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P97000058032

CT CORPORATION SYSTEM

Requestor's Name
660 East Jefferson Street

Address
Tallahassee, FL 32301 222-1092

City State Zip Phone

**CORPORATION(S) NAME**

Forest Lawn / Evergreen Memorial Gardens
merging into:
Carriage Services of Florida, Inc.

11/20/97--01044--032
*****70.00 *****70.00

( ) Profit
( ) NonProfit
( ) Limited Liability Co.
( ) Foreign

( ) Amendment
( ) Dissolution/Withdrawal

(X) Merger
( ) Mark

( ) Limited Partnership
( ) Reinstatement

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ARTICLES OF MERGER
Merger Sheet

MERGING:

FOREST LAWN/EVERGREENMANAGEMENT CORP., G77514, a FL Corp.

INTO

**CARRIAGE SERVICES OF FLORIDA, INC.**, a Florida corporation, P97000058032.

File date: November 20, 1997

Corporate Specialist: Susan Payne

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# ARTICLES OF MERGER

OF

FOREST LAWN/EVERGREEN MANAGEMENT CORP.

INTO

CARRIAGE SERVICES OF FLORIDA, INC.

Pursuant to the Section 607.1105 of the Florida Business Corporation Act, the undersigned domestic corporations adopt the following Articles of Merger:

FIRST: The Plan of Merger is attached hereto as Exhibit A.

SECOND: The effective date of the merger is the date on which these Articles of Merger are filed with the Department of State of Florida.

THIRD: The Plan of Merger was adopted by the shareholders of Forest Lawn/Evergreen Management Corp., a Florida corporation, on November 20, 1997, and was adopted by the shareholders of Carriage Services of Florida, Inc., a Florida corporation, on November 20, 1997.

Signed this 20th day of November, 1997.

FOREST LAWN/EVERGREEN MANAGEMENT CORP.

By: _____
GREG M. BRUDNICKI, President

CARRIAGE SERVICES OF FLORIDA, INC.

By: _____
MARK W. DUFFEY, President

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EXHIBIT A

# PLAN OF MERGER

THIS PLAN OF MERGER, dated as of November __, 1997, is among CARRIAGE SERVICES, INC., a Delaware corporation (the "Purchaser"), CARRIAGE SERVICES OF FLORIDA, INC., a Florida corporation (the "Acquisition Subsidiary"), and FOREST LAWN/EVERGREEN MANAGEMENT CORP., an Florida corporation (the "Company") (the Acquisition Subsidiary and the Company being hereinafter sometimes referred to collectively as the "Constituent Corporations").

W I T N E S S E T H:

WHEREAS, the respective Board of Directors of the Acquisition Subsidiary and the Company deem it desirable and in the best interests of their respective corporations and shareholders that the Company be merged with and into the Acquisition Subsidiary and upon consummation of such merger, that each of the issued and outstanding shares of the Common Stock, no par value ("Company Common Stock"), of the Company be converted into the right to receive cash, shares of Class A Common Stock, $.01 par value ("Class A Shares"), of the Purchaser, Deferred Merger Consideration (as hereafter defined), and other consideration, all as further and more specifically provided in the following terms and conditions of this Plan of Merger; and

WHEREAS, the Acquisition Subsidiary, the Purchaser, the Company, and the shareholders of the Company (collectively, the "Shareholders") have entered into a Merger Agreement of even date herewith (the "Merger Agreement"), which provides for, among other things, the execution and delivery of this Plan of Merger by the Purchaser, the Acquisition Subsidiary and the Company and consummation of the merger transaction described herein;

NOW, THEREFORE, the Purchaser, the Acquisition Subsidiary and the Company agree as follows:

1. Merger. At the Effective Time of the Merger (as hereinafter defined), the Company shall be merged with and into the Acquisition Subsidiary in a statutory merger (the "Merger") to be consummated pursuant to and on the terms and conditions set forth in this Plan of Merger and in accordance with the laws of the State of Florida. The Acquisition Subsidiary shall be the surviving corporation of the Merger (the "Surviving Corporation"), and shall continue its corporate existence as a corporation governed by the laws of the State of Florida.

2. Effective Time of the Merger. The time when the Merger shall become effective (the "Effective Time of the

Merger") shall be at the time and date that appropriate executed and verified Articles of Merger, with a copy of this Plan of Merger attached thereto, are filed with and endorsed by the Secretary of State of Florida, in accordance with Section 607.1105 of the Florida Statutes Annotated.

3. Articles of Incorporation and By-laws.

(a) Articles of Incorporation. From and after the Effective Time of the Merger, the Articles of Incorporation of the Acquisition Subsidiary shall be the Articles of Incorporation of the Surviving Corporation, subject to the right of the Surviving Corporation to amend its Articles of Incorporation after the Effective Time of the Merger in accordance with such Articles of Incorporation and Chapter 607 of the Florida Statutes Annotated.

(b) Bylaws. From and after the Effective Time of the Merger, the bylaws of the Acquisition Subsidiary, as in effect immediately prior to the Effective Time of the Merger, shall be the bylaws of the Surviving Corporation, until changed or amended as provided therein.

4. Directors and Officers.

(a) Directors. From and after the Effective Time of the Merger, the directors of the Surviving Corporation shall be those persons who are directors of the Acquisition Subsidiary immediately prior thereto, each of whom shall hold office subject to the provisions of Chapter 607 of the Florida Statutes Annotated and the Articles of Incorporation and bylaws of the Surviving Corporation.

(b) Officers. From and after the Effective Time of the Merger, the officers of the Surviving Corporation shall be those persons who are officers of the Acquisition Subsidiary immediately prior thereto, each of whom shall hold office subject to the provisions of the Chapter 607 of the Florida Statutes Annotated and the bylaws of the Surviving Corporation.

5. Conversion of Shares.

(a) Conversion of Shares. The manner of converting shares of the capital stock of each of the Constituent Corporations issued and outstanding immediately prior to the Effective Time of the Merger into shares of Common Stock, $.01 par value, of the Surviving Corporation, or into the right to receive cash, Class A Shares of the Purchaser and Deferred Merger Consideration, as the case may be, shall be as follows:

(i) At the Effective Time of the Merger, each share of Common Stock, $.01 par value, of the Acquisition Subsidiary then issued and outstanding shall, by virtue of the Merger and without any action on the part of the Acquisition Subsidiary or the holder of such shares, be converted into one share of Common Stock, $.01 par value, of the Surviving Corporation.

(ii) At the Effective Time of the Merger, each share of capital stock of the Company issued and held in its treasury shall, by virtue of the Merger and without any action on the part of the holder thereof, cease to be outstanding and shall be cancelled and retired without the payment of any consideration in respect thereof.

(iii) Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time of the Merger shall, by virtue of the Merger, without any action on the part of the holder thereof, automatically be converted into and become, at the Effective Time of the Merger, the right to receive from the Purchaser consideration (collectively, the "Merger Consideration"), determined as follows:

First, the aggregate Merger Consideration for all shares of issued and outstanding Company Common Stock shall be calculated as the sum of the following:

(A) An amount payable in cash equal to $11,085,000.00 less the amount determined under clause (B) below;

PLUS

(B) A number of Class A Shares as shall be set forth in written notice from the Shareholders to the Purchaser prior to the Closing, each of which Class A Shares shall, for purposes of this clause (B), be deemed to have a value equal to the average trading price of a Class A Share, as reported over the NASDAQ National Market System, for the ten trading days preceding the Closing, but in no event less than $17.00 nor more than $19.00 per Class A Share;

PLUS

(C) $2,000,000.00 payable in installments after the Effective Time of the Merger as provided in paragraph (e) below (the "Deferred Merger Consideration");

PLUS

(D) An amount (not to exceed $1,350,000) equal to the sum of all cash balances of the Company at the Effective Time of the Merger, excluding (x) any cash balances committed to fund preneed obligations (y) cash proceeds from payment of the promissory note referred to in Section 6.1(m) of the Merger;

PLUS

(E) The amount of those accounts receivable of the Company which are outstanding at the Effective Time of the Merger and which arise from the sale of merchandise and services for funeral services performed at the Homes prior to the Closing Date and from the at-need sale of Cemetery merchandise and plots at the Cemeteries prior to the Closing Date (collectively "Closing Date Receivables"), specifically excluding Preneed Cemetery Accounts Receivable (as defined in the Merger Agreement);

LESS

(F) The amount of the Closing Date Liabilities (as defined in paragraph (g) below);

PLUS

(G) The amount of the Contingent Merger Consideration determined in accordance with paragraph (h) below; and

PLUS

(H) The Promissory Note of Rupert Cleaners, Inc. dated September 30, 1992 payable to the Company in the original principal amount of $85,000 (the "Rupert Note").

Second, the Merger Consideration payable per share of outstanding Company Common Stock shall be determined by dividing the aggregate Merger Consideration calculated above by the number of shares of Company Common Stock which are issued and outstanding at the Effective Time of the Merger. The net amount of Merger Consideration calculated as set forth above shall be allocated on a pro rata basis among all of the shares of Company Common

Stock which are issued and outstanding at the Effective Time of the Merger.

Third, an amount calculated as the sum of (A) plus (D) less (F) above, plus the sum of $700,000 (as a down payment on the Merger Consideration under (G) above) shall be payable to the Shareholders in cash at or promptly following the Effective Time of the Merger; the amount under (B) above shall be payable by the delivery to the Shareholders of one or more certificates representing the Class A Shares; the Deferred Merger Consideration under (C) above shall be payable in installments as provided in paragraph (e) below; the amount payable under (H) above shall be paid by the Surviving Corporation's assignment of the Rupert Note to the Shareholders, without recourse or warranty; and the amount in respect of Closing Date Receivables under (E) above shall be payable as provided in paragraph (f) below. In addition, any amount payable in respect of the balance of the Contingent Merger Consideration (as defined in paragraph (h) below) shall be payable as described in said paragraph (h).

(iv) At the Effective Time of the Merger, all options, warrants, calls, or other securities convertible into or exchangeable with Company Common Stock, and all hereafter issued Company Common Stock that is not issued and outstanding on the date of this Agreement, shall, by virtue of the Merger and without any action on the part of any holder thereof, cease to be outstanding and shall be cancelled and retired without the payment of any consideration in respect thereof.

(v) No fractional Class A Shares Stock or scrip will be issued in respect of fractional interests; in lieu of any fractional Class A Shares which may be issued in respect of shares of Company Common Stock as aforesaid, the holders thereof instead shall receive a cash payment in an amount equal to the product of such fraction multiplied by $19.00.

(b) Surrender and Payment. After the Effective Time of the Merger, each holder of an outstanding certificate which prior to the Effective Time of the Merger represented shares of Company Common Stock shall, upon surrender of such certificate to the Surviving Corporation, be entitled to receive the Merger Consideration as payment therefor pursuant to Section 5(a)(iii) of this Plan of Merger. Until so surrendered, each outstanding certificate which prior to the Effective Time of the Merger represented shares of Company Common Stock shall, upon and after the Effective Time of the Merger, represent and evidence only the right to receive payment therefor as provided in Section 5(a)(iii) of this Plan of Merger.

(c) No Further Transfers. Upon and after the Effective Time of the Merger, no transfer of shares of Company Common Stock issued and outstanding immediately prior to the Effective Time of the Merger shall be made on the stock transfer books of the Surviving Corporation.

(d) Dissenting Shares. All of the respective stockholders of the Company and the Acquisition Subsidiary have, pursuant to the Merger Agreement, irrevocably and unconditionally waived all dissenters' and other similar rights with respect to the Merger under and pursuant to Sections 607.1302 and 607.1320 of the Florida Statutes Annotated.

(e) Deferred Merger Consideration. The Deferred Merger Consideration shall be payable in forty (40) equal quarterly installments of $50,000.00 each, payable on or before the last day of each February, May, August and November during the ten-year period following the Closing, commencing February 28, 1998 and continuing quarterly thereafter through to and including November 30, 2007. Each installment of Deferred Merger Consideration shall be payable to each holder of shares of Company Common Stock on a pro rata basis in proportion to his or her respective holdings of Company Common Stock at the Effective Time of the Merger. No interest shall accrue or be payable in respect of the Deferred Merger Consideration. For federal income tax purposes, the parties agree that the Deferred Merger Consideration shall be deemed to include an imputed rate of interest of seven percent (7%) per annum. The Deferred Merger Consideration shall be subject to offset as provided in Section 8.4 of the Merger Agreement.

(f) Closing Date Receivables. Upon the Effective Time of the Merger, the Shareholders shall provide to the Purchaser a listing (certified by them to be complete and accurate) of the Closing Date Receivables. Following the Effective Time of the Merger, for each month in which any Closing Date Receivables are collected, the Surviving Corporation shall remit 100% of such collections to the Shareholders by no later than the 15th day of the following month. The Surviving Corporation shall have no duty to pursue collection of Closing Date Receivables by means greater than used on its collection of other accounts receivable, and in no event shall the Surviving Corporation be required to institute suit or refer any account to a collection agency. At any time after the first anniversary of the Effective Time of the Merger, the Surviving Corporation may at any time, by written notice to the Shareholders, satisfy its obligation to pay to the Shareholders that portion of the Merger Consideration attributable to any remaining collections due on the Closing Date Receivables by assigning the same to the Shareholders without recourse or warranty against the Surviving Corporation, in which case the Surviving Corporation shall be thereafter

relieved of all further responsibility hereunder other than in respect of collections received prior to the giving of such notice.

(g) Closing Date Liabilities. Upon the Effective Time of the Merger, the Shareholders shall deliver to the Purchaser a statement, certified by them to be true and complete, of all liabilities and obligations of the Company of whatever nature and character including (but not limited to) indebtedness for borrowed money, indebtedness secured by Liens against any assets or properties of the Company, accounts and trade payable, accrued liabilities, any liabilities under suits, claims, judgments or orders then pending or any other liability or obligation of the Company attributable to the operation of its business prior to Closing (collectively, "Closing Date Liabilities"), excluding (i) obligations under preneed funeral contracts for which the full amount has been deposited in trust or funded by insurance as required under applicable law, and under cemetery endowment care, merchandise and service contracts for which the full amount has been deposited in trust, (ii) obligations arising after the Effective Time of the Merger under the executory contracts listed on Schedule 3.13 to the Merger Agreement and (iii) Assumed Tax Liability (as defined in the Merger Agreement). In the case of indebtedness for borrowed money or secured by Liens against any assets of the Company, such statement shall be accompanied by statements of the holders of such indebtedness certifying as to the balance thereof, including per diem interest. For purposes of calculating the amount of Closing Date Liabilities, there shall be included all amounts necessary to pay and discharge the same in full at the Effective Time of the Merger, including principal, interest, fees, prepayment fees or premiums, and other similar amounts, however characterized. Such statement shall include estimated federal and state income tax liabilities. To the extent that Closing Date Liabilities are outstanding at the Effective Time of the Merger, the amount thereof shall be deducted from the cash portion of the Merger Consideration as described in paragraph (a)(iii)(F) above. Any Closing Date Liabilities remaining unpaid after the Closing which are not set forth on such statement of the Shareholders shall be paid by the Shareholders and shall be subject to indemnification under Section 8.1.

(h) Contingent Merger Consideration. In addition to the foregoing, there shall be included as additional Merger Consideration (herein referred to as "Contingent Merger Consideration") an amount equal to the amount by which (x) the Average Operating Net Income (as hereafter defined) for the Emerald Coast Operations (as hereafter defined) multiplied by seven (7) exceeds (y) $700,000. If (x) minus (y) is zero or less, then there shall be no adjustment to the Merger Consid-

eration. On the other hand, if such calculation results in positive Contingent Merger Consideration, the Purchaser shall pay the same to the Shareholders on or before March 31, 2002. Such payment by the Purchaser may be, at the Shareholders' election (as they shall advise the Purchaser in writing on or before January 31, 2002), payable in any combination of cash or shares of the Purchaser's Class A Common Stock (based upon the average trading price of a share of Class A Common Stock, as reported on any national securities exchange or over-the-counter on the NASDAQ National Market System) for the ten trading days ending December 31, 2001; provided that if the Purchaser shall not have timely received such notice from a Shareholder, then the Contingent Merger Consideration due such Shareholder shall be payable entirely in cash. For purposes of the foregoing:

"Emerald Coast Operations" means the Emerald Coast Funeral Home located at 113 Racetrack Road, N.E. in Fort Walton Beach, Florida.

"Average Operating Net Income" means the Operating Net Income (as hereafter defined) for the two fiscal years ending December 31, 2000-2001, divided by two.

"Operating Net Income" means, for any fiscal year, the net income for such fiscal year attributable to the revenues and expenses from the Emerald Coat Operations, determined in accordance with generally accepted accounting principles and as reflected in the unaudited statement of income of the operations of the Emerald Coast Operations for such Fiscal Year, plus federal income taxes, interest, depreciation and amortization deducted for purposes of calculating such net income. In no event will there be charged against Operating Net Income, for purposes of the above calculation, any corporate overhead charges from the Purchaser's corporate offices in Houston, Texas, other than auditors fees, insurance premiums, legal expenses and other similar costs of the Purchaser, all of which must be reasonably and directly attributable to the Emerald Coast Operations. For purposes of the foregoing, there shall be included revenues and expenses arising from the sale of cemetery merchandise (namely, caskets, vaults, markers, urns and other merchandise) and services, but only to the extent permitted by generally accepted accounting principles and Florida trusting laws.

6. Effects of the Merger. At the Effective Time of the Merger:

(i) the Constituent Corporations shall be merged into a single corporation, which shall be the Surviving Corporation;

(ii) the separate existence of the Company shall cease;

(iii) the Surviving Corporation shall have all of the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under Chapter 605 of the Florida Statutes Annotated;

(iv) the Surviving Corporation shall possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the Constituent Corporations;

(v) all property, real, personal and mixed, and all debt due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the Constituent Corporations, shall be taken and deemed to be transferred to and vested in the Surviving Corporation without further act or deed;

(vi) title to any real estate, or any interest therein, vested in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger;

(vii) the Surviving Corporation shall be responsible and liable for all of the liabilities, obligations and penalties of each of the Constituent Corporations;

(viii) any claim existing or action or proceeding, civil or criminal, pending by or against either of the Constituent Corporations may be prosecuted as if the Merger had not taken place or the Surviving Corporation may be substituted in its place, and any judgment rendered against either of the Constituent Corporations may be enforced against the Surviving Corporation; and

(ix) neither the rights of creditors nor any liens upon the property of either of the Constituent Corporations shall be impaired by the Merger.

7. Other Provisions with Respect to the Merger.

(a) Pursuant to the Merger Agreement, this Plan of Merger has been approved by the respective shareholders of each of the Constituent Corporations as provided by Section 11.05 of the Florida Business Corporation Act. Subject to the conditions set forth in the Merger Agreement, upon the Closing thereunder all required documents shall be executed, verified, filed and recorded and all required acts shall be done in order to accomplish the Merger in accordance with the applicable provisions of the statutes of the State of Florida.

(b) This Plan of Merger may be abandoned at any time prior to the Effective Time of the Merger, whether before or after action thereon by the shareholders of each of the Constituent Corporations (but prior to the filing of Articles of Merger referred to in Section 2 of this Plan of Merger with the Secretary of State of Florida) by mutual consent of each of the Constituent Corporations, expressed by action of their respective Boards of Directors. This Plan of Merger shall be automatically abandoned upon the valid termination of the Merger Agreement, in accordance with the terms thereof, prior to the filing of Articles of Merger referred to in Section 2 of this Plan of Merger with the Secretary of State of Florida.

(c) The Constituent Corporations, by mutual consent of their respective Boards of Directors, and to the extent permitted by law, may amend, modify, supplement and interpret this Plan of Merger in such manner as may be mutually agreed upon by them in writing at any time before or after adoption thereof by their respective shareholders, and, in the case of an interpretation, the actions of such Boards shall be binding.

(d) If at any time the Surviving Corporation shall consider or be advised that any further assignment or assurance in law or other action is necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation the title to any property or rights of either Constituent Corporation acquired or to be acquired by or as a result of the Merger, the proper officers and directors of the Surviving Corporation shall be and they hereby are, severally and fully authorized to execute and deliver such deeds, assignments and assurances in law and to take such other action as may be necessary or proper in the name of such Constituent Corporation or the Surviving Corporation to vest, perfect or confirm title to such property or rights in the Surviving Corporation and otherwise to carry out the purpose of this Plan of Merger.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed and affixed with its corporate seal as of the date first above written.

THE PURCHASER:

CARRIAGE SERVICES, INC.

By: _____
MARK W. DUFFEY, President

THE ACQUISITION SUBSIDIARY:

CARRIAGE SERVICES OF FLORIDA, INC.

By: _____
MARK W. DUFFEY, President

THE COMPANY:

FOREST LAWN/EVERGREEN MANAGEMENT CORP.

By: _____
GREG M. BRUDNICKI, President

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