

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

## LICENSE AND MAINTENANCE AGREEMENT Private Monuments

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 (“**MH**” or “**Owner**”), its successors and assigns.

### RECITALS:

R1. MH is the owner of all of the property depicted on Plat Nos. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ (collectively, the “**Plats**”), recorded among the land records of Montgomery County, Maryland (collectively, the “**MH Property**”).

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

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 MH Property and the Project.

R4. The Plats include the dedication of Towler Street, Rosefield Lane and Hillpark Lane as public rights-of-way. The Towler Street and Rosefield Lane rights-of-way are collectively referred to in this Agreement as the “**City Property**”.

R5. Certain monuments are planned to be located within the City Property to serve the Project (“**Private Monuments**”), as shown on **Exhibit A**, attached hereto.

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 Monuments within the City Property for the benefit of the MH Property for the life of the Project under the terms set forth in this Agreement.

R7. In reliance on this Agreement to permit the Private Monuments to be located within the City Property to service the MH Property for the life of the Project, 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, in consideration of the foregoing recitals, 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 Monuments License. Subject to the reservations and conditions set forth herein, 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 “Monuments License Areas” on the plan attached hereto as **Exhibit B (“Monuments License Areas”)**, for the purpose of constructing, operating, inspecting, maintaining, repairing, restoring, and replacing the Private Monuments, together with a right of entry for all proper purposes associated with such construction, operation, inspection, 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.

2. Restrictions. Except as provided herein, the Owner, without the prior written consent of the City, will neither perform nor permit upon or within the Monuments License Area: (i) the erection or installation of any structure, building or other improvements, (ii) the excavation or filling of land, or (iii) the installation of trees, shrubs, or other landscaping, unless shown on the approved Site Plan 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.

3. Obligation for Construction of Private Monuments. In the event the Site Plan Approval is implemented on the Property, and all necessary permits and bonds have been obtained and posted, Owner shall be responsible to construct and install the Private Monuments in accordance with City permits within the Monuments License Areas and shall further provide for inspection and necessary maintenance of the Private Monuments in accordance with the approved design standards and all applicable laws, rules and regulations. City issuance of any required permit for the Private Monuments shall constitute necessary consent for the construction of the Private Monuments within the Monuments License Areas. 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.

4. Maintenance and Repair After Construction. Upon completion of construction of the Private Monuments, Owner shall be responsible for inspecting and maintaining the Private Monuments in a good state of repair and in a safe and orderly condition. Owner’s maintenance, inspection, operation, repair and replacement responsibility is limited to only the Private Monuments under this Agreement. If the City damages the Private Monuments in the course of maintaining the City’s public infrastructure within the City Property, then Owner shall be responsible for repairing the damage to the Private Monuments, 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 Director of Public Works, seventy-two (72) hours prior to performing any inspection, maintenance, repair, or replacement of any improvements in the Monuments License Area, except for regularly occurring maintenance. If required, Owner shall secure all necessary City permits before performing 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 perform its responsibilities to inspect, maintain, repair, or replace the Private Monuments as required by this Agreement or the City Code may result in the City seeking any remedy afforded by law, including, but not limited to, issuance of a City citation and fine. The obligations and remedies set forth in this Paragraph 4 are in addition to other obligations and remedies of 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 Monuments.

5. Clean-Up and Restoration. Upon satisfactory completion of any work by Owner and/or its contractors in the Monuments License Areas, 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 notify the City of the damage and shall repair such damage according to a schedule as reasonably determined by the Department of Public Works.

6. City Rights. Subject to the notice requirements in this paragraph, if the Owner shall fail to properly perform its responsibilities to install, inspect, maintain, repair, and replace the Private Monuments in accordance with the approved design standards and all applicable laws, rules, regulations, and development approvals, the City may, but is not obligated to, access the Private Monuments and perform all necessary installation, inspection, maintenance, repair, and/or replacement, and may assess the Owner for the cost of the work. Prior to performing such work, except in an emergency, the City shall provide the Owner at least thirty (30) days written notice of the failure to adequately install, inspect, maintain, repair, and/or replace the Private Monuments to applicable standards, along with a reasonable period of time to obtain a permit and perform any required corrective actions. If the Private Monuments are not adequately inspected, maintained, operated, repaired or restored to City standards within such stated cure period, then the City shall deliver a notice of the City's intention to perform work after ten (10) days at the Owner's expense.

Notwithstanding the foregoing, the City shall also have the right, in its sole discretion but without obligation, to provide emergency repairs to the Private Monuments 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 work performed by the City pursuant to this paragraph within sixty (60) days of delivery of an invoice with supporting documentation for such work or in accordance 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 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.

7. No Limitation on City Right-of-Way Work. Nothing in this Agreement shall limit the City's right to improve, inspect, maintain, repair, or replace any public improvements within rights-of-way, and the City 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 Monuments.

8. Ownership and Insurable Interest. Notwithstanding who constructed and installed the Private Monuments, upon their completion, the ownership of, the insurable interest in, and responsibility to replace, the Private Monuments shall be held by the Owner, and its successors and assigns.

9. 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 9 or elsewhere in this Agreement, at such time as the homeowners association for the MH Property (the "HOA") is legally created, the HOA shall be solely responsible for (i) maintaining, inspecting, operating, repairing and replacing the Private Monuments, (ii) reimbursing the City for any costs incurred pursuant to Paragraphs 4 through 6 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 MH (or any successor developer of the MH 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 Paragraphs 4 through 6 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.

10. Limitations with Respect to MH. The obligations and liabilities of MH shall apply with respect to the period during which MH owns an interest in any part of the MH Property which utilizes the Monuments License Areas. When MH ceases to own an interest in the MH 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 MH as to such whole or part (excluding third party homebuyers per Paragraph 9 above).

11. 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.

12. Revocation. The City acknowledges that the Private Monuments: (i) are an integral part of the Project, (ii) that in reliance on this Agreement, Owner is proceeding to implement the Approved Site Plan, and its lenders and partners are proceeding to lend and invest money to construct the Property; and (iii) 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 Monuments 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 MH Property so long as the Private Monuments 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 and abandon the Private Monuments located in the Monuments License Area only under the following circumstances: (1) if the City determines that the Private Monuments are, or are likely to become, an immediate safety hazard due to Owner's material breach of this Agreement, 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' (120) notice to Owner, the City shall have the right, in its sole discretion, to inspect, maintain, repair, restore, and/or replace the Private Monuments 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 Monuments 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.

13. 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 gross negligence or willful misconduct of the City. In no event, however, shall Owner be liable for any indirect, consequential or punitive damages. Any liability on the part of the City shall be subject to the limitations and immunities provided by law, including without limitation, the Local Government Tort Claims Act, Section 5-303(s) of the Courts and Judicial Proceedings Article of the Maryland Code.

14. Insurance. Prior to the City's release of all bonds for the construction of the Private Monuments, Owner, within 15 days of a written request by the City, shall provide the City with evidence of insurance coverage for the Monuments License Area naming the City as an insured party 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 Monuments License Area 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.

15. 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 Monuments 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 Monuments with a copy of this License and Maintenance Agreement with accurate as-built construction plans detailing the Private Monuments.

16. 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.

17. Other Improvements. Nothing in this Agreement shall be deemed to authorize Owner to install any additional improvements in the Monuments License Area without the approval of, and appropriate permits from, the City.

18. 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:

City Attorney  
Rockville City Hall  
111 Maryland Avenue  
Rockville, Maryland 20850

If to the Owner:

Michael Harris at Tower  
c/o Harris Schwalb  
6345 Executive Boulevard  
Rockville, MD 20852  
E-mail: [hschwalb@michaelharrishomes.com](mailto:hschwalb@michaelharrishomes.com)

with a copy to:

Erin E. Girard  
Lerch, Early and Brewer, Chartered  
7600 Wisconsin Avenue, Suite 700  
Bethesda, MD 20814  
E-mail: [eegirard@lercheearly.com](mailto:eegirard@lercheearly.com)

Either party may change its address by written notice to the other party in the manner described above. If Owner transfers the MH 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. Authorization and Consents. Owner hereby certifies that there are no suits, liens, leases, mortgages or trust affecting the MH 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 MH Property necessary to give full effect to this License and Maintenance Agreement have signed, or otherwise consented in writing to, this document.

24. 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 (30) days of the date of this Agreement and shall provide the City with documentary proof of recordation within five (5) days of said recordation.

25. 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 MH Property or to any property owners association with respect to the MH Property without City's consent.





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:

WITNESS:

**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: \_\_\_\_\_

**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.: \_\_\_\_\_  
\_\_\_\_\_

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