

E-3

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


**MEMORANDUM**

TO: Ronald Belmont, Supervisor/Mayor  
Members of the Town Board and Village Board

FROM: Nelson E. Canter, Deputy Town Attorney

DATE: June 27, 2018

SUBJECT: **Stormwater Control Facility Easement and Maintenance Agreement  
between Manhattanville College and Town/Village of Harrison**



At the request of Seth Mandelbaum, Esq, of McCullough, Goldberger & Staudt, LLP, attached herewith is a copy of the Stormwater Facility Easement and Maintenance Agreement between Manhattanville College and the Town/Village of Harrison that has been signed by Manhattanville College and is being held in escrow awaiting Town Board approval. In addition, attached is a copy of a Maintenance Bond in the amount of \$10,000 as requested in Section 7 of the Agreement.

I have reviewed the Stormwater Facility Easement and Maintenance Agreement, deemed it to be in order, and accordingly, recommend that the Supervisor/Mayor execute the Agreement along with all other documents for filing of the Agreement with Westchester County.

NEC:ap  
Attachments

**STORMWATER CONTROL FACILITY EASEMENT**

**AND MAINTENANCE AGREEMENT**

**This Stormwater Control Facility Easement and Maintenance Agreement**

("AGREEMENT") is made and entered into as of the 5<sup>th</sup> day of June, 2018, by and between **Manhattanville College** (the "GRANTOR"), an educational corporation organized and existing under the laws of the State of New York, having its office at 125 Purchase Street, Purchase, New York 10577 and **The TOWN of Harrison** (the "TOWN") and **The VILLAGE of Harrison** (the "VILLAGE"), New York, municipal corporations having their principal place of business at 1 Heineman Place, Harrison, New York 10528.

**WITNESSETH:**

WHEREAS, GRANTOR is the owner of certain real property in the TOWN of Harrison, County of Westchester and State of New York, which is known as 2900 Purchase Street and also known and designated on the tax assessment map of the TOWN as Block 631, Lot 5 (the "PROPERTY"); and

WHEREAS, on or about November 13, 2017, GRANTOR received Land Development approval from the Engineering Department of the TOWN; and

Chapter 130 of the Code of the TOWN of Harrison, entitled "Stormwater Management and Erosion and Sediment Control", requires GRANTOR to grant the TOWN and the VILLAGE an easement (the "Easement") 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") which are shown on Drawing Nos. CD-2.0 and CD-5.2, entitled "Site Grading and Utility Plan" and "Site & Utility Details", respectively, prepared by Divney Tung Schwalbe, LLP, last revised October 6, 2017, and attached hereto as Exhibit "A" (collectively, the "Approved Plan"); and

GRANTOR, the TOWN and the VILLAGE agree that following the construction of the Stormwater Control Measures in accordance with the Approved Plan, the Stormwater Control Measures shall thereafter be maintained, cleaned and repaired by GRANTOR;

NOW, THEREFORE, GRANTOR, the TOWN and the VILLAGE agree as follows:

1. GRANTOR agrees to maintain, clean and repair the Stormwater Control Measures in accordance with the Stormwater Pollution Prevention Plan ("SWPPP") for the Project, prepared by Divney Tung Schwalbe, LLP, last revised September 2017, as necessary to ensure that the Stormwater Control Measures remain in good working order. GRANTOR shall be responsible for all expenses related to the maintenance, cleaning and repair of the Stormwater Control Measures.
2. On or about the date which is one (1) year after the date the certificate of completion of construction for the Project is issued by the TOWN, and thereafter on or about the annual anniversary of such date, GRANTOR shall in accordance with the SWPPP cause the Stormwater Control Measures to be inspected to determine the condition and integrity of such facilities. A professional engineer licensed by the State of New York shall perform such inspection (the "Inspecting Engineer"). GRANTOR shall submit a report to the TOWN and the VILLAGE prepared by the Inspecting Engineer within 30 days of the inspection, which report shall include the findings and recommendations for any actions necessary to ensure the continuation of the Stormwater Control Measures in good working order.
3. GRANTOR shall undertake any necessary repairs of the Stormwater Control Measures at the direction of the TOWN and the VILLAGE and in accordance with the recommendations of the Inspecting Engineer. GRANTOR shall not modify the Approved Plans or SWPPP, or undertake any alteration, modification or discontinuance of the Stormwater Control Measures except in accordance with the approval of the TOWN.
4. GRANTOR hereby grants the TOWN and the VILLAGE a perpetual Easement to enter upon the Property at any reasonable time or times following reasonable written notice for the purpose of periodically inspecting the Stormwater Control Measures to ensure that the Stormwater Control Measures are maintained by GRANTOR in good working order; provided however, that in the event of a bona fide emergency, the TOWN shall have the right to enter upon the Property at all times without prior written notice to GRANTOR.

5. The parties agree that the TOWN and the VILLAGE may enter upon the Property for purposes of inspecting and/or repairing the Stormwater Control Measures (the "Work") (i) in the event of a bona fide emergency, and/or (ii) if GRANTOR fails to maintain and/or repair the Stormwater Control Measures in good working order and such failure shall remain uncured for a period of thirty (30) days after written notice of such failure is given by the TOWN or the VILLAGE to GRANTOR (the "Notice Period") (or in the case of a failure which cannot be cured within the Notice Period, GRANTOR fails to commence to cure such failure within the Notice Period and/or thereafter fails to diligently prosecute such cure to completion).
6. The TOWN and the VILLAGE shall, upon the completion of any such Work, expeditiously replace and restore the Property to as near to the same condition as existed before the undertaking of such Work as is reasonably practicable under the circumstances.
7. GRANTOR shall provide to the TOWN or the VILLAGE 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.
8. If the TOWN or the VILLAGE performs any Work, then the TOWN or the VILLAGE shall be reimbursed for such Work by the GRANTOR. Unless otherwise agreed to by the TOWN or the VILLAGE, payment shall be made to the TOWN or the VILLAGE within fifteen (15) days after the TOWN or the VILLAGE gives GRANTOR written notice identifying the work performed and the costs thereof in reasonable detail; provided that if GRANTOR fails to timely make such payment, the TOWN or the VILLAGE may draw in the amount of such costs upon any letter of credit, escrow deposit or maintenance bond required to be provided to the TOWN or the VILLAGE as security for the maintenance and continuation of the Stormwater Control Measures. The TOWN and the VILLAGE shall give GRANTOR prompt written notice of any such draw. Notwithstanding the foregoing, any amounts not paid by GRANTOR which are either not covered by, or in excess of, such security may be made a lien against the Property in favor of the TOWN or the VILLAGE, as may be the case.

9. Unless otherwise provided for in this Agreement, any notice to be given pursuant to this Agreement shall be in writing and sent by prepaid certified or registered U.S. mail, Return Receipt Requested, or by a reputable overnight courier, to the address of the parties below specified or at such other address as may be given by written notice in the manner prescribed in Section 8. Any notices shall be deemed delivered when accepted or refused.

Grantor's address for notices shall be as follows:

Manhattanville College  
Attn: Erik Paulson  
2900 Purchase Street, Purchase, NY 10577

With a copy to:

McCullough, Goldberger & Staudt, LLP  
Attn: Seth M. Mandelbaum  
1311 Mamaroneck Road, Suite 340  
White Plains, NY 10605

The TOWN's and the VILLAGE'S address for notices shall be as follows:

Town and Village of Harrison  
1 Heineman Place  
Harrison, New York 10528  
Attention: Town (or Village) Engineer  
Attention: Town (or Village) Attorney

10. GRANTOR shall record this Agreement at its own cost and expense in the Office of the Westchester County Clerk, Division of Land Records.
11. This Agreement, the Easement and all rights hereunder granted shall run with the land and shall be binding up on the successors, legal representatives and assigns of the respective parties and the failure of the parties to enforce any provisions contained herein shall not be deemed a waiver of the right to do so thereafter.

[Nothing further on this page]

IN WITNESS WHEREOF, this Stormwater Control Facility Easement and Maintenance Agreement has been duly executed by the parties hereto the day and year first written above.

MANHATTANVILLE COLLEGE

By: Erik Paulson  
Name: Erik Paulson  
Title: Vice President of Finance

TOWN OF HARRISON

By: \_\_\_\_\_  
Name: Ronald Belmont  
Title: Supervisor/Mayor

VILLAGE OF HARRISON

By: \_\_\_\_\_  
Name: Ronald Belmont  
Title: Supervisor/Mayor


STATE OF NEW YORK

Suffolk  
COUNTY OF ~~WESTCHESTER~~

) ss.:

On the 5 day of June, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Erik Paulson, 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 he/she acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the

instrument.  
STEPHANIE A. BUFFA  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02BU6311964  
Qualified in Suffolk County  
My Commission Expires September 22, 2018



Notary Public

STATE OF NEW YORK

COUNTY OF WESTCHESTER

) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for said State, 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 he/she acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

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

STATE OF NEW YORK

COUNTY OF WESTCHESTER ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for said State, 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 he acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

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Notary Public



**EXHIBIT A**





**MAINTENANCE  
BOND**

**Travelers Casualty and Surety Company of America  
Hartford, CT 06183**

Bond No.: 106834217

KNOWN ALL BY THESE PRESENTS: That we MANHATTANVILLE COLLEGE,  
as Principal, and Travelers Casualty and Surety Company of America, a corporation  
organized and existing under the Laws of the State of Connecticut, as Surety, are held  
and firmly bound unto Town of Harrison, New York, as Obligee, in the  
total sum of Ten Thousand Dollars  
U.S. Dollars (\$10,000) for the payment whereof said Principal and Surety bind  
themselves, jointly and severally, as provided herein.

WHEREAS, the Principal entered into a contract with the Obligee dated 11/7/2017 for  
Maintenance of the storm water control measures associated with the soccer field and temporary seasonal enclosure.  
("Work").

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal  
shall maintain and remedy said Work free from defects in materials and workmanship for a  
period of 1 year(s) commencing on May 30, 2018 (the  
"Maintenance Period"), then this obligation shall be void; otherwise it shall remain in full force  
and effect.

PROVIDED, HOWEVER, that any suit under this bond shall be commenced no later than one  
(1) year from the expiration date of the Maintenance Period; provided, however, that if this  
limitation is prohibited by any law controlling the construction hereof, such limitation shall be  
deemed to be amended so as to be equal to the minimum period of limitation permitted by  
such law, and said period of limitation shall be deemed to have accrued and shall commence  
to run on the expiration date of the Maintenance Period.

SIGNED this 30th day of May, 2018.

(Principal)

By: Erin Paul

Travelers Casualty and Surety Company of America

By: Halley A. Sullivan, Attorney-in-Fact

**TRAVELERS** **POWER OF ATTORNEY**

Farmington Casualty Company  
 Fidelity and Guaranty Insurance Company  
 Fidelity and Guaranty Insurance Underwriters, Inc.  
 St. Paul Fire and Marine Insurance Company  
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
 Travelers Casualty and Surety Company  
 Travelers Casualty and Surety Company of America  
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 229650

Certificate No. 006464925

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Gregory O. Hunter, Holley A. Gardiner, Lindsay K. Volpe, Joshua Trowbridge, and Matthew Daly

of the City of Boston, State of Massachusetts, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 30th day of September, 2015.

Farmington Casualty Company  
 Fidelity and Guaranty Insurance Company  
 Fidelity and Guaranty Insurance Underwriters, Inc.  
 St. Paul Fire and Marine Insurance Company  
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
 Travelers Casualty and Surety Company  
 Travelers Casualty and Surety Company of America  
 United States Fidelity and Guaranty Company



State of Connecticut  
 City of Hartford ss.

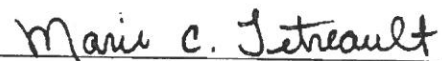
By: 

Robert L. Raney, Senior Vice President

On this the 30th day of September, 2015, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.  
 My Commission expires the 30th day of June, 2016.



  
 Marie C. Tetreault, Notary Public



This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 30th day of May, 2018.

*Kevin E. Hughes*  
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.