

Exhibit No.:  
Issues: Transfer of Water and Sewer System  
Witness: Derald Morgan  
Sponsoring Party: Complainants  
Type of Exhibit: Direct Testimony  
Case No. WC-2017-0345  
Date Prepared: December 28, 2017

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

**FILED<sup>2</sup>**

**FEB 13 2018**

**Missouri Public  
Service Commission**

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

Complainants, )

v. )

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

Respondents. )

File No. WC-2017-0037

**DIRECT TESTIMONY OF DERALD MORGAN ON BEHALF OF COMPLAINANTS**

**Branson, Missouri  
December, 2017**

*Complainant* Exhibit No. 10  
Date 2-6-18 Reporter mh  
File No. WC-2017-0037

**TABLE OF CONTENTS**

**I. INTRODUCTION AND WITNESS QUALIFICATIONS.....3**

**II. CARRIAGE OAKS ISSUES.....4**

1  
2  
3  
4 **DIRECT TESTIMONY OF DERALD MORGAN**  
5

6 **I. Introduction and Qualifications**  
7

8 **Q. Please state your name.**

9 My name is Derald Morgan.

10 **Q. Please summarize your professional experience and educational background.**

11 I hold the following degrees: PhD in Engineering from Arizona State University; Master of Science in  
12 Electrical Engineering from Missouri Science and Technology and a Bachelor of Science in Electrical  
13 Engineering and Business from Louisiana Tech University. I currently work as a forensic engineer  
14 throughout the United States. I am a licensed engineer in 5 states, including Missouri, and have  
15 testified on several occasions before Public Service Commissions, including in Missouri. I was a  
16 Professor and University Administrator for 46 years, 19 Of which were at Missouri Science and  
17 Technology. I held 2 Professor Distinguished Chairs at Rolla and was head of Electrical and Computer  
18 Engineering, Dean of Engineering at New Mexico State University and Vice President at University of  
19 Alabama in Huntsville retiring as Special Assistant to the Chancellor of the University of Alabama.

20 **Q. Where do you currently live?**

21 I live at 108 Carriage Oaks Drive, Reeds Springs, Missouri.

22 **Q. Do you know the other Complainants in this case?**

23 Yes.

24 **Q. How do you know them?**

25 They are my neighbors in the Carriage Oaks Estates subdivision.

26 **Q. What are there names?**

27 Rick and Cindy Graver, William and Gloria Phipps, and David Lott.

28 **Q. Where do those Complainants live?**

29 They live in the Carriage Oaks Estates subdivision.

30 **Q. How long have you lived there?**

31 I've lived there 8 years.

1           **Q. Are you and the other complainants in this case lot owners within the Carriage Oaks Estates**  
2           **Subdivision?**

3           Yes.

4           **II. Carriage Oaks Issues**

5           **Q. Is Carriage Oaks Subdivision subject to certain restrictions and covenants?**

6           Yes.

7           **Q. Are you familiar with the Respondents in this case?**

8           Yes.

9           **Q. Can you describe the relationship between the Respondents in this case?**

10           Carriage Oaks, LLC is the developer of the Carriage Oaks Estate subdivision. Carl Mills is a member of  
11 Carriage Oaks, LLC. From 2000 to April 2, 2016, Carriage Oaks, LLC owned, operated and maintained the water and  
12 sewer systems located at Carriage Oaks Estates subdivision. In April 2016, Carriage Oaks, LLC transferred the water  
13 and sewer system to Caring Americans Trust Foundation, Inc. Caring Americans Trust Foundation, Inc. is a non-profit  
14 corporation created by Carl Mills. Carl Mills is also on the board of directors for that organization. In January 2017,  
15 Caring Americans transferred ownership of the water and sewer system to Carriage Oaks Not for Profit Water and  
16 Sewer Corporation.

17           **Q. What entity currently provides water and sewer services to the lot owners in the Carriage Oaks**  
18 **Estates subdivision?**

19           Currently, water and sewer services are provided by Carriage Oaks Not for Profit Water and Sewer  
20 Corporation.

21           **Q. Do the lot owners have control over the operation and maintenance of the water and sewer system?**

22           None of the complainants in this case are members of Carriage Oak Not for Profits, nor do they have any  
23 control or authority over Carriage Oaks Not for Profit or influence over the operation and maintenance of the water  
24 and sewer system.

25           **Q. Are the lot owners members of the Carriage Oaks Estates Homeowners' Association?**

26           Yes.

27           **Q. What is Carriage Oaks Estates Homeowners' Association?**

1 Carriage Oaks Estates Homeowners Association is the homeowners' association for Carriage Oaks Estates,  
2 in which all owners in Carriage Oaks Estates subdivision are members.

3 **Q. Is Carriage Oaks Estates Homeowners' Association controlled by the lot owners?**

4 No. Respondent Carl Mills controls the majority voting interest in the Association by way of his position as  
5 developer, and runs the Association as he sees fit.

6 **Q. Are you familiar with how decisions are made with regard to the operation and maintenance of the  
7 water and sewer system that serves the lot owners in Carriage Oaks Estates Subdivision?**

8 All decisions as to what maintenance and repair work are done to the water and sewer systems are made by  
9 Carl Mills, and all decisions as to payments to Carriage Oaks are made by Carl Mills, via the Association.

10 **Q. How are water and sewer rates determined for the subdivision?**

11 Each year, the owners in Carriage Oaks Estates subdivision pay an assessment to the Carriage Oaks Estates  
12 Homeowners' Association, which, in the past Mills has used to reimburse his entities for all costs and expenses related  
13 to the water and sewer system. In addition, in the past, Carriage Oaks, LLC has paid itself a fee every year for the so-  
14 called "services" it provides to the Association in maintaining and operating the water and sewer system. Thus, the  
15 homeowners' association bears all of the expenses and costs associated with the water and sewer system, and then is  
16 forced to pay Respondents a fee for its services.

17 **Q. Can you explain why you and the other Complainants in this case decided to file this action?**

18 In or around mid-2016, Carriage Oaks purportedly transferred ownership of the water and sewer systems to  
19 Caring Americans Trust Foundation, Inc. (hereinafter "Caring Americans"), a Missouri non-profit corporation also  
20 under the control of Carl Mills. Like Carriage Oaks, none of the owners at Carriage Oaks Estates subdivision are  
21 members of this non-profit corporation, nor do they have any control or authority over the non-profit corporation.

22 Complainants, through their counsel, sent multiple requests to Carl Mills asking that he transfer ownership of the  
23 water and sewer systems to either the Association or a new non-profit corporation in which all of the owners were  
24 members. Complainants repeated requests were ignored, and they were left with no choice but to file their Complaint  
25 with PSC. We're concerned because we have no influence over the manner in which the water and sewer system is  
26 run and Respondents claim they are not subject to the jurisdiction of the Public Service Commission. We are  
27 essentially at the mercy of Respondents.

1           **Q. Are the members of the Carriage Oaks Estates Homeowners' Association members of the Carriage**  
2 **Oaks Not-for-Profit Water and Sewer Corporation?**

3           No.

4           **Q. Do the lot owners like yourself and the other complainers have control or influence over the**  
5 **operation and maintenance of the water and sewer system?**

6           No.

7           **Q To your knowledge, did Respondents obtain a certificate of necessity from the Public Service**  
8 **Commission prior to the transfer of ownership of the water and sewer system?**

9           Not to my knowledge.

10          **Q. Do you know if the Not-for-profit has bylaws?**

11          Yes.

12          **Q. Have you reviewed those bylaws?**

13          Yes.

14          **Q. Is Exhibit 1 a true and accurate copy of those bylaws?**

15          Yes.

16          **Q. Under these bylaws, would Carl Mills or an entity associated with him be able to control the**  
17 **operation of the Not-for-Profit?**

18                Yes. Article II, Section 2 of the Bylaws violate the "one member, one vote" requirement by allowing  
19 members to hold "more than one Membership Interest." Because Respondents would hold more than one  
20 Membership Interest, they would be entitled to multiple votes on any particular matter. Likewise, the Bylaws allow  
21 prospective utility consumers to be members.

22          **Q. Why do you have concerns about Carl Mills or an entity under his control controlling the operation**  
23 **of the Not-for-Profit and thus the water and sewer system?**

24                If neither the homeowners who receive water and sewer service nor the Public Service Commission has a  
25 means for influencing or regulating the rates and operation of the water and sewer system, Carl Mills will be able to  
26 set whatever rates he wishes. The homeowners who pay for and receive the water and sewer services will have no way  
27 of ensuring that they receive safe and reliable services at a reasonable rate. They would have no recourse whatsoever  
28 and no protection.

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**Q. What relief are you and the other Complainants requesting in this case?**

We would like Respondents to be ordered to transfer the ownership of water and sewer system to a proper entity in accord with the laws of Missouri in which all homeowners that currently receive water and sewer service are members of said entity and each member receives one vote.

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Americans Foundation, Inc.) )

Respondents. )

AFFIDAVIT OF DERALD MORGAN

*C. McMillon*  
STATE OF MISSOURI )  
*C. McMillon* §  
COUNTY OF TANEY )

Derald Morgan, being first duly sworn on his oath, states as follows:

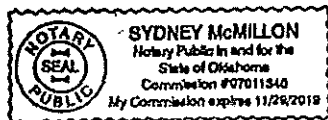
1. My name is Derald Morgan. I am a complainant in the above-referenced matter. I am over 18 years of age and competent to give testimony.
2. Attached hereto and made a part hereof for all purposes is my Direct Testimony on behalf of Complainants consisting of 7 pages and Exhibit 1, all of which have been prepared in written form for introduction into evidence in the above-referenced docket.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.

*Derald Morgan*  
Derald Morgan

Subscribed and sworn to me this 28 day of December, 2017.

*Sydney McMillon*  
Notary Public

My commission expires: 11-29-2019





**CARRIAGE OAKS NOT-FOR-PROFIT WATER AND SEWER CORPORATION**

*Bylaws*

**Article I: Name and Office**

Section 1. Name. The name of the corporation shall be Carriage Oaks Not- For-Profit Water and Sewer Corporation (the "*Corporation*").

Section 2. Principal and Registered Office. The principal office of the Corporation in the state of Missouri shall be located at 209 Falling Leaf Ct, Branson West, MO 65737. The registered office of the Corporation shall be the same as the principal office.

**Article II: Members**

Section 1. Members. The Corporation shall have members (each a "*Member*", collectively the "*Members*"). Members shall be comprised to include each person or entity owning property that is or will receive water and sewer services and is located within the geographic area to be served by the Corporation's water and sewer systems.

Section 2. Membership Interest. Each owner of property that is or will receive a water and or sewer service connection within the geographic area to be served by the Corporation's water and sewer system shall be entitled to one membership interest (a "*Membership Interest*") and one vote for the election of Directors (as defined herein). A Member may have more than one Membership Interest.

Section 3. Membership Restrictions. Members shall be limited to the property owners and customers located within the specific geographic area designated to be served by the Corporation. In the case of a Member that is a corporation, its agent, officer, or designee shall represent the customer as Member. In the case of multiple owners, only one owner may vote and votes may not be divided into fractional interests.

Section 4. Geographic Service Area. The Geographic Service Area served by the Corporation is identified and attached hereto as Exhibit "A."

Section 5. Members' Rights. The Members shall have the right to vote for the election of Directors and to amend these bylaws or the articles of incorporation of the Corporation and shall have such other rights as required by Chapter 393.825 to 393.861 and Chapter 393.900 to 393.945 RSMo. Members may also be entitled to dividends or proceeds in liquidation. The Members shall have no authority, acting alone, to govern or bind the Corporation to any transaction and shall not be liable for the debts or obligations of the Corporation. A Member's rights shall not be transferable. Membership in the Corporation shall cease when a Member is no longer a user or potential user of the services of the Corporation. New members shall be added as they become users and/or property owners within the geographic area served by the Corporation.



Section 6. Meetings. The annual meeting of the Members shall be held on the second Saturday of each February at 2:00pm or such other time as the Directors may agree (the "*Annual Meeting*"). Special meetings of the Members may be called by any three Directors, by not less than Members holding ten percent (10%) of the total Membership Interest, or by the President ("*Special Meeting*"; together with Annual Meetings, "*Meeting*"). A Meeting shall be held at such location as is specified by the Directors. Members holding two percent (2%) of the total Membership Interest shall constitute a quorum for the transaction of the Corporation business at a Meeting. Written or printed notice stating the time and place of any Meeting, and in the case of a Special Meeting, the purpose or purposes for which the Meeting is called, shall be given to each Member either personally or by mail, not less than ten (10) nor more than twenty-five (25) days before the date of the Special Meeting.

Section 7. Proxies. A Member may grant a proxy with respect to any matter for vote at any particular Meeting. A valid proxy must be signed and dated by the Member and shall be valid for one (1) month from the date of signature or until revoked in writing by notice sent to the Secretary of the Corporation. All proxies must be filed with the Secretary of the Corporation at or prior to the Meeting and shall be retained by the Secretary. Proxies may be mailed to the Secretary or principal office of the Corporation prior to the Meeting and may appoint a particular person or the President of the Corporation as proxy for all purposes and matters to come before the Meeting. Proxies may be limited or specific.

### ARTICLE III: Board of Directors

Section 1. General Powers. The property and business of the Corporation shall be managed under the direction of the Board of Directors of the Corporation ("*Directors*"). This shall include, but not be limited to, all matters necessary for the acquisition, construction and operation of wastewater and well water facilities and connections in the designated service area, including the establishment of such area and the setting of rates and the like in connection therewith, or the entering of contracts with other corporations, municipalities, individuals, or other business entities to provide any services needed by the Corporation, including but not limited to management or operation services.

Section 2. Number. The number of Directors shall be not less than five (5) nor more than eleven (11). There shall be five (5) initial Directors, the names of whom are listed in the articles of incorporation. The future number shall be designated from time to time by resolution adopted at any Meeting.

Section 3. Term of Office. The Directors shall serve for a period of three (3) years. The Directors shall serve on staggered terms so that approximately one third of the Directors shall be elected at each Annual Meeting to serve for three years. At the first Meeting, one (1) Director shall be elected for a one (1) year term, two (2) Directors shall be elected for a two (2) year term and two (2) shall be elected for a three (3) year term.

Section 4. Election. Directors shall be elected by the Members at each Annual Meeting to fill those positions of the Directors scheduled to expire. A slate of candidate Member(s) for each Director position shall be submitted by the Directors and nominations shall be accepted from the

floor at the Annual Meeting. Any Member may serve as a Director, including any corporation, partnership, limited liability Corporation, or other business entity provided such entity shall designate a representative to cast all votes and discharge other board member obligations. Those candidate Member(s) receiving the most votes (plurality) shall fill the open positions. There is no limit to the number of terms a Director may serve, nor shall there be any restriction upon being reelected.

Section 5. Removal. Any Director may be removed from office with or without cause by the affirmative vote of three-fourths of the Members present at any Meeting called for such purpose. A Director may be removed for cause by a majority vote of the Directors. The term "cause" shall include the conviction of any felony or any fraud, theft, embezzlement or intentional harm directed at the Corporation.

Section 6. Filling Vacancies. In the case of any vacancy in Directors through death, resignation, disqualification, removal or other cause, the remaining Directors, by affirmative vote of the majority thereof, may elect a successor to hold office for the unexpired portion of the term of the Director whose place shall be vacant, and until the election of his successor, or until he shall be removed, prior thereto, by an affirmative vote of at least three fourths of the Directors.

Section 7. Annual Meetings. The annual meeting of the Directors shall be held immediately following the Annual Meeting of the Members ("*Director's Annual Meeting*").

Section 8. Regular Meetings. Regular meetings of the Directors may be held without notice at such time and place as shall from time to time be determined by resolution of the Board ("*Director's Regular Meeting*"), provided that notice of every resolution of the Directors fixing or changing the time or place for the holding of the Director's Regular Meeting shall be mailed to each Director at least ten (10) days before the first meeting held pursuant thereto. Any business may be transacted at the Director's Regular Meeting.

Section 9. Special Meetings. Special meetings of the Directors shall be held whenever called by any Director ("*Director's Special Meetings*"; together with Director's Annual Meetings, Director's Regular Meetings, "*Director's Meetings*"). The Secretary shall give notice of each Director's Special Meeting by mailing the same at least ten (10) days prior to the meeting or by telegraphing the same at least five (5) days before the meeting, to each Director; but such notice may be waived by any Director. Director's Special Meetings shall specify an agenda and no other business may be taken up at a Director's Special Meeting unless all Directors present at the meeting consent to taking up such item. Immediately following the Director's Special Meeting, any items taken up which were not on the agenda must be specifically communicated to all Directors who were absent. Any Director absent shall have two (2) days from the receipt of such notice to file an objection, and if such objection is filed, then such action shall be held in abeyance pending a Director's Special Meeting specifically called for the reconsideration of such item. The Secretary, upon receipt of any such objection, shall call such Director's Special Meeting by not less than five (5) days written notice to all Directors specifying the matter to be reconsidered. Notwithstanding the foregoing, any action to (a) amend the articles of incorporation; (b) amend these bylaws; or (c) remove a Director, may not be taken up at a Director's Meetings or Meetings unless specifically set forth in the agenda and notice of the

meeting. The provisions of this paragraph may, as with any other matter pertaining to notice herein, be waived by the unanimous written consent of all Directors.

Section 10. Quorum. One-half (1/2) of the total number of Directors shall constitute a quorum for the transaction of business at all Director's Meetings, but, if at any Director's Meeting less than a quorum shall be present, a majority of those present may adjourn the meeting from time to time. The act of a majority of the Directors present at any Director's Meeting at which there is a quorum shall be the act of the Directors, except as may be otherwise specifically provided by law or by the articles of incorporation or by these bylaws.

Section 11. Meetings of Directors. If all of the Directors entitled to vote shall meet at any place, either within or outside the State of Missouri, and consent to the holding of a Director's Meeting, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

Section 12. Action without Meeting by Written Consents. Any action required to be taken at a Director's Meeting may be taken without a meeting when consents in writing setting forth the action so taken shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consents shall have the same force and effect as the unanimous vote of the Directors at a Director's Meeting duly held. The Secretary shall file such consents with the minutes of the meetings of the Directors.

Section 13. Conference Call. Any Director may request to participate in a Director's Meeting by conference call or other means of communication whereby each Director can hear the others. Each Director so participating shall be considered present at the meeting.

Section 14. Required Vote. Except as otherwise set forth herein, affirmative vote of a majority of the Directors present shall be necessary for the passage of any resolution. A unanimous vote of all Directors shall be required however for the passage of any resolution regarding:

- (a) Rate increases or decreases;
- (b) Sale of any item of property valued in excess of \$10,000.00;
- (c) The entry into any contract which cannot be performed within one (1) year or which requires the expenditure by the Corporation of in excess of \$10,000.00.

Section 15. Compensation of Directors. Directors shall not receive any payment for their services as such.

#### ARTICLE IV: Officers

Section 1. Election. The officers of the Corporation shall be a President, a Secretary, and a Treasurer, and/or one or more Vice Presidents and/or one or more assistants to the foregoing officers as the Directors from time to time may consider necessary for the proper conduct of the business of the Corporation (the "*Officers*"). The Officers shall be elected annually by the

Directors at its Annual Director's Meeting except where a longer term is expressly provided in an employment contract duly authorized and approved by the Directors.

Section 2. Limitations. The President and Vice President shall be a Director and the other Officers may, but need not be, Directors. Any two or more of the above Officers, except those of President and Secretary, may be held by the same person, but no Officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law or by these bylaws to be executed, acknowledged or verified by any two or more Officers.

Section 3. Compensation. The compensation or salary paid to all Officers shall be fixed by resolution adopted by the Directors.

Section 4. Removal. Except where otherwise expressly provided in a contract duly authorized by the Directors, all Officers shall be subject to removal at any time by the affirmative vote of a majority of the whole Directors, and all Officers, agents, and employees shall hold office at the discretion of the Directors or of the Officers appointing them.

Section 5. Vacancies. In the event that any Officer other than an Officer required by law, shall not be filled by the Directors, or, once filled, subsequently becomes vacant, then such Officer and all references thereto in these bylaws shall be deemed inoperative unless and until such Officer is appointed in accordance with the provisions of these bylaws.

Section 6. Powers and Duties of the President. The president of the Corporation ("*President*") shall be the chief executive officer of the Corporation and shall have general charge and control of all its business affairs and properties. He or she shall preside at all Meetings. The President may sign and execute all authorized bonds, contracts or other obligations in the name of the Corporation. He or she shall have the general powers and duties of supervision and management usually vested in the office of president of a corporation. The President shall be ex officio member of all the standing committees. He or she shall do and perform such other duties as may, from time to time, be assigned to him or her by the Directors. Notwithstanding anything contained herein to the contrary, unless it is previously approved by resolution of the Directors or set forth as a specific item in an annual budget approved by the Directors, neither the President, nor any other Officer, may sign any document or contract, which binds the Corporation nor enter into any contract binding the Corporation to do one or more of the following:

- (a) Purchase or lease any real estate;
- (b) Enter into any agreement which is not cancelable on 30 days or less notice and which obligates the Corporation to pay more than \$1,000 per month, excluding phone and any and all utilities;
- (c) Requires the Corporation to pay more than \$8,000 cumulatively or \$2,000 at any one time, except for inventory and service supply agreements which otherwise meet the requirements of paragraph (b) above;

- (d) Purchase any capital asset costing more than \$ 5,000;
- (e) Pledges or encumbers any of the Corporation's assets;
- (f) Binds the Corporation to any employment agreement not terminable at will;
- (g) Cancels or terminates any agreement, prior to the scheduled termination, which falls within the above classifications or which was specifically authorized and directed to be entered into by Directors at such agreement's inception;
- (h) Institutes or directs the filing of any lawsuit.

Section 7. Powers and Duties of the Vice President. The Directors may, but need not appoint one or more vice presidents ("*Vice President*"). Each Vice President (unless otherwise provided by resolution of the Directors) may sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. Each Vice President shall have such other powers and shall perform such other duties as may be assigned to him by the Directors or by the President. In case of the absence or disability of the President, the duties of that office shall be performed by the Vice President, and if there are more than one, then the Executive Vice President and such successors in authority as may be set forth in the resolution appointing him or her. The taking of any action by any such Vice President in the place of the President shall be conclusive evidence of the absence or disability of the President.

Section 8. Secretary. The Directors shall appoint a secretary of the Corporation (the "*Secretary*"). The Secretary shall give, or cause to be given, notice of all meetings of the Directors and all other notices required by law or by these bylaws, and in case of his or her absence or refusal or neglect to do so, any such notice may be given by any person thereunto directed by the President, or by the Directors upon whose written request the meeting is called as provided in these bylaws. The Secretary shall record all the proceedings of the meetings of the Directors in books provided for that purpose, and he or she shall perform such other duties as may be assigned to him or her by the Directors or the President. In general, the Secretary shall perform all the duties generally incident to the office of Secretary, subject to the control of the Directors and the President.

Section 9. Treasurer. The Directors shall appoint a treasurer of the Corporation (the "*Treasurer*"). The Treasurer shall have custody of all the funds and securities of the Corporation, and shall keep full and accurate account of receipts and disbursements in books belonging to the Corporation. He or she shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depository or depositories as may be designated by the Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Directors, taking proper account for such disbursements. He or she shall render to the President and the Directors, whenever either of them so requests, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall give the Corporation a bond, if required by the Directors, in a sum, and with one or more sureties, satisfactory to the Directors, for the faithful performance of the duties of the office and for the

restoration to the Corporation in case of his or her death, resignation, retirement or removal from office of all books, papers, vouchers, moneys, and other properties of whatever kind in his or her possession or control as belong to the Corporation. The Treasurer shall perform all the duties generally incident to the office of the Treasurer, subject to the control of the Directors and the President.

#### **ARTICLE V: Bank Accounts, Loans and Reimbursements**

Section 1. Bank Accounts. Such Officers as from time to time shall be designated by the Directors shall have authority to deposit any funds of the Corporation in such banks or trust companies as shall from time to time be designated by the Directors and such Officers as from time to time shall be authorized by the Directors may withdraw any or all of the funds of the Corporation so deposited in any such bank or trust Corporation, upon checks, drafts or other instruments or orders for the payment of money, drawn against the account or in the name or behalf of this Corporation, and made or signed by such Officers or agents; and each bank or trust Corporation with which funds of the Corporation are so deposited is authorized to accept, honor, cash and pay, without limit as to amount, all checks, drafts or other instruments or orders for the payment of money, when drawn, made or signed by Officers so designated by the Directors until written notice of the revocation of the authority of such Officers by the Directors shall have been received by such bank or trust Corporation. There shall from time to time be certified to the banks or trust companies in which funds of the Corporation are deposited, the signature of the Officers or agents of the Corporation so authorized to draw against the same. In the event that the Directors shall fail to designate the persons by whom checks, drafts and other instruments or orders for the payment of money shall be signed, as hereinabove provided in this Section, all of such checks, drafts and other instruments or orders for the payment of money shall be signed by the President or a Vice President and countersigned by the Secretary or Treasurer of the Corporation. In the event such offices are held by the same person, only one signature shall be required.

Section 2. Loans. Such Officers or agents of this Corporation as from time to time shall be designated by resolution of the Directors shall have authority to effect loans, advances or other forms of credit at any time or times for the Corporation from such banks, trust companies, institutions, corporations, firms or persons as the Directors, shall from time to time designate, and as security for the repayment of such loans, advances, or other forms of credit to assign, transfer, endorse and deliver, either originally or in addition or substitution, any or all stocks, bonds, rights and interest of any kind in or to stocks or bonds, certificates of such rights or interests, deposits, accounts, documents covering merchandise, bills and accounts receivable and other commercial paper and evidences of debt at any time held by the Corporation; and for such loans, advances or other forms of credit to make, execute and deliver one or more notes, acceptances or written obligations of the Corporation on such terms, and with such provisions as to the security or sale or disposition thereof as such Officers or agents shall deem proper; and also to sell to, or discount or rediscount with, such banks, trust companies, institutions, corporations, firms or persons any and all commercial paper, bills receivable, acceptances and other instruments and evidences of debt at any time held by the Corporation, and to that end to endorse, transfer and deliver the same. There shall from time to time be certified to each bank, trust Corporation, institution, corporation, firm or person so designated the signatures of the

Officers or agents so authorized; and each such bank, trust Corporation, institution, corporation, firm or person is authorized to rely upon such certification until written notice of the revocation by the Directors of the authority of such Officers or agents shall be delivered to such bank, trust Corporation, institution, corporation, firm or person.

Section 3. Reimbursements. Any payments made to an Officer or other employee of the Corporation, such as salary, commission, interest or rent, or entertainment expense incurred by him, which shall be disallowed in whole or in part as a deductible expense by the Internal Revenue Service, shall be reimbursed by such Officer or other employee of the Corporation to the full extent of such disallowance. It shall be the duty of the Directors, to enforce payment of each such amount disallowed. In lieu of payment by the Officer or other employee, subject to the determination of the Directors, proportionate amounts may be withheld from his future compensation payments until the amount owed to the Corporation has been recovered.

#### ARTICLE VI. Indemnification

Section 1. Directors and Officers. The Corporation shall indemnify and advance expenses to a Director or Officer of the Corporation in connection with a proceeding to the fullest extent permitted by and in accordance with Section 351.355 of the General Business Corporations Act of Missouri, as may be amended from time to time (the "Act").

Section 2. Indemnification of Employees and Agents. With respect to an employee or agent, other than a Director or Officer, of the Corporation, the Corporation may, as determined by the Directors of the Corporation, indemnify and advance expenses to such employee or agent in connection with a proceeding to the extent permitted by the Act.

Section 3. Insurance. The Corporation may purchase officers and directors liability insurance, general liability insurance, and such other surety and indemnity plans for itself and its Directors, and Officers as from time to time approved by resolution of the Directors. .

#### ARTICLE VII. Miscellaneous Provisions

Section 1. Fiscal Year. The fiscal year of the Corporation shall end on the last day of December.

Section 2. Notices. Whenever, under the provisions of these bylaws, notice is required to be given to any Director, Officer or Member it shall not be construed to mean personal notice, but such notice shall be given in writing, by mail, by depositing the same in a post office or letter box, in a postpaid sealed wrapper, addressed to each Member, Officer or Director at such address as last appears on the books of the Corporation, and such notice shall be deemed to be given at the time the same be thus mailed. Any Member, Director or Officer may waive any notice required to be given under these bylaws.

Section 3. Amendment of By Laws. Any amendment of these bylaws shall first be approved by the Directors, and once approved shall be submitted to the Members for approval. Approval of such change shall require a vote of two thirds majority of those Members present in person or by



proxy at any Meeting called for such purpose. This shall include by the same process the authority to amend, alter or repeal the articles of incorporation and/or these by Laws or any provision thereof, and from time to time by the same process to make additions to these bylaws.

Exhibit A

# CARRIAGE OAKS NOT-FOR-PROFIT WATER AND SEWER CORPORATION

## *Bylaws*

### Article I: Name and Office

Section 1. Name. The name of the corporation shall be Carriage Oaks Not- For-Profit Water and Sewer Corporation (the "*Corporation*").

Section 2. Principal and Registered Office. The principal office of the Corporation in the state of Missouri shall be located at 209 Falling Leaf Ct, Branson West, MO 65737. The registered office of the Corporation shall be the same as the principal office.

### Article II: Members

Section 1. Members. The Corporation shall have members (each a "*Member*", collectively the "*Members*"). Members shall be comprised to include each person or entity owning property that is or will receive water and sewer services and is located within the geographic area to be served by the Corporation's water and sewer systems.

Section 2. Membership Interest. Each owner of property that is or will receive a water and or sewer service connection within the geographic area to be served by the Corporation's water and sewer system shall be entitled to one membership interest (a "*Membership Interest*") and one vote for the election of Directors (as defined herein). A Member may have more than one Membership Interest.

Section 3. Membership Restrictions. Members shall be limited to the property owners and customers located within the specific geographic area designated to be served by the Corporation. In the case of a Member that is a corporation, its agent, officer, or designee shall represent the customer as Member. In the case of multiple owners, only one owner may vote and votes may not be divided into fractional interests.

Section 4. Geographic Service Area. The Geographic Service Area served by the Corporation is identified and attached hereto as Exhibit "A."

Section 5. Members' Rights. The Members shall have the right to vote for the election of Directors and to amend these bylaws or the articles of incorporation of the Corporation and shall have such other rights as required by Chapter 393.825 to 393.861 and Chapter 393.900 to 393.945 RSMo. Members may also be entitled to dividends or proceeds in liquidation. The Members shall have no authority, acting alone, to govern or bind the Corporation to any transaction and shall not be liable for the debts or obligations of the Corporation. A Member's rights shall not be transferable. Membership in the Corporation shall cease when a Member is no longer a user or potential user of the services of the Corporation. New members shall be added as they become users and/or property owners within the geographic area served by the Corporation.

Section 6. Meetings. The annual meeting of the Members shall be held on the second Saturday of each February at 2:00pm or such other time as the Directors may agree (the "*Annual Meeting*"). Special meetings of the Members may be called by any three Directors, by not less than Members holding ten percent (10%) of the total Membership Interest, or by the President ("*Special Meeting*"; together with Annual Meetings, "*Meeting*"). A Meeting shall be held at such location as is specified by the Directors. Members holding two percent (2%) of the total Membership Interest shall constitute a quorum for the transaction of the Corporation business at a Meeting. Written or printed notice stating the time and place of any Meeting, and in the case of a Special Meeting, the purpose or purposes for which the Meeting is called, shall be given to each Member either personally or by mail, not less than ten (10) nor more than twenty-five (25) days before the date of the Special Meeting.

Section 7. Proxies. A Member may grant a proxy with respect to any matter for vote at any particular Meeting. A valid proxy must be signed and dated by the Member and shall be valid for one (1) month from the date of signature or until revoked in writing by notice sent to the Secretary of the Corporation. All proxies must be filed with the Secretary of the Corporation at or prior to the Meeting and shall be retained by the Secretary. Proxies may be mailed to the Secretary or principal office of the Corporation prior to the Meeting and may appoint a particular person or the President of the Corporation as proxy for all purposes and matters to come before the Meeting. Proxies may be limited or specific.

### ARTICLE III: Board of Directors

Section 1. General Powers. The property and business of the Corporation shall be managed under the direction of the Board of Directors of the Corporation ("*Directors*"). This shall include, but not be limited to, all matters necessary for the acquisition, construction and operation of wastewater and well water facilities and connections in the designated service area, including the establishment of such area and the setting of rates and the like in connection therewith, or the entering of contracts with other corporations, municipalities, individuals, or other business entities to provide any services needed by the Corporation, including but not limited to management or operation services.

Section 2. Number. The number of Directors shall be not less than five (5) nor more than eleven (11). There shall be five (5) initial Directors, the names of whom are listed in the articles of incorporation. The future number shall be designated from time to time by resolution adopted at any Meeting.

Section 3. Term of Office. The Directors shall serve for a period of three (3) years. The Directors shall serve on staggered terms so that approximately one third of the Directors shall be elected at each Annual Meeting to serve for three years. At the first Meeting, one (1) Director shall be elected for a one (1) year term, two (2) Directors shall be elected for a two (2) year term and two (2) shall be elected for a three (3) year term.

Section 4. Election. Directors shall be elected by the Members at each Annual Meeting to fill those positions of the Directors scheduled to expire. A slate of candidate Member(s) for each Director position shall be submitted by the Directors and nominations shall be accepted from the

floor at the Annual Meeting. Any Member may serve as a Director, including any corporation, partnership, limited liability Corporation, or other business entity provided such entity shall designate a representative to cast all votes and discharge other board member obligations. Those candidate Member(s) receiving the most votes (plurality) shall fill the open positions. There is no limit to the number of terms a Director may serve, nor shall there be any restriction upon being reelected.

Section 5. Removal. Any Director may be removed from office with or without cause by the affirmative vote of three-fourths of the Members present at any Meeting called for such purpose. A Director may be removed for cause by a majority vote of the Directors. The term "cause" shall include the conviction of any felony or any fraud, theft, embezzlement or intentional harm directed at the Corporation.

Section 6. Filling Vacancies. In the case of any vacancy in Directors through death, resignation, disqualification, removal or other cause, the remaining Directors, by affirmative vote of the majority thereof, may elect a successor to hold office for the unexpired portion of the term of the Director whose place shall be vacant, and until the election of his successor, or until he shall be removed, prior thereto, by an affirmative vote of at least three fourths of the Directors.

Section 7. Annual Meetings. The annual meeting of the Directors shall be held immediately following the Annual Meeting of the Members ("*Director's Annual Meeting*").

Section 8. Regular Meetings. Regular meetings of the Directors may be held without notice at such time and place as shall from time to time be determined by resolution of the Board ("*Director's Regular Meeting*"), provided that notice of every resolution of the Directors fixing or changing the time or place for the holding of the Director's Regular Meeting shall be mailed to each Director at least ten (10) days before the first meeting held pursuant thereto. Any business may be transacted at the Director's Regular Meeting.

Section 9. Special Meetings. Special meetings of the Directors shall be held whenever called by any Director ("*Director's Special Meetings*"; together with Director's Annual Meetings, Director's Regular Meetings, "*Director's Meetings*"). The Secretary shall give notice of each Director's Special Meeting by mailing the same at least ten (10) days prior to the meeting or by telegraphing the same at least five (5) days before the meeting, to each Director; but such notice may be waived by any Director. Director's Special Meetings shall specify an agenda and no other business may be taken up at a Director's Special Meeting unless all Directors present at the meeting consent to taking up such item. Immediately following the Director's Special Meeting, any items taken up which were not on the agenda must be specifically communicated to all Directors who were absent. Any Director absent shall have two (2) days from the receipt of such notice to file an objection, and if such objection is filed, then such action shall be held in abeyance pending a Director's Special Meeting specifically called for the reconsideration of such item. The Secretary, upon receipt of any such objection, shall call such Director's Special Meeting by not less than five (5) days written notice to all Directors specifying the matter to be reconsidered. Notwithstanding the foregoing, any action to (a) amend the articles of incorporation; (b) amend these bylaws; or (c) remove a Director, may not be taken up at a Director's Meetings or Meetings unless specifically set forth in the agenda and notice of the

meeting. The provisions of this paragraph may, as with any other matter pertaining to notice herein, be waived by the unanimous written consent of all Directors.

Section 10. Quorum. One-half (1/2) of the total number of Directors shall constitute a quorum for the transaction of business at all Director's Meetings, but, if at any Director's Meeting less than a quorum shall be present, a majority of those present may adjourn the meeting from time to time. The act of a majority of the Directors present at any Director's Meeting at which there is a quorum shall be the act of the Directors, except as may be otherwise specifically provided by law or by the articles of incorporation or by these bylaws.

Section 11. Meetings of Directors. If all of the Directors entitled to vote shall meet at any place, either within or outside the State of Missouri, and consent to the holding of a Director's Meeting, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

Section 12. Action without Meeting by Written Consents. Any action required to be taken at a Director's Meeting may be taken without a meeting when consents in writing setting forth the action so taken shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consents shall have the same force and effect as the unanimous vote of the Directors at a Director's Meeting duly held. The Secretary shall file such consents with the minutes of the meetings of the Directors.

Section 13. Conference Call. Any Director may request to participate in a Director's Meeting by conference call or other means of communication whereby each Director can hear the others. Each Director so participating shall be considered present at the meeting.

Section 14. Required Vote. Except as otherwise set forth herein, affirmative vote of a majority of the Directors present shall be necessary for the passage of any resolution. A unanimous vote of all Directors shall be required however for the passage of any resolution regarding:

- (a) Rate increases or decreases;
- (b) Sale of any item of property valued in excess of \$10,000.00;
- (c) The entry into any contract which cannot be performed within one (1) year or which requires the expenditure by the Corporation of in excess of \$10,000.00.

Section 15. Compensation of Directors. Directors shall not receive any payment for their services as such.

#### ARTICLE IV: Officers

Section 1. Election. The officers of the Corporation shall be a President, a Secretary, and a Treasurer, and/or one or more Vice Presidents and/or one or more assistants to the foregoing officers as the Directors from time to time may consider necessary for the proper conduct of the business of the Corporation (the "*Officers*"). The Officers shall be elected annually by the

Directors at its Annual Director's Meeting except where a longer term is expressly provided in an employment contract duly authorized and approved by the Directors.

Section 2. Limitations. The President and Vice President shall be a Director and the other Officers may, but need not be, Directors. Any two or more of the above Officers, except those of President and Secretary, may be held by the same person, but no Officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law or by these bylaws to be executed, acknowledged or verified by any two or more Officers.

Section 3. Compensation. The compensation or salary paid to all Officers shall be fixed by resolution adopted by the Directors.

Section 4. Removal. Except where otherwise expressly provided in a contract duly authorized by the Directors, all Officers shall be subject to removal at any time by the affirmative vote of a majority of the whole Directors, and all Officers, agents, and employees shall hold office at the discretion of the Directors or of the Officers appointing them.

Section 5. Vacancies. In the event that any Officer other than an Officer required by law, shall not be filled by the Directors, or, once filled, subsequently becomes vacant, then such Officer and all references thereto in these bylaws shall be deemed inoperative unless and until such Officer is appointed in accordance with the provisions of these bylaws.

Section 6. Powers and Duties of the President. The president of the Corporation ("*President*") shall be the chief executive officer of the Corporation and shall have general charge and control of all its business affairs and properties. He or she shall preside at all Meetings. The President may sign and execute all authorized bonds, contracts or other obligations in the name of the Corporation. He or she shall have the general powers and duties of supervision and management usually vested in the office of president of a corporation. The President shall be ex officio member of all the standing committees. He or she shall do and perform such other duties as may, from time to time, be assigned to him or her by the Directors. Notwithstanding anything contained herein to the contrary, unless it is previously approved by resolution of the Directors or set forth as a specific item in an annual budget approved by the Directors, neither the President, nor any other Officer, may sign any document or contract, which binds the Corporation nor enter into any contract binding the Corporation to do one or more of the following:

- (a) Purchase or lease any real estate;
- (b) Enter into any agreement which is not cancelable on 30 days or less notice and which obligates the Corporation to pay more than \$1,000 per month, excluding phone and any and all utilities;
- (c) Requires the Corporation to pay more than \$8,000 cumulatively or \$2,000 at any one time, except for inventory and service supply agreements which otherwise meet the requirements of paragraph (b) above;

- (d) Purchase any capital asset costing more than \$ 5,000;
- (e) Pledges or encumbers any of the Corporation's assets;
- (f) Binds the Corporation to any employment agreement not terminable at will;
- (g) Cancels or terminates any agreement, prior to the scheduled termination, which falls within the above classifications or which was specifically authorized and directed to be entered into by Directors at such agreement's inception;
- (h) Institutes or directs the filing of any lawsuit.

Section 7. Powers and Duties of the Vice President. The Directors may, but need not appoint one or more vice presidents ("*Vice President*"). Each Vice President (unless otherwise provided by resolution of the Directors) may sign and execute all authorized bonds, contracts, or other obligations in the name of the Corporation. Each Vice President shall have such other powers and shall perform such other duties as may be assigned to him by the Directors or by the President. In case of the absence or disability of the President, the duties of that office shall be performed by the Vice President, and if there are more than one, then the Executive Vice President and such successors in authority as may be set forth in the resolution appointing him or her. The taking of any action by any such Vice President in the place of the President shall be conclusive evidence of the absence or disability of the President.

Section 8. Secretary. The Directors shall appoint a secretary of the Corporation (the "*Secretary*"). The Secretary shall give, or cause to be given, notice of all meetings of the Directors and all other notices required by law or by these bylaws, and in case of his or her absence or refusal or neglect to do so, any such notice may be given by any person thereunto directed by the President, or by the Directors upon whose written request the meeting is called as provided in these bylaws. The Secretary shall record all the proceedings of the meetings of the Directors in books provided for that purpose, and he or she shall perform such other duties as may be assigned to him or her by the Directors or the President. In general, the Secretary shall perform all the duties generally incident to the office of Secretary, subject to the control of the Directors and the President.

Section 9. Treasurer. The Directors shall appoint a treasurer of the Corporation (the "*Treasurer*"). The Treasurer shall have custody of all the funds and securities of the Corporation, and shall keep full and accurate account of receipts and disbursements in books belonging to the Corporation. He or she shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depository or depositories as may be designated by the Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Directors, taking proper account for such disbursements. He or she shall render to the President and the Directors, whenever either of them so requests, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall give the Corporation a bond, if required by the Directors, in a sum, and with one or more sureties, satisfactory to the Directors, for the faithful performance of the duties of the office and for the



restoration to the Corporation in case of his or her death, resignation, retirement or removal from office of all books, papers, vouchers, moneys, and other properties of whatever kind in his or her possession or control as belong to the Corporation. The Treasurer shall perform all the duties generally incident to the office of the Treasurer, subject to the control of the Directors and the President.

#### **ARTICLE V: Bank Accounts, Loans and Reimbursements**

Section 1. Bank Accounts. Such Officers as from time to time shall be designated by the Directors shall have authority to deposit any funds of the Corporation in such banks or trust companies as shall from time to time be designated by the Directors and such Officers as from time to time shall be authorized by the Directors may withdraw any or all of the funds of the Corporation so deposited in any such bank or trust Corporation, upon checks, drafts or other instruments or orders for the payment of money, drawn against the account or in the name or behalf of this Corporation, and made or signed by such Officers or agents; and each bank or trust Corporation with which funds of the Corporation are so deposited is authorized to accept, honor, cash and pay, without limit as to amount, all checks, drafts or other instruments or orders for the payment of money, when drawn, made or signed by Officers so designated by the Directors until written notice of the revocation of the authority of such Officers by the Directors shall have been received by such bank or trust Corporation. There shall from time to time be certified to the banks or trust companies in which funds of the Corporation are deposited, the signature of the Officers or agents of the Corporation so authorized to draw against the same. In the event that the Directors shall fail to designate the persons by whom checks, drafts and other instruments or orders for the payment of money shall be signed, as hereinabove provided in this Section, all of such checks, drafts and other instruments or orders for the payment of money shall be signed by the President or a Vice President and countersigned by the Secretary or Treasurer of the Corporation. In the event such offices are held by the same person, only one signature shall be required.

Section 2. Loans. Such Officers or agents of this Corporation as from time to time shall be designated by resolution of the Directors shall have authority to effect loans, advances or other forms of credit at any time or times for the Corporation from such banks, trust companies, institutions, corporations, firms or persons as the Directors, shall from time to time designate, and as security for the repayment of such loans, advances, or other forms of credit to assign, transfer, endorse and deliver, either originally or in addition or substitution, any or all stocks, bonds, rights and interest of any kind in or to stocks or bonds, certificates of such rights or interests, deposits, accounts, documents covering merchandise, bills and accounts receivable and other commercial paper and evidences of debt at any time held by the Corporation; and for such loans, advances or other forms of credit to make, execute and deliver one or more notes, acceptances or written obligations of the Corporation on such terms, and with such provisions as to the security or sale or disposition thereof as such Officers or agents shall deem proper; and also to sell to, or discount or rediscount with, such banks, trust companies, institutions, corporations, firms or persons any and all commercial paper, bills receivable, acceptances and other instruments and evidences of debt at any time held by the Corporation, and to that end to endorse, transfer and deliver the same. There shall from time to time be certified to each bank, trust Corporation, institution, corporation, firm or person so designated the signatures of the

Officers or agents so authorized; and each such bank, trust Corporation, institution, corporation, firm or person is authorized to rely upon such certification until written notice of the revocation by the Directors of the authority of such Officers or agents shall be delivered to such bank, trust Corporation, institution, corporation, firm or person.

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proxy at any Meeting called for such purpose. This shall include by the same process the authority to amend, alter or repeal the articles of incorporation and/or these by Laws or any provision thereof, and from time to time by the same process to make additions to these bylaws.

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