

**TOWN OF HARRISON  
VILLAGE OF HARRISON  
ATTORNEY'S OFFICE**

**MEMORANDUM**

E-7  
V-E-1

TO: Richard Dionisio, Supervisor/Mayor  
Members of the Town and Village Boards

FROM: Andrea C. Rendo, Deputy Village Attorney



DATE: September 21, 2023

SUBJECT: **Proposed Stormwater Management System Maintenance and Easement Agreement between AVB Harrison, LLC and the Town/Village of Harrison**

Attached with the endorsement of the Town Engineer, is copy of the above-referenced, proposed Agreement. I have reviewed the Agreement, deem it to be in order and accordingly request authorization for the Supervisor/Mayor to execute the Agreement and associated transfer documents.

ACR:ld

Attachment

cc: Michael Amodeo, Town Engineer

**Record and Return to:**

Andrea Carapella Rendo, Esq.  
Deputy Village Attorney  
Town/Village of Harrison  
1 Heineman Place  
Harrison, New York 10528

**STORMWATER MANAGEMENT SYSTEM MAINTENANCE AND EASEMENT  
AGREEMENT**

**THIS STORMWATER MANAGEMENT SYSTEM MAINTENANCE AND EASEMENT AGREEMENT** (this "Agreement") is made and entered into the \_\_\_ day of \_\_\_\_\_, 2023, by and between AVB Harrison, LLC, a Delaware limited liability company having its offices at c/o AvalonBay Communities, Inc., 4040 Wilson Boulevard, Suite 1000, Arlington, Virginia 22203 ("Grantor"), and the Town/Village of Harrison, a municipal corporation having its offices at 1 Heineman Place, Harrison, New York 10528 ("Grantee").

**WITNESSETH:**

**WHEREAS**, Grantor is the owner of certain real property in the Town/Village of Harrison shown as Lot 1 and Lot 2 on that certain map filed in the Office of the County Clerk, County of Westchester on December 18, 2018, as Map. No. 29290, and described in Exhibit A attached hereto (the "Site"); and

**WHEREAS**, Grantor intends to develop the Site as a mixed-use multi-family residential and commercial facility known as "Avalon Harrison" (the "Project"); and

**WHEREAS**, on June 26, 2018, the Planning Board of the Town/Village of Harrison (the "Planning Board") adopted Resolution No. PB 2018-06 (the "Approval"), granting conditional site plan approval for the development of the Project; and

**WHEREAS**, the Planning Board approved the construction and installation of a stormwater management system serving the Project (the "Stormwater Management System"), and coverage for the Project under New York State Department of Environmental Conservation ("NYSDEC") SPDES General Permit for Stormwater Discharges from Construction Activities (Permit No. GP-0-15-002); and

**WHEREAS**, Chapter 130 of the Town Code of the Town of Harrison, entitled "Stormwater Management and Erosion and Sediment Control" requires Grantor to grant the Town and the Village of Harrison an easement (the "Easement") as described and delineated in the plans approved by the Planning Board and prepared by Milone & MacBroom, Inc., which are listed below, permitting the Town access to the Property for the purposes of inspecting the stormwater management and erosion and sediment control facilities to be constructed as part of the Project (the "Stormwater Control Measures"); and

**WHEREAS**, Grantee and Grantor desire that the Stormwater Management System be built and installed in accordance with the approved Project Documents (as defined below) and all applicable NYSDEC regulations, standards and guidelines for the Project and thereafter be maintained, cleaned, repaired, replaced, and continued in perpetuity in order to ensure optimum performance of the components of the Stormwater Management System.

**NOW THEREFORE**, Grantee and Grantor hereby agree as follows:

1. Grantor shall construct and install the Stormwater Management System in accordance with the approved Project Documents and all applicable NYSDEC regulations, standards and guidelines.
2. Grantor shall repair and maintain the Stormwater Management System, as needed, to ensure that it shall remain fully operational.
3. Grantor represents and ensures that the following design documents (the "Project Documents") contain all necessary information to construct, operate, and maintain the Stormwater Management System for the lifetime of the facility, as required by NYSDEC for compliance with the conditions of NYSDEC SPDES General Permit No. GP-0-15-002, as may be amended from time to time:
  - (a) Plans approved by the Planning Board consisting of the following drawings, among others, prepared by Milone & MacBroom, Inc. ("M&M");

Drawing No.	Name	Title	Date
01		TITLE SHEET	rev. 5/30/18
02	IN	INDEX & OVERALL SITE PLAN	8/17/17 rev. 5/14/18
03	EX-1	EXISTING CONDITIONS	8/17/2017
04	EX-2	EXISTING CONDITIONS	8/17/2017
05	LA-1	SITE PLAN - LAYOUT AND LANDSCAPING	8/17/17 rev. 5/14/18
06	LA-2	SITE PLAN - LAYOUT AND LANDSCAPING	8/17/17 rev. 5/14/18
07	GR-1	SITE PLAN - GRADING	8/17/17 rev. 5/14/18
08	GR-2	SITE PLAN - GRADING	8/17/17 rev. 5/14/18
09	UT-1	SITE PLAN - UTILITIES	8/17/17 rev. 5/30/18
10	UT-2	SITE PLAN - UTILITIES	8/17/17 rev. 5/30/18
11	PR-1	WATER PLAN AND SECTION	5/14/18 rev. 5/18/18
12	PR-2	SANITARY PLAN AND PROFILE	5/14/18

			rev. 5/30/18
13	PR-3	STORMWATER PLAN AND PROFILE	5/14/2018
14	PR-4	STORMWATER PLAN AND PROFILE	5/14/18 rev. 5/30/18
15	PR-5	STORMWATER PLAN AND PROFILE	5/14/18 rev. 5/30/18
16	PR-6	STORMWATER PLAN AND PROFILE	5/14/2018
17	PR-7	STORMWATER PLAN AND PROFILE	5/14/2018
18	SE-1	SITE PLAN - SEDIMENT AND EROSION CONTROL	8/17/17 rev. 5/14/18
19	SE-2	SEDIMENT & EROSION CONTROL NOTES & DETAILS	8/17/17 rev. 5/14/18
20	SD-1	SITE DETAILS	8/17/17 rev. 5/14/18
21	SD-2	SITE DETAILS	8/17/17 rev. 5/14/18
22	SD-3	SITE DETAILS	8/17/17 rev. 5/14/18
23	SD-4	SITE DETAILS	8/17/17 rev. 5/14/18
24	SD-5	SITE DETAILS	8/17/17 rev. 5/14/18
25	SD-6	SITE DETAILS	8/17/17 rev. 5/18/18

(b) Plans approved by the Engineering Department for the Land Development Application dated April 1, 2019.

(c) Final Storm Water Pollution Prevention Plan (“SWPPP”) for the Project, prepared by M&M, and dated October 31, 2017.

(d) Any amendments to the Project Documents that may hereafter be approved by the Planning Board.

4. Grantor shall provide for inspections of the Stormwater Management System in accordance with the SWPPP to determine the condition and integrity of the system. Such inspections shall be performed not more frequently than every five (5) years by a professional engineer licensed by the State of New York or anyone else certified or authorized by the State of New York to conduct such inspections (the “Inspecting Engineer”). The Inspecting Engineer shall prepare and submit to Grantee within thirty (30) days of the inspection a written report of the condition of the Stormwater Management System, including recommendations for those actions necessary to ensure the system will remain fully operational. The Inspecting Engineer’s report shall be certified to both Grantor and Grantee.
5. Grantor shall undertake all necessary repairs and replacement of the Stormwater Management System in accordance with the recommendations of the Inspecting Engineer. Grantor is responsible for all related expenses.
6. Failure to properly maintain the Stormwater Management System could potentially result in a violation of the New York State Environmental Conservation Law.

7. Grantor hereby grants a perpetual easement to Grantee to enter onto the Site at reasonable times and in a reasonable manner, upon not less than three (3) days' notice, for the purposes set forth in this Agreement including, without limitation, inspecting the Stormwater Management System. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.
8. The parties agree that the Grantee may enter upon the Property for purposes of inspecting or repairing the Stormwater Management System: (i) in the event of a bona fide emergency, and/or (ii) if ever the Grantee determines that Grantor has failed to construct or maintain the Stormwater Management System in accordance with the Project Documents and all applicable NYSDEC regulations standards and guidelines, or has failed to undertake corrective action specified by Grantee or by the Inspecting Engineer, and the Grantee has provided written notice of such failure and a reasonable opportunity to remedy the failure to Grantor (which, for all non-emergency conditions shall be a period of not less than 30 days), Grantee is authorized to enter onto the Site to undertake such steps as reasonably necessary for the preservation, continuation, or maintenance of the Stormwater Management System. In the event Grantee, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, or materials, Grantor, its successors and assigns, shall reimburse Grantee upon demand, within thirty (30) days of receipt of written demand specifying in reasonable detail the actual costs incurred by Grantee. If Grantee is not reimbursed within the prescribed time, Grantee is authorized to affix the expenses thereof as a lien against the Site. Any work undertaken by Grantee shall be performed in a good and workmanlike manner, and Grantee shall repair any damage to the Site outside of the Stormwater Management System (or to the system itself) caused by Grantee's activities.
9. The easement granted hereby shall not confer unto Grantee any duty or obligation to fix or maintain the Stormwater Management System. Further, Grantee's acceptance of any rights pursuant to this Agreement shall not be deemed as the acceptance of any duty or obligation to fix or maintain the Stormwater Management System.
10. Grantor shall provide to the Grantee within thirty (30) days of the date of this Agreement security in the amount of \$10,000.00 for the maintenance and continuation of the Stormwater Control Measures in the form of a bond, letter of credit or escrow account.
11. Grantor shall not authorize, undertake, or permit any material alteration, abandonment, modification or discontinuation of the Stormwater Management System except in accordance with written approval of the Planning Board.
12. Any notice required under this Agreement shall be deemed duly given when made in writing and mailed by certified mail return-receipt requested to the party at the following address (or to such other address as that party may give notice of in writing from time to time):

Grantor:

AVB Harrison, LLC  
c/o AvalonBay Communities, Inc.  
4040 Wilson Boulevard, Suite 1000  
Arlington, Virginia 22203  
Attention: Asset Management

And to:

AvalonBay Communities, Inc.  
4040 Wilson Boulevard, Suite 1000  
Arlington, Virginia 22203  
Attention: General Counsel  
Telephone: (703) 317-4132

Grantee:

Town/Village of Harrison  
1 Heineman Place  
Harrison, New York 10528  
Attention: Supervisor

13. Grantor shall disclose this Agreement to any successor or assign.
14. This Agreement is binding upon Grantor and its successors or assigns in accordance with its terms, and the provisions hereof shall be deemed to run with the land.
15. This Agreement may not be altered except in a writing signed by Grantor and Grantee (or their successors or assigns).

**[Nothing further on this page.]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly signed and made effective as of the day and year first above written.

**AVB HARRISON, LLC**

By: AvalonBay Communities Inc., Sole Member

By: \_\_\_\_\_

Name:

Title:

**TOWN OF HARRISON**

By: \_\_\_\_\_

Name: Rich Dionisio

Title: Supervisor

**VILLAGE OF HARRISON**

By: \_\_\_\_\_

Name: Rich Dionisio

Title: Mayor

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_ day of \_\_\_\_\_ in the year 2023, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF WESTCHESTER )

On the \_\_\_ day of \_\_\_\_\_ in the year 2023, before me, the undersigned, personally appeared Rich Dionisio, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF WESTCHESTER )

On the \_\_\_ day of \_\_\_\_\_ in the year 2023, before me, the undersigned, personally appeared Rich Dionisio, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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



## **EXHIBIT A**

### **Legal description of the Site**

LOT 1 - PROPERTY IN THE TOWN/VILLAGE OF HARRISON:

COMMENCING AT THE INTERSECTION OF THE NORTHERLY SIDE OF HALSTEAD AVENUE WITH THE WESTERLY SIDE OF MACY STREET, THENCE RUNNING WESTERLY AND ALONG THE NORTHERLY SIDE OF HALSTEAD AVENUE THE FOLLOWING THREE (3) COURSES AND DISTANCES:

1. SOUTH 74 DEGREES 22 MINUTES 14 SECONDS WEST, 38.80 FEET;
2. SOUTH 80 DEGREES 37 MINUTES 3 SECONDS WEST, 146.95 FEET;
3. SOUTH 74 DEGREES 22 MINUTES 14 SECONDS WEST, 679.10 FEET TO THE POINT OR PLACE OF BEGINNING;

THENCE FROM SAID POINT OR PLACE OF BEGINNING AND RUNNING SOUTHERLY INTO SAID HALSTEAD AVENUE, A TOWN ROAD, SOUTH 15 DEGREES 37 MINUTES 46 SECONDS EAST, 11.00 FEET;

THENCE RUNNING WESTERLY ALONG NOW NORTHERLY SIDE OF HALSTEAD AVENUE, SOUTH 74 DEGREES 22 MINUTES 14 SECONDS WEST, 386.70 FEET;

THENCE NORTH 15 DEGREES 37 MINUTES 46 SECONDS WEST, 11.00 FEET

TO THE BEGINNING OF A CURVE CONNECTING THE NORTHERLY SIDE OF HALSTEAD AVENUE WITH THE EASTERLY SIDE OF HARRISON AVENUE, SAID CURVE BEARING TO THE RIGHT, HAVING A RADIUS OF 40.00 FEET, A LENGTH OF ARC OF 67.81 FEET (67.85 FEET AS SHOWN ON WESTCHESTER COUNTY CLERK FILED MAP NO. 8080), AND A CHORD BEARING AND DISTANCE OF NORTH 57 DEGREES 2 MINUTES 51 SECONDS WEST, 59.97 FEET TO A POINT ON THE EASTERLY SIDE OF HARRISON AVENUE;

THENCE RUNNING NORTHERLY AND ALONG THE EASTERLY SIDE OF HARRISON AVENUE NORTH 8 DEGREES 26 MINUTES 44 SECONDS WEST, 102.48 FEET TO THE NORTHWESTERLY CORNER OF THE PARCEL HEREIN DESCRIBED, SAID POINT ALSO BEING ON THE EXISTING SOUTHERLY LIMIT OF THE NEW YORK AND NEW HAVEN RAILROAD RIGHT OF WAY;

THENCE RUNNING EASTERLY AND ALONG THE NEW SOUTHERLY LIMIT OF THE NEW YORK AND NEW HAVEN RAILROAD RIGHT OF WAY THE FOLLOWING THIRTEEN (13) COURSES AND DISTANCES:

1. NORTH 74 DEGREES 22 MINUTES 14 SECONDS EAST, 161.23 FEET;
2. SOUTH 15 DEGREES 37 MINUTES 46 SECONDS EAST, 5.00 FEET;
3. NORTH 74 DEGREES 22 MINUTES 14 SECONDS EAST, 61.00 FEET;
4. NORTH 15 DEGREES 37 MINUTES 46 SECONDS WEST, 5.00 FEET;
5. NORTH 74 DEGREES 22 MINUTES 14 SECONDS EAST, 33.65 FEET;
6. SOUTH 15 DEGREES 37 MINUTES 46 SECONDS EAST, 5.56 FEET;
7. NORTH 74 DEGREES 22 MINUTES 14 SECONDS EAST, 32.00 FEET;
8. NORTH 15 DEGREES 37 MINUTES 46 SECONDS WEST, 5.56 FEET;
9. NORTH 74 DEGREES 22 MINUTES 14 SECONDS EAST, 32.00 FEET;
10. SOUTH 15 DEGREES 37 MINUTES 46 SECONDS EAST, 12.00 FEET;
11. NORTH 74 DEGREES 22 MINUTES 14 SECONDS EAST, 49.00 FEET;
12. SOUTH 15 DEGREES 37 MINUTES 46 SECONDS EAST, 3.55 FEET;
13. NORTH 74 DEGREES 22 MINUTES 14 SECONDS EAST, 57.33 FEET;

THENCE SOUTHERLY ALONG THE DIVISION LINE OF FORMER LOT 12 & LOT 15 AS SHOWN ON WESTCHESTER COUNTY CLERK FILED MAP NO. 8080, SOUTH 15 DEGREES 37 MINUTES 46 SECONDS EAST, 131.10 FEET TO THE POINT OR PLACE OF BEGINNING, CONTAINING 63,838 SQUARE FEET OR 1.4655 ACRES MORE OR LESS. ALL BEARINGS REFER TO THE NEW YORK STATE PLANE COORDINATE SYSTEM (NAD 83).

LOT 2 - PROPERTY IN THE TOWN/VILLAGE OF HARRISON:

COMMENCING AT THE INTERSECTION OF THE NORTHERLY SIDE OF HALSTEAD AVENUE WITH THE WESTERLY SIDE OF MACY STREET, THENCE RUNNING WESTERLY AND ALONG THE NORTHERLY SIDE OF HALSTEAD AVENUE THE FOLLOWING THREE (3) COURSES AND DISTANCES:

1. SOUTH 74 DEGREES 22 MINUTES 14 SECONDS WEST, 38.80 FEET;
2. SOUTH 80 DEGREES 37 MINUTES 3 SECONDS WEST, 146.95 FEET;
3. SOUTH 74 DEGREES 22 MINUTES 14 SECONDS WEST, 50.00 FEET TO THE POINT OR PLACE OF BEGINNING;

THENCE FROM SAID POINT OR PLACE OF BEGINNING AND RUNNING SOUTHERLY INTO SAID HALSTEAD AVENUE, A TOWN ROAD, SOUTH 15 DEGREES 37 MINUTES 46 SECONDS EAST, 11.00 FEET;

THENCE RUNNING WESTERLY ALONG THE NOW NORTHERLY SIDE OF HALSTEAD AVENUE, SOUTH 74 DEGREES 22 MINUTES 14 SECONDS WEST, 629.10 FEET;

THENCE NORTH 15 DEGREES 37 MINUTES 46 SECONDS WEST, 11.00 FEET

TO THE NORTHERLY SIDE OF HALSTEAD AVENUE AND THE DIVISION LINE OF FORMER LOT 12 & LOT 15 AS SHOWN ON WESTCHESTER COUNTY CLERK FILED MAP NO. 8080, THENCE RUNNING NORTHERLY AND ALONG SAID FORMER DIVISION LINE NORTH 15 DEGREES 37 MINUTES 46 SECONDS WEST, 146.65 FEET TO A POINT. SAID POINT BEING THE NORTHWESTERLY CORNER OF THE PARCEL HEREIN DESCRIBED, SAID POINT ALSO BEING ON THE EXISTING SOUTHERLY LIMIT OF THE NEW YORK AND NEW HAVEN RAILROAD RIGHT OF WAY;

THENCE RUNNING EASTERLY AND ALONG THE EXISTING SOUTHERLY LIMIT OF SAID NEW YORK AND NEW HAVEN RAILROAD RIGHT OF WAY NORTH 74 DEGREES 22 MINUTES 14 SECONDS EAST, 276.43 FEET;

THENCE RUNNING SOUTHERLY AND INTO SAID FORMER LOT 12 AS SHOWN ON SAID WESTCHESTER COUNTY CLERK FILED MAP NO. 8080 THE FOLLOWING NINE (9) COURSES AND DISTANCES:

1. SOUTH 15 DEGREES 37 MINUTES 46 SECONDS EAST, 37.75 FEET;
  2. NORTH 74 DEGREES 22 MINUTES 14 SECONDS EAST, 5.00 FEET;
  3. SOUTH 15 DEGREES 37 MINUTES 46 SECONDS EAST, 67.10 FEET;
  4. NORTH 74 DEGREES 22 MINUTES 14 SECONDS EAST, 7.02 FEET;
  5. SOUTH 15 DEGREES 37 MINUTES 46 SECONDS EAST, 21.23 FEET;
  6. NORTH 74 DEGREES 22 MINUTES 14 SECONDS EAST, 547.28 FEET;
  7. NORTH 15 DEGREES 37 MINUTES 46 SECONDS WEST, 76.15 FEET;
  8. SOUTH 74 DEGREES 22 MINUTES 14 SECONDS WEST, 0.83 FEET;
  9. NORTH 15 DEGREES 37 MINUTES 46 SECONDS WEST, 49.93 FEET TO SAID SOUTHERLY LIMIT OF SAID NEW YORK AND NEW HAVEN RAILROAD RIGHT OF WAY;
- THENCE RUNNING EASTERLY AND ALONG SAID SOUTHERLY LIMIT OF NEW YORK AND NEW HAVEN RAILROAD RIGHT OF WAY NORTH 74 DEGREES 22 MINUTES 14 SECONDS EAST, 67.84 FEET;

THENCE RUNNING SOUTHERLY ALONG THE EASTERLY LINE OF SAID FORMER LOT 12 AS SHOWN ON SAID WESTCHESTER COUNTY CLERK FILED MAP NO. 8080, SOUTH 15 DEGREES 37 MINUTES 46 SECONDS EAST, 146.65 FEET TO THE POINT OR PLACE OF

BEGINNING, CONTAINING 63,795 SQUARE FEET OR 1.4645 ACRES MORE OR LESS. ALL BEARINGS REFER TO THE NEW YORK STATE PLANE COORDINATE SYSTEM (NAD 83).