

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

DERALD MORGAN, RICK AND CINDY )  
GRAVER, WILLIAM AND GLORIA PHIPPS )  
and DAVID LOTT, )

Complainants, )

v. )

File No. WC-2017-0037

CARL RICHARD MILLS, )  
CARRIAGE OAKS ESTATES, )  
DISTINCTIVE DESIGNS, and )  
CARING AMERICANS TRUST )  
FOUNDATION, INC. (f/k/a Caring )  
Americans Foundation, Inc.) )

Respondents. )

**RESPONDENTS' MOTION TO DISMISS  
COMPLAINANTS' AMENDED PETITION**

Respondents move to dismiss the Complainants' Amended Petition ("Petition") because the Missouri Public Service Commission (the "PSC") does not have jurisdiction over the Respondent or the claims asserted in the Petition. In further support of this Motion, Respondents state as follows:

**I. Background Information**

Carriage Oaks, LLC ("Carriage Oaks") is the owner and Distinctive Designs Ltd. is the developer of Carriage Oaks Estates, a residential subdivision located in Stone County, Missouri. (Declaration of Restrictive Covenants & Easements for Carriage Oaks Estates, Exhibit "A") Carl Richard Mills ("Mills"), through his trust, is the manager and controlling owner of Carriage Oaks and Distinctive Designs Ltd. (Ex. B). Since the inception of Carriage Oaks Estates Subdivision, Carriage Oaks and Distinctive Designs have owned, operated, and maintained the water and sewer systems that provide service to the residents of Carriage Oak Estates (Ex. B). The Carriage Oaks Estates Homeowners Association ("Association") is charged a small fee every year to cover expenses associated with the

operation of the water and sewer systems. However, the fees are not adequate to cover all costs and expenses related to upkeep, maintenance and improvements of the water and sewer systems (Ex. B).

Mills is 76 years old and a widower. In mid-2016, Mills transferred ownership of the water and sewer systems from Carriage Oaks to the Caring Americans Trust Foundation, Inc. (“Caring Americans”), a Missouri non-profit corporation controlled by Mills (Ex. B). The purpose of this transfer was solely for succession planning—to ensure upon Mills’ demise an entity would exist that would continue to own and maintain the water and sewer systems for Carriage Oaks Estates (Ex. B). Complainants’, as residents of Carriage Oaks Estates, filed this action with the PSC claiming that Caring Americans must obtain a permit from the PSC to operate the water and sewer systems and asking the PSC to demand Caring Americans turn over the water and sewer systems to the Association. Respondents move to dismiss this claim on the grounds that: (1) the PSC lacks jurisdiction over the Respondent and the claims; (2) the Complainants are precluded from obtaining an ownership interest in the water and sewer systems to substantiate their demand for possession; and (3) the Declarations adequately address oversight of the Carriage Oaks water and sewer systems.

## **II. The Public Service Commission Lacks Jurisdiction Over the Complaint**

The PSC has jurisdiction to regulate public utilities. A public utility has been defined to include both water corporations and sewer corporations. *Ogg v. Mediacom, LLC*, 142 S.W. 3d 801, 813 (Mo. App. W.D. 2004). Respondents operate neither a water corporation nor a sewer corporation in providing services to the residents of Carriage Oaks Estates.

The statute defines a water corporation as “Every corporation...and person...owning, operating, controlling or managing any plant or property, dam, or water supply, canal or power stated, distributing or selling for distribution, or selling or supplying *for gain* any water” (emphasis added). Section 386.020(59) RSMo. Courts have interpreted the phrase “for gain” within this definition to mean that the water corporation is operated for the purpose of receiving compensation. *Hurricane Deck Holding Co. v Public Service Com’n of State*, 298 S.W. 3d 260 (Mo. Ct. App. W.D. 2009). Respondents do not receive a financial gain in providing the water services. To the contrary, the Association payments do not cover all

the costs to operate the water system (Ex. B). All fees collected from the Association are invested in the upkeep and maintenance of the water system and do not financially benefit any Respondent. Because the Respondents do not operate the water system for gain, they are excluded from the definition of a water corporation and, in turn, such service is excluded from the jurisdiction of the PSC.

The statute defines a sewer corporation as, “Every corporation...or person...owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets”. Section 368.020(49) RSMo. The sewer services provided by Respondents only serve five outlets—the five residential lots in Carriage Oaks Estates. As such, the sewer system is explicitly excluded from the definition of sewer corporation, and such sewer service falls outside of the jurisdiction of the PSC. The sewer system is also not operated “for gain” and is excluded from the PSC’s jurisdiction for the reasons explained above.

Additionally, although the relevant statutory definitions contain no explicit requirement that an entity be operated for a public use in order to constitute a public utility, the Missouri Supreme Court has long held that such public use requirement was intended. *Hurricane Deck* at 264. Services provided by Respondents are not available to the general public, but rather a select group of people. “The Developer and/or Owner shall provide a central water well and sewer treatment facilities to serve lots in each phase of the Carriage Oaks Estates Development in accordance with the Missouri Department of Natural Resources ...” (Ex. A, § IV, ¶ 1). Here, the Declarations clearly limit the water and sewer systems to the members of the Association.

In the case of *Orler*, the PSC held that they lacked jurisdiction over water and sewer systems provided solely to residents of a homeowners association because such services were not available to the general public. *Orler v. Folsom Ridge, LLC*, WC 2006-0082. In particular, the PSC noted, “Substantial and competent evidence in the record establishes that service is only offered to individuals who have paid tap-on fees for access and who have become members of the Association. Thus, while the water and sewer systems are available to all current Island residents and to potential future Island residents, they are

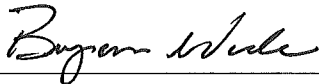
only being offered on an optional basis to a discrete group of people (members of the Association) not the general public.” *Id.* Similar to the situation in *Orler*, the services provided by Carriage Oaks are to a select group of people (residents of Carriage Oaks Estates) and not the public in general. As such, the services provided by Carriage Oaks are not public utilities and not within the jurisdiction of the PSC.

### **III. Complainants Do Not Have an Ownership Interest in the Systems**

Each lot in Carriage Oaks Estates is subject to Exhibit A which were properly filed with the Stone County Recorder on June 1, 2001 and each of the Complainants were given a copy of these restrictions when they purchased their lot in Carriage Oaks Estates. These deed restrictions state that the Owner, Carriage Oaks, owns all interest in the water and sewer systems. These restrictions also give Carriage Oaks the right to transfer the water and sewer systems to other entities. Under these restrictions, the Complainants have no interest in the water and sewer systems. Additionally, these deed restrictions prevent the Association from owning the water and sewer systems until at least 75% of the lots are developed. Currently, there are only 7 lots which are developed- a far cry from the 75% (or 41 lots) required to transfer ownership. In light of the foregoing, the Complainants demand that the PSC grant them ownership of the water and sewer systems is unjustified and a blatant violation of the deed restrictions.

Respondents respectfully ask the PSC to dismiss the Complainants’ First Amended Petition and for such other and further relief as appropriate.

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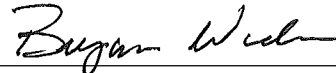
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Attorneys for Respondent

**Certificate of Service**

The below signed counsel hereby certifies that a true and accurate copy of the foregoing was sent to Karl Finkenbinder, counsel for the Complainants, via email ([karl@sfalawfirm.com](mailto:karl@sfalawfirm.com)) on this 6th day of September, 2016.



Bryan Wade, Counsel for Respondents

DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENTS

*Per Recorded Plat IN BK. 45 Pg 62*

CARRIAGE OAKS ESTATES R-1

I.

DEFINITIONS

SECTION I. The following words used in the Declaration have the following meanings (unless the context shall clearly indicate otherwise):

a. "Association" shall mean and refer to the Carriage Oaks Estates Homeowners Association, a not for profit Missouri Corporation created by the Owner, or to any other entity, organized for-profit or not-for-profit, succeeding in interest to the Carriage Oaks Estates Development in relation to its obligations, responsibilities or entitlements under this Declaration.

b. "Commission" shall mean the Clean Water Commission of the State of Missouri and shall include the Missouri Department of Natural Resources and its or their successors as may be created by law from time to time hereafter.

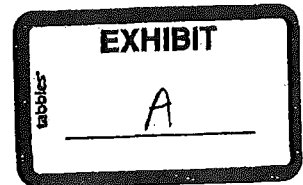
c. "Lot" shall mean and refer to any numbered plat of any tract of land shown upon any recorded plat of any part of the properties.

d. "Owner" shall mean and refer to the record owner whether one or many persons or entities, of the fee simple title to any lot situated upon the properties, but not withstanding any applicable theory of mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to a foreclosure, "Owner" shall also include any purchaser in possession under a contract for deed.

e. "Central Sewer System" or "Sewer" shall mean and refer to the wastewater disposal system and all sewer lines, pipes, fittings, valves, motors, tanks, pumps and other necessary components of the system.

f. "Central Water Well or Well" shall mean and refer to the State Approved Well and Water lines, pipes, fittings, valves, motors, tanks, pumps and other necessary components of the system.

g. "Assessment" shall refer to and mean any charges or fees assessed or required at anytime hereafter to be paid by any purchaser of a lot (or lots) by virtue of this Declaration or any other recorded document affecting the legal or equitable ownership, possess or use of any lot or lots within the Subdivision.



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h. "Developer/Owner shall refer to and mean Distinctive Designs Ltd. Div. Mills Properties Group Ltd. a Missouri Corporation, or any managing member of Carriage Oaks LLC, Owner of Record of the Subdivision Property, designated to act, vote, or make decisions for or on issues or matters relating to the Carriage Oaks Estates Development.

## II.

1. No lot or tract shall be divided into smaller lots or tracts.
2. No more than one dwelling shall be constructed on any lot or tract.
3. No private well shall be drilled on any lot and used for drinking water, and no method of obtaining drinking water shall be allowed except connection to the state approved water supply well constructed to Department of Natural Resources/Public Drinking Water Program standards and permitted by the Department of Natural Resources.

## III.

### GENERAL PROVISIONS

1. Any lot sold or conveyed from this tract shall be used exclusively for a single family residence and no other purpose. Developer shall have the reserved right to approve or disapprove of any plans of construction, upon either aesthetic or fire or other safety considerations. Plans for construction of dwellings shall be submitted to and approved by the Contractor prior to commencement of construction. Plans submitted will be promptly evaluated by the Developer according to the quality of materials and proposed workmanship, harmony of external design with respect to existing structures, and location with respect to topography and finish grade level. Approval of plans shall not be unreasonably withheld by Developer and if no action is taken upon the plans within 60 days after submission to the Developer, the plans shall be considered as though they had been approved by Developer. All buildings shall be completed as to exterior within 12 months of the starting date. Interior shall be completed within 24 months of starting date. Any modification or addition to the original structure must be approved in writing by the Developer/Association prior to any change or modification of already approved plans.
2. Not more than one (1) building or structure shall be erected on any lot sold or conveyed from this tract with a minimum two car and a maximum five car garage compatible in design and appearance with the residence. Absolutely no separate storage buildings. No metal buildings of any sort shall be permitted. All residents or homes to be built by a general contractor with at least 10 years of being in business and approved by Developer prior to breaking ground in Carriage Oaks.

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- a. No fences, satellite dishes more than 24" nor any other structure may be built without approval of developer.
3. All buildings or structures erected shall be permanently affixed to a permanent foundation and shall have no exposed concrete on foundations, walls, or anything except drive, or sidewalks and for flat surfaces only. The upright concrete surfaces must be covered with rock, stone, brick or masonry product such as Drivit or Stucco etc. At least 1/4 of the upright surfaces constructed on property must be covered in rock stone, or brick surface. All residences must be at least 3,100 Square feet of living space for a 1 story home; a minimum of 2,200 square feet on main floor living area and a minimum of 1,800 square feet finished on lower level. No home may be more than 2 stories except for those with walkout finished basement level, or 2 stories with underground basement unfinished. All square footage's are figured on finished conditioned living area. areas excluded are porches, decks and garages.
  - a. No trees greater than 4", large rock shelves, or other natural existing structures may be removed without approval of the developer.
4. No vinyl, or metal on exterior walls.
5. Minimum set backs for homes are 25 Ft. from front property line adjacent to street, 15 Ft. from side property line and 25 Ft. from rear property line. Set backs on recorded plat takes precedence over these setbacks. No Propane, or other tank(s) will be mounted above ground.
6. Roofing material to be asphalt or fiberglass architectural shingles, wood shake, concrete shingles or tile.
7. No building or structure shall significantly interfere with the natural flow of water drainage.
8. No motor vehicle, trailer, van camper, recreational vehicle, shack, tent, mobile home, boat trailer, or boat shall be used occupied either temporarily or permanently for residence purposes or stored outside of a garage.
9. All trash and garbage shall be stored in one or more tightly sealed containers and shall be removed to a designated area for pick up, until notified of individual pick up from each lot once a week. No trash or garbage receptacle or container shall be kept or stored in front or rear of building line of any residence unless kept in an enclosed garage. All trash is to be kept off of owners grounds. All down trees will be removed within 30 days of being downed.
10. No hogs, horses, cattle, sheep, goats, other livestock poultry or other animals other than common household pets shall be permitted, kept, housed, or maintained on any lot.



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No animals shall be at anytime kept or maintained on any lot for any purpose, other than ordinary, usual, and common household pets; and then, no more than 3 in number at any time. No uncommon, exotic, or dangerous animals shall be maintained or kept on any lot or within any residence upon any lot; and no poultry, cows, horses, mules, swine, rabbits, sheep or goats, or other domesticated farm animals shall be allowed to be maintained or kept upon any lot. All household pets shall be the responsibility of the homeowner when allowed outside of the confines of any residence, and will be held responsible for injury or damage to other neighboring lot owners.

11. No unlicensed motorized vehicles or abandoned vehicles shall be allowed on any common street or roadway, or any lot excluding golf carts and riding lawnmowers.

12. No loud or offensive music, noise or activity shall be permitted on any lot nor shall anything be done therein which shall be or become an annoyance to the neighborhood.

13. All driveways, sidewalks, and ramps shall be asphalt or concrete. All driveways providing access from any tract to any common roadway, when necessary, shall be constructed over a culvert of size to provide for proper drainage of surface water.

14. The Developer/Owner hereby reserves and retains, and any lot sold or conveyed is subject to an easement under, over and above a strip of land 15 Ft. in width for the purposes of erecting, maintaining and operating electric power lines, telephone lines, water lines, sewage and/or gas lines.

Developer and/or Association shall further be permitted entry upon any lot or tract for the purpose of cutting or trimming any tree growth or other growth located upon any lot or tract which might interfere with or endanger the construction or operation of any utility services to any such lot or tract.

15. Except as otherwise provided herein, no signs of any kind shall be placed on the property, except that a "For Sale" sign not to exceed twenty-four (24) inches by twenty-four (24) inches in size may be placed on any lot offered for sale, and except that any owner may place on any lot owned by him a sign identifying the owner, provided that no such sign shall exceed twenty-four (24) inches by six (6) inches in size.

16. Each Owner of a lot of Carriage Oaks Estates shall be responsible for paying his proportional share of the cost of maintaining the well, sewer treatment plant including pumps, lines and equipment of either water or sewer treatment systems providing services other than the cost of constructing the original facilitates this will include roads, gates and common area.

17. No lots may be sub-divided from original plat as recorded in Stone County Recorders Office, Stone County, Missouri.

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18. These restrictions shall run with the land and shall remain in full force and effect for a period of fifteen 15 years from the date of filing of this declaration. Thereafter these restrictions shall automatically remain in full force and effect for successive periods of ten (10 years unless the owners of seventy-five percent (75%) of the lots covered by these restrictions execute and instrument in writing modifying or abolishing these restrictions. This includes all phases of the Carriage Oaks Development and lots of all phases as they are or may become recorded in Stone County, Missouri.

19. These restrictive covenants and easements may be enforced by the Owner of any lot of this tract and each owner by purchasing a lot of said tract agrees that violations of any of these restrictions may be enjoined in any Court of competent jurisdiction without proof of any damage.

20. These restrictive covenants and easements may at any time be abolished or amended prior to the expiration of fifteen (15) years by the written agreement of seventy-five (75%) of the owners of lots of Carriage Oaks Estates Development, which includes all phases of the development.

21. Any right, power or authority reserved herein the Developer/Owner, by written instrument filed or recorded, may be sold by the Developer/Owner to a property owners association, private or public utility, or private corporation, This does not include improved streets, roads, gates, or common areas which may only be dedicated to lot owners or association thereof.

22. Invalidation of any one of these covenants and restrictions by judgment or Court order shall not affect any other provisions, which shall remain in full force and effect.

23. The covenants in the agreement contained shall be binding upon and the benefits and advantages hereunder shall insure to the respective heirs, executors, administrators, successors, and assigns of the parties hereto.

#### IV

#### WATER, WELL, AND SEWER SYSTEM FACILITIES

1. The Developer and/or Owner shall provide a central water well, and sewer treatment facilities, to serve lots in each phase of the Carriage Oaks Estates Development, in accordance with the Missouri Department of Natural Resources, maintained, managed and accordance with the Missouri Clean Water Commission.

The costs for the central water well and sewer treatment facility including piping, valves, pumps, motors, tanks and all components necessary for the operation of such, shall be born by the Owner of the development and installed by the developer.

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All residential units must connect to the well and sewer distribution system.

Prior to utilizing the wastewater central collection and treatment facility, all property owners shall have installed an approved "on-site" plumbing system to transfer all wastewater generated by the subject property to the collection and treatment facility.

It shall be the responsibility of the property owner to maintain said "on-site" system such that it will continually operate in accordance with the current standards of the Missouri Department of Natural Resources.

All "on-site" systems shall be built to the specifications as attached hereto as "Exhibit A" and have a minimum of the following features:

- (1) 1000 gallon waterproof concrete or fiberglass primary treatment tank for homes of 3 bedrooms or less, 1250 gallon for 4 bedrooms, and 1500 gallon for 5 bedrooms or more, Homes over 5 bedrooms may require additional storage.
- (2) Each tank shall have a screened pump vault with a minimum of 16 square feet of 1/8 inch polymer mesh.
- (3) Each tank shall contain a high-head effluent 1/2 hp, 115 VAC single phase pump. This pump shall be capable of a minimum flow rate of 5 gpm against a head of 200 feet or 10 gpm against a head of 135 feet.
- (4) The system shall also include all plumbing and electrical assemblies, as recommended by the manufacturer to assure the system is fully functional as intended.
- (5) It will be the responsibility of the property owner to have the tank pumped out at reasonable intervals (not to exceed 5 years) in order not to damage tank components or any of the central collection or treatment system, by a licensed pump and hauling contractor.

The costs for maintenance or improvements shall be assessed quarterly to start with by the Homeowners Association for all roads, streets, gates, common areas, central water well and sewer system including distribution lines for either or both.

2. Any restriction relating to special water or sewerage disposal provisions, shall be independently enforceable by either or both the Department of Natural Resources of Missouri, and/or the Missouri Clean Water Commission; as well as by the Developer/Owner or Homeowners Association.

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V.

ASSESSMENTS OR CHARGES

1. The Homeowners Association, from time to time shall set quarterly, semi annual, or annual charges or assessments for the following:
  - A) Road repair, maintenance and/or improvement;
  - B) Repair, maintenance and/or improvement of any common areas or gates
  - C) Well or Sewer system and circulating lines for either, repair maintenance and/or improvement;
2. The rates for each of the charges or assessments provided for above shall be set by the Association.
3. Rates for any of the foregoing charges or assessments, once established, may be changed from time to time as may be necessary to meet economic practicalities or the expected costs of future needs; but in every instance shall be uniform as to comparable properties within the Subdivision (subject only to the exclusion of charges or assessments as against lots owned by the Developer/Owner but not ~~sold or~~ built on.)

VI

LIENS FOR ASSESSMENTS, ENFORCEMENT PROVISIONS

1. The provisions of this Declaration and of any other recorded document (and, the provisions adopted now or in the future by the Association in its By-Laws or otherwise) providing for the assessment of charges as against the ownership interest of any lot within the Subdivision herein referred to, shall be enforceable by the Association.
2. A lien shall arise in favor of the Association (when authorized by action of its officers) and against the legal or equitable ownership interests of any person or entity in relation to any lot within the Subdivision in the amount of any assessment or charge levied at anytime by the Association; from the time any such assessment or charge is first made and asserted. Any assessment or charge shall be limited only to the reasonable expenses of construction, maintenance, improvement and/or expansion of the properties' road, water system, or sewerage disposal system or any other facilities or structures or equipment related to the same, or the reasonable expected costs of meeting the future expense of any of the foregoing. The lien shall continue in force and effect from the date of its creation until each charge or assessment giving rise to the lien shall be fully paid together with interest at the statutory rate for "judgments" from the date of the lien's creation; and any court costs or legal fees of the Association by action in law or equity in any court of competent jurisdiction. If reduced to a judgment, the charge or assessment, together with accrued interest, attorney's fees awarded, and court costs, shall be enforceable by a special

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writ of execution against the ownership interest of the owner of the lot assessed or charged. Lots owned by the Developer/Owner shall be free of any charge or assessment until and unless improved by an occupied residence Otherwise, all assessments and charges shall be uniformly assessed and applied; and shall be like in amount to the same assessments or charges made for comparable lots within the subdivision (the assessments made against unimproved lots to be the same as that made for any and all other unimproved lots; exclusive of those owned by Developer/Owner; and the assessments made against improved lots). Lessees or tenants of any owner (s) shall be jointly and severally liable with the lot owner for any assessments or charges incurred during the period of the lessees' or tenants' occupancy of any lot. Subsequent transferees or aliens of a lot owner shall acquire title subject to the lien of any assessments or charge made prior to acquisition of title.

3. Any lien created for the amount of any assessment or charge, as above set forth, shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon any lot or lots in the Subdivision and running in favor of any bank, savings and loan association, insurance company, or other institutional lender; provided, such subordination shall apply only to the lien of assessments or charges which have become due and payable prior to a foreclosure sale by the lender, or a transfer in lieu of foreclosure sale to a lender. Any such sale in foreclosure or transfer in lieu of foreclosure sale shall not relieve the lot or lots from the liability for, or lien of, any assessments or charges thereafter becoming due.

## VII.

### ENFORCEMENT OF 'USE' RESTRICTIONS

1. Any provision (s) of this or any other recorded document affecting or limiting the "uses" to be made of any Lot within the Subdivision shall be enforceable by either the Developer, the Association, or by any individual lot owner complaining of an unpermitted use, by either or both an action in law for damages or an action in equity for injunctive or other relief.
2. Any party having proper standing and bringing any action to enforce any provision related to limitation of uses of any property within the Subdivision, if successful in any such action, shall be entitled to recover not only injunctive relief and/or any special or actual damages found sustained as result of any such unpermitted use having been made of any lot(s); but shall also be entitled to recover court costs and a reasonable attorney's fee incurred in the enforcement action.

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### VIII.

#### AMENDMENT OF THIS DECLARATION

1. This declaration may be amended at anytime, and from time to time, by the Developer/Owner, or with the Developer/Owners consent, by the Association. No such amendment shall be permitted or allowed which would have the effect, actual or intended, or modifying any provision herein contained and intended for the purpose of complying with any requirement of either the Missouri Department of Natural Resources, or of the Missouri Clean Water Commission.
2. No amendment of this Declaration which would have the effect or purpose of enlarging upon any obligation or liability of any lot owner within the subdivision shall be made by the Developer/Owner first securing the written approval of such modification or amendment of at least 2/3 in number of the lot owners owning lots with the Subdivision as of the date of the amendment. Any "certificate" issued by the Secretary of the Association reciting written consents of 2/3 in number of the lot owners then owning lots to any such amendment shall be accepted, when recorded, as conclusive evidence of the existence of the required number of consents. Modification of the amount of any special assessment or charge shall not constitute an enlargement of the obligation of a lot owner within the meaning of this paragraph.

### IX

#### HOMESOWNERS ASSOCIATION

Section 1. MEMBERSHIP The Owner shall cause to be created a not for profit Missouri Corporation to be known as Carriage Oaks Estates Homeowners Association. Each and every owner of any lot within the Subdivision shall be, by virtue of ownership of one or more lots, a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot.

Section 2. CLASSES OF MEMBERS AND VOTING RIGHTS Class A members shall be all of those owners of lots ( with the exception of the Developer/Owner) in Carriage Oaks Estates, Each Class A member of the Association shall be entitled to cast a single vote at any business meeting of the Association for each lot owner; if a lot is owned jointly or severally by more than one person, entity, or association of individuals or entities there shall still be only a single vote cast for that lot, it being the responsibility of the several owners to appoint one of their number in writing as the designated person to cast any such vote (in case of default, no vote may be cast for that lot). No vote may be cast by any lot owner(s) who are, at the time of the balloting upon any issue, delinquent in any assessment or charge due the Association.

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Class B member shall be the Developer/Owner and its successors and assigns. The Class B member shall be entitled to 10 votes for each lot as shown on the preliminary and final plat for Phase I, and any successive Phases as may be Developed in the future of the Carriage Oaks Estates, and recorded in the Stone County Recorders office, in Stone County Missouri.

Section 3. BOARD OF DIRECTORS The Association shall be governed by a Board of Directors, which shall consist of two (2) members, and may be expanded to five (5) members as requirements increase.

The election of succeeding Directors, and the conduct of all of the affairs of the Association, shall be conducted in accordance with the Articles and By-Laws of the Association; insofar as they do not conflict with the terms or provisions of this Declaration. in which case, the terms and provisions hereof shall control.

Section 4. POWERS AND DUTIES OF THE ASSOCIATION. The Association shall have and enjoy and be subject to obligation for, in addition to every other authority, privilege and entitlement or obligation provided for or arising from or by reason of these Declarations, the following additional powers, authorities and obligations;

A) The Association shall, (unless or until sold prior, to a utility or private corporation subject to this same provision) maintain, operate and improve, repair, and regulate the use of the Central Water and Sewer systems, all in a manner consistent with the requirements and duties imposed upon it by the Missouri Clean Water Law (Chapter 204. R.S. Mo.), and all standards, regulations and rules adopted pursuant thereto, and all permits and orders issued thereunder, and all such other standards or provisions of law, federal, state or local as may form time to time be enacted or exist.

B) The Association shall provide to all lot owners in the above Subdivision equal right and advantages of connection with the central well and sewer system, and for the collection, treatment and disposal of all sewerage wastewater, subject, however, to the conditions herein provided, and reasonable rules and regulations uniform in application to all owners of lots within the Subdivision of similar classification.

C) The Association will allow the Developer/Owner to acquire for addition to the Central well, and the sewer system and sewerage treatment facilities, properties, and improvements of the type described in this Declaration and which may be located outside the Subdivision boundaries; and may permit any property and improvements located outside the boundaries of the Subdivision to be connected to the Central well and sewerage disposal or treatment systems, provided that all such assets or properties which are acquired for addition to the system or to be provided with service are also subjected to the terms, conditions, and restrictions of this Declaration and the rules and regulations promulgated pursuant hereto.

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D) The Association will allow the Developer/Owner to transfer and convey to any public authority, municipal corporation, or private corporation certificate by the Public Service Commission of Missouri, said sewerage disposal/treatment system, and or Central well either with or without money consideration therefore, and such conveyance shall be any such public authority municipal corporation, or certificate private corporation capable of accepting such conveyance and thereafter performing all functions relating to the construction, maintenance, operation, repair, improvement and regulation of the systems.

E) The Association is empowered to contract with any person, firm, or governmental or other entity for the performance of any part or all of the sewerage treatment/disposal or Central well services; provided, that the cost of any such contract shall be paid by the Association in the same manner as other costs and expenses of the Association in operating and maintaining the sewerage disposal/treatment or Central well systems.

F) The Board of Directors of the Association shall adopt, prescribe, and enforce reasonable rules and regulations with respect to the use of the sewerage or well systems. Said rules and regulations shall conflict with neither the Clean Water Law of Missouri, or the Dept. of Natural Resources or this Declaration.

G) The Board of Directors of the Association shall from time to time employ such agents, servants and employees as they may determine necessary; and may employ counsel to prosecute or defend lawsuits for or against them concerning any provision of this Declaration or any rule or regulation of the Board of Directors adopted pursuant hereto.

H) The Board of Directors of the Association shall be authorized to contract for and obtain such policies of insurance as it may deem necessary or appropriate.

I) The Board of Directors of the Association shall be authorized to establish a perpetual easement in gross for ingress and egress, to perform its obligations and duties as required by its By-Laws. Should it be necessary to enter a Lot to repair a common element or facility, agents and workmen shall be entitled to entrance by exhibiting to the Lot owner an Order issued by the Board of Directors, or in the event of an emergency to enter a residence of a Lot Owner, if the Owner is unable to be contacted, for same.

J) If at anytime the sewer system or water system require maintenance, improvement, replacement or repair, it shall be the duty of the Association to cause the same to be done; and the Association shall have full power and authority to contract with regard to the performance thereof. The costs and expenses of having any of the foregoing performed shall be borne by the membership of the Association through special or regular assessment. The Association shall be empowered to borrow money, and in connection therewith to pledge its assets or receivable, in order to pay such costs or expenses.

K) The Association, the Developer/owner, the Department of Natural Resources for the State of Missouri, and the Missouri Clean Water Commission shall enjoy alike, the privilege of entering upon any property within the Subdivision to ascertain whether there



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at anytime exist violations of the provisions of this Declaration or the Missouri Clean Water Law, relating to water services or sewerage waste disposal or treatment services.

X.

#### DEVELOPER/OWNER-ASSOCIATION RELATIONSHIP

1. The Developer/Owner shall have the option of retaining direct control over all matters which might otherwise, be the duty, obligation or entitlement of the Association for a period of fifteen (15) years from the date of recording of this Declaration or until such time as two thirds (2/3) of the lots in the subject tract have been transferred, whichever shall first occur. At such time, the well and water distribution system and the sewer system and sewer disposal treatment and distribution system shall be conveyed to the Association unless sold prior, or otherwise conveyed to a utility or private corporation (with exception of roads, streets, gates or common areas).
2. The Developer/Owner may, at anytime within the fifteen (15) years immediately following the recording of this Declaration, assign any part or all of the control retained by the preceding paragraph, to the Association.
3. Any assignment of control by the Developer/Owner pursuant to paragraph 2, above and preceding, shall be evidenced by a writing executed by the President of the Developer Corporation, be sealed and attested by its Secretary, or executed by the Managing Member Owner, and shall be recorded in the land records for Stone County, Missouri.
4. Notwithstanding and retention of control on the part of the Developer/Owner, the Association shall nonetheless be authorized, independently of any approval of the Developer, to bring any provision of these Declarations.
5. If the Developer/Owner collects any charge or assessment during any period of time in which Developer/Owner has retained control, as above provided for, the Developer/Owner, shall hold, use and expend the monies collected in a fiduciary capacity for the benefit of membership the Association: Collecting and expending any charges or assessments solely for the purposes elsewhere herein provided for, and shall upon assigning or delivering control to the Association ( or in any event, upon the expiration of fifteen (15) years from the date of recording this Declaration) account to the Association for all collections and expenditures, and deliver into the hands of that person as may be designated by the Association, all the funds remaining on hand and unexpended which were collected as charges or otherwise conveys ownership to a utility, or private corporation then only the funds collected for the roads, streets, gates and common area maintenance will be turned over to the Association, and the remainder collected for the central well and sewer system after all debts have been paid, will be distributed back to the lot owners directly in proportion to their ownership, or be given to the Association for the distribution to same.

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XI.

AMBIGUITY OF TERMS

Should any dispute or controversy arise as between the Developer and the Association, or the Developer and a lot owner, or the Association and a lot owner, as to the meaning of any term or provision of this Declaration; the good faith opinion of the Developer as to meaning of any ambiguous term (as announced by its President) shall control and be determinative over the interpretation of the Association or any lot owner, and a good faith opinion of a majority in number of the Board of Directors of the Association shall control over the interpretation urged for any such provision by any lot owner.

XII.

DURATION OF THESE RESTRICTIVE DECLARATIONS

The covenants, restrictions and declarations herein contained shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer/Owner, by the Association, or by the owner of any lot within the Subdivision, and/or where applicable, the Missouri Department of Natural Resources or the Missouri Clean Water Commission, and its and their legal representatives, successors and assigns for a period of 25 years from date of the recording hereof, and shall be automatically renewed or extended for successive periods of 10 years duration thereafter, unless by vote of 3/4ths in number of the members of the Association entitled to vote thereon, they are abandoned or terminated.

XIII

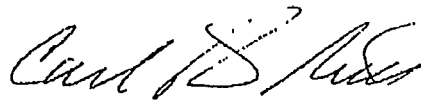
All "Exhibits" or "Amendments" shall be attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this instrument this

15<sup>th</sup> day of June, 2001.



PRES. DISTINCTIVE DESIGNS LTD.  
Div. Mills Properties Group Ltd. a Missouri  
Corporation DEVELOPER  
*CARL R. MILLS*



CARL R. MILLS Managing Member  
CARRIAGE OAKS LLC  
OWNER

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STATE OF MISSOURI )  
                                  ) ss,  
COUNTY OF STONE )

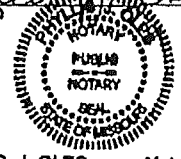
\**Carl R. Mills*

On this 1st day of June, 2001, before me personally  
appeared to me known to be the person described in and who executed the foregoing  
instrument and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official  
seal, the day and year first above written.

My commission expires:  
6-17-03

*Phyllis J. Oles*



PHYLLIS J. OLES                      Notary Public  
Stone County                      State of Missouri  
My Commission Expires June 17, 2003

*CR Mills*

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

DERALD MORGAN, RICK AND CINDY )  
GRAVER, WILLIAM AND GLORIA PHIPPS )  
and DAVID LOTT, )

Complainants, )

v. )

File No. WC-2017-0037

CARL RICHARD MILLS, )  
CARRIAGE OAKS ESTATES, )  
DISTINCTIVE DESIGNS, and )  
CARING AMERICANS TRUST )  
FOUNDATION, INC. (f/k/a Caring )  
Americans Foundation, Inc.) )

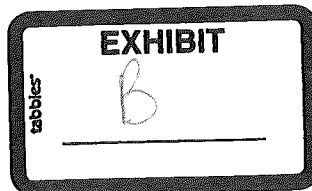
Respondents. )

**AFFIDAVIT OF CARL RICHARD MILLS**

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF STONE     )

I am of sound mind, requisite age and have personal knowledge of the facts stated here.

I formed Carriage Oaks, LLC, a Missouri limited liability company, and Distinctive Designs Ltd. to act as the owner and developer of Carriage Oaks Estates Subdivision in Stone County, Missouri. My personal trust, of which I am the trustee, is the majority owner and manager of Carriage Oaks and Distinctive Designs. Since the inception of Carriage Oaks Estates, Carriage Oaks and Distinctive Designs have owned, operated and maintained the water and sewer system. They also pass along a fee to the Carriage Oaks Homeowners Association (“Association”) to offset expenses associated with the operation of the water and sewer systems. Fees were assessed to the Association, however, the fees have not covered all the costs and




expenses associated with management, maintenance and upgrades of Carriage Oaks water and sewer systems.

I am 76 years old and a widower. In 2016, I caused to be transferred the ownership of the water and sewer systems from Carriage Oaks, LLC to The Caring Americans Trust Foundation, Inc., a Missouri non-profit corporation, which I currently control. I made this transfer for succession planning – to ensure that an entity would exist that would continue to own and maintain the water and sewer systems for Carriage Oaks Estates.

Further Affiant sayeth not.

  
Carl Richard Mills

Subscribed and sworn to before me this 6<sup>th</sup> day of September, 2016.

  
Notary Public

My commission expires:

