

**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.), Carriage )  
Oaks Not-for -Profit Water and Sewer )  
Corporation. )

Respondents. )

**RESPONDENTS' MOTION TO DISMISS  
COMPLAINANTS' SECOND AMENDED COMPLAINT**

Respondents move to dismiss the Complainants' Second Amended Complaint because the Missouri Public Service Commission (the "PSC") does not have jurisdiction over the Respondents or the claims asserted in the Complaint. 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. ("Distinctive Designs") is the developer of Carriage Oaks Estates Subdivision, a residential subdivision located in Stone County, Missouri ("Carriage Oaks Estates"). (*Exhibit A*). Carl Richard Mills ("Mills"), through his trust, is the manager and controlling owner of Carriage Oaks and Distinctive Designs. (*Exhibit B*). At the inception of Carriage Oaks Estates, Carriage Oaks and Distinctive Designs owned, operated and



maintained the water and sewer systems that provide service to the residents of Carriage Oaks Estates. (*Exhibit B*).

Mills is a 77 year-old 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. (*Exhibit B*). The purpose of this transfer was solely for succession planning—to ensure upon Mills’ demise an entity existed to continue to own and maintain the water and sewer system for Carriage Oaks Estates. (*Exhibit B*). Caring Americans received an operating permit from the Missouri Department of Natural Resources (“DNR”). (*Exhibit C*). In August 2016, Complainants, as residents of Carriage Oaks Estates, filed an amended complaint (“Complaint”) with the PSC claiming Caring Americans must obtain a permit from the PSC to operate the water and sewer system and asking the PSC to demand Caring Americans turn over ownership of the water and sewer system to a proper entity where all of the Complainants are members of said entity, such as the Carriage Oaks Homeowners Association (“Association”).

At the suggestion of the PSC staff, as set forth in Staff Report and Motion for Mediation dated October 28, 2016, and in attempt to appease the Complainants, the water and sewer systems of Carriage Oaks Estates were transferred to Carriage Oaks Not For Profit Water and Sewer Corporation, a non-profit water and sewer entity properly formed under §393.900-.954 and §393.825-861 RSMo (“Carriage Oaks NFP”). Pursuant to the Bylaws of Carriage Oaks NFP, each homeowner in Carriage Oaks Estates is a member of Carriage Oaks NFP and has the right to vote. (*Exhibit D*). In accordance with Section 393.825 and Section 393.900 RSMo, DNR also found the Bylaws and Articles of Incorporation of Carriage Oaks NFP to be in compliance with all statutory requirements. (*Exhibit E*). Additionally, DNR has issued Carriage Oaks NFP an operating permit for the water and sewer systems of Carriage Oaks Estates. (*Exhibit F*).

In addition to transferring ownership of the water and sewer systems to Carriage Oaks NFP, in October 2017 Mills, as president of the Association, also presented all residents with the option of hiring a third party to maintain and service the water and sewer systems. This matter was rejected by all of the residents of Carriage Oaks Estates.

The Association is charged a small fee every year to cover expenses associated with the operation of the water and sewer systems and the Association subsequently passes on such fees to the residents of Carriage Oaks Estates through annual assessments. However, these fees are not adequate to cover all cost and expenses related to the upkeep, maintenance and improvement of the water systems. (*Exhibit B*). In setting the fees charged to the Association, the Respondents reviewed and compared the rates charged by third party service providers in their area. (*Exhibit G*). Starting January 1, 2018, Carriage Oaks NFP plans on billing each homeowner in Carriage Oaks Estates separately for their water and sewer services, with such sewer services being charged at a flat rate each month and water services billed on a usage basis.

Respondents move to dismiss this claim on the grounds that: (1) the PSC lacks jurisdiction over the Respondents 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 Respondents have already complied with the Complainants' demands set forth in the Complaint.

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

The PSC has jurisdiction over non-profit entities that provide water and sewer services, except for those organized under Sections 393.825 et seq. and 393.900 et seq. for the sole purpose of providing wastewater and drinking water services, respectively. Carriage Oaks NFP is a non-profit entity properly formed under Section 393.825 and 393.900. As such, the PSC does not have jurisdiction over Carriage Oaks NFP.

Additionally, Respondents maintain that the PSC has always lacked jurisdiction over the water and sewer system of Carriage Oaks Estates. 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). Neither Caring Americans, Carriage Oaks, nor Distinctive Designs operated 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 *.(Exhibit 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 that twenty-five outlets”. Section 368.020(49) RSMo. The sewer services provided by Respondents only serve seven 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 ...” (*Exhibit 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 owner in Carriage Oaks Estates is subject to deed restrictions set forth on *Exhibit A* which were properly filed within the Stone County Recorder on June 1, 2001 and each of the Complainants were given a copy of these deed 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 deed restrictions also give Carriage Oaks the right to transfer the water and sewer systems to other entities. Additionally, these deed restrictions prevent the Association from owning the water and sewer system 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 system is unjustified and a blatant violation of the deed restrictions.

#### **IV. Respondents have Attempted to Comply with Complainants Demands**

Despite the allegations set forth in the Complaint alleging Respondents refuse to communicate with Complainants regarding the issue at hand, Respondents have been in constant communication with Complainants and have made multiple attempts to appease their demands. Pursuant to the Complaint, the Complainants' main request is that the Respondents transfer the water and sewer systems to an entity in which all owners are members of said entity. In an attempt to accommodate Complainants and at the suggestion of the PSC staff, the water and sewer systems were transferred to the Carriage Oaks NFP. Pursuant to Section 1 and Section 2 of Carriage Oaks NFP Bylaws, all of the homeowners of Carriage Oaks Estates are members of Carriage Oaks NFP and have the explicit right to vote. (*Exhibit D*). As such, Carriage Oaks NFP clearly meets the demands set forth by the Complainants in their Complaint.

Despite the compliance with their demands, Complainants still remained unsatisfied and voiced their concern at the annual Association meeting held on August 25, 2017 ("HOA Meeting"). At such HOA Meeting, the Complainants' stated that they now demanded the water and sewer system facilities be managed by an independent third party. In an additional attempt to meet the Complainants demands, Mills, as President of the Association, received a quote for management and maintenance services from Ozarks Clean Water Company and distributed such quote to the residents of Carriage Oaks Estates for a vote. After viewing the cost associated with such services—which were substantially more than those fees currently charged by Carriage Oaks NFP—none of the residents, including the Complainants, voted in favor of Ozarks Clean Water Company's management and maintenance services.

Respondents respectfully ask that the PSC dismiss the Complainants' Second Amended Petition and for such other and further relief as appropriate.

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**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 24<sup>th</sup> day of October, 2017.

Whitney Smith

Whitney Smith, 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.





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 ~~lots~~ 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

HOMEOWNERS 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 from 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

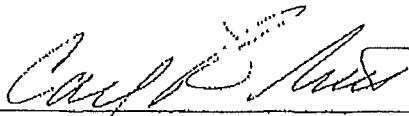
The covenants, restrictions and declarations herein contained shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer/Owner, by the Association, or by the owner of any lot within the Subdivision, and/or where applicable, the Missouri Department of Natural 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.

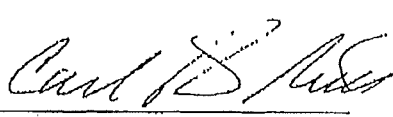
XIII

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.

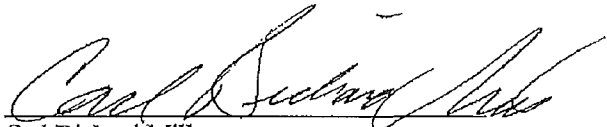
I formed Carriage Oaks, LLC, a Missouri limited liability company, and Distinctive Designs Ltd. to act as the owner and developer of Carriage Oaks Estates Subdivision in Stone County, Missouri. My personal trust, of which I am the trustee, is the majority owner and manager of Carriage Oaks and Distinctive 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



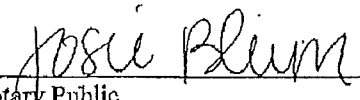
expenses associated with management, maintenance and upgrades of Carriage Oaks water and sewer systems.

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.

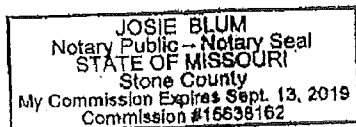
Further Affiant sayeth not.

  
Carl Richard Mills

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

  
Notary Public

My commission expires:



STATE OF MISSOURI  
DEPARTMENT OF NATURAL RESOURCES  
MISSOURI CLEAN WATER COMMISSION



MISSOURI STATE OPERATING PERMIT

In compliance with the Missouri Clean Water Law. (Chapter 644 R.S. Mo. as amended, hereinafter, the Law), and the Federal Water Pollution Control Act (Public Law 92-500, 92<sup>nd</sup> Congress) as amended.

Permit No. MO-0126098  
Owner: Caring American Trust Foundation INC  
Address: 209 Falling Leaf Court, Branson West, MO 65737  
Continuing Authority: Carriage Oaks Estates Homeowners Association  
Address: same as above  
Facility Name: Carriage Oaks Estates WWTF  
Facility Address: 209 Falling Leaf Court, Branson West, MO 65737  
Legal Description: NE¼, NE¼, Sec. 12, T22N, R23W, Stone County  
UTM Coordinates: X = 467064, Y= 4053895  
Receiving Stream: Unnamed tributary to Table Rock Lake (U)  
First Classified Stream and ID: Table Rock Lake (L2) (7313) 303(d) List  
USGS Basin & Sub-watershed No.: (11010001-1404)

is authorized to discharge from the facility described herein, in accordance with the effluent limitations and monitoring requirements as set forth herein:

FACILITY DESCRIPTION

Outfall #001 - Subdivision – SIC # 4952

No Certified Operator Required.

Recirculating sand filter / chemical addition to facilitate phosphorus removal / flocculation tank / tertiary filtration / chlorination / dechlorination / sludge removal by contract hauler

Design population equivalent is 104 PE.

Design flow is 7,800 gallons per day.

Actual flow is 1,700 gallons per day.

Design sludge production is 1.04 dry tons/year.

This permit authorizes only wastewater discharges under the Missouri Clean Water Law and the National Pollutant Discharge Elimination System; it does not apply to other regulated areas. This permit may be appealed in accordance with Section 644.051.6 of the Law.

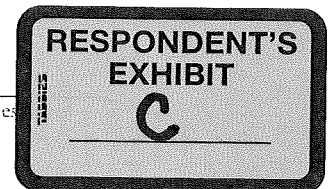
August 1, 2013  
Effective Date

September 29, 2016  
Modification Date

July 31, 2018  
Expiration Date

Sara Parker Pauley, Director, Department of Natural Resources

John Madras, Director, Water Protection Program





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**

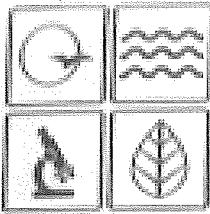
Section 1. Fiscal Year. The fiscal year of the Corporation shall end on the last day of December.

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.



Missouri Department of dnr.mo.gov

# NATURAL RESOURCES

Eric R. Greitens, Governor

Carol S. Comer, Director

AUG 17 2017

Mr. Carl Mills, Director  
Carriage Oaks Not-For-Profit Water and Sewer Corporation  
209 Falling Leaf Court  
Branson West, MO 65737

Dear Mr. Mills:

The Articles of Incorporation and bylaws of Carriage Oaks Not-For-Profit Water and Sewer Corporation have been reviewed by the Missouri Department of Natural Resources General Counsel.

It has been determined that the Articles of Incorporation are consistent with the legal requirements of §393.825.2, RSMo. Additionally, the bylaws sufficiently demonstrate how the organization will be governed. Both documents are compliant with statutory requirements of §393.825 to §396.861, RSMo.

Please note that should the Carriage Oaks Not-for-Profit Water and Sewer Corporation choose to dissolve at a later date, dissolution requirements as outlined in §393.855, RSMo, shall be followed. Additionally, Carriage Oaks Not-For-Profit Water and Sewer Corporation shall notify the Department within 30 days of dissolution.

If you were adversely affected by this decision, you may be entitled to an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Section 621.250, RSMo. To appeal, you must file a petition with the AHC within thirty days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Contact information for the AHC is: Administrative Hearing Commission, United States Post Office Building, 3<sup>rd</sup> Floor, 131 West High Street, P.O. Box 1557, Jefferson City, Missouri 65102, Phone: 573-751-2422, Fax: 573-751-5018, and Website: [www.na.mo.gov/ahc](http://www.na.mo.gov/ahc).



RESPONDENT'S  
EXHIBIT

TABULAR  
E

Mr. Carl Mills, Director  
Page Two

If you have any questions concerning this permit, please do not hesitate to contact Ms. Samantha Ostmann at the Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102-0176 or by phone at 573-526-2445.

Sincerely,

WATER PROTECTION PROGRAM



Timothy W. Dill  
Operating Permits Section

TB/sm

c: Mr. Kevin Hess, Southwest Regional Office  
Mr. James Merciel, Missouri Public Service Commission

STATE OF MISSOURI  
 DEPARTMENT OF NATURAL RESOURCES  
 MISSOURI CLEAN WATER COMMISSION



## MISSOURI STATE OPERATING PERMIT

In compliance with the Missouri Clean Water Law, Chapter 644 R.S.Mo. as amended hereinafter, the Law, and the Federal Water Pollution Control Act (Public Law 85-92) as amended.

Permit No.: MO-0126098

Owner: Carriage Oaks Not for Profit Water and Sewer Corporation  
 Address: 209 Falling Leaf Court, Branson West, MO 65737

Continuing Authority: Same as above  
 Address: Same as above

Facility Name: Carriage Oaks Estates Wastewater Treatment Facility  
 Facility Address: 209 Falling Leaf Court, Branson West, MO 65737

Legal Description: NE¼, NE¼, Sec. 12, T22N, R23W, Stone County  
 UTM Coordinates: X = 467064, Y = 4053895

Receiving Stream: Unnamed tributary to Table Rock Lake (U)  
 First Classified Stream and ID: Table Rock Lake (L2) (7313) 303(d) List  
 USGS Basin & Sub-watershed No.: (11010001-1404)

is authorized to discharge from the facility described herein, in accordance with the effluent limitations and monitoring requirements as set forth herein:

**FACILITY DESCRIPTION**

Outfall #001 - NON-POTW - Subdivision - SIC # 8641  
 No Certified Operator Required.  
 Recirculating sand filter / chemical addition to facilitate phosphorus removal / flocculation tank / tertiary filtration / chlorination / dechlorination / sludge removal by contract hauler  
 Design population equivalent is 104 PE.  
 Design flow is 7,800 gallons per day.  
 Actual flow is 1,700 gallons per day.  
 Design sludge production is 1.04 dry tons/year.

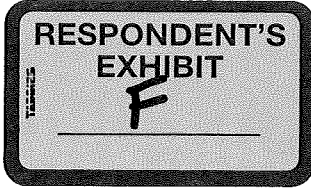
This permit authorizes only wastewater discharges under the Missouri Clean Water Law and the National Pollutant Discharge Elimination System; it does not apply to other regulated areas. This permit may be appealed in accordance with Section 644.051.6 of the Law.

August 1, 2013                      April 1, 2017  
 Effective Date                      Modification Date

July 31, 2018  
 Expiration Date

*Steven Feeler*  
 Steven Feeler, Acting Director, Division of Environmental Quality

*David J. Lamb*  
 David J. Lamb, Acting Director, Water Protection Program



**White River Valley Environmental Services, LLC.**

536 Roark Branch Drive

Branson West, MO. 65737

417-294-0590

417-339-2007 Fax

[rhelms@whiteriver.org](mailto:rhelms@whiteriver.org) email -

August 22, 2014

Exhibit B

Carriage Oaks Estates Subdivision

Dick Mills

209 Falling Leaf Court

Branson West, MO. 65737

Dear Mr. Mills:

The proposed monthly amount for operating and maintaining your Wastewater Treatment Facility at Carriage Oaks Estates Subdivision is \$392.00 per month. This includes a once per week visit to the wastewater treatment facility. During this visit operations and maintenance tasks will be performed and recorded. Operator will collect required samples once per quarter and perform lab testing as required by MDNR. A monthly wastewater report will be prepared for you. The proposed amount does not include grounds maintenance work on or around the Wastewater Treatment Facility. Chemicals used at the facility can be provided at an additional cost. If other tasks are needed to be performed they will be billed at our hourly rate. *75<sup>00</sup> Hr.*

Current Chemical Pricing (subject to change in the event of price change from our supplier).

Chlorine Tablets	50 lb. pail	\$196.20
Dechlor Tablets	45 lb. pail	\$164.40
Prestofloc C-100	55 gallon drum	\$374.40

If you have any questions please do not hesitate to call me at 417-294-0591.

We look forward to doing business with you.

Sincerely,



Tim Thorson, Operations Supervisor

