and each of Grantee's, heirs, personal representatives, successors and assigns. All future deeds for this property shall contain this provision.*

- (d) Notwithstanding anything herein to the contrary, failure to comply with the terms of this Section 3 shall not in any way diminish or invalidate this Declaration as to any MPDU Townhouse Unit.

**4. Subsequent MPDU Sale Price Restrictions.** In accordance with the MPDU Ordinance, during the MPDU Townhouse Unit Compliance Control Period, and subject to the foreclosure regulations set forth in Section 13.5-9(e) of the MPDU Ordinance, MPDU Townhouse Units shall not be resold or refinanced by either the initial purchasers of MPDU Townhouse Units or any subsequent purchasers (each referred to herein as an “**Owner**”) for a price greater than the original selling price for the applicable MPDU Townhouse Unit,

plus: (a) a percentage of the applicable MPDU Townhouse Unit's original selling price equal to the increase in the cost of living, as determined by the consumer price index, (b) an allowance for improvements made to the applicable MPDU Townhouse Unit by the selling Owner, not to exceed ten percent (10%) of the selling price calculated in accordance with subsection (a) of this Section 4, (c) an allowance for closing costs which were not paid by the Declarant, but which was paid by the initial buyer of the applicable MPDU Townhouse Unit, for the benefit of the subsequent buyer of the applicable MPDU Townhouse Unit, and (d) a reasonable sales commission if the applicable MPDU Townhouse Unit is not sold within sixty (60) days to an Eligible Households from the Eligibility List (the "MPDU Resale Price").

**5. Subsequent Sale of MPDUs – During the MPDU Townhouse Unit Compliance Control Period.**

- (a) Notification Requirements. An Owner shall immediately notify the DHCD Director in the event such Owner wants to offer his or her MPDU Townhouse Unit for resale during the MPDU Townhouse Unit Compliance Control Period.
- (b) Offering. Each MPDU Townhouse Unit that is offered for resale during the MPDU Townhouse Unit Compliance Control Period must be offered as follows:
  - i. *Housing Agency.* The MPDU Townhouse Unit shall first be exclusively offered for resale to the Housing Agency. The DHCD Director shall notify the Housing Agency of any MPDU Townhouse Unit that will be offered for resale. Upon receipt of such notice, the Housing Agency will have twenty-one (21) days to indicate to the selling Owner of its interest in acquiring the MPDU Townhouse Unit.
  - ii. *Eligible Households on the Eligibility List.* If the Housing Agency does not exercise its right to purchase the MPDU Townhouse Unit being offered for resale within the timeframes set forth in the MPDU Ordinance, the MPDU Townhouse Unit shall next be exclusively offered for resale to Eligible Households who are on the Eligibility List for forty-five (45) days.
  - iii. *General Public.* If an Eligible Household from the Eligibility List does not exercise its right to purchase the MPDU Townhouse Unit being offered for resale within the forty-five (45) day period, the selling Owner may then offer the MPDU Townhouse Unit to Eligible Households from the general public. No later than thirty (30) days prior to settlement of any resale to an Eligible Household from the general public, the selling Owner shall deliver to the DHCD Director written proof of buyer's eligibility, which shall be satisfactory to the DHCD Director.

- iv. *Market Rate Sale.* If the MPDU Townhouse Unit remains unsold 180 days after the unit is offered for resale to the general public, then the City Manager may permit the selling Owner to sell the MPDU Townhouse Unit at a price in excess of the MPDU Resale Price (the “**Market Rate Price**”). If the MPDU Townhouse Unit is sold at the Market Rate Price, the selling Owner must pay to the Mayor and Council all sales proceeds in excess of the MPDU Resale Price. Once the sales proceeds are paid to the Mayor and Council for deposit into its Moderately Priced Housing Fund, the Mayor and Council will release this Declaration from the applicable MPDU Townhouse Unit.
- (c) Notice must be included in any agreement of sale for a MPDU Townhouse Unit which fully and completely discloses the resale price restrictions and controls established in this Declaration. A copy of the agreement of sale signed by all parties shall be delivered to the DHCD Director no later than thirty (30) days prior to settlement.
- (d) Intentionally Omitted.
- (e) No transfer or conveyance of any MPDU Townhouse Unit after the initial sale shall occur without the written consent of the City Manager, or his authorized designee, as evidenced by the City Manager’s or authorized designee’s signature on the deed. Additionally, the deed from an Owner to a subsequent purchaser of each MPDU Townhouse Unit shall contain the following language setting forth that the townhouse unit is subject, for the remaining duration of the MPDU Townhouse Unit Compliance Control Period, to this Declaration, and that all future deeds transferring the MPDU Townhouse Unit shall be subject to this Declaration.

*THIS TOWNHOUSE UNIT IS SUBJECT TO THAT CERTAIN DEED OF DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS FOR THE MAYOR AND COUNCIL OF ROCKVILLE’S MODERATELY PRICED DWELLING UNIT (MPDU) HOMEOWNERSHIP PROGRAM, RECORDED IN DEED BOOK \_\_\_\_\_, PAGE \_\_\_\_\_ AMONG THE MONTGOMERY COUNTY LAND RECORDS. This provision shall run with the property and bind upon the property and shall bind Grantee(s) and each of Grantee’s, heirs, personal representatives, successors and assigns. All future deeds for this property shall contain this provision.*

- (f) Failure to comply with the terms of this Section 5 shall not in any way diminish or invalidate this Declaration as to any MPDU Townhouse Unit.

**6. Subsequent Sale of MPDUs – Post MPDU Townhouse Unit Compliance Control Period.**

- (a) If an MPDU Townhouse Unit is sold or resold following the expiration of the MPDU Townhouse Unit Compliance Control Period, the price and resale restrictions set forth in Section 5 above shall not apply. However, for the first sale of each MPDU Townhouse Unit following the expiration of the MPDU Townhouse Unit Compliance Control Period, the selling Owner shall pay to the Mayor and Council, for deposit into its Moderately Priced Housing Fund, one-half (1/2) of the excess of the total resale price over the sum of the following: (i) the original selling price, (ii) a percentage of the MPDU Townhouse Unit's original selling price equal to the increase in the cost of living as determined by the consumer price index, (iii) an allowance for improvements made to the MPDU Townhouse Unit not to exceed ten percent (10%) of the selling price calculated in accordance with subsection (a)(ii) of this Section 6, and (iv) a reasonable sales commission. The City Manager shall adjust the amount paid into the Moderately Priced Housing Fund so that the selling Owner retains at least \$10,000 of the excess of the resale price over the sum of the items in (i) through (iv).
- (b) When the City Manager determines that the price and terms of the sale or resale of the MPDU Townhouse Unit covered by Section 6(a) have been met, and the Mayor and Council receives the amount due, the Mayor and Council will release this Declaration from the applicable MPDU Townhouse Unit.

**7. Principal Residence Requirement.**

- (a) Subject to Section 13.5-8(a)(6) of the MPDU Ordinance, Owners of MPDU Townhouse Units (i) shall occupy the MPDU Townhouse Unit subject to this Declaration as his/her principal residence, and (ii) shall not lease, sublease, rent or otherwise accept compensation for use of the MPDU Townhouse Unit premises or any portion thereof. In the event of any violation of this provision, Owner shall be liable to the Mayor and Council for 150% of the compensation collected by such Owner for the period the lessee (or sublessee) is in violation, in addition to any other remedies to which the Mayor and Council is entitled in law or equity.
- (b) Owner further agrees to submit to the DHCD Director annually a notarized affidavit executed by Owner on the anniversary date of initial settlement certifying Owner's continuing occupancy of the MPDU Townhouse Unit as the purchaser's primary residence.

**8. Obligation to Maintain.** Declarant and each successor Owner of a MPDU Townhouse Unit is obligated during its ownership of the MPDU Townhouse Unit to keep and maintain the MPDU Townhouse Unit in good order, repair, and condition.

**9. Financing.** This Declaration shall be superior to all instruments securing financing with respect to each MPDU Townhouse Unit, and this Declaration shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that, subject to

Section 13.5-9(e) of the MPDU Ordinance, this Declaration may be released in the event of foreclosure by lending institution holding a first priority purchase money deed of trust on the MPDU Townhouse Unit.

**10. Non-Discrimination.**

- (a) The Declarant shall not, in the offering for sale of MPDU Townhouse Units, discriminate against any person on the grounds of Race, National Origin, Color, Marital Status, Sex, Religion, Age/Elderliness, Disability (physical or mental), Sexual Orientation, or Familial Status (being pregnant or having children under age 18), or discriminate in violation of any applicable law or regulation. The Declarant shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any related rules and regulations.
- (b) The Declarant agrees not to discriminate against prospective Owners on the basis that they receive or are eligible to receive housing assistance under any Federal, State, or local housing assistance program.

**11. Administration of Declaration.**

- (a) Declarant, for itself and its heirs, assigns and successors, hereby irrevocably assigns, transfers, and conveys unto the Mayor and Council and its designees all of its rights, interest or obligation to enforce and maintain in full force and effect the terms and conditions, and requirements, of this Declaration.
- (b) The Mayor and Council and its designee shall monitor and evaluate the Owners' efforts in performing the Owners' obligations under this Declaration, and each Owner agrees to cooperate fully with the Mayor and Council's monitoring and administration efforts. Each Owner shall submit to the Mayor and Council or its designee any documents or information that may be reasonably required by the Mayor and Council from time to time.

**12. Default; Enforcement.** In the event that the Declarant defaults in the performance of any of the covenants or its obligations under this Declaration, the Mayor and Council may, after providing notice of such default to the Declarant and a reasonable period within which Declarant may cure such default, at its option, pursue any one or more of the remedies provided by the MPDU Program Agreement, at law or in equity, including but not limited to the right to apply to any court of competent jurisdiction within the State of Maryland to enforce specific performance by the Declarant of its obligations hereunder or to obtain an injunction against any violations hereof, or to obtain any other such relief as may be appropriate.

**13. Waiver; Forbearance.** The Mayor and Council shall have the right to waive at its option any of the rights granted to it hereunder to enforce the terms hereof, provided that the Mayor and Council's election not to pursue any particular remedy in the event of a default



hereunder shall not be construed to preclude or be a waiver of the Mayor and Council's right to pursue any of the other remedies with respect to the violation for which such remedy was pursued or with respect to any other violation prior or subsequent thereto. In addition, any forbearance by the Mayor and Council in exercising any of its rights hereunder shall not constitute a waiver or preclude the exercise of such rights.

14. **Estoppels.** From time to time upon the written request of the Declarant, the City Manager shall provide to any purchasers of a MPDU Townhouse Unit or any lender making a loan secured by the MPDU Townhouse Unit an estoppel certificate confirming the provisions of the Declaration; certifying, to the best of the City Manager's knowledge, that the Declarant remains in full force and effect; and specifying whether any default(s) exist under any of the provisions of the Declaration.
15. **Amendment.** This Declaration may be amended only by written agreement by and between the Declarant and the Mayor and Council.
16. **Governing Law.** This Declaration shall be governed by the laws of the State of Maryland.
17. **Severability.** The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions hereof.
18. **Covenants Run with the Land.** The covenants set forth herein shall be deemed covenants running with the land and shall be an encumbrance on each of the MPDU Townhouse Units for the duration of the MPDU Townhouse Unit Compliance Control Period. Such covenants shall be binding upon the Declarant and its successors and assigns, including any successors in title to each of the MPDU Townhouse Units.

**IN WITNESS WHEREOF**, the Declarant has caused this Declaration to be executed as of the date first above written.

**DECLARANT**

**Michael Harris at Tower, LLC**, a Maryland limited liability company.

**By: Tower Manager, LLC**, a Maryland limited liability company, Manager

By: \_\_\_\_\_  
Name: Harris Schwalb  
Title: Manager

**ACKNOWLEDGMENT**

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this the \_\_\_\_ day of \_\_\_\_\_, 2025, before me, personally appeared Harris Schwalb, who acknowledged himself to be the Manager of Michael Harris at Tower, LLC, a Maryland limited liability company, and named as Owner in the above instrument, and that he, as Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Michael Harris at Tower, LLC, a Maryland limited liability company by him as the Manager of said Michael Harris at Tower, LLC.

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED TO:**

**THE MAYOR AND COUNCIL OF  
ROCKVILLE**, a body corporate and municipal  
corporation of the State of Maryland

By: \_\_\_\_\_  
Jeff Mihelich, City Manager

**Approved as to form:**

By: \_\_\_\_\_  
Robert E. Dawson, City Attorney

**ACKNOWLEDGMENT**

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this the \_\_\_\_ day of \_\_\_\_\_ 2025, before me, personally appeared Jeff Mihelich, who acknowledged himself to be the City Manager of The Mayor and Council of Rockville and that he, as City Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of The Mayor and Council of Rockville by him as the City Manager of The Mayor and Council of Rockville.

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

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

## **Exhibit A**

### **Legal Description**

All those lots or parcels of land, together with the improvements thereon and appurtenances thereunto belonging, lying, situate and being in the City of Rockville, Montgomery County, Maryland, being more particularly described as follows:

Lots 2-4, Block B, Tower Preserve, recorded as Plat No. 26231 in the Land Records for Montgomery County (“Land Records”), and Lots 4, 14-16, 26, 27, 30, 31, 43, 48 and 49, Block B, Tower Preserve, recorded as Plat No. 26232 in the Land Records.

NOTE FOR INFORMATIONAL PURPOSES ONLY:

<b>Address</b>	<b>Lot #</b>	<b>Block</b>	<b>Tax ID Number</b>
2124 Towler Street, Rockville, MD 20852	2	B	04-03903443
2120 Towler Street, Rockville, MD 20852	3	B	04-03903454
2116 Towler Street, Rockville, MD 20852	4	B	04-03903465
2221 Hillpark Lane, Rockville, MD 20852	14	B	04-03903578
2225 Hillpark Lane, Rockville, MD 20852	15	B	04-03903580
2229 Hillpark Lane, Rockville, MD 20852	16	B	04-03903591
2317 Rosefield Lane, Rockville, MD 20852	26	B	04-03903693
2321 Rosefield Lane, Rockville, MD 20852	27	B	04-03903705
2333 Rosefield Lane, Rockville, MD 20852	30	B	04-03903738
2337 Rosefield Lane, Rockville, MD 20852	31	B	04-03903740
2240 Towler Street, Rockville, MD 20852	43	B	04-03903864
2220 Towler Street, Rockville, MD 20852	48	B	04-03903911
2216 Towler Street, Rockville, MD 20852	49	B	04-03903922

**(End of Exhibit A)**