

**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' AMENDED MOTION TO DISMISS

Respondents move to dismiss the Complainants' Amended Petition for the following reasons:

1. On August 4, 2016, Complainants filed their Complaint with the Missouri Public Service Commission ("PSC") requesting that the PSC turn over the water and sewer system of Carriage Oaks Subdivision, a small subdivision in Stone County with less than ten residents, to the Carriage Oaks Homeowners Association.

2. On September 16, 2016, Respondents filed their Motion to Dismiss the Complaint on the grounds that the PSC lacked jurisdiction over Carriage Oaks Subdivision.

3. On October 28, 2016, the PSC Staff ("Staff") filed its pleading in response to the Motion to Dismiss, alleging generally that the Staff believed Carriage Oaks Subdivision was subject to PSC jurisdiction even though it had been lawfully operated for more than ten years subject to the Missouri Department of Natural Resources jurisdiction and only allegedly came under PSC jurisdiction by virtue of Carl R. Mill's, developer of Carriage Oaks Subdivision, estate planning transfer. In this pleading, the Staff suggest three alternatives to resolving the dispute alleged in the Complaint, among which was to

turn over control of the water and sewer system to an appropriately organized not-for-profit water and sewer corporation.

4. Although the Respondents believe the Staff and Complainants' legal analysis is flawed and not supported, due to the extreme cost of litigation, Respondents elected to form a not-for-profit water and sewer corporation to hold and operate the water and sewer assets of Carriage Oaks Subdivision.

5. On January 18, 2017 the Respondents formed a Missouri not-for-profit sewer and water corporation appropriately organized under Section 393.825 and 393.900 RSMo, named Carriage Oaks Not-For-Profit Water and Sewer Corporation (the "Non Profit"). The filed Articles of Incorporation are attached. *See Exhibit "A"*.

6. The Non Profit is organized to define its members as each person or entity that owns property within Carriage Oaks Subdivision and is or will receive water and sewer services from the Non Profit. This definition includes the Complainants should they choose to receive water and sewer services.

7. After formation, the Non Profit filed an application with the Missouri Department of Natural Resources to transfer the operating permit associated with the water and wastewater facilities. Additionally, the real property associated with the wastewater and water treatment facilities of Carriage Oaks Subdivision has been transferred to the Non Profit and recorded in the real property records of Stone County. *See Exhibit "B"*.

ARGUMENT

Sections 386.080(49) and 386.020(59) RSMo define regulated water and sewer corporations subject to the PSC's jurisdiction as every corporation owning, operating, controlling or managing any plant or property engaged in distributing or selling or supplying for gain any water or for the collection, carriage, treatment or disposal of waste for gain. Despite the wide jurisdiction of the PSC, Section 393.847 and 393.933 RSMo. provides the PSC shall not have jurisdiction over the construction, maintenance or operation of wastewater or water facilities, service rates, financing, accounting or management of any not-for-profit sewer or water company.

Carriage Oaks Not-For-Profit Water and Sewer Corporation is a validly existing not-for-profit corporation existing under Sections 393.825 and 393.900 RSMo. Although Respondents deny that the PSC had jurisdiction over Carriage Oaks Subdivision at any time, the formation and transfer of water and sewer services to the Non Profit renders Complainants claims moot.

WHEREFORE, based on the above, Respondents request that the Public Service Commission dismiss the Complaint for lack of jurisdiction and for such other and future relief as the Public Service Commission deems just.

HUSCH BLACKWELL LLP

By: /s/ Bryan Wade
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Whitney S. Smith #68405
Husch Blackwell LLP
901 St. Louis St., Suite 1800
Springfield, MO 65806
Office: (417) 268-4000
Fax No: (417) 268-4040
Bryan.wade@huschblackwell.com
Whitney.smith@huschblackwell.com

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) on this 14th day of February, 2017.

/s/ Bryan Wade
Bryan Wade, Counsel for Respondents

N000703976
Date Filed: 1/18/2017
John R. Ashcroft
Missouri Secretary of State

**ARTICLES OF INCORPORATION OF
CARRIAGE OAKS NOT-FOR-PROFIT
WATER AND SEWER CORPORATION**

The undersigned for the purpose of forming a Nonprofit Water and Sewer Company under Section 393.825 to 393.175 and 393.900 to 393.954 of the Missouri Revised Statutes adopt the following Articles of Incorporation:

1. The name of the Corporation is Carriage Oaks Not-for-Profit Water and Sewer Corporation.

2. The name and address of the Corporation's registered agent and principal office shall be:

Registered Agent: Carl R. Mills

Principal Office and Agent Address: 209 Falling Leaf Court
Branson West, MO 65737

3. The names and addresses of the Incorporators are:

Carl Richard Mills
209 Falling Leaf Court
Branson West, MO 65737

Marian Stewart
516 Iowa Colony Road
Hollister, MO 65672

Joseph R. Mills
4 Marne Drive
Lake Saint Louis, MO 63367

Jeremy Storment
186 Shadow Lake Dr.
Branson, MO 65616

Robert Sykes
170 Falling Leaf Court
Branson West, MO 65737

4. The period of duration of the Corporation is perpetual.

5. This organization is organized exclusively for charitable, religious, educational and/or scientific purposes under section 501(c)(3) of the Internal Revenue Code. No part of the net earnings of the organization shall inure to the benefit of, or be distributable to, its members, trustees, officers or other private person, except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof. No substantial part of the activities of the organization shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the organization shall not participate in, or intervene in (including the publishing or distribution of statement) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document, the organization shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue



Code, or corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section for any future federal tax code. The purpose of this organization is to supply wastewater disposal and treatment services within the state of Missouri.

6. The names and address of the person who shall constitute the first Board of Directors are:

Carl Richard Mills
209 Falling Leaf Court
Branson West, MO 65737

Marian Stewart
516 Iowa Colony Road
Hollister, MO 65672

Joseph R. Mills
4 Marne Drive
Lake Saint Louis, MO 63367

Donald B. Mills
678 Hancock Avenue
South Elgin, IL 60177

Robert Sykes
170 Falling Leaf Court
Branson West, MO 65737

The foregoing shall serve until their successors are elected as provided in the Bylaws. Additional directors may be elected as provided in the Bylaws. The directors shall serve on staggered three year terms as provided by law.

7. The Company elects to be subject to the General Non-Profit Corporation Law under Chapter 355 RSMO.


8. The Corporation shall have members. Members shall be comprised of those persons receiving services or agreeing to receive services in the geographic boundary of the area to be served by the Company and as otherwise provided in the Bylaws, consistent with the statutes under which the Corporation is formed. Membership shall not be transferrable. An initial membership fee may be imposed by the directors, refundable without interest in the event membership is terminated, consistent with the statutes under which the Corporation is formed.

9. Upon the dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.


10. This document shall be effective immediately upon filing with the Secretary of State of Missouri.

[Signature Pages Follow]

In affirmation of the facts stated above, we have hereunto set out hands as incorporators:



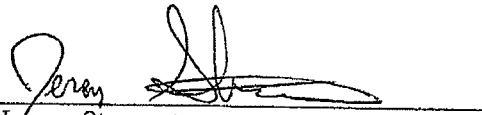
Carl R. Mills



Marian Stewart



Joseph R. Mills



Jeremy Storment



Robert Sykes

STATE OF MISSOURI



John R. Ashcroft
Secretary of State

CERTIFICATE OF INCORPORATION

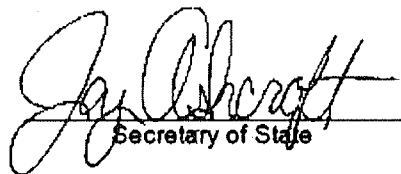
WHEREAS, Articles of Incorporation of

Carriage Oaks Not-for-Profit Water and Sewer Corporation
N000703976

have been received and filed in the Office of the Secretary of State, which Articles, in all respects, comply with the requirements of Sections 393.825 to 393.861 RSMo.

NOW, THEREFORE, I, JOHN R. ASHCROFT, Secretary of State of the State of Missouri, by virtue of the authority vested in me by law, do hereby certify and declare this entity a body corporate, duly organized this date and that it is entitled to all rights and privileges granted corporations organized under Sections 393.825 to 393.861 RSMo.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 18th day of January, 2017.


Secretary of State



Instrument PG 1 OF 2
201700001300

201700001300
Filed for Record in
STONE COUNTY MISSOURI
AMY J LARGON, RECORDER OF DEEDS
01-30-2017 At 08:47 am.
WARR DEED 27.00

General Warranty Deed

THIS DEED, Made and entered into this 27th day of January, 2017, by and between

Grantor: **Caring Americans Trust Foundation Inc.**

Of the county of STONE, State of Missouri, party or parties of the FIRST PART, and

GRANTEE: **Carriage Oaks Not-for-Profit Water and Sewer Corporation** of County of STONE, State of Missouri, party or parties of the SECOND PART.

Grantee's mailing address: 209 Falling Leaf Court, Branson West, Missouri 65737

WITNESSETH, that the said party or parties of the first part, for and in consideration of the sum of One Dollar and other good and valuable considerations, paid by the said party or parties of the second part, the receipt of which is hereby acknowledged, does or do by these presents GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM unto the said party or parties of the second part, the following described Real Estate, situated, in the County of STONE, and State of Missouri, to-wit:

ALL OF THE SEWER TREATMENT PLANT SITE LOT, AND APPURTANCES THEREON, OF CARRIAGE OAKS ESTATES PHASE I, FINAL PLAT, A SUBDIVISION PER THE RECORDED PLAT THEREOF. LOCATED IN STONE COUNTY, MISSOURI. SUBJECT TO ANY AND ALL INCUMBANCES AND RIGHTS RECORDED OR UNRECORD.

TO HAVE AND TO HOLD THE SAME, Together with all rights and appurtenances to the same, belonging unto the said party or parties of the SECOND PART forever.

EXHIBIT B

The said party or parties of the FIRST PART covenanting that said party and the heirs, executors, administrators and assigns of such part, shall and will WARRANT AND DEFEND the title to the premises unto the said party or parties of the SECOND PART, and to the heirs, successors, and assigns of such party or parties forever, against the lawful claims of all persons whomsoever, excepting however, the general taxes for the current calendar year, and thereafter, and special taxes becoming a lien after the date of this deed, and restrictions, easements and building set back liens of record if any, and zoning laws.

IN WITNESS WHEREOF, the said party or parties of the FIRST PART has caused these presents to be signed by its authorized Trustee(s), Managers(s), Members(s) or President, the day and year first above written.

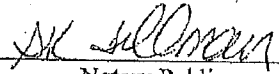
Caring Americans Trust Foundation Inc.

By 
CARL R. MILLS

President &
Founding Director

On this 27 day of Jan, 2017 before me personally appeared CARL R. MILLS, to me personally known, who being by me duly sworn, did say that he is the President of Caring Americans Trust Foundation Inc., and signing said instrument to be the free act and deed of said President of Caring Americans Trust Foundation Inc.

stamp or seal


Notary Public
S. K. TILLMAN
Notary Public - Notary Seal
STATE OF MISSOURI
Stone County
My Commission Expires May 28, 2017
Commission #13394011

201700001299
Filed for Record in
STONE COUNTY, MISSOURI
AMY J LARSON, RECORDER OF DEEDS
01-30-2017 At 08:47 am.
MARR DEED 27.00

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Grantee's mailing address: 209 Falling Leaf Court, Branson West, Missouri 65737

WITNESSETH, that the said party or parties of the first part, for and in consideration of the sum of One Dollar and other good and valuable considerations, paid by the said party or parties of the second part, the receipt of which is hereby acknowledged, does or do by these presents GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM unto the said party or parties of the second part, the following described Real Estate, situated, in the County of STONE, and State of Missouri, to-wit:

ALL OF THE WELL LOT, AND APPURTANCES THEREON, OF CARRIAGE OAKS ESTATES PHASE I, FINAL PLAT, A SUBDIVISION PER THE RECORDED PLAT THEREOF. LOCATED IN STONE COUNTY, MISSOURI. SUBJECT TO ANY AND ALL INCUMBANCES AND RIGHTS RECORDED OR UNRECORD.

TO HAVE AND TO HOLD THE SAME, Together with all rights and appurtenances to the same, belonging unto the said party or parties of the SECOND PART forever.

The said party or parties of the FIRST PART covenanting that said party and the heirs, executors, administrators and assigns of such part, shall and will WARRANT AND DEFEND the title to the premises unto the said party or parties of the SECOND PART, and to the heirs, successors, and assigns of such party or parties forever, against the lawful claims of all persons whomsoever, excepting however, the general taxes for the current calendar year, and thereafter, and special taxes becoming a lien after the date of this deed, and restrictions, easements and building set back liens of record if any, and zoning laws.

IN WITNESS WHEREOF, the said party or parties of the FIRST PART has caused these presents to be signed by its authorized Trustee(s), Managers(s), Members(s) or President, the day and year first above written.

Caring Americans Trust Foundation Inc.

By 
CARL R. MILLS

President &
Founding Director

On this 27 day of Jan, 2017 before me personally appeared CARL R. MILLS, to me personally known, who being by me duly sworn, did say that he is the President of Caring Americans Trust Foundation Inc., and signing said instrument to be the free act and deed of said President of Caring Americans Trust Foundation Inc.

stamp or seal


Notary Public

