



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

9/21/2020

Glencairn Corp, et al.

RE: Director's Final Findings & Orders
NPDES
Summit County
3GC00593*AG

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings & Orders in the referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Fowler". The signature is fluid and cursive.

Kevin J. Fowler, Supervisor
Permit Processing Unit
Division of Surface Water

KJF/dks
Enclosure

CERTIFIED MAIL

cc: L. Reeder, DSW
R. Demuth, DSW
L. Kaldy, DSW
B. Palmer, DSW
J. Martin, DSW
Fiscal
B. Fischbein, Legal
Journal Room
File

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SANDRA KURT
2020 JUN -8 PM 2:13
SUMMIT COUNTY
CLERK OF COURTS

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. CV-2018-05-2281
DAVE YOST	:	
OHIO ATTORNEY GENERAL,	:	
	:	JUDGE CROCE
Plaintiff,	:	
	:	
v.	:	
	:	
GLENCAIRN CORP., et al.,	:	CONSENT ORDER
	:	
Defendants.	:	

The State of Ohio, by its Attorney General (“Plaintiff”/“the State”) and at the written request of the Director of the Ohio Environmental Protection Agency (“the Director”), has filed an Amended Complaint seeking injunctive relief and civil penalties against Defendants Glencairn Corporation, and Lifestyle Neighborhood Co. (“Developer Defendants”) for violations of Ohio’s water pollution control laws under R.C. Chapter 6111 at the Glencairn Forest housing development located east of State Route 21, north of Wheatley Road and south of State Route 271 in Richfield Township, Summit County, Ohio. The Plaintiff’s Amended Complaint added Defendants Glencairn Forest Homeowners’ Association and The Woods Neighborhood Homeowners Association, Inc. as parties. The Parties have consented to entry of this Order.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

I. DEFINITIONS

1. As used in this Order, the following terms are defined:
 - a. “Complaint” means the State’s First Amended Complaint for Injunctive Relief and Civil Penalty in Case No. CV 2018-05-2281, filed on November 20, 2018.

- b. “Developer Defendants” means Defendants Glencairn Corporation, and Lifestyle Neighborhood Co.
- c. “Director” means the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) or her designee.
- d. “Effective Date” means the date upon which this Consent Order is entered by the Court or a motion to enter the Consent Order is granted, whichever occurs first, as recorded in the Court’s docket.
- e. “Homeowners’ Associations” means Glencairn Forest Homeowners’ Association and the Woods Neighborhood Homeowners’ Association, Inc. (“the Woods HOA”)
- f. “Ohio EPA” means the Ohio Environmental Protection Agency.
- g. “Parties” means Plaintiff, the State of Ohio, and Defendants Glencairn Corporation, Lifestyle Neighborhood Co., Glencairn Forest Homeowners’ Association, and the Woods Neighborhood Homeowners Association, Inc.
- h. “Phase 10” means Glencairn Forest Phase X.
- i. “Person” means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
- j. “Property” means storm water drainage systems of Ashby Lane and St. Andrews Lane located in Woods Phases 3 and 4, including the storm sewer outlets located on or in close proximity of the cul-de-sac of Ashby Lane and St. Andrews Lane.
- k. “State” means Plaintiff, the State of Ohio, including the Director, Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity.
- l. “Order” refers to this Consent Order.
- m. “Written” means a paper copy or a saved or stored electronic copy.
- n. “Woods Phases 3 and 4” means the approximately 12-acre development subdivision within the larger Glencairn Forest housing development, located east of State Route 21, north of Wheatley Road and south of State Route 271 in Richfield Township, Summit County, Ohio.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Defendants shall not challenge the Court's jurisdiction to enter or enforce this Consent Order.

III. PARTIES BOUND

3. Defendant Glencairn Corporation, formerly Irongray Corporation, is an Ohio corporation, in good standing, that has been incorporated under the laws of the State of Ohio since May 9, 1991.

4. Defendant Lifestyle Neighborhoods Co., formerly Innovative Contractors & Building Services, Inc., is an Ohio corporation, in good standing, that has been incorporated under the laws of the State of Ohio since February 8, 1985.

5. Defendant Glencairn Forest Homeowners' Association, Inc. is a non-profit corporation, in good standing, that has been incorporated under the laws of the State of Ohio since February 7, 1994.

6. Defendant The Woods Neighborhood Homeowners Association, Inc. ("the Woods HOA") is a non-profit corporation, in good standing, that has been incorporated under the laws of the State of Ohio since August 27, 2003.

7. This Order shall apply to and be binding only upon Defendants, and, to the extent consistent with Civ. R. 65(D), on its agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with Defendants who receive actual or constructive notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendants shall provide a copy of this Consent

Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein or to operate the Site.

8. This Consent Order is in settlement and compromise of disputed claims and nothing in this Consent Order is to be construed as an admission of any facts or liability.

9. If insolvency, bankruptcy, or other failure occurs, the Developer Defendants must immediately pay the remaining unpaid balance of the civil penalty.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

10. The Plaintiff alleges in its Complaint that the Developer Defendants violated water pollution control laws of the State of Ohio under R.C. Chapter 6111. Developer Defendants deny such allegations. The parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Compliance with this Consent Order shall constitute full satisfaction of any civil liability of Developer Defendants and their officers, agents, servants, employees, attorneys, shareholders, directors and successors in interest for all the claims alleged in the Plaintiff's Complaint.

11. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with the Consent Order and/or any work performed at the Property does not constitute and cannot be admitted as evidence of admission of any liability, wrongdoing, or misconduct on part of Developer Defendants, their officers, employees, or agents by the State, Homeowners' Associations or any other person or entity not involved in this case.

V. RESERVATION OF RIGHTS

12. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

- a. Seek any legal or equitable relief or civil penalties from Homeowner Associations or any other appropriate person except for Developer Defendants for any claims or violations related to the storm water separator

units installed pursuant to paragraph 19 that occurred after and are unrelated to the installation of the storm water separator units;

- b. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for claims or violations not alleged in the Complaint;
- c. Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order; and/or
- d. Take any future legal or equitable action against any appropriate person, including Defendants, to eliminate or mitigate conditions at the Site that may present a threat to public health or welfare or to the environment in derogation of applicable laws and rules, which the State of Ohio has the authority to enforce.

13. This Consent Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against Defendants.

14. Except for the signatories to the Consent Order, nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Consent Order for any liability such non-signatory(ies) may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any person who is not a signatory to this Consent Order.

15. Nothing in this Consent Order shall relieve Defendant of its obligations to comply with applicable Federal, State, or local statutes, regulations, rules, or ordinances.

16. Nothing herein shall restrict the right of Defendants to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State in this Section. However, with respect to the actions reserved by the State in this Section, Defendants shall not assert and/or maintain any defense or claim of waiver, *res judicata*, collateral estoppel, issue

preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

VI. PERMANENT INJUNCTION

17. The Developer Defendants are ordered and permanently enjoined to comply fully with R.C. Chapter 6111, the rules adopted thereunder, and any permits issued by Ohio EPA's Division of Surface Water.

18. The Defendant Lifestyle Neighborhood Company and the Homeowners' Associations have executed an access agreement attached as **Exhibit A** to this Consent Order. In the event that Defendant Lifestyle Neighborhood Company fails to comply with Paragraph 19 of this Consent Order, Defendant Glencairn shall execute an access agreement with identical substantive terms as those contained in Exhibit A to this Consent Order to provide Defendant Glencairn authorization to perform the work necessary to comply with Paragraph 19 and all other provisions set forth in Article VI of the Consent Order.

19. By no later than **180 days** following execution of the Consent Order, the Developer Defendants shall complete installation of the storm water separator units to the storm water drainage systems of the Property in accordance with the storm sewer plan for Glencairn Forest – The Woods Corrections prepared by Spagnuolo & Associates LLC as revised on October 30, 2019 and as attached at **Exhibit B** to this Consent Order.

20. The Developer Defendants shall obtain certification from a professional engineer that does not work for Developer Defendants, the contractor who installed the storm water separator units, nor Spagnuolo & Associates LLC that the installations of the storm water separator units were in conformance with the storm sewer plan for Glencairn Forest- The Woods Corrections prepared by Spagnuolo & Associates LLC as revised on October 30, 2019 and as attached as

Exhibit B to this Consent Order. The certification required under this paragraph shall be issued no later than 30 days after installation of the storm water separator units has been completed.

21. Upon issuance of the certification required in paragraph 20, The Glencairn Forest Homeowners' Association shall perform the inspection and maintenance of the storm water separator units in conformance with the storm water separator maintenance plan attached as Exhibit C to this Consent Order.

22. By no later than **30 days** following entry of this Consent Order, the Developer Defendants and Developer Defendants' contractor shall submit a complete and approvable Notice of Intent to comply with Ohio EPA Permit No. OHC0000005 and a Stormwater Pollution Prevention Plan as required under this permit for any construction activities associated with the installation of the post construction stormwater controls referenced in Paragraph 19 above at the Woods Phases 3 and 4.

23. By no later than **30 days** following entry of this Consent Order, the Developer Defendants shall submit a complete and approvable Notice of Intent to comply with Ohio EPA Permit No. OHC0000005 and a Stormwater Pollution Prevention Plan as required under this permit for Phase 10.

24. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following relevant addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency
Division of Surface Water
Attn: Daniel Bogoevski
2110 E. Aurora Road
Twinsburg, OH 44087

and

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Attn: Manager, Storm Water Enforcement Section
50 West Town Street, Suite 700
[P.O. Box 1049]
Columbus, Ohio 43215 [43216-1049]

[For mailings, use the post office box number and zip code in brackets.]

25. Defendants shall inform Ohio EPA of any change in the business addresses or telephone numbers, or the cessation of the business that is the subject of this action within fourteen (14) days of such a change.

VII. CIVIL PENALTY

26. Under R.C. 6111.09, the Developer Defendants are ordered and enjoined to pay a civil penalty of sixty five thousand (\$65,000.00) dollars. Payment of fifty thousand (\$50,000.00) dollars of the civil penalty shall be made within thirty (30) days of entering this Consent Order. Such payment shall be made by delivering to Sandra Finan, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio." The remaining balance of fifteen thousand (\$15,000.00) dollars in civil penalties shall be waived so long as installation of the storm water separator units occurs within one hundred eighty (180) days of the effective date of this Consent Order in compliance with Paragraph 19. If the storm water separator units are not installed within one hundred eighty (180) days of the effective date of this Consent Order, Defendant Lifestyle Neighborhood Company shall pay the remaining balance of fifteen thousand (\$15,000.00) dollars in civil penalties within two hundred ten (210) days of the effective date of this Consent Order.

27. If full payment is not paid as required in Paragraph 26 above, the remaining unpaid balance of the total civil penalty, plus applicable interest under R.C. 131.02(D), less any amount

already paid under this Order, shall become immediately due and owing. Any delinquent payments shall accrue interest at the maximum statutory rate under R.C. 5703.47 calculated from the Effective Date of this Order.

28. The State reserves the right to file a certificate of judgment lien against Defendants for the remaining unpaid balance of the fifty thousand (\$50,000.00) dollar civil penalty, plus applicable interest per Paragraph 27 above, if the full payment is not paid according to the schedule in Paragraph 26 above. The State reserves the right to file a certificate of judgment lien against Defendant Lifestyle Neighborhood Company for the remaining unpaid balance of the fifteen thousand (\$15,000.00) dollars in civil penalties, plus applicable interest per Paragraph 27, if the full payment becomes due and is not paid according to the schedule in Paragraph 26 above. Except with regard to compliance with the requirement to install the storm water separator units within one hundred eighty (180) days of the effective date of the Consent Order, Defendants shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than that specified in Paragraph 26.

VIII. STIPULATED PENALTIES

29. If Developer Defendants fail to comply with any of the requirements of Part VI of this Consent Order, Developer Defendants shall immediately and automatically be liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- a. Two hundred Fifty dollars (\$250.00) per day for each day any requirement of this Consent Order is violated for the first thirty (30) days of violation;
- b. For each day any requirement of this Consent Order is violated between thirty (30) days and ninety (90) days, five hundred dollars (\$500.00) per day; and
- c. For each day any requirement of this Consent Order is violated for more than (90) days, seven hundred fifty dollars (\$750.00) per day.

30. Stipulated penalties due under this Consent Order shall be immediately due and owing without demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and delivered to Sandra Finan or her successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

31. Developer Defendants' payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapter 6111, including civil penalties under R.C. 6111.09; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws or regulations. Further, payment of stipulated penalties by Developer Defendants shall not be an admission of liability by Defendants.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

32. Performance of the terms of this Consent Order by Developer Defendants is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, Developer Defendants' performance is not excused by failing to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

X. POTENTIAL FORCE MAJEURE

33. If any event occurs that causes or may cause a delay of any requirements of this Consent Order, Developer Defendants shall notify the Ohio EPA in writing within fourteen (14) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Developer Defendants to prevent or

minimize the delay, and the timetable by which measures will be implemented. Developer Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

34. In any action by Plaintiff to enforce any provision of this Consent Order, Defendants may raise that they are entitled to a defense that their conduct was caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate time at which to adjudicate the existence of such a defense is when an enforcement action, if any, is commenced by the Plaintiff. If such action is commenced, Defendants shall bear the burden of proving that any delay was caused by circumstances entirely beyond its control. Unanticipated or increased costs associated with the implementation of any requirement of this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved. It shall be at the option of Plaintiff to construe the failure as a waiver of Defendants' right to request an extension of their obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendants qualify for an extension of a subsequent date or dates. Defendants must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Defendants of any rights or defenses they may have under applicable law.

XI. EFFECT OF CONSENT ORDER

35. This Consent Order is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable Federal, State, and local laws, regulations, and permits, and Defendants' compliance with this Consent Order shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. Developer Defendants shall obtain all permits required by R.C. Chapter 6111 and the rules promulgated thereunder. Nothing within this Consent Order shall be deemed to be a waiver of any rights that Defendants may have to challenge any terms and conditions of any future permits.

XII. MODIFICATION

36. No modification shall be made to this Consent Order without the written agreement of the Parties and the Court.

XIII. MISCELLANEOUS

37. Nothing in this Consent Order shall affect Defendants' obligation to comply with all applicable Federal, State or local laws, regulations, rules, ordinances, or orders.

38. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Consent Order shall not relieve Defendants from the obligations created by this Consent Order.

XIV. RETENTION OF JURISDICTION

39. This Court shall retain jurisdiction for the purpose of administering and enforcing this Consent Order.

XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

40. The Parties agree and acknowledge that final approval by Plaintiff and Defendants and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(d)(2)(iii), which

provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. The Parties reserve the right to withdraw this Consent Order based on comments received during the public comment period.

41. The Developer Defendants shall pay the costs incurred by Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation by delivering a certified check, payable to "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days of receipt of notice of the costs from Ohio EPA.

42. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Consent Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 58(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Consent Order.

XVI. EFFECTIVE DATE

43. This Consent Order shall be effective upon the date of its entry by the Court.

XVII. COURT COSTS

44. The Developer Defendants are ordered to pay all court costs of this action.

XVIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

45. Each signatory represents and warrants he or she has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document.

IT IS SO ORDERED.

Christine Croce
JUDGE

6/8/2020
DATE

APPROVED AND AGREED TO BY:

GLENCAIRN CORP.

DAVE YOST
OHIO ATTORNEY GENERAL

Amber Wootton Hertlein

JANEAN WEBER (0083960)
AMBER WOOTTON HERTLEIN (0083858)
KATHERINE A. WALKER (0093850)
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Counsel for Defendant Glencairn Corp.

[
Authorized Representative of Glencairn Corp.

LIFESTYLE NEIGHBORHOODS CO.

JOSEPH P. KONCELIK (0061692)
Tucker Ellis LLP
950 Main Avenue
Suite 1100
Cleveland, OH 44113
Telephone: (216) 696-2373

*Counsel for Defendant Lifestyle
Neighborhoods Co.*

[
Authorized Representative of Lifestyle
Neighborhoods Co.

IT IS SO ORDERED.

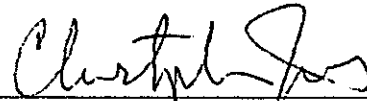
JUDGE

DATE

APPROVED AND AGREED TO BY:

GLENCAIRN CORP.

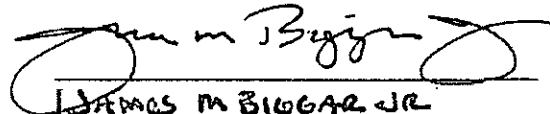
DAVE YOST
OHIO ATTORNEY GENERAL



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JAMES M. BIGGAR JR.
Authorized Representative of Glencairn Corp.

Counsel for Plaintiff, State of Ohio

LIFESTYLE NEIGHBORHOODS CO.

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*Counsel for Defendant Lifestyle
Neighborhoods Co.*

*Authorized Representative of Lifestyle
Neighborhoods Co.*

IT IS SO ORDERED.

JUDGE

DATE

APPROVED AND AGREED TO BY:

GLENCAIRN CORP.

DAVE YOST
OHIO ATTORNEY GENERAL

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Counsel for Defendant Glencairn Corp.

Counsel for Plaintiff, State of Ohio

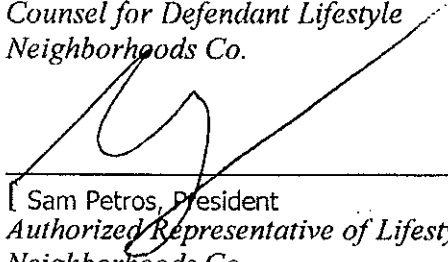
[*Authorized Representative of Glencairn Corp.*]

LIFESTYLE NEIGHBORHOODS CO.



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Suite 1100
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*Counsel for Defendant Lifestyle
Neighborhoods Co.*



[*Sam Petros, President*
*Authorized Representative of Lifestyle
Neighborhoods Co.*]

**THE WOODS NEIGHBORHOOD
HOMEOWNERS' ASSOCIATION, INC.**



JOSEPH DIBAGGIO (0074775)

Karman & Cusimano, LLC
2000 Terminal Tower
50 Public Square
Cleveland, OH 44113
Telephone: (216) 696-0650

*Counsel for Defendant The Woods
Neighborhood Homeowners' Association, Inc.*

[_____]
*Authorized Representative of The Woods
Neighborhood Homeowners' Association, Inc.*

**GLENCAIRN FOREST
HOMEOWNERS' ASSOCIATION, INC.**

STEVEN OTT (0003908)

Ott & Associates Co., LPA
1300 East 9th Street
Suite 1520
Cleveland, OH 44114
Telephone: (216) 771-2600

*Counsel for Defendant Glencairn Forest
Homeowners Association, Inc.*

[_____]
*Authorized Representative of Glencairn
Forest Homeowners' Association, Inc.*

**THE WOODS NEIGHBORHOOD
HOMEOWNERS' ASSOCIATION, INC.**

**GLENCAIRN FOREST
HOMEOWNERS' ASSOCIATION, INC.**

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Telephone: (216) 771-2600

*Counsel for Defendant Glencairn Forest
Homeowners Association, Inc.*


[DONNA H. DELAMATER]
Authorized Representative of The Woods
Neighborhood Homeowners' Association, Inc.

[]
Authorized Representative of Glencairn
Forest Homeowners' Association, Inc.

**THE WOODS NEIGHBORHOOD
HOMEOWNERS' ASSOCIATION, INC.**

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*Counsel for Defendant The Woods
Neighborhood Homeowners' Association, Inc.*

[INSERT NAME]

*Authorized Representative of The Woods
Neighborhood Homeowners' Association, Inc.*

**GLENCAIRN FOREST
HOMEOWNERS' ASSOCIATION, INC.**

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Telephone: (216) 771-2600

*Counsel for Defendant Glencairn Forest
Homeowners Association, Inc.*

[INSERT NAME]

*NICHOLE CARROLL, JR.
Authorized Representative of Glencairn
Forest Homeowners' Association, Inc.*

Exhibit A
Access Agreement between HOAs and Lifestyle

Access Agreement

This Access Agreement (“**Agreement**”) is made and entered into by and between Lifestyle Neighborhoods Company (“**Lifestyle**”) and the Glencairn Forest Homeowners’ Association and the Woods Neighborhood Homeowners’ Association, Inc. (collectively “**HOAs**”) to provide Lifestyle with access to the property located in Phases 3 and 4 of The Woods development, which is a 12-acre subdivision development within the larger Glencairn Forest housing development, located east of State Route 21, north of Wheatley Road and south of the State Route 271 in Richfield Township, Summit County, Ohio, all of which is controlled by the HOAs (“**Property**”).

I. Background Information

A. The State of Ohio, on behalf of the Ohio Environmental Protection Agency (“Ohio EPA”), filed its First Amended Complaint captioned *State of Ohio ex rel. v. Glencairn Corp., et al.* (Case No. CV-2018-05-22810) in Summit County Common Pleas Court (hereinafter referred to as the “Complaint”) in which Lifestyle and the HOAs, along with Glencairn Corporation, were named as “Defendants”;

B. Defendants have reached agreement with the State of Ohio to resolve all violations alleged in the Complaint through a Consent Order;

C. The Ohio EPA has approved engineering plans prepared by Spagnuolo & Associates, LLC dated October 30, 2019 for the installation of storm water separator units in cul-de-sacs located in Ashby Lane and St. Andrews Lane in Phases 3 & 4 as well as the potential addition of rock by the storm water outlet structures located behind the homes in Ashby Lane and St. Andrews Lane which such plans are attached to the Consent Order as Exhibit A (hereinafter “Approved Engineering Drawings”);

D. Pursuant to the Consent Order, Lifestyle will be performing the work set forth in the Approved Engineering Drawings.

II. Statement of the Agreement

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Lifestyle and HOAs agree as follows:

A. HOAs hereby grant to Lifestyle, its agents, representatives, contractors, subcontractors or other designees authorized by (hereinafter “**Authorized Parties**”), the right and license to access the Property to perform all activities necessary for completion of the work as set forth in the Approved Engineering Drawings, or such other work as is incidental thereto as may be required by the Ohio EPA. This right and license to access the Property is effective immediately upon the execution of this Agreement by the HOAs and Lifestyle.

- B. The Authorized Parties shall provide the HOAs with a written list of all contractors, subcontractors, vendors and suppliers hired by Lifestyle to perform work on the Project and said list shall be incorporated herein and made part of this Agreement as an addendum. Lifestyle further agrees it will assign all contractual rights to the HOAs for any Authorized Parties it hire to perform work under the Project.
- C. Lifestyle and the Authorized Parties must obtain all necessary permissions and permits, from the Ohio EPA, Summit County, and the Village of Richfield, including but not limited to, the Richfield Sewer Department before any work is commenced on the Project. Any and all permits must be provided to the HOAs.
- D. The Authorized Parties may enter the Property during normal business hours which shall be from 8 am to 5pm and may also make special arrangements to enter the Property at other times upon receipt of written consent of the HOAs.
- E. HOAs shall not interfere with the access of Authorized Parties or the work being performed thereby and shall not obstruct the areas of the Property to which Authorized Parties requires access or upon which Authorized Parties are performing work in accordance with this Agreement.
- F. Authorized Parties provided access in accordance with this Agreement shall enter upon the Property at their own risk, and the HOAs will not be held responsible or liable for any injury, damage, or loss incurred by any person or property, including but not limited to, any person or property employed by or in any way affiliated the Authorized Parties arising out of or in connection with any activities under this Agreement.
- G. Each Authorized Party jointly and severally hereby indemnifies and holds the HOAs harmless from all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and distributions of any kind or nature including, without limitation, the disbursements and the reasonable fees of counsel the HOAs and any and all claims or causes of action, whether known or unknown, including property damage or bodily injury, arising out of or directly related to the acts of said Authorized Parties in connection with the performance of activities under this Agreement.
- H. Insurance. Each Authorized Party shall at all times, commencing with the date upon which construction begins, carry or cause to be carried by his sub-contractors where applicable, the following types of insurance with an insurance carrier or carriers acceptable to the HOAs and in occurrence based policies covering all work performed under this Agreement and incidental to this Agreement, approved by the HOAs:
- a) Worker's compensation insurance fully covering all persons engaged in the performance of this agreement in accordance with the laws of the State of Ohio.
 - b) Public liability insurance covering death or bodily injury with

limits not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) annual aggregate and property damage in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for each occurrence and One Million and 00/100 Dollars (\$1,000,000.00) annual aggregate which insurance shall name each Association as an additional insured.

c) Each Authorized Party, at the signing of this agreement, shall furnish the HOAs duplicate policies of insurance as set forth in paragraphs (a) and (b) hereof, together with certificates and receipts showing that such insurance is in full force and fully paid for. Each of such policies shall contain a provision to the effect that they may not be canceled except upon ten (10) days' prior written notice to the Association.

I. The access rights granted herein shall expire upon completion of the work as set forth in the Approved Engineering Drawings.

J. The Property accessed to perform all activities necessary for completion of the work as set forth in the Approved Engineering Drawings, or such other work as is incidental thereto shall be restored to the condition it was in (or better) prior to access being given pursuant to this agreement. If resurfacing must be delayed until weather permits, the Authorized Parties shall provide appropriate temporary resurfacing until weather permits the final resurfacing and shall otherwise ensure the construction areas are safe and secure at all times for any all work performed under this Agreement. The final resurfacing shall occur as soon as the weather permits.

K. This instrument shall be construed and enforced in accordance with the laws of the State of Ohio and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. If any term or provision of this instrument shall be deemed by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall remain in full force and effect. This instrument contains the entire Agreement between the parties and supersedes all prior and contemporaneous agreements. This instrument may be modified only by an instrument in writing signed by the party to be charged with the modification. Nothing contained in this instrument shall be deemed to make the parties partners or engaged in a joint venture with one another. This instrument may be signed in more than one counterpart, in which case each counterpart shall constitute an original of this instrument. An executed facsimile copy of this Agreement shall be considered for all purposes the original.

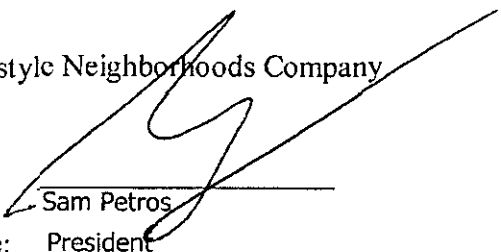
Any written Notices that must be sent under this Agreement will be sent to the following representatives of the HOAs and Developer Defendants:

- 1: Lifestyle Neighborhoods Company: Greg Modic 10474 Broadview Rd
Broadview Heights, Ohio 44147 gmodic@petroshomes.com;
- 2: Glencairn Corporation: James Biggar, Jr. email: jmbiggarrjr@gmail.com;
- 3: Glencairn Forest Homeowners' Association: Mike Caporale, President
3668 Shetland Trail Richfield Ohio 44286; and

4: Woods Neighborhood Homeowners' Association, Inc.: _Kaman & Cusimano, c/o of Joseph E. DiBaggio, Esq. via email at Jdibaggio@kamancus.com and Adam D. Fuller, Woods Neighborhood HOA Secretary, via regular mail, 75 East Market Street, Akron, Ohio 44308 and via email at adfuller@bmdllc.com.

The parties have hereto caused this Agreement to be executed by their respective officers or officials thereunto duly authorized on the day and year set forth below.

Lifestyle Neighborhoods Company

By:  _____

Title: President

Date: 04/14/2020

Glencairn Forest Homeowners' Association

By: _____

Title: _____

Date: _____

Woods Neighborhood Homeowners' Association, Inc.

By: _____

Title: _____

Date: _____

4: Woods Neighborhood Homeowners' Association, Inc.: Kaman & Cusimano, c/o of Joseph E. DiBaggio, Esq. via email at Jdibaggio@kamancus.com and Adam D. Fuller, Woods Neighborhood HOA Secretary, via regular mail, 75 East Market Street, Akron, Ohio 44308 and via email at adfuller@bmdllc.com.

The parties have hereto caused this Agreement to be executed by their respective officers or officials thereunto duly authorized on the day and year set forth below.

Lifestyle Neighborhoods Company

By: _____
Title: _____
Date: _____

Glencairn Forest Homeowners' Association

By: Michael Capone, Jr
Title: President, Glencairn Forest Homeowners Association
Date: April 3, 2020

Woods Neighborhood Homeowners' Association, Inc.

By: _____
Title: _____
Date: _____

4: Woods Neighborhood Homeowners' Association, Inc.: _Kaman & Cusimano, c/o of Joseph E. DiBaggio, Esq. via email at Jdibaggio@kamancus.com and Adam D. Fuller, Woods Neighborhood HOA Secretary, via regular mail, 75 East Market Street, Akron, Ohio 44308 and via email at adfuller@bmdllc.com.

The parties have hereto caused this Agreement to be executed by their respective officers or officials thereunto duly authorized on the day and year set forth below.

Lifestyle Neighborhoods Company

Glencairn Forest Homeowners' Association

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

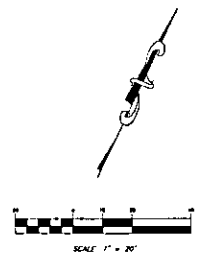
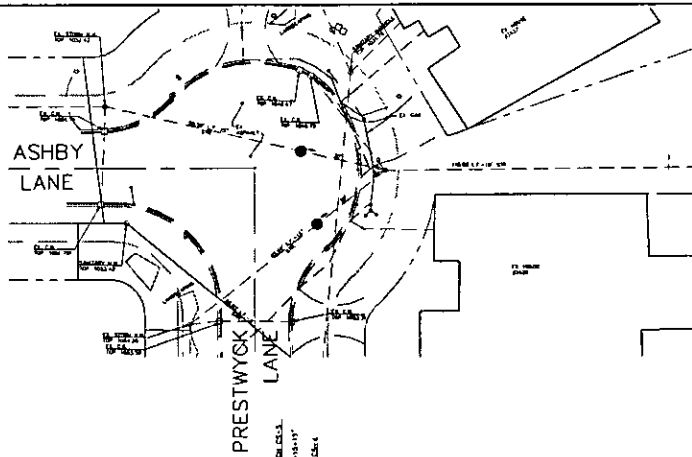
Woods Neighborhood Homeowners' Association, Inc.

By: Donna H. DeLamatter
DONNA H. DELAMATTER

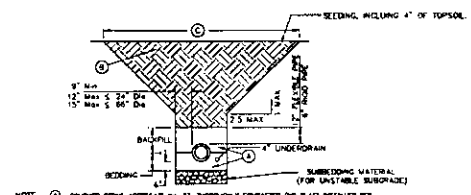
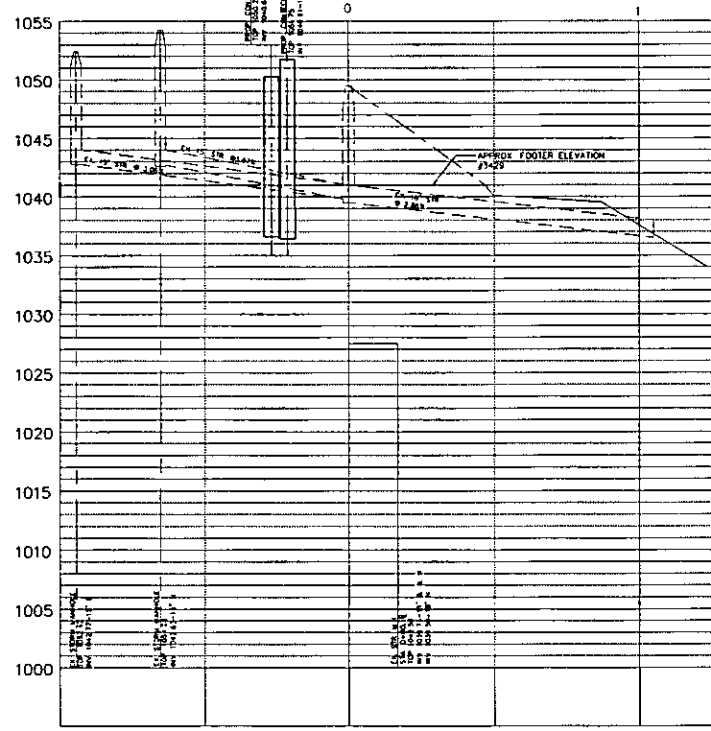
Title: President

Date: 4/16/2020

Exhibit B
Storm Water Separator Approved Engineering Drawings



FULL FLOW CAPACITY OF EXISTING
18" STORM SEWER = 13.40 cfs



- NOTE: (1) CRUSHED STONE ADDRESS # 31 THOROUGHLY COMPACTED AND SLICES INSTALLED PER ASTM D-2221 CLASS 1
- (2) TRENCH BACKFILL:
- (a) ALL BACKFILL ON ALL MATERIAL MUST BE FREE OF ROCKS AND COMPACTED TO AT LEAST 90% OF THE MATERIAL'S STANDARD PROCTOR MAXIMUM DRY DENSITY. IN THE MATERIAL'S WETTER ZONE MUST BE COMPACTED TO 95% OF THE OPTIMUM PRIOR TO COMPACTING.
 - (b) IN DEEPER CUTS & FEEL WHEN COMPACTING WITH A HOE-PAC OR EQUAL VIBRATED COMPACTOR, A CONTRACTOR MUST INSTALL THE FIRST 10" UP TO 3 FEET IN DEPTH BEFORE COMPACTING. SUBSEQUENT LAYS SHALL BE COMPACTED 18" PER THE HOE-PAC.
 - (c) OCCASIONALLY DEEP FEEL SHOULD BE AVOIDED TO A MAXIMUM OF 18" PER LAYER. OCCASIONALLY DEEP FEEL SHOULD BE AVOIDED TO A MAXIMUM OF 18" PER LAYER. OCCASIONALLY DEEP FEEL SHOULD BE AVOIDED TO A MAXIMUM OF 18" PER LAYER.
 - (d) RECYCLED AGGREGATE MUST BE USED FOR BACKFILL. THE MAXIMUM SIZE OF THE AGGREGATE SHALL NOT EXCEED 2" IF RECYCLED AGGREGATE IS USED.

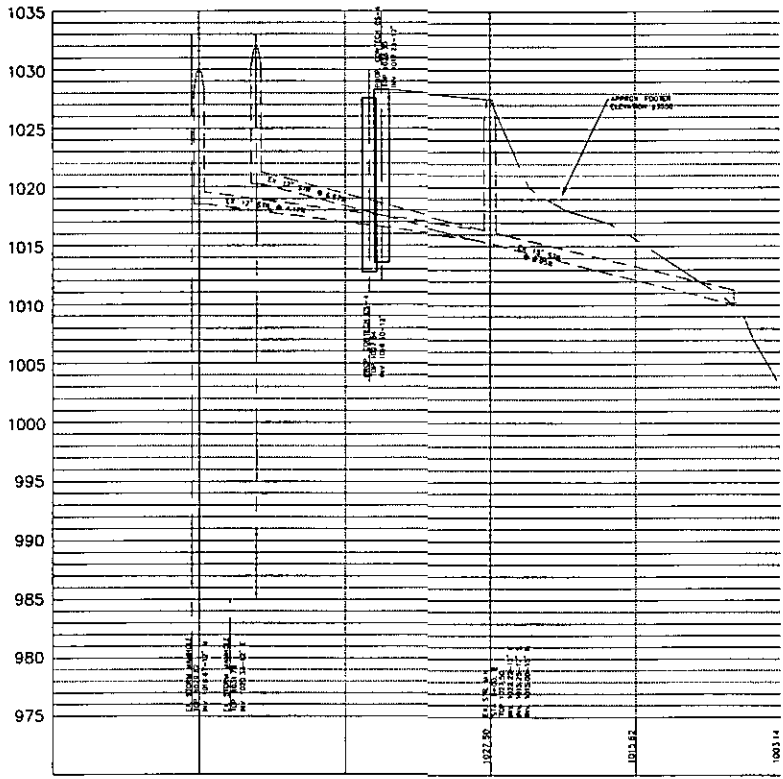
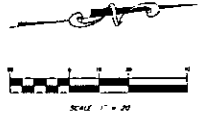
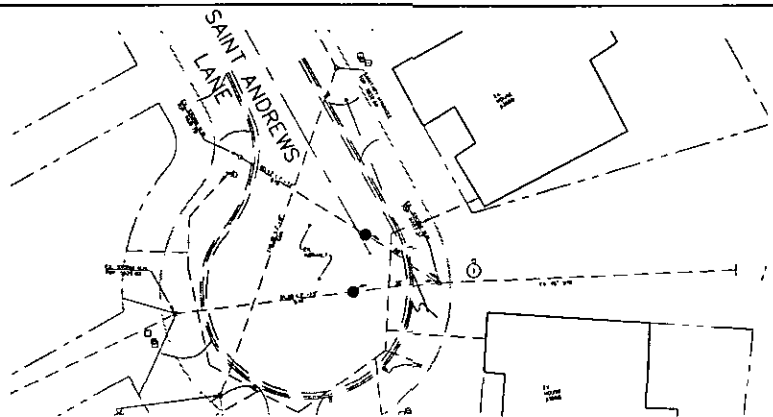
UTILITY
TRENCH DETAIL
NOT TO SCALE

Prepared By
SPAGNUOLO & ASSOCIATES, LLC
ENGINEERS - SURVEYORS
3057 WEST MARKET STREET, SUITE 201
FAULKNER, OHIO 44133
PHONE (330) 836-8661
FAX (330) 836-8115

Stormwater Quality Plan For
GLENCAIRN FOREST-THE WOODS
ASHBY LANE
TOWNSHIP OF RICHFIELD
COUNTY OF SUMMIT
STATE OF OHIO

SCALE: 1" = 50' OCTOBER, 2019

C:\VENKATARAM\WORK\PROJECTS\STORMWATER QUALITY (Development Storm Ashby Lane) 10/19/2019



GENERAL NOTES:

1. WHERE THE SOIL HAS A BEARING CAPACITY OF LESS THAN 2000 POUNDS PER SQUARE FOOT IT WILL BE NECESSARY TO REINFORCE THE MOUND BASE TO SUPPORT THE STORM SEWER AND INCREASE THE WIDTH OF THE MOUND BASE.
2. SEED ALL DISTURBED AREAS WITH TALL FESCUE AT A RESTORE RATE OF 1-1 LBS./1000 S.F. WITH STRAW EROSION CONTROL MATTING.
3. SUPPLEMENT EX. SOON CHANNEL AT STORM SEWER OUTFALLS BY TYPE B ROAD SUPPLEMENT ONLY AS FEASIBLE WITHOUT DISTURBING EXISTING VEGETATION IN THE OUTLET CHANNEL.

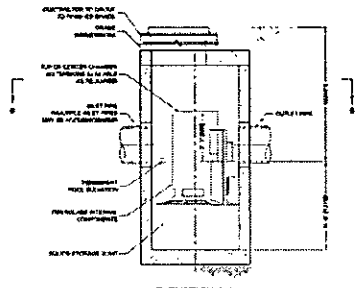
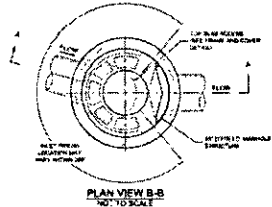
FULL FLOW CAPACITY OF EXISTING 15" STORM SEWER = 13.66 CFS

P:\MISC\PROJECTS\190821\190821.dwg (Drawing Name - Sect. 190821.dwg) 10/17/2019

Prepared By:
SPAGNUOLO & ASSOCIATES, LLC
 ENGINEERS - SURVEYORS
 3057 WEST MARKET STREET, SUITE 201
 FAIRLAWN, OHIO 44123
 PHONE (330) 836-6661
 FAX (330) 836-8115

Stormwater Plan For:
GLENCAIRN FOREST-THE WOODS
SAINT ANDREWS LANE RAVINE CORRECTION
 TOWNSHIP OF RICHFIELD
 COUNTY OF SUMMIT
 STATE OF OHIO

SCALE 1" = 50' OCTOBER, 2019



CASCADE separator

CASCADE SEPARATOR DESIGN NOTES

THE STRUCTURE TO ACCOMMODATE STORMWATER COLLECTION CAPACITIES ARE AVAILABLE AND THE COVER SHALL BE CONFORMED TO THE FOLLOWING NOTES:

CONFIGURATION DESCRIPTION

COVER SHALL BE 1" THICK POLYPROPYLENE

COVER SHALL BE 1" THICK POLYPROPYLENE

COVER SHALL BE 1" THICK POLYPROPYLENE

SITE SPECIFIC DATA REQUIREMENTS

NO.	DESCRIPTION	REMARKS
1	CONCRETE CURB TO MATCH TO FRAME AND COVER DETAIL	
2	TOP RAIN GUTTER WITH FRAME AND COVER DETAIL	
3	INLET PIPE	
4	OUTLET PIPE	
5	FRAMING AND STRUCTURE COMPONENTS	
6	SLOPE FINISH DETAIL	



FRAME AND COVER (SMALLER COURSE) NOT TO SCALE

- NOTES:**
1. PROVIDE ALL UTILITIES AND SERVICES TO BE INSTALLED IN THE STRUCTURE TO ACCOMMODATE STORMWATER COLLECTION CAPACITIES ARE AVAILABLE AND THE COVER SHALL BE CONFORMED TO THE FOLLOWING NOTES.
 2. PROVIDE ALL UTILITIES AND SERVICES TO BE INSTALLED IN THE STRUCTURE TO ACCOMMODATE STORMWATER COLLECTION CAPACITIES ARE AVAILABLE AND THE COVER SHALL BE CONFORMED TO THE FOLLOWING NOTES.
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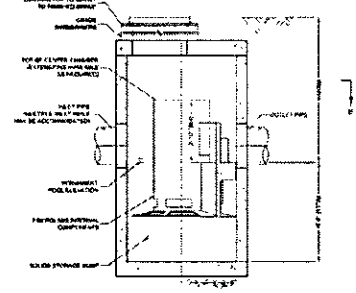
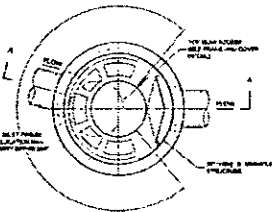
CONTECH
ENGINEERING SOLUTIONS, LLC
10000 W. 10TH AVE., SUITE 1000, DENVER, CO 80202
TEL: (303) 751-1000 FAX: (303) 751-1001

CS-4
CASCADE SEPARATOR
STANDARD DETAIL

WATER QUALITY CALCULATION SAINT ANDREWS WEST
 $WqF = (0.7)(0.75)(2.9) = 1.52 \text{ cfs}$

WATER QUALITY CALCULATION SAINT ANDREW SOUTH
 $WqF = (0.7)(0.75)(1.9) = 1.00 \text{ cfs}$

WATER QUALITY CALCULATION PRESTYCK LANE
 $WqF = (0.7)(0.75)(2.0) = 1.05 \text{ cfs}$



CASCADE separator

CASCADE SEPARATOR DESIGN NOTES

THE STRUCTURE TO ACCOMMODATE STORMWATER COLLECTION CAPACITIES ARE AVAILABLE AND THE COVER SHALL BE CONFORMED TO THE FOLLOWING NOTES:

CONFIGURATION DESCRIPTION

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COVER SHALL BE 1" THICK POLYPROPYLENE

SITE SPECIFIC DATA REQUIREMENTS

NO.	DESCRIPTION	REMARKS
1	CONCRETE CURB TO MATCH TO FRAME AND COVER DETAIL	
2	TOP RAIN GUTTER WITH FRAME AND COVER DETAIL	
3	INLET PIPE	
4	OUTLET PIPE	
5	FRAMING AND STRUCTURE COMPONENTS	
6	SLOPE FINISH DETAIL	



FRAME AND COVER (SMALLER COURSE) NOT TO SCALE

- NOTES:**
1. PROVIDE ALL UTILITIES AND SERVICES TO BE INSTALLED IN THE STRUCTURE TO ACCOMMODATE STORMWATER COLLECTION CAPACITIES ARE AVAILABLE AND THE COVER SHALL BE CONFORMED TO THE FOLLOWING NOTES.
 2. PROVIDE ALL UTILITIES AND SERVICES TO BE INSTALLED IN THE STRUCTURE TO ACCOMMODATE STORMWATER COLLECTION CAPACITIES ARE AVAILABLE AND THE COVER SHALL BE CONFORMED TO THE FOLLOWING NOTES.
 3. PROVIDE ALL UTILITIES AND SERVICES TO BE INSTALLED IN THE STRUCTURE TO ACCOMMODATE STORMWATER COLLECTION CAPACITIES ARE AVAILABLE AND THE COVER SHALL BE CONFORMED TO THE FOLLOWING NOTES.
 4. PROVIDE ALL UTILITIES AND SERVICES TO BE INSTALLED IN THE STRUCTURE TO ACCOMMODATE STORMWATER COLLECTION CAPACITIES ARE AVAILABLE AND THE COVER SHALL BE CONFORMED TO THE FOLLOWING NOTES.
 5. PROVIDE ALL UTILITIES AND SERVICES TO BE INSTALLED IN THE STRUCTURE TO ACCOMMODATE STORMWATER COLLECTION CAPACITIES ARE AVAILABLE AND THE COVER SHALL BE CONFORMED TO THE FOLLOWING NOTES.
 6. PROVIDE ALL UTILITIES AND SERVICES TO BE INSTALLED IN THE STRUCTURE TO ACCOMMODATE STORMWATER COLLECTION CAPACITIES ARE AVAILABLE AND THE COVER SHALL BE CONFORMED TO THE FOLLOWING NOTES.

CONTECH
ENGINEERING SOLUTIONS, LLC
10000 W. 10TH AVE., SUITE 1000, DENVER, CO 80202
TEL: (303) 751-1000 FAX: (303) 751-1001

CS-5
CASCADE SEPARATOR
STANDARD DETAIL

WATER QUALITY CALCULATION ASHBY LANE
 $WqF = (0.7)(0.75)(4.1) = 2.15 \text{ cfs}$

Prepared By:
SPAGNUOLO & ASSOCIATES, LLC
ENGINEERS - SURVEYORS
3057 WEST MARKET STREET, SUITE 201
FAIRLAWN, OHIO 44133
PHONE (330) 836-5661
FAX (330) 836-8115

Stormwater Quality Details For
GLENCAIRN FOREST-THE WOODS

TOWNSHIP OF RICHFIELD
COUNTY OF SUMMIT
STATE OF OHIO

SCALE: 1" = 50' OCTOBER, 2019

Exhibit C
HOA Long Term Maintenance Agreement

EXHIBIT C

STORM WATER SEPARATOR UNIT MAINTENANCE PLAN

Glencairn Forest Homeowners' Association, Inc. their heirs, successors and assigns (hereinafter referred to as the "Owner") agrees to maintain in perpetuity the storm water separator units as set forth below and in a manner that will permit the storm water separator units to perform the purposes for which they were designed and constructed, as shown and described in the storm sewer plan for Glencairn Forest- The Woods Corrections prepared by Spagnuolo & Associates LLC as revised on October 30, 2019 and as attached as Exhibit B to the Consent Order.

1. Owner shall perform the following inspections and maintenance:
 - a. Every three (3) months and after major storm events visually inspect the components of each of the four (4) storm water separator units.
 - b. Remove blockages and/or obstructions in the inlet and separation screen.
 - c. Measure the depth of the accumulated sediment.
 - d. Remove accumulated sediment when the measured depth is 4 feet or greater.
2. The Owner shall perform all maintenance in accordance with the above maintenance plan and shall complete all repairs identified through regular inspections. The Owner shall maintain inspection reports in writing documenting the tasks performed to comply with the inspection and maintenance requirements set forth in paragraph 1. All inspection reports shall be maintained and be made available for review upon request by the Ohio Environmental Protection Agency ("Ohio EPA").
3. The Owner grants permission to the Ohio EPA or its designated agent to enter the Property and to inspect all aspects of the stormwater best management practices (BMPs) and related drainage whenever the Ohio EPA deems necessary.
4. The Owner shall be responsible for the costs of its inspection and maintenance responsibilities as listed in this agreement.
5. The current Owner shall promptly notify the Ohio EPA when the Owner legally transfers any of the Owner's responsibilities for the inspection and maintenance set forth herein. The Owner shall supply the Ohio EPA with a copy of any document of transfer, executed by both parties.