

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWNSHIP OF LOWER MAKEFIELD,
BUCKS COUNTY, PENNSYLVANIA, AMENDING CHAPTER 173
("STORMWATER MANAGEMENT") TO AMEND CHAPTER 173,
ATTACHMENT 1, APPENDIX A ("OPERATION AND MAINTENANCE
(O&M) AGREEMENT")**

WHEREAS, the Township of Lower Makefield ("Township") is a municipality organized and existing under the Second-Class Township Code of the Commonwealth of Pennsylvania, 53 P.S. §§ 65101, et seq.; and

WHEREAS, the Second Class Township Code empowers the Board of Supervisors of the Township of Lower Makefield (the "Board of Supervisors") to promote and protect the public health, safety and general welfare of its residents, 53 P.S. §§ 65607 and 66506, and, therefore, it may adopt ordinances, bylaws, rules, and regulations necessary therefore, so long as they are not inconsistent with or restrained by the Constitution and the laws of the Commonwealth of Pennsylvania; and

WHEREAS, the Second Class Township Code provides that the Board of Supervisors may adopt ordinances in which general or specific powers of the Township may be exercised, and by the enactment of subsequent ordinances, the Board of Supervisors may amend, repeal, or revise existing ordinances, 53 P.S. § 66601; and

WHEREAS, on or about April 16, 2025, the Board of Supervisors adopted Ordinance No. 460 to provide for this Chapter 173 ("Stormwater Management"); and

WHEREAS, the Board of Supervisors now wishes to update and clarify Chapter 173, Attachment 1, Appendix A ("Operation and Maintenance (O&M) Agreement"); and

WHEREAS, it is in the public interest of the resident of the Township for the Township to update and amend Appendix A; and

WHEREAS, the Township now enacts an amendment to the Township Code of Ordinances.

NOW THEREFORE, in consideration of the foregoing, be it **ENACTED** and **ORDAINED** by the Board of Supervisors of Lower Makefield Township, Bucks County, Pennsylvania, as follows:

- I.** Chapter 173 ("Stormwater Management") of the Township Code of Ordinance is hereby **AMENDED** as follows:
 - A.** **AMEND** Appendix A ("Operation and Maintenance (O&M) Agreement") as follows:

STRIKE Appendix A in its entirety and **REPLACE** it with a new Appendix A (“Operation and Maintenance (O&M) Agreement”), attached to this Ordinance as **Exhibit “A.”**

II. Partial Repealer

All other provisions of the Lower Makefield Township Code of Ordinances, as amended, shall remain in full force and effect. All other Ordinances or provisions of the Township’s Code of Ordinances inconsistent herewith or in conflict with any of the terms hereof are, to the extent of said inconsistencies or conflicts, hereby specifically repealed.

III. Severability

The provisions of this ordinance are severable. If any section, clause, sentence, part or provision thereof shall be held illegal, invalid, or unconstitutional by a court of competent jurisdiction, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and such decision of the court shall not affect or impair any of the remaining sections, clauses, sentences, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board of Supervisors that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence or part of a provision had not been included herein.

IV. Effective Date

All provisions of this ordinance shall be in full force and effect five (5) days after the approval and adoption.

ENACTED AND ORDAINED this _____ day of _____, 2026.

ATTEST:

**LOWER MAKEFIELD TOWNSHIP
BOARD OF SUPERVISORS**

David W. Kratzer Jr.,
Township Manager

Name: _____
Vice Chair

EXHIBIT “A”

OPERATION AND MAINTENANCE (O&M) AGREEMENT

**STORMWATER BEST MANAGEMENT PRACTICES (BMPs) AND
CONVEYANCES
OPERATION AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____, with an address of _____ (hereinafter the “Landowner”), and Lower Makefield Township, Bucks County, a political subdivision of the Commonwealth of Pennsylvania, with an address of 1100 Edgewood Road, Yardley, Pennsylvania 19067 (hereinafter “Municipality”);

WITNESSETH

WHEREAS, the Landowner represents and warrants to Municipality that Landowner is the owner of certain real property in Lower Makefield Township, Bucks County, Pennsylvania, located at _____ and more formally identified as Bucks County Tax Parcel No. _____ (hereinafter “Property”); and

WHEREAS, the Landowner is proceeding to build and develop the Property; and

WHEREAS, the Stormwater Best Management Practices (hereinafter BMP(s)) and Conveyances Plan, _____ (title of approved plans) approved by the Municipality on _____ (date) (hereinafter referred to as the “Plan”) for the Property, which is attached hereto as **Appendix A** and made part hereof, provides for management of stormwater within the confines of the Property through the use of BMP(s) and Conveyances; and

WHEREAS, the Municipality and the Landowner, for itself and its administrators, executors, successors, heirs, and assigns, agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that Stormwater BMP(s) and Conveyances be constructed and maintained on the Property; and

WHEREAS, for the purposes of this Agreement, the following definitions shall apply:

Best Management Practice (“BMP”) – Activities, facilities, designs, measures, or procedures as specifically identified in the Plan, used to manage stormwater impacts from Regulated Activities to provide water quality treatment, infiltration, volume reduction, and/or peak rate control, to promote groundwater recharge, and to otherwise meet the purposes of the Municipality’s Stormwater Management Ordinance. Stormwater BMPs are commonly grouped into one (1) of two (2) broad categories or measures: “nonstructural” or “structural.” Nonstructural BMPs refer to low impact development and conservation design practices used to minimize the contact of pollutants with stormwater runoff. These practices aim to limit the total volume of stormwater runoff and manage stormwater at its source using techniques such as protecting natural systems and incorporating existing landscape features. Nonstructural BMPs include, but are not limited to, the protection of sensitive and special value features such as wetlands and riparian

areas, the preservation of open space while clustering and concentrating development, the reduction of impervious cover, and the disconnection of downspouts from storm sewers. Structural BMPs are those that consist of a constructed or physical system that is designed and engineered to capture and treat stormwater runoff. Structural BMPs include, but are not limited to, a wide variety of practices and devices from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, bioretention, wet ponds, permeable paving, grassed swales, riparian buffers, sand filters, detention basins, and other manufactured devices designed to mitigate stormwater impacts. The BMPs identified in the Plan are permanent appurtenances to the Property,

Conveyance – As specifically identified in the Plan, a manmade, existing or proposed facility, feature or channel used for the transportation or transmission of stormwater from one place to another, including pipes, drainage ditches, channels and swales (vegetated and other), gutters, stream channels, and like facilities or features. The Conveyances identified in the Plan are permanent appurtenances to the Property,

Regulated Activities – Any earth disturbance activities, any activities that involve the alteration or development of land in a manner that may affect stormwater runoff, or any activities that clearly increase the pollution potential of stormwater runoff; and

WHEREAS, the Municipality requires, through the implementation of the Plan, that Stormwater Management BMPs and Conveyances, as required by the Plan and the Municipality's Stormwater Management Ordinance, be constructed and adequately inspected, operated and maintained by the Landowner or their designee.

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The foregoing recitals to this Agreement are incorporated as terms of this Agreement as if fully set forth in the body of this Agreement.
2. The Landowner shall construct the BMP(s) and Conveyance(s) in accordance with the specifications identified on the Plan, as may be attached as **Appendix A**, and approved by the Municipality.
3. Upon completion of construction, the Landowner shall be responsible for completing final As-Built Plans of all BMPs, Conveyances, or other stormwater management facilities included in the approved Plan as per the requirements of Section 173-33 of the Municipality's Stormwater Management Ordinance.
4. The Landowner shall inspect, operate and maintain the BMP(s) and Conveyance(s) as shown on the Plan in good working order acceptable to the Municipality and in accordance with

the specific inspection and maintenance requirements in the approved Plan and the current version of the Pennsylvania Stormwater BMP Manual, as amended.

5. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the Property at reasonable times and upon presentation of proper identification, to inspect the BMP(s) and Conveyance(s) whenever it deems necessary for compliance with this Agreement, the Plan and the Municipality's Stormwater Management Ordinance. Whenever possible, the Municipality shall notify the Landowner prior to entering the Property.

6. The Landowner shall inspect the BMP(s) and Conveyance(s) to determine if they continue to function as intended.

7. The BMP(s) and Conveyance(s) shall be inspected according to the following frequencies, at a minimum:

- a. Annually for NPDES permittees (even if terminated), and for the first five (5) years for all others;
- b. Once every three (3) years thereafter;
- c. During or immediately after the cessation of a precipitation event. Inspection reports for inspections during or after the cessation of a 10-year or greater storm event are only required to be submitted to the Municipality if requested by the Municipality or Municipal Engineer.

Written inspection reports shall be created to document each inspection. The inspection report shall contain the date and time of the inspection, the individual(s) who completed the inspection, the location of the BMP, facility or structure inspected, observations on performance, and recommendations for improving performance, if applicable. Inspection reports shall be submitted to the Municipality within 30 days following completion of the inspection.

Landowners must notify the Municipality of BMP(s) and Conveyance(s) that are no longer functioning as designed and must coordinate with the Municipality to determine a schedule to repair or retrofit these systems to restore designed functionality.

8. The Landowner acknowledges that, per the Municipality's Stormwater Ordinance, it is unlawful, without written approval of the Municipality, to:

- a. Modify, remove, fill, landscape, alter or impair the effectiveness of any BMP or Conveyance that is constructed as part of the approved Plan;
- b. Place any structure, fill, landscaping, additional vegetation, yard waste, brush cuttings, or other waste or debris into a BMP or Conveyance that would limit or alter the functioning of the BMP or Conveyance;
- c. Allow the BMP or Conveyance to exist in a condition which does not conform to the approved Plan or this Agreement; and
- d. Dispose of, discharge, place or otherwise allow pollutants including, but not limited to, deicers, pool additives, household chemicals, and automotive fluids to directly or indirectly enter any BMP or Conveyance.

9. In the event that the Landowner fails to operate and maintain the BMP(s) and Conveyance(s) as shown on the Plan in good working order acceptable to the Municipality, the Landowner shall be in violation of this Agreement, and the Landowner agrees that the Municipality or its representatives may, in addition to and not in derogation or diminution of any remedies available to it under the Stormwater Ordinance or other statutes, codes, rules or regulations, or this Agreement, enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s) and Conveyance(s). It is expressly understood and agreed that the Municipality is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Municipality.

10. In the event that the Municipality, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for inspection, labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Municipality for all reasonable expenses (direct and indirect) incurred within thirty (30) days of delivery of an invoice from the Municipality. Failure of the Landowner to make prompt payment to the Municipality permits the Municipality to collect the same as provided by law, including the right to sue the Landowner in assumpsit for reimbursement of the Municipality's costs, and shall have the right to cause a lien to be placed on the Property in the amount of said expense, together with interest thereon plus the reasonable costs of enforcement of its rights hereunder.

11. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMP(s) and Conveyance(s) by the Landowner (or its successors and/or assigns), provided, however, that this Agreement shall not be deemed to create or effect any additional liability on any party for damage alleged to result from or be caused by stormwater runoff.

12. The Landowner, for itself and its executors, administrators, assigns, heirs, and other successors in interest, hereby releases and shall release the Municipality's employees, its agents and designated representatives from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said employees, agents or representatives arising out of the construction, presence, existence, or maintenance of the BMP(s) and Conveyance(s) either by the Landowner or Municipality. In the event that a claim is asserted or threatened against the Municipality, its employees, agents or designated representatives, the Municipality shall promptly notify the Landowner, and the Landowner shall defend, at his own expense, any claim, suit, action or proceeding, or any threatened claim, suit, action or proceeding against the Municipality, or, at the request of the Municipality, pay the cost, including attorneys' fees, of defense of the same undertaken on behalf of the Municipality. If any judgment or claims against the Municipality's employees, agents or designated representatives shall be allowed, the Landowner shall pay all damages, judgments or claims and any costs and expenses incurred by the Municipality, including attorneys' fees, regarding said damages, judgments or claims.

13. The Municipality may enforce this Agreement in accordance with its Stormwater Ordinance, at law or in equity, against the Landowner for breach of this Agreement. Remedies may include fines, penalties, damages or such equitable relief as the parties may agree upon or as may be determined by a Court of competent jurisdiction. Recovery by the Municipality shall include its reasonable attorneys' fees and costs incurred in seeking relief under this Agreement.

14. Failure or delay in enforcing any provision of this Agreement shall not constitute a waiver by the Municipality of its rights of enforcement hereunder.

15. The Landowner shall inform future buyers of the Property about the function of, operation, inspection and maintenance requirements of the BMP(s) prior to the purchase of the Property by said future buyer, and upon purchase of the Property the future buyer assumes all responsibilities as Landowner and must comply with all components of this Agreement.

16. This Agreement shall inure to the benefit of and be binding upon the Municipality and the Landowner, as well as their heirs, administrators, executors, assigns and successors in interest.

This Agreement shall be recorded at the Office of the Recorder of Deeds of Bucks County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, its administrators, executors, assigns, and any other successors in interests, until such time, if any, that the Municipality may approve a different development scheme for the Property or different BMP(s) and/or Convenience(s) than those depicted on the Plan. In the event of such approval, and upon recordation of the same, this Agreement shall be deemed to have been extinguished and terminated (without need for further written documentation evidencing same).

[Signature Page Follows]

[Stormwater BMP Agreement Signature Page]

WITNESS the following signatures and seals:

ATTEST:

(SEAL)

For the Municipality:

(SEAL)

For the Landowner:

ATTEST:

_____ (City, Borough, Township)

By Individual:

State of _____

County of _____

On this _____ day of _____, 20____. Before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be person whose name(s) is/are subscribed to the within instrument and acknowledged that _____ executed the same for the purpose therein contains.

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

Notary Public

My commission expires:

By the Company:

State of _____

County of _____

On this _____ day of _____, 20__, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be _____ of _____, a _____, and that he/she being authorized to do so, executed the forgoing instrument for the purpose therein contained by signing the name of the Company by herself/himself as _____.

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

Notary Public

My commission expires: