

**WILLMAR CITY COUNCIL PROCEEDINGS**  
**COUNCIL CHAMBERS**  
**WILLMAR MUNICIPAL UTILITIES BUILDING**  
**WILLMAR, MINNESOTA**

November 20, 2017  
7:00 p.m.

The regular meeting of the Willmar City Council was called to order by the Honorable Mayor Marv Calvin. Members present on a roll call were Mayor Marv Calvin, Council Members Audrey Nelsen, Ron Christianson, Kathy Schwantes, Fernando Alvarado, Julie Asmus, Shawn Mueske and Andrew Plowman. Council Member Rick Fagerlie was excused from the meeting. Present 8, Absent 1.

Also present were City Administrator Ike Holland, Finance Director Steve Okins, Planning and Development Services Director Bruce Peterson, Police Chief Jim Felt, Fire Chief Frank Hanson, Community Education and Recreation Director Steve Brisendine, Public Works Director Sean Christensen, Human Resource Director Bridget Buckingham, City Clerk Judy Thompson and City Attorney Robert Scott.

There were no additions or deletions to the agenda.

Council Member Christianson moved to approve the agenda as presented. Council Member Nelsen seconded the motion which carried.

City Clerk Judy Thompson reviewed the consent agenda.

- A. City Council Minutes of November 6, 2017
- B. Willmar Municipal Utilities Minutes of November 13, 2017
- C. Planning Commission Minutes of November 8, 2017
- D. Planning Commission Minutes of November 15, 2017
- E. Consideration of **Resolution No. 17-130 Designating a New Polling Location**
- F. Willmar Community Center Board Minutes of October 11, 2017
- G. Building Report for the Month of October, 2017
- H. Fire Department Statistics for the Month of October, 2017
- I. Police Department Statistics for the Month of October, 2017
- J. Accounts Payable Report through November 14, 2017

Council Member Christianson offered a motion to approve the Consent Agenda. Council Member Nelsen seconded the motion which carried on a roll call vote of Ayes 7, Noes 0.

At 7:04 p.m. Mayor Calvin opened the public hearing to consider proposed lease and affiliation agreements with CentraCare Health Systems and Carris Health, LLC., and approve reclassification of hospital bonds as qualified 501(c)(3) bonds. City Attorney Robert Scott, Rice Hospital Attorney Jill Radloff, and Kutak Rock's special attorney for the City Tim Keane were present to present pertinent information regarding the proposed agreements. Also present via telephone were Kutak Rock Attorneys Bob Cohen and Steve Amen. Kennedy & Graven Bond Counsel Jenny Boulton was present to address the reclassification of hospital bonds. City Attorney Robert Scott noted the lease was reviewed by the Planning Commission, as required by City Charter, and they recommended the Council approve the lease subject to a condition that the City preserve, in the lease, its ability to develop a parcel of City-owned property located east of the hospital abutting 1<sup>st</sup> Street which is currently used by the hospital for parking. It was noted the lease has been updated to reflect the Planning Commission's recommendation.

Joann Reuer, Betty Rustad, and Nicole Mages, all nurses at Rice Hospital, addressed the Council during the public hearing with concerns regarding the lack of involvement of staff that works with patients, recruitment of staff and staff retention. They also requested a transition oversight committee be formed to make sure the terms of the agreement are honored.

Rice Hospital Pharmacy Director Carnie Alex addressed the Council and spoke in favor of the proposed agreement.

There being no others to speak for or against the proposed transactions, Mayor Calvin closed the public hearing at 7:38 p.m. and opened it up for discussion by the Council.

Following a lengthy discussion, Mayor Calvin passed the gavel to Mayor Pro Tempore Nelsen. Mayor Calvin wanted to let the public know that through this process, the Council has worked diligently to make sure the needs of our community have been addressed and that patient care was number one. If this agreement did not keep patient care equal or improve patient care, he would not support this. Our citizens would make sure that we as a Council make good decisions to support the outcome that our citizens have health care provided locally and regionally, where possible, and keep those services as close to home as we can. He believes this agreement does that. The other thing he heard loud and clear in the public was the financial component of this transaction and the desire to make sure that number one the hospital is successful, Carris Health is successful, and at the same point the City doesn't want to be on the hook for the bond payments if something were to not work out with Carris Health. He stated this could still happen, but feels strongly we are all looking at a favorable agreement. Mayor Calvin stated he is in agreement that if the hospital could consider forming a transition committee that would certainly be helpful, and acknowledged it would be totally up to the hospital to make that decision. He also stated we don't want to lose our nurses, but one of the things the union told the Mayor and Council at the beginning of this process was "don't change our contract, keep the contract the same and we will stay with you". He hopes the union sticks with what they told the Council they would do. Change is never easy, change can be fun, but sometimes when we get to the other end of change we wish we had gotten there a lot faster.

Council Member Nelsen then returned the gavel to Mayor Calvin.

Following a lengthy discussion, Council Member Nelsen introduced **Resolution No. 131 Approving an Operating Lease Agreement and Affiliation Agreement with CentraCare Health System and Carris Health, LLC Related to the Rice Memorial Hospital**. Council Member Alvarado seconded the motion, which carried on a roll call vote of Ayes 7, Noes 0.

Council Member Christianson introduced **Resolution No. 132 Approving the Deemed Reissuance of the City of Willmar General Obligation Hospital Revenue Refunding Bonds, Series 2012A (Rice Memorial Hospital Project) and Hospital Revenue Notes, Series 2013 (Rice Care Center Project) in Connection with a Lease of Rice Memorial Hospital and Related Facilities**. Council Member Asmus seconded the motion, which carried on a roll call vote of Ayes 7, Noes 0.

At 7:58 p.m. Mayor Calvin recessed the meeting. The meeting reconvened at 8:06 p.m.

At 8:08 p.m. Mayor Calvin opened the public hearing for approval of the sale of General Obligation Street Improvement Bonds, Series 2017A. Finance Director Steve Okins introduced Doug Green from Springsted Incorporated. Mr. Green gave a brief presentation of the pertinent information involving the issuance of \$1,100,000 General Obligation Improvement Bonds, Series 2017A and the levying of taxes to secure payment.

There being no one to speak for or against the proposed bond sale, Mayor Calvin closed the public hearing at 8:11 p.m. and opened it up for discussion by the Council.

Council Member Mueske offered a motion to adopt, assign a number and order final publication of **Ordinance No. 1407 An Ordinance Authorizing the Issuance of \$1,100,000 General Obligation Improvement Bonds, Series 2017A and the Levying of Taxes to Secure Payment Therefore**. Council Member Christianson seconded the motion, which carried on a roll call vote of Ayes 7, Noes 0.

Council Member Plowman introduced **Resolution No. 17-133 Authorizing the Sale of General Obligation Improvement Bonds, Series 2017A**. Council Member Mueske seconded the motion, which carried on a roll call vote of Ayes 7, Noes 0.

At 8:15 p.m. Mayor Calvin opened the public hearing for a utility easement vacation being requested by Kwik Trip. Planning and Development Services Director Bruce Peterson stated the easement is on property described as the Westerly 5 feet of Lot 2, Block 1, First Minnesota Addition, and he requested Council's approval of the utility easement vacation.

There being no one to speak for or against the utility easement vacation, Mayor Calvin closed the public hearing at 8:16 p.m. and opened it up for discussion by the Council.

**Resolution No. 17-134 Vacating a Portion of a Utility Easement** was introduced by Council Member Christianson. Council Member Asmus seconded the motion, which carried on a roll call vote of Ayes 7, Noes 0.

No one requested to speak during the Open Forum.

Municipal Utilities General Manager John Harren presented a request to consider amending the rates and charges for the Municipal Utilities. Mr. Harren stated the Municipal Utilities Commission approved the proposed rates and charges on November 13, 2017.

Council Member Nelsen offered a motion to **introduce an Ordinance Amending Rates Charged by the Municipal Utilities Commission of the City of Willmar Effective for Billings Sent on and after January 1, 2018** and set a public hearing for December 4, 2017 at 7:02 p.m. to take testimony on the ordinance. Council Member Plowman seconded the motion which carried.

City Attorney Robert Scott presented, for consideration by Council, a policy governing its use and acceptance of electronic signatures on the following City of Willmar documents: minutes, resolutions, ordinances, and contracts/agreements. Following discussion, Council Member Nelsen offered a motion to approve the electronic signature policy. Council Member Plowman seconded the motion which carried.

Park and Recreation Director Steve Brisendine presented a request to approve the purchase of playground equipment from MN/WI Playground in the amount of \$101,285.46, and stated the funds were appropriated for this purchase in the 2017 budget. Following discussion, **Resolution No. 17-135 Entering Into an Agreement for the Purchase and Installation of Playground Equipment to Minnesota/Wisconsin Playground in the Amount of \$101,285.46** was introduced by Council Member Mueske. Council Member Plowman seconded the motion, which carried on a roll call vote of Ayes 7, Noes 0.

Park and Recreation Director Steve Brisendine presented a request to approve entering into an agreement with Duinick, Inc. for construction of the tennis courts at Miller Park in the amount of \$298,219.61. Following discussion, **Resolution No. 17-136 Awarding the Contract for the Miller Park Improvements to Duinick, Inc. in the Amount of \$298,219.61** was introduced by Council Member Plowman. Council Member Nelsen seconded the motion, which carried on a roll call vote of Ayes 7, Noes 0.

Planning and Development Services Director Bruce Peterson presented a request for approval of the preliminary/final plat for Dahlberg-Fladeboe Addition. This plat subdivides three existing parcels in Erickson's Second Addition to the City of Willmar, along Highway 12 East, into two parcels. Council Member Christianson offered a motion to approve staff's recommendation. Council Member Nelsen seconded the motion which carried.

Planning and Development Services Director Bruce Peterson presented a request for approval of the Midwest Storage Addition final plat. The developer proposes subdividing two existing parcels into three for a commercial planned-unit development with private drive along Highway 12 East. Council Member Christianson offered a motion to approve staff's recommendation. Council Member Plowman seconded the motion with carried.

Mayor Calvin asked that a special work session be scheduled soon to begin discussion regarding the Eagle Lake Sewer Project agreement. Mayor Calvin also noted the Holiday Parade was a great event and thanked the Willmar Fests Committee for all their efforts in making this a successful event.

Council Member Christianson asked if the Council could receive any new information regarding the Eagle Lake Sewer Project agreement prior to the upcoming meeting.

Council Member Schwantes wished everyone a Happy Thanksgiving.

Council Member Alvarado mentioned he prefers the Council meetings be held downtown Willmar. He also shared information about the In Common Sharing Stories Program.

Council Member Asmus asked everyone to drive safe and have a Happy Thanksgiving.

Council Member Plowman thanked the Ad Hoc Committee and City legal staff that was involved in the recent Carris Health transaction.

Council Member Nelsen stated she was pleased with the unanimous vote by Council on the Carris Health transaction and feels we are doing the right thing for the community in approving the transaction. She also asked if a special budget meeting could be held Monday, November 27<sup>th</sup>.

Following discussion, Mayor Calvin confirmed a special work session would be scheduled for Monday, November 27<sup>th</sup> at 5:00 p.m. at the Council Chambers to discuss the Eagle Lake Sewer District agreement and the 2018 Budget.

Council Member Alvarado offered a motion to adjourn the meeting with Council Member Nelsen seconding the motion, which carried. The meeting adjourned at 8:59 p.m.

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MAYOR

Attest:

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SECRETARY TO THE COUNCIL

**RESOLUTION NO. 17-130**

**A RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLMAR, MINNESOTA  
ESTABLISHING A NEW POLLING PLACE FOR WARD 3, PRECINCT 3 IN THE CITY OF WILLMAR**

Motion By: Christianson                      Second By: Nelsen

**WHEREAS**, Precincts are the basic geographical areas for organizing and administering elections; and;

**WHEREAS**, The City Council has previously established three polling locations in each of the City's four wards; and

**WHEREAS**, Pursuant to Minn. Stat. § 204B.16, the City has the authority to designate polling places by ordinance or resolution; and

**WHEREAS**, The City has previously used the City Auditorium building at 313 6<sup>th</sup> Street Southwest in the City as the polling place for Ward 3, Precinct 3; and

**WHEREAS**, upon reviewing available facilities, City staff has recommended changing the polling place for Ward 3, Precinct 3 to the Willmar Education and Arts Center (WEAC) building at 611 5<sup>th</sup> Street Southwest in the City due to its superior space, parking and climate control facilities.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Willmar that:

1. Pursuant to Minn. Stat. 204B.16, subd. 1, the polling place for Willmar Ward 3, Precinct 3 is designated as the Willmar Education and Arts Center (WEAC) building at 611 5<sup>th</sup> Street Southwest in the City.
2. The change in the polling place designated for Ward 3, Precinct 3 in Paragraph 1 shall be incorporated into the list of all polling places in the City to be designated by resolution of the City Council on or before December 31, 2017.
3. The polling place designated in this Resolution shall be used for Ward 3, Precinct 3 until such time as the City Council designates a new polling place for said precinct, and no other location shall be used as a

polling place unless a condition listed in Minn. Stat. 204B.16, subd. 1(1) through (3) is present, or unless otherwise allowed by law.

4. The City Clerk shall deliver notice to all households affected by this Resolution in the manner required by Minn. Stat. § 204B.16, subd. 1a.

Adopted by the City Council of the City of Willmar on November 20, 2017.

Approved:

s/s Marv Calvin

Mayor

Attested:

s/s Judy Thompson

City Clerk

#### **RESOLUTION NO. 17-131**

#### **A RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLMAR, MINNESOTA APPROVING AN OPERATING LEASE AGREEMENT AND AFFILIATION AGREEMENT WITH CENTRACARE HEALTH SYSTEM AND CARRIS HEALTH, LLC RELATED TO THE RICE MEMORIAL HOSPITAL**

WHEREAS, the Rice Memorial Hospital Board of Directors (the "Rice Board") voted at its October 30, 2017 special meeting to recommend that (1) the Willmar City Council approve and enter into an Operating Lease Agreement with Carris Health, LLC ("Carris") and CentraCare Health System ("CentraCare"), a Minnesota nonprofit and tax-exempt corporation, a copy of which is attached hereto as Exhibit 1 (the "Lease"), for the 136-bed acute care hospital located at 301 Becker Avenue SW, Willmar, Minnesota, known as Rice Memorial Hospital (the "Hospital") and certain related health care facilities including Rice Care Center, Rice Home Medical, Rice Hospice (collectively, with the Hospital, referred to herein as the "Rice Facilities"); (2) the City Council approve and enter into an Affiliation Agreement by and among the City, the Rice Board, Carris and CentraCare, a copy of which is attached hereto as Exhibit 2 (the "Affiliation Agreement"); and (3) the City Council authorize the City to enter into and execute any additional documents necessary to effectuate the Lease and Affiliation Agreement; and

WHEREAS, the Rice Board, working with its consultants and advisors, and following a thorough analysis, public input and consultation with legal counsel, determined that the Lease and Affiliation Agreement will best satisfy the ongoing healthcare needs of the residents of the City of Willmar (the "City") and its community in order to (1) provide more integrated and effective care to residents of the City and the surrounding area, (2) more effectively recruit and retain physicians and other health professionals to serve the people in the area, (3) enhance the competitive position of the Rice Facilities, (4) strengthen the position of the Hospital as an independent provider of health care in the service area and (5) provide a source of payment for the obligations of the City under the bonds related to the Rice Facilities (the "Hospital Bonds") that is not dependent on the results of operation of the Rice Facilities (collectively, the "policy priorities"); and

WHEREAS, the representatives of RMH and the City worked cooperatively, together with legal counsel, to negotiate the Lease and Affiliation Agreement and related contracts documents in order to best advance the policy priorities; and

WHEREAS, Carris intends to acquire the assets, employees and operations of Affiliated Community Medical Centers, P.A., a Minnesota professional corporation which operates a multi-specialty physician group practice consisting of physicians and other providers who are members of the medical staff of the Hospital ("ACMC") in order to facilitate achievement of the objectives set forth above; and

WHEREAS, under the terms of the Operating Lease, the City, acting pursuant to its statutory authority under Minnesota Statutes § 447.47, will lease, and transfer the operations of, the Rice Facilities to Carris for an initial lease term of 30 years with one automatic renewal term of 30 years, on the terms and conditions set forth therein and Carris will, during the term of the Lease, maintain services at the Rice Facilities consistent with the terms of the Lease, continue to make capital investments in the Rice Facilities, and operate the Rice Facilities in a manner consistent with Carris' charitable purposes and tax-exempt status; and

WHEREAS, Willmar City Charter Section 4.08, subdivision 2 requires the City's Planning Commission to review and approve any lease of City-owned real estate or buildings for a period of in excess of three years; and

WHEREAS, under the terms of the Lease, Carris will have the option to purchase the Rice Facilities after the 10<sup>th</sup> year of the initial lease term and after such time as the Hospital Bonds have been repaid, provided that it first satisfies any requirements for the sale of City-owned property under the City's charter or ordinances; and

WHEREAS, procedural requirements under the City's charter applicable to the sale of the Hospital include Section 2.12, subdivision 1(G) (requiring the conveyance of any lands of the City to be accomplished by adopting an ordinance); Section 4.02, subdivision 8 (requiring Planning Commission review of any sale, transfer or conveyance of City-owned lands, buildings and property); and Section 4.04, subdivision 4 (requiring approval by the voters in a referendum if "any incidents of ownership (or) the control thereof" in the Hospital are to be transferred to any other agency than the Rice Board); and

WHEREAS, the City Council has received and considered extensive public comments and feedback on the Lease and Affiliation Agreement, including at the September 13, 2017 special joint City Council-Rice Board meeting, the November 6, 2017 City Council work session, and a special City Council meeting conducted on November 14, 2017 at the Kandiyohi County Health and Human Services Building for the specific purpose of receiving public comments on the proposed transaction.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Willmar, that the City Council makes the following:

#### **FINDINGS**

1. The City Council, taking into advisement the recommendation of the Rice Board, agrees with the policy priorities and adopts the same as its own.
2. The City Council has concluded that it is in the best interests of the residents of the City and the community served by the Hospital for the City to enter into the Lease and Affiliation Agreement in promotion of the policy priorities.
3. The City's Planning Commission considered the Lease on November 8, 2017 as required by Section 4.02, subd. 8 of the City's charter and approved the City Council entering into the lease on the condition that the lease protect the City's ability to develop a parcel of City-owned property currently used by the hospital for surface parking during the term of the lease that is located east of the hospital facility abutting 1<sup>st</sup> Street South. A new section 2.6 has been added to the Lease to protect the City's development rights for this parcel in satisfaction of the Planning Commission's condition.
4. Under the terms of the Lease, at all times during its initial or renewal terms the City will retain the incidents of ownership in the Hospital, the control of which shall continue to be vested in the Rice Board, subject to the overriding power of the City Council, for reasons including but not limited to the following:
  - a. The City will retain legal title to the Hospital;
  - b. The City, by and through the Rice Board, will have authority to exercise oversight of the operation and management of the Hospital and enforce the terms of the Lease and related contract documents, including specific service commitments and capital expenditure commitments made by Carris therein;

- c. The City, by and through the Rice Board, will retain authority to approve material improvements to the Rice Facilities;
  - d. The City will not confer on any other party a right to permanently encumber the Hospital; and
  - e. The City will retain the risk of loss if the Hospital loses value.
5. At such time as Carris exercises its option to purchase the Rice Facilities and the parties agree to the terms of the transfer of the Hospital to Carris, all requirements applicable to the sale, transfer or conveyance of the Hospital or other City-owned property must be satisfied before the transfer of the incidents of ownership in the Hospital may be finalized, including Section 2.12, subdivision 1(G) (requiring the conveyance of any lands of the City to be accomplished by adopting an ordinance); Section 4.02, subdivision 8 (requiring Planning Commission review of any sale, transfer or conveyance of City- owned lands, buildings and property); and Section 4.04, subdivision 4 (requiring approval by the voters in a referendum if “any incidents of ownership (or) the control thereof” in the Hospital are to be transferred to any other agency than the Rice Board).

BE IT FURTHER RESOLVED by the City Council of the City of Willmar, that:

- 1. The City Council hereby approves the Operating Lease Agreement between the City of Willmar and CentraCare Health System and Carris Health, LLC attached hereto as Exhibit 1 and authorizes the Mayor and City Administrator to execute the same on behalf of the City.
- 2. The City Council hereby approves the Affiliation Agreement between the City of Willmar, the Rice Memorial Hospital Board of Directors, Carris Health, LLC and CentraCare Health System attached hereto as Exhibit 2 and authorizes the Mayor and City Administrator to execute the same on behalf of the City.
- 3. The City Council hereby authorizes the City to enter into and execute any additional documents necessary and complete any exhibits and schedules to effectuate the Lease and Affiliation Agreements.
- 4. Pursuant to the Affiliation Agreement, the City Council hereby directs the City Attorney to prepare an ordinance for introduction at the December 4, 2017 regular City Council meeting providing for two non-voting observers to be appointed to the Rice Board by CentraCare and for the Carris Co-Chief Executive Officers to serve as non-voting ex-officio members of the Rice Board.

Adopted by the Willmar City Council this 20<sup>th</sup> day of November 2017.

Approved:

s/s Marv Calvin  
 \_\_\_\_\_  
 Mayor

Attest:

s/s Judy Thompson  
 \_\_\_\_\_  
 City Clerk

EXHIBIT 1  
Operating Lease



**OPERATING LEASE AGREEMENT BY AND  
AMONG  
CITY OF WILLMAR, MINNESOTA,  
CENTRACARE HEALTH SYSTEM, AND  
CARRIS HEALTH, LLC**

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## OPERATING LEASE AGREEMENT

**THIS OPERATING LEASE AGREEMENT** (the “**Agreement**”), has been entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and among the **City of Willmar, Minnesota**,

a Minnesota home rule charter city of the third class (the “**City**”), CentraCare Health System, a Minnesota nonprofit corporation (“**CentraCare**”) and Carris Health, LLC, a Minnesota nonprofit limited liability company (“**Carris**”).

### PREAMBLE

**WHEREAS**, the City owns a 136-bed acute care hospital located at 301 Becker Avenue SW, Willmar, Minnesota, known as Rice Memorial Hospital (the “**Hospital**”), which has been established pursuant to Minnesota Statutes § 447.05 and is operated under the authority of a board of directors appointed in accordance with Minnesota Statutes § 447.07 (the “**Rice Board**”) and certain related health care facilities including Rice Care Center, Rice Home Medical, Rice Hospice (collectively, with the Hospital, referred to herein as the “**Rice Facilities**”); and

**WHEREAS**, the City has issued (i) \$40,910,000 General Obligation Hospital Revenue Refunding Bonds, Series 2012A (Rice Memorial Hospital Project) and (ii) \$9,100,000 Hospital Revenue Notes, Series 2013 (Rice Care Center Project) (collectively, the “**Hospital Bonds**”), the proceeds of which have been used to finance improvements at the Rice Facilities; and

**WHEREAS**, Carris is a wholly-owned subsidiary of CentraCare, which operates a health care system providing services in multiple locations throughout Central Minnesota, including six acute care hospitals. Carris has been established by CentraCare to, among other things, assume the day-to-day operations of the Rice Facilities and, in connection therewith, to acquire certain operating assets, employees and operations of the Rice Facilities; and

**WHEREAS**, the City, upon the recommendation of the Rice Board, and following a thorough analysis, public input and consultation with legal counsel, has concluded that it is in the best interests of the residents of the City and the community served by the Rice Facilities to enter into an Affiliation Agreement by and among the City, the Rice Board, Carris and CentraCare, dated as of the date hereof (the “**Affiliation Agreement**”), in order to (i) provide more integrated and effective care to residents of the City and the surrounding area, (ii) more effectively recruit and retain physicians and other health professionals to serve the people in the area, (iii) enhance the competitive position of the Rice Facilities, (iv) strengthen the position of the Hospital as an independent provider of health care in the service area and (v) provide a source of payment for the obligations of the City under the Hospital Bonds that is not dependent on the results of operation of the Rice Facilities; and

**WHEREAS**, Carris intends to acquire the assets, employees and operations of the Rice Facilities along with the assets, employees and operations of **Affiliated Community Medical Centers, P.A.**, a Minnesota professional corporation which operates a multi-specialty physician group practice consisting of physicians and other providers who are members of the medical staff of the Hospital (“**ACMC**”) in order to facilitate achievement of the objectives set forth above; and

**WHEREAS**, the City, acting pursuant to its statutory authority under Minnesota Statutes § 447.47, will lease, and transfer the operations of, the Rice Facilities to Carris on the terms and conditions set forth herein and Carris will, during the term of this Agreement, maintain services at the Rice Facilities consistent with the terms of this Agreement, continue to make capital investments in the Rice Facilities, and operate the Rice Facilities in a manner consistent with Carris' charitable purposes and tax-exempt status;

**NOW, THEREFORE**, in consideration of the premises, covenants and agreements set forth in this Agreement, the parties hereto agree as follows:

ARTICLE I  
DEFINITIONS

The following words, terms or phrases, when used in this Agreement, shall have the following meanings, unless the context clearly indicates a different meaning:

**1.1** "ACMC" has the meaning set forth set forth the Recitals hereto.

**1.2** "Affiliation Agreement" has the meaning set forth the Recitals hereto.

**1.3** "Assigned Contracts" means the agreements entered into in connection with Rice Operations before the Possession Date, including, but not limited to, those real property leases listed on the attached Exhibit 1.3(a) and those other contracts listed on the attached Exhibit 1.3(b).

**1.4** "Assumed Liabilities" means any and all liabilities, indebtedness, commitments, or obligations of any nature, of the City, the Rice Facilities relating to, or arising out of, Rice Operations, whether known or unknown, fixed or contingent, recorded or unrecorded, currently existing or hereafter arising, other than the Excluded Liabilities, including, but not limited to the following:

(a) All payment obligations, other obligations and liabilities arising under the Assigned Contracts listed on the attached Exhibits 1.3(a) and 1.3(b);

(b) Any materialmen, mechanics or other liens against the Leased Assets or the Transferred Assets;

(c) All accounts payable, trade payables and similar liabilities arising out of Rice Operations;

(d) All payment obligations, other obligations and other liabilities arising in connection with the license agreements listed on the attached Exhibit 1.4(d)

(e) All payment obligations, other obligations and other liabilities arising in connection with the easements listed on the attached Exhibit 1.4(e);

(f) All liabilities and obligations relating to or arising under the terms of any Health Plan Contract;

(g) All claims or potential claims for medical malpractice or general liability relating to acts or omissions asserted to have occurred in connection with Rice Operations;

(h) All federal, state or local tax liabilities or obligations arising from Rice Operations including, without limitation, any withholding tax, franchise tax, tax recapture, sales and/or use tax, FICA, FUTA, and workers' compensation taxes;

(i) All employee liabilities arising from Rice Operations, including, but not limited to, liabilities associated with any employee benefit plan maintained for persons employed at the Rice Facilities, whether arising before or after the Possession Date, or for any and all claims by or on behalf of such employees relating to periods prior to the Possession Date including, without limitation, liability for any compensation-related payments, deferred compensation, incentive compensation, fringe benefit, tuition reimbursement, severance, termination pay, change in control or retention payments, bonuses or any other employee benefit plan of whatever kind or nature or any employee health and welfare benefit plans, liability for any EEOC claim, ADA claim, FMLA claim, wage and hour claim, unemployment compensation claim, or workers' compensation claim, and any liabilities or obligations to former employees under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended; any obligation or liability accruing, arising out of, or relating to any collective bargaining agreements relating to employees at the Rice Facilities;

(j) All civil or criminal obligations or liabilities arising in connection with Rice Operations accruing, arising out of, or relating to any federal, state or local investigations of, or claims or actions against, the City, the Rice Facilities or any of officer, employee, medical staff, or other agent thereof;

(k) All liabilities or obligations arising as a result of any breach by the City, Rice Facilities of any contract or commitment in connection with Rice Operations;

(l) All liabilities arising from, or relating to, any violation or claim of a violation by Rice Facilities of any obligation or claim of an obligation against any Rice Facility to investigate, assess, mitigate, conduct a removal action or remediate under any law or regulation relating to the protection of the environmental including liabilities arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986;

(m) Any fines, penalties or other payments, or repayments, required to be made to any governmental entity (including, but not limited to, return of overpayments made by Medicare) under the federal Anti-Kickback Law, federal Physician Self-Referral Law, federal False Claims Act, federal Civil Monetary Penalties Law and other similar federal and state laws in connection with the operation and use of Rice prior to the Possession Date; and

(n) All liabilities incurred by the City for acts or omissions attributable to its elected officials, employees or agents pertaining to the ownership or operation of the Rice Facilities, or to any member of the Rice Board or the officers, employees or agents of Rice Facilities, in either case on or before the Possession Date, together with the benefit of (i) all of the defenses, privileges and immunities afforded by applicable law (including, without limitation, Minnesota Statutes, Chapter 466) and (ii) insurance with respect to such liabilities maintained by the City.

**1.5** “Base Rent” has the meaning set forth in Section 3.1(a) below.

**1.6** “Bond Reserves” means all funds (including, but not limited to, debt service reserve funds) held or otherwise required to be maintained under the Bond Documents.

**1.7** “Bond Documents” means such resolutions as were adopted by the City Council on January 17, 2012 and December 2, 2013 governing the issuance of the Hospital Bonds; the Security and Covenant Agreement, dated December 31, 2013, between the City and the Banks party thereto; the Security and Covenant Agreement, dated March 4, 2014, between the City and the Banks party thereto; and the Security Agreement, dated December 31, 2013, between Rice Home Medical, LLC and the Banks party thereto.

**1.8** “Breach Notice” has the meaning set forth in Section 11.6(a) below.

**1.9** “Carris” has the meaning set forth in the introductory paragraph of this Agreement.

**1.10** “Carris Board” means the Board of Governors of Carris as established under the terms of the Carris Operating Agreement.

**1.11** “Carris Operating Agreement” has the meaning set forth in Section 5.1 below.

**1.12** “City” has the meaning set forth in the introductory paragraph of this Agreement.

**1.13** “City Council” means the City Council of the City.

**1.14** “City Indemnified Parties” has the meaning set forth in Section 3.3 below.

**1.15** “Code” means the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States Internal Revenue Law.

**1.16** “Enforcement Action” has the meaning set forth in Section 11.6(a) below.

**1.17** “Excluded Liabilities” means all of the obligations of the City with respect to

(a) The Hospital Bonds, provided, however, that the Leased Assets or Transferred Assets shall remain subject to all liens, security interests and other encumbrances, if any, created with respect thereto under the terms of the Hospital Bonds or the Bond Documents. Although the City shall continue to be solely responsible for the Excluded Liabilities, Carris and CentraCare shall be responsible for funding the payment



of principal and interest on the Hospital Bonds as and when due through its payment of Base Rent as provided in Section 3.1(a); and

(b) Any liabilities relating to Rice employees' pension through the Public Employees Retirement Association of Minnesota.

**1.18** "Guarantee Agreement" has the meaning set forth in Section 3.1(c) below.

**1.19** "Health Plan Contracts" means all health plan participation, provider, and/or reimbursement agreements of the Rice Facilities listed on attached Exhibit 1.19.<sup>1</sup>

**1.20** "Hospital" has the meaning set forth in the Recitals hereto.

**1.21** "Hospital Bonds" has the meaning set forth in the Recitals hereto.

**1.22** "Hospital Medical Staff" means all medical, dental and mid-level health professionals holding appointment to the Medical Staff of the Hospital as of the Possession Date.

**1.23** "Improved Transferred Assets" has the meaning set forth in Section 4.3 below.

**1.24** "Improvements to Leased Assets" has the meaning set forth in Section 7.3 below.

**1.25** "Initial Term" has the meaning set forth in Section 2.2 below.

**1.26** "Intergovernmental Transfer" has the meaning set forth in Section 3.1(b) below.

**1.27** "Inventories of Supplies" means all items of consumable personal property located at, or used exclusively in connection with the Rice Operations that are owned by the City or any Rice Facility as of the Possession Date.

**1.28** "Investment Fund" means the investments in fixed income securities reflected under the heading "Other Assets" on the Rice balance sheet.

**1.29** "IP License" has the meaning set forth in Section 2.4 below.

**1.30** "IRS" means the Internal Revenue Service.

**1.31** "Leased Assets" means the City's interest in all of the following, subject to the rights of third parties pursuant to any Assigned Contracts: the real property comprising of the Rice Facilities, which is more specifically described on the attached Exhibit 1.31, including all buildings and surrounding parking areas, improvements, fixtures, furnishings or other types of personal property incorporated into or affixed to any part of such buildings located as of the Possession Date, and any other property or equipment financed or re-financed with the proceeds of the Hospital Bonds. Further, for purposes of this Agreement, the term "Leased Assets" shall include all additions, alterations, improvements, changes and deletions in and to all or any part of the Leased Assets either before or after the Possession Date.

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<sup>1</sup> Exhibit will list the Medicare, Medicaid, CHAMPUS/TRICARE, or other government or any commercial payor programs in connection with Rice Operations.

**1.32** “Material Adverse Change” means any event, occurrence, fact, condition or change that is individually, or in the aggregate, materially adverse to the business, results of operations condition (financial or otherwise) or assets of the Rice Facilities.

**1.33** “New Property” has the meaning set forth in Section 4.3 below.

**1.34** “Possession Date” means the date on which possession of the Leased Assets and ownership of the Transferred Assets are conveyed to Carris subject to the terms and conditions set forth in Article XII hereof, which the parties anticipate will occur as of January 1, 2018.

**1.35** “Possession Date Working Capital” means \$9,000,000; provided, however, that in the event this Agreement is terminated pursuant to Section 11.2 (uncured breach by the City), Section 11.3(c) (failure of Rice Board to approve proposed improvements to the Rice Facilities) or pursuant to Section 11.3(a) or (b) (expiration of Term), then Possession Date Working Capital means \$9,000,000 less any amounts that Carris was required to pay during the first three (3) years of the Term relating to the Assumed Liabilities under Section 1.5(g) through Section 1.5(n) that were not accrued as of the Possession Date.

**1.36** “Prepayment Election” has the meaning set forth in Section 3.1(d) below.

**1.37** “Renewal Term” has the meaning set forth in Section 2.2 below.

**1.38** “Rice Accounts Receivable” means all amounts owed to the City, the Hospital or any other Rice Facility in connection with Rice Operations as of the Possession Date whether actually billed as of the Possession Date or whether work in progress remaining to be billed.

**1.39** “Rice Assets” collectively means the Leased Assets, the Transferred Assets and all other property acquired by Carris or any of its affiliates or subsidiaries after the Possession Date relating to Rice Operations.

**1.40** “Rice Funds” means all of the City’s right, title and interest in or to all cash, bank accounts, savings and loan accounts, certificates of deposit, money market accounts, treasury bills, investments (whether debt or equity, liquid or illiquid), reserves, or other cash items held in the name of, or on behalf of, the City as of the Possession Date in connection with Rice Operations, including the Investment Fund but excluding any Bond Reserves.

**1.41** “Rice Intellectual Property” means all copyrights, copyright applications, trade names, assumed or corporate names, trademarks or service marks, software licenses and related applications listed on the attached Exhibit 1.41 and any other intellectual property rights used in connection with Rice Operations existing as of the Possession Date,

**1.42** “Rice Operating Expenses” means all costs and expenses, of any nature, associated the operation of the Rice Facilities, including, but not limited to, all Assumed Liabilities and all costs of maintenance and repair of Leased Assets, Transferred Assets, Improved Transferred Assets and New Property, utilities, equipment rental, professional fees, salaries, wages, employee benefits, permit fees, license fees, taxes, assessments and governmental charges and penalties that may be lawfully assessed or levied against or otherwise attributable to the business operations of the Rice Facilities during the Term.

**1.43** “Rice Operations” means all health care, administrative and related or ancillary activities conducted in connection with the operation of the Rice Facilities either prior to the Possession Date or during the Term.

**1.44** “Renewal Term” has the meaning set forth in Section 2.2 below.

**1.45** “Rice Board” means the Board of Directors of Rice Memorial Hospital.

**1.46** “Rice Facilities” has the meaning set forth in the Recitals hereto.

below. **1.47** “Section 501(c)(3) Organization” has the meaning set forth in Section 5.3(a)

**1.48** “Taking” has the meaning set forth in Section 8.2 below.

**1.49** “Term” has the meaning set forth in Section 2.2 below.

**1.50** “Transfer” has the meaning set forth in Section 11.5(a) below.

**1.51** “Transferred Assets” means the following assets:

(a) All right, title, control and interest (whether held in the name of the City, the Hospital or any other Rice Facility) in the tangible and intangible personal property used in Rice Operations, including machinery, furniture and equipment, movable medical and office equipment, but specifically excluding any personal property incorporated into or affixed to the real property that is included in the Leased Assets;

(b) All interests of the City or the Rice Facilities, third party entities, joint ventures or partnerships relating to Rice Operations, including without limitation, the 50% partnership interest held by the Hospital in WMS (including real property owned by WMS or a subsidiary of WMS);

(c) The Rice Accounts Receivable;

(d) The gifts, bequests, donations or other endowments specifically given for the benefit of or restricted to the use of Rice or any part thereof, provided, however, that Carris will observe all conditions applicable to such gifts;

(e) All rights to receive goods or services, to use and occupy personal and leased real property or to receive payment for goods or services rendered, or other benefits arising under the Assigned Contracts;

(f) All Inventories of Supplies;

(g) All trade secrets and other confidential information concerning the operation or use of Rice not in the public domain and in existence on the Possession Date;

(h) All books and records and other documents and information relating to the Rice Assets and/or used in the operation of Rice, including, without limitation, all patient medical records, hospital charts, patient lists, literature, inventory records, purchase orders and invoices, sales orders and sales order log books, patient information, patient and payor correspondence, employee payroll and personnel records, and educational and promotional literature of every kind and nature, provided, however, all existing records shall be preserved pursuant to the City's retention schedule;

(i) Rice's current telephone listings and the right to use the telephone numbers currently being used at Rice;

(j) All Rice Funds;

(k) Any prepaid expenses arising from the operation or use of Rice in existence on the Possession Date;

(l) The right to any and all recovery from all collection cases in progress on the Possession Date for goods furnished or services rendered by Rice;

(m) All rights under the license agreements listed on the attached Exhibit 1.4(d); and

(n) All Health Plan Contracts.

**1.52** "Transferred Employees" has the meaning set forth in Section 5.10(a) below.

**1.53** "WMS" means Willmar Medical Services, LLP, a Minnesota limited liability partnership of which the Hospital and ACMC is each a 50% partner.

below. **1.54** "Working Capital Reconciliation" has the meaning set forth in Section 11.4(a)(i)

## ARTICLE II LEASE OF ASSETS

**2.1** Lease of Leased Assets. In consideration of the agreements set forth in this Agreement, effective as of the Possession Date, the City shall lease and demise the Leased Assets to Carris on the terms and conditions set forth in this Agreement, and Carris shall lease the Leased Assets from the City on such terms and conditions, to have and to hold for the Term, as defined in Section 2.2 below.

**2.2** Lease Term and Renewal. Subject to the further provisions of this Agreement, the initial term (the "**Initial Term**") of the lease shall commence on the Possession Date and expire at 11:59 p.m. on the day immediately prior to the thirtieth (30th) anniversary of the Possession Date. If Carris is then in material compliance with all of the terms and conditions of this Agreement for which the City has not waived any noncompliance, then this Agreement shall automatically renew upon the same terms and conditions, for one additional term beginning on the 30th anniversary of the Possession Date and continuing, unless earlier terminated, until 11:59

p.m. on the day immediately prior to the sixtieth (60th) anniversary of the Possession Date (the “**Renewal Term**”). The Initial Term and the Renewal Term, if any, are collectively referred to in this Agreement as the “**Term**.” If Carris does not desire to renew this Agreement after the Initial Term, Carris shall provide written notice to the City of such non-renewal on or before the twenty-eighth (28th) anniversary of the Possession Date, and this Agreement shall be terminated under Section 11.3.

**2.3** Transfer of Transferred Assets. In consideration of the covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the City shall, or shall cause, all of the Transferred Assets to be transferred, assigned and conveyed to Carris as of the Possession Date, subject to the terms and conditions set forth in this Agreement. To the extent accounts receivable from governmental payors are not assignable to Carris under law or otherwise, such accounts receivable will be collected by Carris acting as the agent for the Hospital or the respective Rice Facility pursuant to the terms of a Billing Agent Agreement in substantially the form attached hereto as Exhibit 2.3.

**2.4** Rice Intellectual Property. During the term of the Lease, the City shall grant Carris an exclusive, royalty-free, nontransferable, non-sublicenseable, and non-assignable license to use the Rice Intellectual Property pursuant to the terms of a Licensing Agreement in substantially the form attached hereto as Exhibit 2.4 (the “**IP License**”).

**2.5** Carris Profits. All rents, profits, gains, and other income derived from the Leased Assets and the Transferred Assets and the proceeds of accounts receivable and other assets generated in connection with Rice Operations during the Term shall be the sole property of Carris and will inure to and for the exclusive benefit of Carris. The profits realized by Carris, whether before, during or after the Term, shall not be subject to return to City upon termination of this Agreement or any other provision of this Agreement; provided, however, that this sentence is not intended to limit Carris’ liability for its specific obligations to make payments to the City, or for any event of default by it, under this Agreement.

**2.6** Future City Development. The City is the taxpayer of record for Lots 1-14, Block 47, Original Town (now City) of Willmar (parcel 95-003-5630) included within the definition of Leased Assets (the “Parking Lot Parcel”). The City reserves the right to terminate the Lease with regard solely to the Parking Lot Parcel on one year’s written notice to Carris in order to facilitate a redevelopment of the Parking Lot Parcel to an alternate use. Upon such written notice, the City agrees to work with Carris in good faith to facilitate the replacement of the Parking Lot Parcel due to such redevelopment.

ARTICLE III  
CONSIDERATION

In consideration of the City's lease of the Leased Assets to Carris, the transfer of the Transferred Assets and income earned on such Transferred Assets to Carris, and all other promises and responsibilities of the City set forth in this Agreement, Carris agrees as follows:

**3.1 Rent.**

(a) Carris shall pay rent to the City in the amounts as set forth on attached Exhibit 3.1(a), which amounts are equal to the principal and interest payments on the Hospital Bonds ("**Base Rent**"). Base Rent shall be due and payable on the dates set forth in Exhibit 3.1(a) and the obligation of Carris to make payments of Base Rent shall be unconditional. The City shall apply all payments of Base Rent to make principal and interest payments on the Hospital Bonds as and when due.

(b) Carris shall make additional payments to the City during the Term, or until the thirtieth anniversary of the Possession Date in the event of a Transfer, in an initial amount of \$300,000 per annum (the "**Intergovernmental Transfer**"), payable in equal monthly installments. Intergovernmental Transfer shall be due and payable by the 25th day of each calendar month (or the next succeeding business day). The amount of annual Intergovernmental Transfer shall be increased with respect to any year by the same percentage as the tax levy increase of the City for such year, but in no event more than 3% of the amount of the prior year's Intergovernmental Transfer Amount.

(c) All payments of Base Rent and Intergovernmental Transfer shall be made by wire transfer or other mutually agreed upon means of immediately available funds to the bank account of the City specified in Exhibit 3.1(a) or in subsequent wiring instructions delivered by the City to Carris; provided, however, that the City may require that payments of Base Rent be remitted by Carris directly to the respective bond trustees or other paying agents for the Hospital Bonds to make the payment of principal and interest then due on the Hospital Bonds. Pursuant to a Guarantee Agreement attached as Exhibit 3.1(c) (the "**Guarantee Agreement**"), CentraCare shall guarantee Carris' obligations to make all payments of Base Rent and Intergovernmental Transfer.

(d) At any time during the Term, Carris may elect to pay an amount to the City equal to the amount (including principal, accrued interest and prepayment premiums or penalties) necessary to allow the City to pay off the Hospital Bonds to the extent allowed under the terms of the Hospital Bonds (a "**Prepayment Election**"). Carris shall provide the City with not less than 90 days' prior written notice of a Prepayment Election. Upon its remittance of cash equal to the entire amount necessary to prepay the Hospital Bonds (which, at the election of the City may be remitted directly to the respective bond trustees or other paying agents for the Hospital Bonds), (i) the City will apply such cash to the repayment of the Hospital Bonds and take such steps as are necessary to release Leased Assets and Transferred Assets from any lien, security interest or other encumbrance thereon securing the City's obligations under the Hospital Bonds, (ii) the

obligation of Carris to make further payments of Base Rent shall terminate and (iii) any amounts remaining in the Bond Reserves shall be remitted by the City to Carris.

(e) The City acknowledges that the amounts held in the debt reserve account are dedicated to the Existing Bonds, and in the event that there is a reduction in the amount of the required debt reserve or Carris elects to pay off the Existing Bonds, then the amounts held in the debt reserve account shall be used to pay off the Existing Bonds.

**3.2** Payment of Operating Expenses and Taxes. During the Term, Carris shall pay, or otherwise cause to be paid, satisfied or discharged all Rice Operating Expenses as and when due; provided, however, that with respect to taxes, assessments or governmental charges and penalties that may lawfully be paid in installments, Carris shall be obligated to pay only such installments as are due and payable during the Term. Carris may, at its expense and in its own name and behalf (or, to the extent lawful and pertaining to Assumed Liabilities, in the name and behalf of the City), contest in good faith any such Rice Operating Expenses provided that such proceedings have the effect of preventing the forfeiture of the Leased Assets. The City will cooperate reasonably with Carris, at Carris' expense, in any such contest. Any settlement by Carris of any claim that could potentially involve Assumed Liabilities shall require sixty (60) days prior written notice to the City.

**3.3** Indemnification by Carris

. Anything in this Agreement to the contrary notwithstanding, Carris hereby agrees to pay, protect, indemnify, defend and hold harmless, the City and each of its current or former elected officials, employees, officers, agents and contractors and each current or former member of the Rice Board ("City Indemnified Parties") from and against any and all claims, losses, liabilities, damages, expenses and costs, including attorneys' fees, incurred by any City Indemnified Party relating to, arising out of or otherwise associated with the Assumed Liabilities, the conduct of Carris' business operations (including, but not limited to Rice Operations by Carris during the Term) or any challenges to the transactions contemplated under this Agreement. Carris shall procure and maintain director and officer liability insurance coverage with respect to the performance or nonperformance of the duties of the City officers and directors and Rice Board prior to the Possession Date. Carris shall also indemnify and hold the City Indemnified Parties harmless from any and all claims, losses, liabilities, damages, expenses and costs, including attorneys' fees, including those relating to an inquiry or adverse determination by the IRS related to the Hospital Bonds arising out of Rice Operations by Carris during the Term. The terms of this Section 3.3 shall survive expiration or any earlier termination of this Agreement.

**3.4** Indemnification by City. Anything in this Agreement to the contrary notwithstanding, the City shall, at its own cost and expense, pay, protect, indemnify, and defend Carris, and hold Carris harmless, from and against all claims, causes of action, suits, demands, liabilities, damages, penalties, judgments, and expenses, including reasonable attorneys' fees, which may be imposed upon, incurred by, or asserted against Carris arising from or by reason of any of the Excluded Liabilities (other than resulting from a breach by Carris of its obligations under this Agreement) or any breach by the City of its obligations under this Agreement.

**3.5** Third Party Claims. In the event of any action or proceeding involving a claim for which a party seeks to be indemnified under Section 3.3 or Section 3.4, the party providing such indemnity may, to the full extent permitted by law, assume the defense of such third party action or proceeding at its own cost and expense and upon written notice to the indemnified party; provided, however, that in the event of any inquiry or proceeding by the IRS with respect to the Hospital Bonds, Carris shall not have any right to respond to or assume the defense thereof. In all cases, the indemnified party shall reasonably cooperate in the defense of any such action or proceeding; provided that any expense incurred by the indemnified party as the result of that cooperation shall be paid for by the indemnifying party.

#### ARTICLE IV

#### OPERATION, MAINTENANCE, EXPENSES, TAXES AND INSURANCE

**4.1** Operation and Maintenance of Rice. Carris shall have sole responsibility for the management, operation, administration and maintenance of the Leased Assets, and shall (i) maintain, preserve and keep the Leased Assets in good condition, repair and working order and free and clear of all liens, security interests or other encumbrances other than those imposed under the terms of the Hospital Bonds, (ii) purchase, repair or replace any and all equipment necessary to meet then-current state licensure and Medicare certification requirements of the Hospital and the other Rice Facilities. The City acknowledges and agrees that Carris may, at its own expense, make or cause to be made any and all additions, alterations, changes and deletions in and to all or any part of the Leased Assets as Carris, in its sole discretion, deems necessary or appropriate, including without limitation additional fixed or movable equipment or other personal property, except as may otherwise be provided in this Agreement or the Bond Documents. If Carris is required to repair any of the Leased Assets, and the repair is attributable to conditions for which the City is the holder of a manufacturer's, supplier's, or contractor's warranty or guaranty, the City shall, upon written notice from Carris, undertake all reasonable steps, including legal action, to exercise the City's rights under and recover upon such warranty or guaranty; provided, however, that all expenses and costs, including legal fees, incurred in connection with the exercise of those rights shall be borne by Carris. In the event of recovery by the City, the City agrees to promptly remit all proceeds from the recovery, whether in cash or in kind, to Carris.

**4.2** Insurance. Carris will, at its expense, carry such type and amount of insurance concerning the Leased Assets as is required to satisfy the Bond Documents and related documents governing the Hospital Bonds. Such insurance shall include, without limitation, "all-risk" property insurance, insuring both the City and Carris each as their interests may appear. In addition, Carris will, at its expense, carry comprehensive general liability insurance, worker's compensation insurance and professional liability insurance, in amounts determined by the Carris Board and consistent with policy limits for CentraCare hospitals of a similar size and nature. Subject to the requirements of Section 3.2, the Bond Documents and related documents governing the Hospital Bonds, Carris may elect to obtain such insurance as is required by this Section 4.2 by means of policies issued by insurance companies, or, at Carris' election, partially by means of self-insurance in conjunction with other companies through an insurance trust or other arrangement, or wholly by means of self-insurance. All liability insurance policies maintained pursuant to this Section 4.2 will name the City as an additional insured party. The proceeds of any property insurance on any Leased Asset will be applied as required by the Bond



Documents, as long as the Hospital Bonds remain outstanding, and then as provided in Article VIII of this Agreement.

**4.3** New Machinery and Equipment. Subject to the terms of the Bond Documents or associated covenants under the Hospital Bonds, during the Term, in its discretion and at its cost, Carris may (a) install replacement or additional items of fixed or movable machinery, equipment or other types of personal property (“**New Property**”), in or at the Hospital or any other Rice Facility included in the Leased Assets, and (b) improve, replace or enhance the Transferred Assets (“**Improved Transferred Assets**”). Subject to the terms of the Bond Documents or associated covenants under the Hospital Bonds, all New Property and Improved Transferred Assets shall be considered the property of Carris.

ARTICLE V  
**GENERAL COVENANTS OF CARRIS**

Except as otherwise provided in this Article V, Carris hereby agrees and covenants with the City to take the following actions during the Term (or such other period as may be specified below):

**5.1** Execution of Carris Operating Agreement. Prior to the Possession Date, but effective thereon, Carris and CentraCare shall have entered into that certain Member Control and Operating Agreement in substantially the form attached hereto as Exhibit 5.1 (the “**Carris Operating Agreement**”).

**5.2** Status. Carris shall maintain its existence as a Minnesota nonprofit limited liability company. Carris has not entered into and shall not enter into any lease, management contract, service contract, or similar arrangement which would give rise to any “private business use” of the Leased Assets as defined in the Code in an amount which would cause the Hospital Bonds to lose their tax-exempt status under the Code.

**5.3** Tax-Exempt Status; Tax Covenants. Carris will not use, or permit the use of, the Leased Assets, directly or indirectly, in a manner that would adversely affect the exclusion from gross income of interest on the Hospital Bonds. To that end, Carris covenants that during the time any of the Hospital Bonds remain outstanding:

(a) None of the Leased Assets financed with proceeds of the Hospital Bonds will be used in any activity which constitutes: (i) an unrelated trade or business activity of Carris or any other Section 501(c)(3) Organization (as defined below), determined by applying Section 513(a) of the Code; or (ii) a trade or business of a person other than a Section 501(c)(3) Organization or a State of the United States or a political subdivision of a State of the United States, to the extent that such use would adversely affect the exclusion from gross income of interest on the Hospital Bonds. As used in this Section 5.3, “Section 501(c)(3) Organization” means an organization that is exempt from federal income taxation pursuant to Section 501(a) of the Code as a result of the application of Section 501(c)(3) of the Code.

(b) Carris shall not cause the Hospital Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code. For purposes of this Section 5.3, the

Hospital Bonds are “federally guaranteed” if the payment of principal or interest with respect to the Hospital Bonds is guaranteed, directly or indirectly, in whole or in part, by the United States (or any agency or instrumentality thereof).

(c) Carris has no present intention to sell or otherwise dispose of any substantial portion of the property acquired, financed, or refinanced with the proceeds of the Hospital Bonds, in whole or in part, before the final maturity date of the Hospital Bonds except such portions of the moveable equipment as may, pursuant to the express terms of this Agreement, be disposed of in the ordinary course of business because of normal wear and tear or obsolescence. Carris has not been an obligor with respect to state or municipal obligations issued within thirty (30) days prior to the date hereof which were sold pursuant to a common plan of financing with the Hospital Bonds, and Carris does not expect to become an obligor with respect to any such obligations within thirty (30) days after the date hereof.

(d) While any portion of the Hospital Bonds remains outstanding, from and after the Possession Date, no portion of the proceeds of the Hospital Bonds will be used to provide any airplane, skybox, or other private luxury box, any facility primarily used for gambling, or a store, the principal business of which is the sale of alcoholic beverages for consumption off premises.

(e) Carris shall not cause the payment of the principal of, or interest on, more than five percent of the proceeds of the Hospital Bonds to be directly or indirectly:  
(i) secured by any interest in (A) property used or to be used for a private business use or (B) payments in respect of such property; or (ii) to be derived from payments in respect of property, or borrowed money, used or to be used for a private business use as defined in Section 141 of the Code (except for by a Section 501(c)(3) Organization).

(f) Carris will promptly provide City with full information as to any use of the Leased Assets financed with proceeds of the Hospital Bonds for which the City was not aware of prior to the Possession Date by anyone other than a Section 501(c)(3) Organization, including the revenues and square footage involved. Nothing in this paragraph is intended to give Carris rights to assign this Agreement or sublease any portion of the Leased Assets not granted in Section 7.2 (except for by a Section 501(c)(3) Organization) for a use that is not an unrelated trade or business.

(g) From and after the Possession Date, no portion of the proceeds of the Hospital Bonds is to be used directly or indirectly to provide residential rental property for family units.

(h) Carris has not leased, sold, assigned, granted, or conveyed and will not lease, sell, assign, grant, or convey all or any portion of the Leased Assets or any interest therein to the United States or any agency or instrumentality thereof within the meaning of Section 149(b) of the Code.

(i) Carris is, and throughout the term of the Hospital Bonds will remain, a nonprofit organization described and qualified under Section 501(c)(3) of the Code, that is not a “private foundation” as defined in Section 509(a) of the Code.

(j) There is no action, proceeding, or investigation pending or threatened or any basis therefor by the IRS or authorities of the State of Minnesota which, if adversely determined, might result in a modification of the status of Carris as a nonprofit organization described and qualified under Section 501(c)(3) of the Code.

(k) From and after the Possession Date, no part of the Leased Assets will be subject to a contract for management services except for contracts for management services which will not adversely affect the exclusion from gross income of interest on the Hospital Bonds. Carris will not enter into any research contracts that currently or in the future result in (i) another entity having an ownership interest in the Leased Assets;

(ii) actual or beneficial use of the Leased Assets by another entity pursuant to a lease; or

(iii) another party using the Leased Assets pursuant to a management or incentive payment contract.

(l) Carris shall operate the Leased Assets in a manner that complies with the requirements of Minnesota Statutes, Section 447.47(a), as amended from time to time.

(m) Any Improvements to the Leased Assets made by Carris during the term of this Agreement shall comply with the terms of the then outstanding Bonds to which the Leased Assets are subject.

**5.4 Bond Covenants.** As long as the Hospital Bonds remain outstanding, notwithstanding any other provision of this Agreement, Carris shall be subject to the agreements and covenants set forth in the Bond Documents, including the following.

**5.5 Licenses and Approvals.** At all times during the Term, Carris shall maintain such licenses and obtain such approvals as are deemed necessary by Carris to comply with statutes, regulations or codes applicable to the Rice Operations.

**5.6 Medicare Certification.** At all times during the Term, Carris shall maintain Medicare certification of the Hospital and the other Rice Facilities. As of the Possession Date, the City shall assign to Carris the National Provider Identifier for the Hospital the other Rice Facilities, and Carris shall assume all liabilities associated therewith.

**5.7 Medical Staff.** On or before the Possession Date, Carris shall adopt the Bylaws, Rules and Regulations of Rice’s Medical Staff in effect as of the Possession Date for purposes of the Hospital and shall extend privileges to all members of Rice’s Medical Staff then in compliance with such Bylaws, Rules and Regulations on identical terms as in effect as of the Possession Date. Carris shall maintain an open Medical Staff, in compliance with the conditions to the bequest of real and personal property to the City by Cushman Albert Rice for purposes of establishing the Hospital, unless it determines otherwise based on the best interests of the community it serves.

**5.8** Consents, Licenses and Approvals. Carris shall take all actions it deems necessary or appropriate to obtain and maintain in full force and effect any consents, licenses, permits and approvals necessary in connection with this Agreement, Rice Operations, or the furtherance of Carris' purposes.

**5.9** Commitments to Serve the Community.

(a) The Hospital and the other Rice Facilities shall be open to all residents of the communities they serve on equal terms. Carris agrees that it will not discriminate against any person in admission, treatment or participation in its programs, services or activities or deny any person the full and equal enjoyment of its facilities, accommodations, goods, advantages or privileges based on race, color, national origin, ethnicity, culture, language, disability, age, creed, religion, sex, marital status, sexual orientation, gender identity or expression, socioeconomic status or other protected class status as provided by applicable law.

(b) Carris will operate the Hospital and the other Rice Facilities as a charitable health care organization in accordance with the "community benefit standards" as they apply to 501(c)(3) hospital nonprofit corporations, including the (i) acceptance of all Medicare and Medicaid patients, (ii) acceptance of all emergency patients without regard to ability to pay, (iii) maintenance of an open medical staff, (iv) provision of public health programs of educational benefit to the community, and (v) general promotion of public health, wellness, and welfare to the community through the provision of health care at a reasonable cost.

**5.10** Transfer of City Employees.

(a) Each employee of Rice who is actively employed or on a leave of absence from such active employment on the Possession Date will be offered employment by Carris, as applicable, with comparable position, hours and benefits, and at the wage or salary provided as of the Possession Date, subject only to the following pre-employment screening requirements: (i) professional licensure that is presently required for the position at Rice; (ii) criminal and professional background check; (iii) immigration law compliance; and (iv) any other legally mandated requirements. Employees hired under this Section 5.10 are referred to as "**Transferred Employees.**" Continued employment of Transferred Employees by Carris will be subject to Carris' policies and procedures.

(b) Eligibility for benefits for Transferred Employees will begin on the first day of employment at Carris. Carris shall treat employee service with Rice prior to the Possession Date as having been service with Carris and will waive, to the extent permitted by law, any length of service requirements, waiting periods, vesting periods or differential benefits based on length of service in any such employee benefit plans and defined contribution plans for which Transferred Employees may be eligible after the Possession Date.

(c) Carris will grant credit for all unused paid time off (PTO) accrued by Transferred Employees before the Possession Date, provided that such PTO credit

effectively eliminates any claim for a payout of accrued PTO by such Transferred Employees. If a Transferred Employee does not consent to such credit, then the City will pay out all such accrued PTO as of the Possession Date, and the Transferred Employee will not be granted PTO credit.

(d) Carris will assume all collective bargaining agreements relating to the Transferred Employees in place on the Possession Date subject to adjustment to reflect the National Labor Relations Act.

**5.11 Reports.** Carris will provide a report to the City Council and the Rice Board within one hundred eighty (180) days of the end of each year and on a more frequent basis as requested by the Rice Board (a) with respect to the fulfillment of by Carris of its obligations and covenants under Sections 5.12 and 5.13 hereof and such other information as the City or the Rice Board may reasonably request in order to understand and confirm Carris' fulfillment of such obligations and covenants, (b) audited financial statements of CentraCare within one hundred eighty (180) days of the end of each fiscal year of CentraCare, and (c) audited financial statements of Carris within one hundred eighty (180) days of the end of each fiscal year of Carris. Carris shall also timely provide any reports and information as necessary to meet the requirements and covenants of the Bond Documents.

**5.12 Service Commitments.**

(a) Carris agrees that it will continue to operate the Hospital in the City of Willmar as a licensed general acute care hospital and at minimum a Level 3 or such appropriate status trauma center and furnish such health care services as are deemed necessary and appropriate by the Carris Board, which services in the City of Willmar shall include inpatient beds, emergency department, surgery services, therapy services, ambulance services, and obstetrical services and will not materially limit, reduce or eliminate such core services without the prior approval of the Rice Board. Nothing herein shall limit in any manner the right and ability of Carris to perform any health care service at the Hospital that it may otherwise lawfully perform.

(b) Carris shall work collaboratively with the Rice Board to maintain and expand physician specialty services at the Hospital, which may include cardiology, gastroenterology, orthopedics, kidney care or specialties.

(c) Amounts in the Investment Fund shall be used solely for purposes of making capital investments in, or otherwise supporting the operations of, Carris in providing services in the geographic areas served by Rice Facilities as of the Possession Date.

**5.13 Capital Investments.**

(a) Carris will make such capital expenditures as are determined by the Carris Board to be necessary and appropriate for the provision of the scope of healthcare services at the Hospital and as are consistent with the service commitments referred to in Section 5.12 above. During the initial ten years of the Term, Carris shall invest at least \$32 million in aggregate in capital expenditures at the Hospital. Additional capital

expenditures by Carris may also be evaluated and funded if determined to be advisable by the Carris Board and CentraCare.

(b) The capital commitment set forth in this Section 5.13 shall be unconditional and is specifically not subject to any financial performance or profitability parameters of, or applicable to, Carris or CentraCare. The capital commitments are anticipated to be funded primarily through cash flow of Carris and Carris' cash and investment balances, including amounts in the Investment Fund. To the extent those sources are not adequate to fund the capital commitments, Carris may borrow funds to finance such capital expenditures or CentraCare will fund the additional amounts necessary to fully fund such capital commitments out of its own net cash flow and cash balances and, if necessary, from funds borrowed by CentraCare under its borrowing arrangements.

(c) CentraCare and Carris shall provide to the Rice Board written annual reports that identify the capital expenditures made during the relevant period and cumulative since the Possession Date. Carris shall provide such additional information as reasonably requested by the Rice Board in order to understand and confirm CentraCare's and Carris' fulfillment of its obligations under this Section 5.13.

**5.14 Corporate Support.** At the request of Carris, CentraCare shall provide requested corporate functions and services, including back office services, physician recruitment assistance, operational support services, and quality and patient safety programs to Carris on the same cost basis as such functions and services are provided to other hospitals owned and operated by CentraCare or its affiliates reflecting the proportional amount of services that CentraCare provides to Carris.

**5.15 Branding.** During the Term, Carris will operate the Hospital under the name "Rice Memorial Hospital." The name and logo of the Hospital may include references to CentraCare or Carris following the Possession Date and the Hospital's logo may be modified by Carris from time to time.

**5.16 Rice Health Foundation.** During the Term, Carris will (a) allow the Rice Health Foundation to continue to use space in the Leased Assets for its community programming efforts and meetings, without charge and on a schedule and level consistent with such efforts and meetings that occurred prior to entering into this Agreement; and (b) ensure that Rice Health Foundation receives administrative support commensurate with such support given by Hospital prior to entering into this Agreement. At its discretion, but subject to prior approval of the Rice Board and the Rice Health Foundation Board, Carris may consolidate the Rice Health Foundation with the CentraCare Health Foundation; provided, however, that in the event of such consolidation, all funds held by the Rice Health Foundation at the time of the consolidation will be dedicated exclusively for use in, and the benefit of, the Willmar area.

**5.17 Rice Portraits.** At all times during the Term, Carris will continue to display the three life-sized oil paintings of Lt Gov. Albert E. Rice, Sophia L. Rice, and Cushman Albert Rice in their current location at the Hospital or in such other locations in the Hospital as shall be approved in advance by the Rice Board.

## GENERAL COVENANTS OF CITY

The City hereby agrees and covenants with Carris to take the following actions during the Term (or such other period as may be specified below):

**6.1** Operation in Ordinary Course. The City shall conduct Rice Operations from the date of this Agreement until the Possession Date in the ordinary course of business.

**6.2** Consents and Notices. The City, prior to the Possession Date, shall obtain such consents and give such notices as may be required in connection with the assignment to Carris of the Assigned Contracts and the assumption by Carris of the Assumed Liabilities. The City shall provide Carris satisfactory evidence on or before the Possession Date that the City has obtained all such consents and given such notices.

**6.3** Cooperation with Carris. The City shall cooperate reasonably with Carris in any manner necessary to enable Carris to fulfill its obligations and exercise its rights under this Agreement.

**6.4** Update to Exhibits, Accounts Receivable, Accounts Payable Reports. No later than three (3) business days prior to the Possession Date, the City shall deliver to Carris  
(i) updated Exhibits to reflect any changes occurring since the date of this Agreement and  
(ii) updated accounts receivable and accounts payable reports.

**6.5** Liens and Encumbrances. The City shall not suffer or permit any liens or encumbrances (other than any liens or encumbrances which may exist on the Possession Date) to be filed or exist against the Leased Assets except with the consent of Carris.

**6.6** Sole and Exclusive Possession. Subject to satisfaction by Carris of its obligations under this Agreement, the City shall deliver to Carris sole and exclusive possession of the Leased Assets, and shall allow Carris to take and enjoy peaceful, quiet and undisputed possession of the Leased Assets, subject to the rights of third parties in such assets.

**6.7** No Transfer. So long as Carris is not in default hereunder, the City shall not transfer its interest in the Leased Assets, except with the consent of Carris.

**6.8** Eminent Domain. The City shall take no action to exercise the power of eminent domain or to cause any other governmental authority or person, firm or corporation acting under governmental authority to exercise such power over any of the Leased Assets.

## ARTICLE VII

### SALE, AFFILIATION, ASSIGNMENT, SUBLETTING AND IMPROVEMENTS

**7.1** Restrictions on Sale of Leased Assets.

(a) During the Term, and so long as Carris is not in default hereunder, the City shall not, without first obtaining the prior affirmative consent of Carris, authorize any transaction providing for the sale or other disposition of any of the Leased Assets.

(b) During the Term, without the prior affirmative consent of the City, (i) Carris will not sell, convey or otherwise transfer any of the Leased Assets, other than for the disposition of obsolete or non-functional equipment, furnishings or other types of personal property that are replaced pursuant to Section 4.3 hereof in the normal course of business, and (ii) CentraCare will remain the sole member of Carris and will not sell, convey or otherwise transfer any of its membership in Carris or admit any other party as a member of Carris; provided, however that CentraCare may transfer its membership interests in Carris to an affiliate of CentraCare; provided that such transfer shall not relieve CentraCare from any of its obligations under this Agreement.

**7.2** Assignment and Subletting. Except as otherwise provided in this Agreement, neither Carris nor CentraCare shall assign this Agreement or its rights, duties and obligations hereunder to a third party without the prior written consent of the City, and the City shall not assign this Agreement or its rights, duties and obligations hereunder to a third party without the prior written consent of CentraCare. Notwithstanding the foregoing, Carris may (i) sublet any portion of the Leased Assets or (ii) enter into a contract for the management of one or more departments of the Leased Assets, such as radiology or emergency room, in each instance to healthcare professionals or business entities having expertise in the operation of such departments, so long as such sublease or management contract is consistent with state and federal laws and regulations and the terms of the Hospital Bonds; provided, however, Carris shall not enter into a sublease, management contract, service contract, or similar arrangement that would give rise to “private business use” of the Leased Assets as defined in Section 141(b)(6) of the Code in an amount that would cause the Hospital Bonds to lose their tax-exempt status under the Code.

**7.3** Improvements to the Leased Assets. From time to time Carris, at its cost and expense, may make improvements to the Leased Assets (“**Improvements to the Leased Assets**”) and such changes in and additions and alterations, structural or otherwise, to the Leased Assets which Carris deems necessary or desirable for Rice Operations, provided that:

(a) The design, specification and estimated cost of any material Improvements to the Leased Assets, shall be approved by the Rice Board (including submission of the Rice Board minutes to the City Council for approval) prior to the implementation of such Improvements to the Leased Assets; provided, however, that in the event the Rice Board does not approve any such Improvements to the Leased Assets within sixty (60) days after a written proposal with respect thereto is submitted by Carris to the Rice Board (which period may be extended by the number of days needed for Carris to provide the Rice Board with additional information relating to such proposal that the Rice Board reasonably requests), then Carris, at its option, may terminate this Agreement pursuant to Section 11.3(c).

(b) The work is performed in a good and workmanlike manner and in accordance with all applicable laws, ordinances, rules, and regulations;

(c) No improvement, change, alteration, modification or addition shall be made which impairs the structural soundness or diminishes the value of the Leased Assets;



(d) No construction, change, alteration, modification, or addition shall be undertaken until Carris has first procured and paid for all required municipal and other governmental permits and authorizations required by municipal departments and governmental subdivisions that have jurisdiction thereof;

(e) At all times during which any construction, change, alteration, modification, or addition is in process, there shall be maintained, at Carris' expense, builder's risk insurance, in an amount reasonably acceptable to the City, and worker's compensation insurance in accordance with laws governing all persons employed in connection with the construction, change, alternation, modification, or addition; and Carris shall likewise, at its own expense, maintain general public liability insurance for the mutual benefit of both Carris and the City, expressly covering the additional hazards due to the construction, change, alternation, modification, or addition; and

(f) All such Improvements to the Leased Assets shall be treated as Leased Assets for all purposes hereunder, provided, however, that in connection with the termination of this Agreement, the book value of the Improvements to the Leased Assets shall be treated as set forth in Section 11.4 of this Agreement.

#### ARTICLE VIII

#### DAMAGE, DESTRUCTION AND EMINENT DOMAIN

**8.1** Damage and Destruction. Subject to the requirements of the Hospital Bonds or other permitted indebtedness then in effect, in the case of damage or destruction by fire or other casualty of the Leased Assets, the following terms shall apply. In the event that the Leased Assets, or any portion thereof, is damaged or destroyed by any casualty, then to the extent of the proceeds of the property insurance maintained by Carris pursuant to Section 4.2, Carris shall rebuild and restore the Leased Assets to substantially their condition immediately prior to the damage or destruction, including, without limitation: (1) all mechanical, electrical, and plumbing systems serving the Leased Assets; (2) the heating, ventilation, and air conditioning systems serving the Leased Assets; (3) the roof, foundation, and interior and exterior windows and walls of the Leased Assets; and (4) all tenant improvements to the Leased Assets constructed prior to the date of such damage or destruction. The City shall have no obligation to repair any damage to, or to replace the Leased Assets or any of Carris' personal property, furnishings, fixtures, equipment, or other such property or effects of Carris, unless said damages are caused by the City's negligence or intentional wrongdoing. Carris shall commence the repairs required of it under this Section 8.1 within three hundred sixty five (365) days of the date of any damage or destruction, and the repairs shall be completed within two (2) years of commencement of repairs. In the event Carris is delayed in the commencement or completion of repairs by events beyond Carris' reasonable control, Carris' delay for commencement or completion of repairs shall be extended one day for each such day of delay. Notwithstanding anything to the contrary in this Section 8.1, in the event that the Leased Assets, or any portion thereof, is damaged or destroyed when less than twelve (12) months remain of the term of this Agreement, then Carris may, at its option, either (1) rebuild or restore the Leased Assets and repair the damaged portions thereof at its own expense as required above; or (2) terminate this Agreement effective as of the date the damage or destruction occurred, in which event all insurance proceeds shall be paid to the City, and the terms set forth in Section 11.4 shall apply to such termination. If Carris does not provide

the City with written notice of Carris' exercise of its option to terminate this Agreement in accordance with this Section 8.1 within one hundred eighty (180) days after the damage or destruction, Carris shall have waived its option to terminate this Agreement. If material damage or destruction occurs to the Leased Assets such that they cannot be fully and completely repaired and/or reconstructed for any reason within two (2) years of the casualty, or such that they are not fully and completely repaired and/or reconstructed for any reason within two (2) years of the casualty, and Carris has not exercised its option to terminate the Lease in accordance with this Section 8.1, then the City may terminate this Agreement upon one hundred eighty (180) days prior written notice to Carris, in which event all insurance proceeds shall be paid to the City, and the terms set forth in Section 11.4 shall apply to such termination.

**8.2 Eminent Domain.** Subject to the requirements of the Hospital Bonds or other permitted indebtedness then in effect, in the case that title to or the temporary use of any portion of the Leased Assets shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority (each, a "Taking"), the following terms shall apply. The City shall receive all Taking awards attributable to the Leased Assets with no discount for the value of the leasehold interest created by this Agreement. In the event that the Leased Assets, or any portion thereof, is subject to any Taking, then Carris shall, at the City's sole option and using proceeds of the Taking received by and controlled by the City, rebuild and restore the Leased Assets to substantially their condition immediately prior to the Taking to the extent reasonably practical; provided, however, that any activity taken pursuant to this Section 8.2 to rebuild or restore Leased Assets shall be paid for solely by the Taking awards received by the City, and Carris shall have no additional or further obligations with respect to rebuilding or restoring the applicable Leased Assets. Carris shall commence the repairs required of it under this Section 8.2 within three hundred sixty five (365) days of the date of any Taking, and the repairs shall be completed within two (2) years of commencement of repairs. In the event Carris is delayed in the commencement or completion of repairs by events beyond Carris' reasonable control, Carris' delay for commencement or completion of repairs shall be extended one day for each such day of delay. Notwithstanding anything to the contrary in this Section 8.2, in the event that the Leased Assets, or any portion thereof, is subject to any Taking when less than twelve (12) months remain of the term of this Agreement, then Carris may, at its option, either (1) restore the Leased Assets and repair the damaged portions thereof as required above using the City's Taking proceeds; or (2) terminate this Agreement effective as of the date the damage or destruction occurred, in which event all Taking proceeds shall be paid to the City, as set forth in this Section 8.2. If Carris does not provide the City with written notice of Carris' exercise of its option to terminate this Agreement in accordance with this Section 8.2 within one hundred eighty (180) days after the Taking, Carris shall have waived its option to terminate this Agreement. If a Taking affects the Leased Assets such that they cannot be fully and completely repaired for any reason within two (2) years of the Taking, or such that they are not fully and completely repaired and/or reconstructed for any reason within two (2) years of the Taking, and Carris has not exercised its option to terminate the Lease in accordance with this Section 8.2, then the City may terminate this Agreement upon thirty (30) days prior written notice to Carris, in which event all Taking proceeds shall be paid to the City, and the terms set forth in Section 11.4 shall apply to such termination.

ARTICLE IX REPRESENTATIONS AND  
WARRANTIES OF CITY

Except as otherwise noted in the City Disclosure Schedule, attached hereto as Exhibit 9, which is subject to updating by the City as of the Possession Date, the City hereby represents and warrants to Carris that the following representations and warranties are true and accurate as of the date hereof and as of the Possession Date:

**9.1** Authority. The City has power and authority to execute and deliver this Agreement, and to carry out the transactions contemplated hereby and therein, respectively. The City Council, acting on behalf of the City in connection with this Agreement, is the properly appointed, acting, and duly authorized governing body of the City, and is acting in accordance with the provisions of the Act, or any successor or similar statute.

**9.2** No Conflicts. The Agreement is duly executed and delivered and is a valid and legally binding obligation of the City enforceable in accordance with its respective terms. The execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby will not, result in the creation of any lien, charge or encumbrance or the acceleration of any indebtedness or other obligation of the City, and are not prohibited by, in violation of or in conflict with any provisions of, and will not result in a default under or a breach of (i) any constitutional provision affecting the City, (ii) any ordinance, law or regulation, or (iii) any order, decree or judgment of any court or governmental agency to which the City or Rice is a party or is bound.

**9.3** Bonds. The Hospital Bonds are the only bonds authorized and issued by the City which are outstanding as of the Possession Date and applicable to the Leased Assets.

**9.4** Condition. Except as expressly stated in this Agreement, the City does not make any representations or warranties regarding the Leased Assets or the Transferred Assets, including any warranty as to merchantability or fitness for a particular purpose. Carris acknowledges that it is accepting the Transferred Assets and leasing the Leased Assets on an "AS IS," "WHERE IS" and "WITH ALL FAULTS" basis, based upon its own judgment.

REPRESENTATIONS AND WARRANTIES OF CARRIS AND CENTRACARE

Carris and CentraCare hereby represent and warrant to the City that the following representations and warranties are true and accurate as of the date hereof and as of the Possession Date:

**10.1** Organization.

(a) CentraCare is a nonprofit corporation duly organized and in good standing under the laws of the State of Minnesota. CentraCare is an organization qualified under Section 501(c)(3) of the Code.

(b) Carris is a nonprofit limited liability company duly organized and in good standing under the laws of the State of Minnesota. As a single-member limited liability company of which the sole member is CentraCare, an organization qualified under Section 501(c)(3) of the Code, Carris is a disregarded entity that takes on the tax-exempt

status of CentraCare, its sole owner. Carris has the power to lease and to own assets and to carry on its business as contemplated under this Agreement.

**10.2 Authority.** CentraCare and Carris each has the power to execute and deliver this Agreement and to carry out the transactions contemplated hereby. All actions required to be taken by CentraCare and Carris to authorize the execution, delivery and performance of this Agreement and all transactions contemplated hereby have been duly and properly taken.

**10.3 No Conflicts.** This Agreement is duly executed and delivered and is a valid and legally binding obligation of CentraCare and Carris and is enforceable against them in accordance with its respective terms. The execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby will not, result in the creation of any lien, charge or encumbrance, or the acceleration of any indebtedness or other obligation of CentraCare or Carris, and are not prohibited by, in violation of or in conflict with any provision of, and will not result in a default under or a breach of (i) the articles of incorporation and bylaws of CentraCare, articles of organization or Operating Agreement of Carris, or any contract, agreement or other instrument to which CentraCare or Carris is a party or is bound, (ii) any ordinance, law or regulation applicable to CentraCare or Carris, or (iii) any order, decree or judgment of any court or governmental agency to which CentraCare or Carris is a party or is bound.

#### ARTICLE XI

#### **DEFAULT, TERMINATION AND TRANSFER**

**11.1 Effect of Default by Carris or CentraCare.** If (i) Carris or CentraCare fails to pay any Base Rent, Intergovernmental Transfer or other sum due under this Agreement and such failure continues for five (5) calendar days after written notice of such default from the City, (ii) Carris fails to perform any of its other material obligations under the terms of this Agreement and such failure continues for thirty (30) days after written notice of such default from the City (provided, however, that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then Carris shall not be deemed to be in default if Carris commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion, and provided, further, if the default involves a hazardous condition Carris shall immediately after written notice commence and with diligence thereafter prosecute a cure to such default); (iii) Carris or CentraCare adopts a plan of dissolution or files for bankruptcy, liquidation or receivership, (iv) CentraCare or Carris breaches the provisions set forth in Article III or Section 5.1 of the Carris Operating Agreement, then the City shall have the right to (a) terminate this Agreement upon written notice to the Carris at any time after expiration of the applicable cure period, if any, or (b) enforce the terms of this Agreement or the foregoing provisions of the Carris Operating Agreement by invoking any other right or remedy allowed at law or in equity, including without limitation an action for specific performance. If an event of default, as defined in this Section 11.1, shall occur, CentraCare shall pay to the City, on demand, all expenses incurred by the City as a result thereof, including reasonable attorneys' fees, court costs and expenses actually incurred.

**11.2 Effect of Default by the City.** If the City fails to perform or pay, in a full and timely manner, any of its obligations under the terms of this Agreement and such failure

continues for thirty (30) days after written notice of such default from Carris provided, however, that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then the City shall not be deemed to be in default if the City commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion, and provided, further, if the default involves a hazardous condition the City shall immediately after written notice commence and with diligence thereafter prosecute a cure to such default), then Carris shall have the right either to (a) terminate this Agreement upon written notice to the City at any time after expiration of the applicable cure period, if any, or (b) enforce the terms of this Agreement by invoking any other right or remedy allowed at law or in equity, including without limitation an action for specific performance.

**11.3 Other Events of Termination.** In addition to termination under Section 11.1 and 11.2 hereof, this Agreement will terminate:

- (a) At the expiration of the Initial Term, in the event Carris notifies the City that it does not intend to renew this Agreement by the time period set forth in Section 2.2;
- (b) At the expiration of the Renewal Term;
- (c) In the event Carris elects to terminate this Agreement pursuant to Section 7.3(a);
- (d) By either Carris or the City as provided in Sections 8.1 or 8.2; or
- (e) The Leased Assets are transferred to Carris pursuant to Section 11.5.

**11.4 Effect of Termination.**

(a) Upon the termination of this Agreement for any reason other than a transfer by the City to Carris of the Leased Assets pursuant to Section 11.5, in which case the provisions of Section 11.5 shall govern the termination process, the parties shall take all steps reasonably necessary to allow the City (or such other party as the City shall designate as a successor lessee and operator of the Rice Facilities) to immediately assume operations of the Rice Facilities so that there are no disruptions of services at the Rice Facilities, including, but not necessarily limited to, the following:

- (i) At soon as reasonably practicable, Carris shall surrender possession of all Rice Assets, including any improvements and additions thereto made pursuant to Sections 4.3 and 7.3, and, in the case of the Transferred Assets (including any Improved Transferred Assets and an amount of working capital equal to the Possession Date Working Capital (the “**Working Capital Reconciliation**”) and the New Property, shall take all such steps as are necessary to convey title thereto, to the City or its designee, free and clear of all liens, security interests and encumbrances, other than those relating to the liabilities assumed by the City (or its designee) pursuant to paragraph (ii) below; provided however, that nothing in this Section 11.4(a)(i) shall be interpreted to require Carris to return any Transferred Assets in amounts, value, or condition, consistent with the amounts, value, or condition of the Transferred Assets as of the

Possession Date, including without limitation, the Rice Funds, except for the Working Capital Reconciliation.

(ii) The City (or its designee) will assume such contracts, leases, subleases, and other agreements to which Carris is a party relating to Rice Operations, and the liabilities of Carris thereunder, that the City (or such designee) consents to assume and, from and after the termination date the City (or its designee) shall resume responsibility for Rice Operations and maintenance of the Rice Assets;

(iii) The City (or its designee) will have the right to offer employment to all Carris employees who are employed at the Rice Facilities in substantially the same manner as described in Section 5.10 hereof and, in connection therewith, Carris will waive any non-competes or other restrictions imposed on its employees; and

(iv) The IP License shall expire.

(b) If this Agreement is terminated by Carris under Section 11.2 (uncured default by the City), then at the time the actions in Section 11.4(a) are consummated, the City shall pay Carris an amount equal to the book value of all capital investments made by Carris in the Rice Facilities pursuant to Section 4.3 and Section 7.3 hereof prior to the termination of the Agreement.

(c) If this Agreement is terminated by Carris under Section 11.3(c) hereof (failure of Rice Board to approve proposed Improvements to the Rice Facilities), or if this Agreement terminates under either Section 11.3(a) or (b) hereof due to the nonrenewal or expiration of the Term, then at the time the actions in Section 11.4(a) are consummated, the City shall pay Carris an amount equal to the book value of all capital investments made by Carris and CentraCare in the Rice Facilities pursuant to Section 4.3 and Section 7.3 hereof prior to the termination of the Agreement; provided, however, that any such payment shall be offset (but not below zero) by the amount by which the Investment Fund on such date is less than the amount of the Investment Fund on the Possession Date.

(d) For the purposes of Section 11.4(b) and (c), the book value of Carris' capital investments shall be the amounts recorded as such on Carris' books as the date of termination of this Agreement using Carris' historical methods of cost depreciation consistently applied.

(e) At City's request, CentraCare will provide transition services to the City (or its designee) on a fair market value basis for a period of one (1) year after termination of this Agreement to assist in the transition of Rice's Operations to the City or such designee. The terms of such transition services will be mutually agreed upon at the time of termination.

(f) Any proposed termination of this Agreement by the City only shall be effective upon the satisfaction of all obligations of the City set forth in this Section 11.4.

## **11.5** Potential Transfer of Leased Assets to Carris.

(a) Notwithstanding any other provision in this Agreement to the contrary, at any time after the tenth (10th) anniversary of the Possession Date, Carris may propose a transfer (the “**Transfer**”) of the Leased Assets from the City to Carris, by delivering a written proposal with respect thereto to the City. Any such Transfer shall be made, if at all, on terms and conditions mutually agreed to by Carris and the City, provided, however, in any such case Carris shall agree to:

(i) Pay all remaining principal, interest and other obligations of the City under the Hospital Bonds pursuant to Section 3.1(d) hereof on or before the effective date of the Transfer; and

(ii) Continue its commitments under Section 5.12 (Service Commitments) and Section 5.13 (Capital Investments) for an additional ten (10) years after the effective date of the Transfer.

Notwithstanding the foregoing, the terms of any Transfer under this Section 11.5 will not require the payment of any amounts by Carris to the City.

(b) Any such Transfer will be subject to the prior satisfaction of all then- applicable procedural requirements, including requirements set forth in the City charter or ordinances.

(c) In the event Carris and the City agree to the terms of a Transfer, the title to the Leased Assets will be conveyed by the City to Carris, free and clear of all liens and encumbrances (other than those associated with Assumed Liabilities, all of which will be retained by Carris), at a closing to be held at a date and time determined by agreement of Carris and the City. As of the effective time of such Transfer, this Agreement shall terminate; provided, however that the obligation of Carris to indemnify the City pursuant to Section 3.3 of this Agreement (and CentraCare’s guarantee of such obligation under the Guaranty) shall survive the effective date of the Transfer.

(d) In the event Carris and the City are unable to agree to the terms of a Transfer, then this Agreement will continue to remain in effect in accordance with its terms.

## **11.6** Enforcement of Carris and CentraCare Obligations by Rice Board.

(a) If, at any time after the Possession Date, the Rice Board makes a good faith determination that either Carris or CentraCare is in breach of its obligations hereunder, including but not limited to Sections 5.12 (Service Commitments) and 5.13 (Capital Commitments), then the Rice Board shall provide written notice thereof to Carris and CentraCare describing in reasonable detail the nature of the alleged breach and other information pertinent thereto (a “Breach Notice”). Upon receipt of a Breach Notice, representatives of CentraCare, Carris, and the Rice Board (along with their respective advisors) shall meet on a regular basis to discuss and resolve the alleged breach identified in the Breach Notice. If Carris, CentraCare and the Rice Board are unable to resolve the

alleged breach by Carris or CentraCare identified in the Breach Notice to the reasonable satisfaction of the Rice Board within sixty (60) days of the delivery of the Breach Notice, then the Rice Board may bring and pursue an Enforcement Action on behalf of, and in the name of, the City with respect thereto. The Rice Board shall have the exclusive right and authority to make any and all decisions with respect to the prosecution of such Enforcement Action, including the decision to engage or dismiss legal counsel representing the Rice Board and the City in connection therewith and decisions to enter into settlement negotiations and to make and accept settlement offers with respect thereto. CentraCare and Carris acknowledge and agree that the Rice Board has standing to assert and bring an Enforcement Action on behalf of the City; provided, however, that the Rice Board shall only be authorized to seek equitable relief on behalf of in the form of an injunction or specific performance and shall not be authorized to seek money damages from CentraCare or Carris (other than specific performance of an obligation involving the payment of money) with respect thereto. "Enforcement Action" means any lawsuit, alternative dispute resolution process or similar proceeding brought on behalf of the City by, and at the election of, the Rice Board pursuant to this Section 11.6 in order to enforce one or more of CentraCare's or Carris' commitments contained herein.

(b) In the event the Rice Board incurs expenses following the submission of a Breach Notice to enforce the covenants of this Agreement that results in the City prevailing in an Enforcement Action, CentraCare shall be fully responsible for the reasonable expenses incurred by the Rice Board in connection therewith. The Rice Board shall provide CentraCare with invoices and other written documentation evidencing the expenses incurred by it in connection with an Enforcement Action to the extent the City prevails in an Enforcement Action against CentraCare or Carris.

(c) Access to Information. The Rice Board shall be afforded reasonable access to all information that is reasonably necessary for it to carry out its duties and responsibilities under this Section 11.6, and the Rice Board and CentraCare shall provide or make available such information to the Rice Board as is reasonably requested by it for such purposes and will respond to all inquiries submitted by the Rice Board relating to compliance with the covenants set forth herein. Neither Carris nor CentraCare or their respective directors, officers, or other agents will be deemed in violation of any agreement protecting the confidentiality of information as a result of providing information to the Rice Board for proper purposes under this Section 11.6. All restrictions on the use and disclosure of Carris confidential information applicable to persons serving on the Carris Board, whether under Carris' governing documents, contract or applicable law, will be applicable to the use and disclosure of information provided to the Rice Board pursuant to this Section 11.6.

**11.7** No Termination. Neither Carris nor the City shall have the unilateral right to terminate this Agreement prior to the expiration of the Term, other than as set forth in this Article XI.



ARTICLE XII  
**CONDITIONS PRECEDENT TO CLOSING**

The obligations of the parties under this Agreement are subject to the satisfaction, on or prior to the Possession Date, of the following conditions:

**12.1** There shall have been no material breach by any party in the performance of any of their respective covenants in this Agreement, each of the representations and warranties of each of them contained or referred to in this Agreement shall be true and correct in all material respects on the Possession Date as though made on the Possession Date, and there shall have been delivered to each party their respective deliveries as described in Article XIII below;

**12.2** No order shall have been entered in any action or proceeding before any court or governmental agency, and no preliminary or permanent injunction by any court shall have been issued which would have the effect of (i) making the transactions contemplated by this Agreement illegal; or (ii) otherwise preventing consummation of such transactions; and there shall have been no federal or state statute, rule or regulation enacted or promulgated that could reasonably, directly or indirectly, result in any of the consequences referred to in clauses (a) or (b) of this Section 12.2;

**12.3** All necessary federal, state and local governmental approvals and consents, including the approval of the City of Willmar Planning Commission and City Council, shall have been obtained, without the imposition of any material conditions or restrictions and without the loss of any existing material waivers arising out of the closing of the transactions contemplated hereby;

**12.4** If any governmental agency seeks to preliminarily enjoin the transactions contemplated hereby, either party may decide not to proceed further with the transactions; provided, however, that if both of the parties agree to contest such preliminary injunction, each party shall bear its own costs and expenses associated therewith;

**12.5** All third party consents or waivers required to be obtained with respect to the proposed transactions shall have been obtained or waived;

**12.6** The City shall have received consent of the bondholders of the \$9,100,000 Hospital Revenue Notes, Series 2013 (Rice Care Center Project);

**12.7** The City shall have received an opinion of Kennedy & Graven LLP, as bond counsel.

**12.8** The City Council and Rice Board shall have approved this Agreement.

**12.9** No Material Adverse Change shall have occurred.

**12.10** All Exhibits and Schedules in this Agreement provided for shall be complete in form and substance. The parties agree that the Exhibits hereto may be amended by the parties up to and including the Possession Date to reflect current information as of the Possession Date.

**12.11** Consummation on or before the Possession Date of a transaction between Carris or CentraCare and ACMC pursuant to which Carris or CentraCare acquires the stock of ACMC, and the ACMC physicians and other providers become fully integrated with Carris or CentraCare.

Upon satisfaction or waiver of the foregoing conditions, the parties shall promptly execute a certificate acknowledging that each said condition has been either satisfied or waived.

**ARTICLE XIII POSSESSION DATE  
DELIVERIES**

**13.1** CentraCare and Carris Deliveries to the City. Carris shall deliver the following to the City on or before the Possession Date:

- (a) Certificate of Good Standing of both CentraCare and Carris from the Minnesota Secretary of State.
- (b) A certificate executed by the President of CentraCare, dated as of the Possession Date, stating that, to the best of his knowledge, all representations and warranties of CentraCare and Carris set forth in this Agreement are accurate and true as of the Possession Date.
- (c) A certified copy of resolutions adopted by the Board of Directors of CentraCare, authorizing and approving the execution and performance of this Agreement by CentraCare and Carris.

CentraCare Carris also shall take any and all additional actions which may be reasonably necessary in order to complete the transaction on the Possession Date.

**13.2** City Deliveries to CentraCare and Carris. The City shall deliver the following to CentraCare and Carris on or before the Possession Date:

- (a) A certificate executed by the Mayor of the City, dated as of the Possession Date, stating that, to the best of his knowledge, all representations and warranties of the City set forth in this Agreement are accurate and true as of the Possession Date.
- (b) A Bill of Sale, in a form mutually agreed upon by the parties, transferring the Transferred Assets to Carris as of the Possession Date.
- (c) The updated Exhibits and accounts receivable and accounts payable reports described in Section 6.4.
- (d) Evidence of all consents and notices required by Section 6.2.
- (e) A certified copy of resolutions adopted by the City Council authorizing and approving the execution and delivery of this Agreement.
- (f) An opinion of Kennedy & Graven LLP.

(g) Consent of the bondholders of the \$9,100,000 Hospital Revenue Notes, Series 2013 (Rice Care Center Project).

The City also shall take any and all additional actions which may be reasonably necessary in order to complete the transaction on the Possession Date.

**13.3** Failure to Deliver. In the event that either party hereto fails to make any delivery required under this Article, the non-defaulting party may, at its option, declare this Agreement to be null and void as of the Possession Date, in which case all deliveries shall immediately be returned to the party making the delivery. Any failure not objected to shall be deemed waived immediately after the Possession Date.

ARTICLE XIV  
MISCELLANEOUS

**14.1** Notices and Payments. All notices, requests, demands, payments and other communications to be made hereunder shall be in writing and shall be deemed to have been duly given if either mailed by certified mail, return receipt requested, postage prepaid, or hand delivered and with such delivery evidenced by a signed receipt or sworn affidavit of the deliverer, as follows:

If to the City:           City of Willmar  
                                  333 Sixth Street SW  
                                  P.O. Box 755 Willmar,  
                                  MN 56201  
                                  Attention: City Administrator

If to Carris:             Carris Health, LLC  
                                  301 Becker Ave SW  
                                  Willmar, MN 56201  
                                  Attention:        Chief        Executive  
                                  Officers

If to CentraCare: CentraCare Health System  
                                  1406 Sixth Avenue N St.  
                                  Cloud, MN 56303  
                                  Attention: President  
                                  With a copy to: General Counsel

or to such other address as either party hereto may request by such written notice. Any notice given in accordance with this Article shall be deemed to have been received either three (3) days after it was mailed or upon delivery, whichever first occurs.

**14.2** Severability. If any provision of this Agreement or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Agreement that

can be given effect without the invalid provisions or application, and to this end the provisions of this Agreement are declared to be severable.

**14.3 Entire Agreement.** This Agreement, the Affiliation Agreement and the Exhibits attached hereto and thereto (including documents contained in Exhibits that are fully executed and in accordance herewith), contains the entire understanding of the City and of Carris with respect to the transactions contemplated hereby and supersedes all other agreements and understandings among the City, Carris.

**14.4 Amendment.** This Agreement may be amended only by a written agreement authorized by the affirmative vote of the governing body of both CentraCare and the City and executed by the authorized representatives of both parties.

**14.5 Governing Law and Venue.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Minnesota. Venue shall lie exclusively in Stearns County, Minnesota.

**14.6 Counterparts.** This Agreement may be executed simultaneously in two (2) or more counterparts, all of which together shall constitute one and the same Agreement.

**14.7 Accounting Determinations.** All accounting determinations required to be made under this Agreement shall be made in accordance with generally accepted accounting principles.

**14.8 Successors and Assigns.** All the terms, conditions, covenants, agreements and provisions of this Agreement shall inure to the benefit of and be binding upon the City, CentraCare and Carris and upon their respective personal representatives, heirs, successors and permitted assigns. All of the terms, conditions, covenants, agreements and provisions of this Agreement pertaining to the Leased Assets shall also be construed as covenants running with the land.

**14.9 Authorization of Carris to Act.** Notwithstanding any other provisions of this Agreement, the City hereby authorizes Carris, at its sole discretion, to obtain any and all zoning and/or building permits, tax divisions and certifications of tax exempt status, filing plats of subdivision, negotiated agreements with public and private utilities, and any and all other documents and/or approvals required by or from any governmental authority exercising jurisdiction over all or any part of the Leased Assets, as Carris, in its sole discretion, shall from time to time deem necessary or appropriate in order to carry out the health care purposes of Carris. Nothing in this Article shall be deemed or construed as in any way limiting or amending the obligations of the City under Section 6.3 to cooperate with Carris in any way necessary in order to enable Carris to exercise their rights hereunder, including without limitation, the obligation to sign any and all documents and to take any and all other steps necessary to accomplish any of the actions set forth in this Article.

**14.10 Impossibility.** Except for Carris' obligations under Section 3.1 and Carris' obligations under Article VIII, no party hereto shall be liable for any delay in performance or failure to perform when fire, flood, explosion, accident, unavailability of equipment, supplies, parts or materials, energy shortage, war, weather, casualty, act of God, sabotage, law or

government regulation, or any other cause reasonably beyond such party's control makes performance impossible despite the best efforts to perform by the party from whom performance is required.

**14.11 No Third-Party Beneficiary.** This Agreement is for the benefit solely of the City, CentraCare and Carris and their respective successors and permitted assigns (which shall include the City Indemnified Parties with respect to Section 3.3 hereof), and it shall give rise to no third party rights and shall not be enforceable by any other party (as a third party beneficiary or otherwise), including without limitation, rights related to (a) service commitments under Section 5.12 and (b) the Carris medical staff under Section 5.9(b).

**14.12 Accounts Receivable.** Some of the accounts receivable being or to be assigned and transferred are or may be due from governmental authorities or agencies, or intermediaries/agents thereof, under the programs commonly known as Medicare and Medicaid/Medical Assistance. To the extent those accounts receivable are not transferable or assignable, the assigning party shall collect those receivables and remit or endorse the receipts to the other promptly. Further, the assigning party hereby appoints the other as its attorney-in-fact to collect and endorse for payment of all the receivables being assigned and transferred in any way that the assigning party could collect them and endorse payment. This appointment is irrevocable, special and coupled with an interest.

**14.13 Recordation.** The parties agree to execute and file of record, on or before the Possession Date, either this Agreement or a memorandum of lease evidencing the existence of this Agreement, the Term, and the Leased Assets in this Agreement leased.

**14.14 Non-Delegation.** No provision of this Agreement shall be construed to permit or require the delegation by the City of any governmental function of the City.

**14.15 Payment of City Expenses.** Whether or not the transaction contemplated hereby closes, the parties hereby agree that the City shall be reimbursed for the reasonable legal fees and disbursements of Kutak Rock LLP in connection with its representation of the City out of the Rice Funds prior to the transfer thereof to Carris pursuant to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused their authorized representatives to execute this Agreement in their respective names effective as of the day and year first above written.

[Signature pages follow]

CITY OF WILLMAR, MINNESOTA

By: \_\_\_\_\_  
Marvin Calvin, Mayor

ATTEST:

\_\_\_\_\_  
Isaac Holland, City Administrator

NOTARY

STATE OF MINNESOTA                    )  
  :  
COUNTY OF KANDIYOHI                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ of \_\_\_\_\_, 2017, by Marvin Calvin, who is the Mayor of the City of Willmar, and Isaac Holland, who is the City Administrator of the City of Willmar, on behalf of the City.

\_\_\_\_\_  
Notary Public

CARRIS HEALTH, LLC

By: \_\_\_\_\_  
\_\_\_\_\_

NOTARY

STATE OF MINNESOTA            )  
  :  
COUNTY OF KANDIYOHI        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ of \_\_\_\_\_, 2017, by \_\_\_\_\_, who is the \_\_\_\_\_ of Carris Health, LLC.

\_\_\_\_\_  
Notary Public

CENTRACARE HEALTH SYSTEM

By: \_\_\_\_\_  
\_\_\_\_\_

NOTARY

STATE OF MINNESOTA                )  
  :  
COUNTY OF KANDIYOHI             )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ of \_\_\_\_\_, 2017, by \_\_\_\_\_, who is the \_\_\_\_\_ of CentraCare Health System.

\_\_\_\_\_  
Notary Public

Signature Pages to Operating Lease Agreement



GUARANTEE AGREEMENT

THIS GUARANTEE AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by CentraCare Health, a Minnesota non-profit corporation ("Guarantor").

RECITALS

- A. Carris Health, LLC, a Minnesota non-profit limited liability company ("Lessee"), the City of Willmar, Minnesota, a home rule charter city of the third class ("Lessor"), and Guarantor are parties to that certain Operating Lease Agreement, dated \_\_\_\_\_ 2018 (the "Lease"), for that certain property commonly known as Rice Memorial Hospital, as more particularly described in the Lease.
- B. Guarantor is the sole member of Lessee and will realize a substantial benefit in such capacity as a result of the Lease.
- C. Lessee and Guarantor acknowledge that Lessee will rely entirely on the payments made to it under the Lease in order to satisfy its obligation to make debt service payments on certain long-term debt financing used by Lessor to finance improvement to the property being leased to Lessee under the Lease;
- D. Because Lessee is a newly formed entity, the parties to the Lease have required Guarantor to provide this Guaranty pursuant to Section 3.1(c) of the Lease.
- E. Unless the context clearly indicates the contrary, capitalized terms used but not defined in this Guaranty have the meanings assigned to them in the Lease.

AGREEMENT

Guarantor irrevocably and unconditionally agrees with the City as follows:

- 1. Guarantor guarantees, without the necessity of prior notice, the full and prompt payment of all rent and other sums and charges payable by Lessee under the Lease (including, without limitation, payment of all amounts payable under Section 3.1(a) and Section 3.1(b) of the Lease and all payment obligations that survive the expiration or earlier termination of the Lease).
- 2. Guarantor guarantees, without the necessity of prior notice, the due and punctual payment in full of any and all losses, damages and expenses incurred by Lessor and arising out of any default by Lessee in performing any of its obligations under the Lease.
- 3. Lessor may, in its sole discretion, without notice to or consent of Guarantor and without in any way affecting or terminating any of Guarantor's obligations and liabilities hereunder, from time to time, (a) waive compliance with the terms of the Lease or any default thereunder; (b) grant any extension or renewal of the terms of the Lease; or (c) effect any release, compromise or settlement in connection therewith.

4. Guarantor's obligations under this Guaranty (a) shall be unconditional, without regard to the enforceability of the Lease or any other circumstance which might otherwise constitute a discharge of a guarantor or Lessee at law or in equity; (b) shall not be conditioned upon Lessor's pursuit of any remedy which it has against Lessee or any other person; and (c) shall survive and shall not be diminished, impaired or delayed in connection with (i) any bankruptcy, insolvency, reorganization, liquidation or similar proceeding relating to Lessee, its properties or creditors, (ii) any transfer, assignment, sublease or termination of Lessee's interest under the Lease, or (iii) expiration or termination of the Lease, to the extent that the applicable liability or obligation under the Lease accrued prior to the date of expiration or termination of the Lease or otherwise survives the termination or expiration of the Lease, provided that in the event Lessee's obligations under the Lease terminate due to Lessor's breach of the Lease then Guarantor shall have no ongoing obligations under this Guaranty.

5. All rights and remedies of Lessor under this Guaranty, the Lease, or at law or in equity, are separate and cumulative, and the exercise of one shall not limit or prejudice the exercise of any other such rights or remedies. Any waivers or consents by Guarantor as set forth in this Guaranty shall not be deemed exclusive of any additional waivers or consents by Guarantor which may exist in law or equity.

6. The obligations of the Guarantor under this Guaranty may not be assigned, including by operation of law, without the prior consent of the Lessor. This Guaranty shall be binding upon Guarantor, and Guarantor's successors and permitted assigns, and shall inure to the benefit of Lessor and its successors and assigns.

7. If any provision of this Guaranty is held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Guaranty shall remain in full force and effect and shall be liberally construed in favor of Lessor in order to effect the provisions of this Guaranty.

8. Guarantor agrees that this Guaranty shall be governed by and construed according to the laws of the State of Minnesota and that Guarantor is subject to the jurisdiction of the courts of Stearns County, Minnesota.

9. Guarantor hereby represents and warrants to the City that:

(a) Guarantor is a nonprofit corporation duly organized and in good standing under the laws of the State of Minnesota and has the power to execute and deliver this Guaranty and to fulfill all of its obligations hereunder;

(b) All actions required to be taken by Guarantor to authorize the execution, delivery and performance of this Guaranty have been duly and properly taken and this Guaranty has been duly executed and delivered and is a valid and legally binding obligation of Guarantor enforceable in accordance with its terms; and

(c) The execution and delivery of this Guaranty does not, and the performance by Guarantor of its obligations hereunder will not, violate, conflict with, or result in a default under or a breach of (i) the articles of incorporation or bylaws of Guarantor or any contract, agreement or other instrument to which Guarantor is a party or is bound, (ii) any ordinance, law or regulation to which Guarantor is subject, or (iii) any order, decree or judgment of any court or governmental agency to which Guarantor is a party or is bound.

*Signature on Next Page*

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**IN WITNESS WHEREOF**, Guarantor has caused this Guaranty to be duly executed and delivered as of the day and year first above written.

CentraCare Health,  
a Minnesota non-profit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

CARRIS HEALTH, LLC

MEMBER CONTROL AND OPERATING AGREEMENT

THIS MEMBER CONTROL AND OPERATING AGREEMENT (the “**Operating Agreement**”) is made effective \_\_\_\_\_, 2018, by and between Carris Health, LLC, a Minnesota limited liability company (the “**Company**”), and the Member (as defined below) (collectively, the “**Parties**”).

BACKGROUND

A. The Parties have acted through their legal representatives as organizers of a limited liability company (“**LLC**”) under the laws of the State of Minnesota by filing the Articles of Organization (the “**Articles**”) for the Company pursuant to the Minnesota Revised Uniform Limited Liability Company Act, Chapter 322C of the Minnesota Statutes (the “**Act**”) on October 11, 2017 with the Secretary of State of the State of Minnesota;

B. Section 322C.0110 of the Act authorizes use of an operating agreement by the members of an LLC;

C. The Member is the sole member of the Company and wishes to enter into this Operating Agreement, which will constitute the Operating Agreement and a member control agreement under the Act; and

D. As of the date hereof, the Company is party to an Operating Lease Agreement (the “**Lease Agreement**”) with the City of Willmar regarding Rice Memorial Hospital (the “**Hospital**”).

**NOW, THEREFORE**, the Member and Company adopt the Operating Agreement and Member Control Agreement of the Company:

ARTICLE I

**NAME, LOCATION, AND PURPOSE**

**1.1** Name. The name of the limited liability company shall be Carris Health, LLC.

**1.2** Registered Office. The principal executive office and the registered office of the Company is 301 Becker Avenue SW, Willmar, MN 56201.

**1.3** Purpose. The Company is organized and shall be operated exclusively for educational and charitable purposes, as contemplated and permitted by Sections 170(c)(2) and 501(c)(3) of the Internal Revenue Code of 1986, and as a nonprofit limited liability company under Minnesota Statutes, Section 322C.1101. Within the framework and limitations of the foregoing, the purposes for which the Company is formed, and the business and the objects to be carried on by it, are as follows:

- (a) To establish and maintain an institution or institutions with permanent facilities to provide medical care and treatment.
- (b) To carry on related educational activities as may be justified, desirable, and appropriate.
- (c) To engage in any activities to promote the general health of all members of the community and improve the delivery of health care services.
- (d) To promote and further the provision of health and medical care services to individuals with limited or no financial ability to pay for such services.
- (e) To promote health and medical research and medical and allied health education.
- (f) To establish and maintain permanent facilities to provide medical, nursing, spiritual, physical, social, or psychological care and services, including housing and outreach services, for the elderly and other persons who do not require acute hospital care.
- (g) To provide such other services and programs as may, from time to time, be appropriate to accomplish the Company's charitable purpose.

**1.4** Board-Managed. The Company shall be a "board-managed" limited liability company for purposes of the Act.

**1.5** Restricted Activities. In carrying out the purposes stated in Section 1.3, the Company is restricted as follows:

- (a) No part of the assets or income of the Company shall be used for objects or purposes which are not exclusively educational or charitable under Section 501(c)(3) of the Internal Revenue Code and the laws of the State of Minnesota. The Company shall not carry on propaganda or otherwise attempt to influence legislation to such extent as would result in the loss of exemption under Section 501(c)(3) of the Internal Revenue Code. The Company shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.
- (b) No compensation or payment shall be made or paid to any officer or member of the Board of Governors (each, a "**Governor**") of the Company, except as reimbursement for actual expenditures made on behalf of the Company or for reasonable compensation for services actually rendered. No part of the net earnings, nor assets of the Company, shall inure to the benefit of any private individual.

ARTICLE II  
MEMBERSHIP

**2.1** Member. The Company has no units and is organized on a membership basis. The sole member (the “**Member**”) of the Company is CentraCare Health System, a Minnesota nonprofit corporation.

**2.2** Meetings. An annual meeting of the Member is not required. A regular meeting of the Member shall be held when requested by a majority of the Board of Governors, or by the Chair of the Board of Governors.

**2.3** Special Meeting. A special meeting of the Member may be called at any time by the Chair and in the Chair’s absence, by any officer.

**2.4** Time and Place. All regular and special meetings shall be held at the principal executive office of the Company at such date and time as is set by the Chair.

**2.5** Action by Member. Any action required to be taken at any regular or special meeting of the Member may be taken by way of a resolution adopted at any regular or special meeting of the Board of Directors of the Member.

**2.6** Limitation on Liability. The Member shall not be liable under a judgment, decree, or order of the court, or in any other manner, for a debt, obligation or liability of the Company, except as provided by law.

ARTICLE III BOARD OF  
GOVERNORS

**3.1** Number and Appointment.

(a) In accordance with Section 322C.0407, Subd. 4(1) of the Act , the activities and affairs of the Company shall be managed by a board of ten (10) governors (the “**Board of Governors**”) elected by the Member, as follows:

(i) Four (4) individuals, including two (2) individual residents of the City of Willmar, nominated by the Hospital Board of Directors (such four (4) Governors shall be referred to as the “**Rice Facilities Governors**”); provided, however, that prior to appointment to the Board of Governors, any individual nominated by the Hospital Board of Directors must first be approved by the Member;

(ii) Four (4) individuals, including one (1) individual who is an active member of the Hospital medical staff, nominated in the manner set forth in Section 3.1(g) (such four (4) Governors shall be referred to as the “**Aligned Physician Governors**”); provided, however, that prior to appointment to the Board of Governors, any individual nominated by ACMC must first be approved by the Member; and

(iii) Two (2) individuals nominated by the Member.

(iv) In addition, the Company Chief Executive Officers shall serve on the Board of Governors as *ex-officio*, non-voting members.

(b) A majority of the Governors shall be independent community Governors who are not members of the Hospital's Medical Staff or officers or employees of the Company.

(c) Upon the affirmative vote of at least seven (7) of the Board of Governors, which affirmative vote must include at least three (3) Aligned Physician Governors and three (3) Rice Facilities Governors (a "**Supermajority**"), and subject to the approval of the Member, the Board of Governors may be changed in number or composition, including without limitation expansion of the Board of Governors for purposes of facilitating appropriate consideration of the perspective and interests of new participants in Company, such as additional medical groups or community hospitals.

(d) The sale or lease of all or substantially all of the assets of the Company, any merger or consolidation of the Company, any dissolution or discontinuation of the business of the Company, any change in the Member of the Company or the addition of other members to the Company, or any other affiliation or consolidation of the Company with another organization where the Board of Governors ceases to have responsibility for managing the business and affairs of the Company shall require the affirmative vote of a Supermajority.

(e) With the exception of the Company Chief Executive Officers, who shall automatically become members of the Board of Governors upon assuming such position with Company, Governors shall be elected by the Member.

(f) The Rice Facilities Governors shall be nominated by the Hospital Board of Directors; provided, however, that any nominated candidate shall be subject to the approval of the Member, and election by the Member. Any vacancy in the Rice Facilities Governors, whether due to removal, resignation, death or disability, or failure to satisfy the residency requirement, shall be filled by nomination of the Hospital Board of Directors. A Rice Facilities Governor may fulfill the existing term that he or she is serving even if he or she ceases to meet the City of Willmar residency requirement under Section 3.1(a)(i) if he or she continues to be a resident of Kandiyohi County, Minnesota.

(g) The Aligned Physician Governors shall be nominated by a nominating committee composed of the then-current Aligned Physician Governors, two (2) members of the Board of Governors and six (6) at-large physician employees of Affiliated Community Medical Centers, P.A. ("**ACMC**") or this Company as its successor, who have completed at least two years of employment with ACMC or this Company; provided, however, that any nominated candidate shall be subject to the approval of the Member, and election by the Member.

(h) In the event the Member does not approve a candidate nominated by the Hospital Board of Directors under Section 3.1(f) or the nominating committee under



Section 3.1(g), the party(ies) making the initial recommendation will make an additional nomination in the manner set forth in Section 3.1(f) or Section 3.1(g), as applicable, until such time as a nominee is approved by the Member to become a Governor.

**3.2** Quorum and Voting Requirements. A quorum for the transaction of business at any meetings of the Board of Governors shall consist of a majority of the Governors, including at least one (1) Rice Facilities Governor and one (1) Aligned Physician Governor. The affirmative vote of a majority of the Governors present in person or by telephone at a meeting at which a quorum is present shall be the action of the Governors.

**3.3** Matters Reserved to Member. The following matters are reserved for action by the Member:

- (a) Adoption of amendments to the Articles of Organization or the Operating Agreement, subject to the provisions of Section 5.1 of this Operating Agreement.
- (b) Election and removal of Governors and executive management employees of the Company.
- (c) Appointment, removal and periodic review of the Chief Executive Officers of the Company.
- (d) Subject to satisfaction of the commitments of the Company contained in the Lease Agreement, approval of the Company's annual operating and capital budgets.
- (e) Approval of the Company's strategic plans.
- (f) Subject to satisfaction of the commitments of the Company contained in the Lease Agreement, approval of changes in clinical services to be furnished by or through the Company in its service area, provided that the Member will take into consideration guidance offered by the Hospital Board of Directors.
- (g) Approval of the incurrence or guarantee of any form of indebtedness by the Company, including without limitation operating and capital leases, in excess of limits established from time to time by the Member.
- (h) Approval of capital expenditures, whether budgeted or unbudgeted, as recommended by the Board of Governors, in excess of limits established from time to time by the Member.
- (i) Approval of any plans of merger or consolidation of the Company with any third-party entity, or the sale, lease, mortgage, encumbering, or transfer of any Company assets in excess of limits established from time to time by the Member; provided, however, that the Member shall not approve any such transaction in violation of the Lease Agreement.
- (j) Approval of any transaction which may affect the Company's status as an organization exempt from federal income taxation

(k) Subject to the terms of the Lease Agreement, approval of the discontinuation of the business, or the dissolution, of the Company.

**3.4** Authority of Board of Governors. Subject to matters reserved to the Member pursuant to Section 3.3 of this Operating Agreement, the Board of Governors shall have responsibility for managing the business and affairs of the Company.

**3.5** Terms and Term Limits. With the exception of the Chief Executive Officers of Company, the term of each Governor shall be for a period of three (3) years from the date of his or her election; provided, however, that the Member shall set the initial term of three (3) of the Governors at one (1) year and the initial term of three (3) Governors at two (2) years so that the terms of the Governors of than the Chief Executive Officers shall be staggered such that the terms of approximately one-third (1/3) of such Governors expire each year, and such that the terms of no more than two (2) Rice Facilities Governors and two (2) Aligned Physician Governors expire in any year. The term of the Chief Executive Officers shall run concurrently with such individual's or individuals' term as Chief Executive Officers of Company and shall terminate upon his or her termination from such position. With the exception of the Chief Executive Officers, a Governor may not serve more than four (4) terms (excluding partial terms served).

**3.6** Resignation. A Governor may resign at any time by giving written notice to the Chair. The resignation is effective without acceptance when the notice is given unless a later effective time is specified in the notice. If a resignation is made effective at a later date, the vacancy may be filled before the effective date provided that the successor does not take office until the effective date.

**3.7** Removal. A Governor may be removed without cause at any time by the Member.

**3.8** Vacancy. A vacancy in a position of a Governor shall be filled by appointment made by the Member, subject to the nomination process in Section 3.1. The succeeding Governor shall serve the remaining term of the preceded Governor.

**3.9** Place of Meeting. Meetings of the Board of Governors, regular or special, shall be held at the registered office of the Company, unless otherwise designated.

**3.10** Meetings. The Board of Governor shall hold regular meetings not less often than once per calendar quarter. The Board of Governors shall determine a place, date, and time for regular meetings which shall be held at the registered office of the Company. Minutes of each meeting shall be taken.

**3.11** Special Meetings. Meetings of the Board of Governors, other than the regular meetings, are referred to as "special" meetings and may be held upon notice given at least three days preceding the day for such meeting. Special meetings may be called by the Chair or by any two Governors.

**3.12** Waiver of Notice. Notice of any meeting may be waived in writing by the person or persons entitled to such notice, whether before or after the time of such meeting, and shall be equivalent to the giving of such notice. Attendance of a Governor at such meeting shall

constitute a waiver of notice thereof, except where a Governor attends a meeting for the express purpose of objecting to the transaction of any business because such meeting is not properly convened. The business to be transacted at and the purpose of any meeting of the Board of Governors shall be specified in the notice, unless all Governors waive such notice.

**3.13 Action Without a Meeting.** Any action required or permitted to be taken at a meeting of the Governors may be taken without a meeting by a written action signed by all of the Governors. The written action is effective when it has been signed by all of the Governors, unless a different effective time is provided in the written action.

**3.14 Action by Remote Communication.** A conference among Governors by a means of one or more remote communication through which all persons may participate is a meeting of the Governors, if the same notice is given of the conference as would be required for a meeting and if the number of persons participating in the conference is a quorum. Participation in a meeting by this means is personal presence at the meeting. A Governor may participate in a meeting of the Board of Governors by a means of conference telephone, or, if authorized by the Board of Governors, by such other means of remote communication, in each case through which the Governor, other persons participating, and all persons physically present at the meeting may participate with each other during the meeting. Participation in a meeting by this means is personal presence at the meeting.

**3.15 Standard of Conduct.** A Governor shall discharge the duties of the position of Governor in good faith, in a manner the Governor reasonably believes to be in the best interests of the Company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable to the Company or the Member by reason of being or having been a Governor of the Company.

A Governor is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by: (i) one or more officers or employees of the Company whom the Governor reasonably believes to be reliable and competent in the matters presented; (ii) counsel, public accountants, or other persons as to matters that the Governor reasonably believes are within the person's professional or expert competence; or (iii) a committee of the Board of Governors upon which the Governor does not serve, duly established, as to matters within its designated authority, if the Governor reasonably believes the committee to merit confidence.

**3.16 Duty of Loyalty.** It is agreed that all Governors shall exercise their responsibility and duties to the Company with the highest level of fiduciary duty of care and loyalty to the Company, in a prudent business manner, and will take all actions and make all votes in good faith consistent with such duties. Subject solely to the foregoing, all Governors shall act on behalf of the Company in a manner consistent with their fiduciary duties of care and loyalty.

**3.17 Presumption of Assent.** A Governor who is present at a meeting of the Board of Governors when an action is approved by the Board of Governors is presumed to have assented to the action approved unless the Governor:

(a) Objects at the beginning of the meeting to the transaction of the business because the meeting was not properly called or convened and does not participate in the meeting, in which case the Governor is not considered to be present at the meeting;

(b) Votes against the action at the meeting; or

(c) Is unable to vote because the Governor has a material financial interest in the matter which is not disclosed of and approved of in accordance with Minnesota Statutes Section 317A.255 or a conflict of interest policy adopted by the Board of Governors.

**3.18 Governors' Liability for Damage.** To the extent provided by Minnesota Statutes Section 317A.257, any person who serves as a Governor, officer, member, or agent of the Company, without compensation, is not liable for an act or omission if the act or omission was in good faith, was within the scope of the person's responsibilities, and did not constitute willful or reckless conduct.

**3.19 Committees.** The Board of Governors may establish and appoint such standing or special committees as it deems necessary from time to time. If the Board of Governors appoints an Executive Committee, such committee shall include at least one (1) Rice Facilities Governor and one (1) Aligned Physician Governor. The charge to each standing or special committee shall be as determined by the Board of Governors in accordance with the strategic and operational objectives and requirements of the Company. No committee shall have authority to take any action outside the scope of its authorization or to exercise any power required to be exercised by the Board of Governors or the Member under the Act, the Articles, or this Operating Agreement unless that power is expressly delegated by the Board of Governors or the Member, as the case may be.

(b) The chair of each standing committee shall be a Governor. The chair of each special committee need not be a Governor.

(c) A majority of any committee shall constitute a quorum, and a majority of committee members present and voting at a meeting at which a quorum is present is necessary for committee action. A committee may act by unanimous consent in writing without a meeting.

#### ARTICLE IV OFFICERS

**4.1 Officers.** The officers shall consist of a Chair, Vice Chair Chief Executive Officer(s) and treasurer and, if the Governors deem necessary, one or more vice presidents, and such other officers and agents as it deems necessary for the operation and management of the Company who shall have the duties, powers, rights, and responsibilities as provided in the Operating Agreement or determined by the Board of Governors. There shall be two chief executive officers, one of whom shall be a physician and the other a non-physician, both employed by the Company, who shall perform their duties in a dyad relationship. The Board of Governors shall appoint the individuals serving, respectively, as the Hospital Chief Executive

Officer and the ACMC Chief Executive Officer immediately prior to the Possession Date as defined under the Lease Agreement.

**4.2** Chair. The Chair shall:

- (a) Chair the meetings of the Board of Governors;
- (b) Maintain records of and, when necessary, certify proceedings of the Board of Governors and the Member; and
- (c) Perform other duties prescribed by the Board of Governors.

**4.3** Vice Chair. The Vice Chair shall:

- (a) Preside as chair at the meetings of the Board of Governors when the Chair is absent;
- (b) Perform other duties as prescribed by the Board of Governors.

**4.4** Chief Executive Officers. The chief executive officers shall:

- (a) Have general active management of the business of the Company;
- (b) See that all orders and resolutions of the Board of Governors are carried into effect;
- (c) Sign and deliver in the name of the Company contracts or other instruments pertaining to the business of the Company, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated in the articles or Operating Agreement or by the Board of Governors to another officer or agent of the Company; and
- (d) Perform other duties prescribed by the Board of Governors.

**4.5** Treasurer. The treasurer shall:

- (a) Keep accurate financial records for the Company;
- (b) Deposit money, drafts, and checks in the name of and to the credit of the Company in the banks and depositories designated by the Board of Governors;
- (c) Endorse for deposit notes, checks, and drafts received by the Company as ordered by the Board of Governors, making proper vouchers for the deposit;
- (d) Disburse corporate funds and issue checks and drafts in the name of the Company, as ordered by the Board of Governors;
- (e) Upon request, provide the Chair and the Board of Governors an account of transactions and of the financial condition of the Company; and

- (f) Perform other duties prescribed by the Board of Governors.

ARTICLE V  
MISCELLANEOUS

**5.1** Amendment to Articles and Operating Agreement. Amendment to the Articles of Organization and to this Operating Agreement shall be made with the approval of the Member the Board of Governors; provided, that and in the case of any amendment to Sections 3.1, 3.2, 3.3, 3.4, 3.19, and 5.1, and any amendment relating to a transaction described in Section 3.1(d), only upon the affirmative vote of Supermajority.

**5.2** Indemnification. The Company shall indemnify its Governors, officers, and employees made or threatened to be made a party to a proceeding in such manner and to such extent as provided by Minnesota Statutes Section 322C.0408.

**5.3** Overhead Allocations. During the term of the Lease, the Company agrees that any overhead or related charges of the Member in connection with services requested by the Board of Governors shall be mutually agreed to by the Board of Governors and the Member.

**COMPANY:**

Carris Health, LLC

Health System

By: \_\_\_\_\_

EXHIBIT 2  
Affiliation Agreement

## AFFILIATION AGREEMENT

**THIS AFFILIATION AGREEMENT** (the “**Affiliation Agreement**”) made effective as of [\_\_\_\_], 2017, among the **City of Willmar, Minnesota**, a Minnesota home rule charter city of the third class (the “**City**”), **Rice Memorial Board of Directors** (the “**Rice Board**”), **Carris Health, LLC**, a Minnesota nonprofit limited liability company (“**Carris**”), and **CentraCare Health System** (“**CentraCare**”), a Minnesota nonprofit corporation (collectively referred to herein as the “**Parties**”).

### PREAMBLE

**WHEREAS**, City owns the real and personal property used to operate Rice Memorial Hospital, Rice Care Center, Rice Home Medical, Rice Hospice, referred to in this Affiliation Agreement as the “**Rice Facilities**.”

**WHEREAS**, CentraCare operates an integrated health delivery system consisting of The Saint Cloud Hospital and its operating division, St. Benedict’s Senior Community, CentraCare Health System - Melrose, CentraCare Health System - Long Prairie, CentraCare Health System - Sauk Centre, CentraCare Health - Monticello, CentraCare Health - Paynesville, and CentraCare Clinic, in this Affiliation Agreement referred to as the “**System**.”

**WHEREAS**, CentraCare has established a subsidiary limited liability company known as Carris Health, LLC, a Minnesota non-profit limited liability company. Carris will operate as a wholly-owned tax-exempt subsidiary of CentraCare, for purposes of coordinating and delivering high-quality and locally-focused inpatient, outpatient and professional healthcare services in west central Minnesota. Carris filed its Articles of Organization with the Minnesota Secretary of State on October 11, 2017, which are attached as Exhibit A.

**WHEREAS**, City wishes to engage CentraCare, through Carris, to operate the Rice Facilities as a part of the System.

**WHEREAS**, Carris shall oversee the operations of Rice Facilities in accordance with its Operating Agreement, this Affiliation Agreement, and the Lease referred to herein.

**NOW, THEREFORE**, in consideration of the mutual terms and conditions contained herein, the parties agree as follows:

### ARTICLE I ACTIONS AFTER EXECUTION

Promptly following the execution of this Affiliation Agreement, the Parties agree as follows:

**1.1** Carris Member Control and Operating Agreement; Carris Tax-Exempt Status. Carris shall adopt and approve its Member Control and Operating Agreement, in form and substance substantially similar to Exhibit B. Carris shall be an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”), based on the tax-exempt status of CentraCare, its sole member.



## 1.2 Certificates.

(a) Each of CentraCare and Carris shall execute and deliver to the Rice Board and the City an Officer and Incumbency Certificate in form and substance reasonably satisfactory to the Rice Board, certifying as to, among other things as the Rice Board may reasonably require, (i) attached copies of organizational documents, certificates of good standing and resolutions authorizing the transactions contemplated herein, and (ii) the then-current officers of the applicable company, including the genuineness of their signatures.

(b) CentraCare shall execute and deliver to the Rice Board and the City a tax certificate in form and substance reasonably satisfactory to the Rice Board and the City, certifying as the matters set forth in Section 5.3 of the Lease and to such additional matters as, in the reasonable opinion of bond counsel, may be necessary to assure the continuing exemption from income tax of the interest on the Bonds.

**1.3 Lease.** Carris, CentraCare, and the City shall enter into an operating lease (the "**Lease**") in the form attached as Exhibit D, by which Carris will lease the Leased Assets (as defined in the Lease) from the City and the City will transfer the Transferred Assets (as defined in the Lease), to Carris and CentraCare shall execute and deliver to City a Guarantee Agreement in the form attached as Exhibit E. The effective date of the Lease (the "**Possession Date**") shall be January 1, 2018, or such earlier date as described in the Lease. Prior to the Possession Date, the City and Carris will update the Exhibits attached to the Lease.

## ARTICLE II **ACTIONS ON THE POSSESSION DATE**

Beginning on the Possession Date:

**2.1 Operation of Rice Facilities.** Subject to the conditions set forth in Article IV, on the Possession Date, the parties agree to transfer operation of the Rice Facilities to Carris in accordance with the terms of the Lease, and Carris agrees to operate the Rice Facilities pursuant to the terms of the Lease. All Rice Facilities' assets leased pursuant to the terms of the Lease will be used in the fulfillment of the charitable missions of Carris, including the advancement of healthcare services in the Rice service area. Carris will observe all restrictions applicable to the Rice Facilities' assets, including without limitation, continued use of the Rice name.

**2.2 Rice Governance.** The Rice Board will adopt the Amended and Restated Bylaws of Rice Memorial Hospital, which will remain in effect at all times during which Carris operates the Rice Facilities under the terms of the Lease, which Bylaws will reflect that the Rice Board will continue to have seven (7) voting members. CentraCare will have the right to appoint two (2) non-voting observers to the Rice Board, and the Carris Co-Chief Executive Officers each will be non-voting, *ex-officio* members of the Rice Board. The Rice Board will continue to conform to Minnesota state statutes, including the Minnesota open meeting laws.

**2.3 Transfer of Rice Assets.** The City will transfer to Carris certain operating assets and working capital with respect to the Rice Facilities pursuant to the terms of the Lease. On or prior to the Possession Date, the City will **[specify bond-related actions to be taken.]**

**2.4 Carris Governance.** Carris governance shall be as provided for in Carris' Member Control and Operating Agreement; specifically, the Board of Governors of Carris ("**Carris Board**") shall include ten (10) members, as follows: four (4) individuals, including two (2) individual residents of the City, nominated by the Rice Board of Directors (such four (4) members shall be referred to as the "**Rice Governors**"); four (4) individuals, including one (1) individual who is an active member of the Rice Memorial Hospital medical staff, nominated by Affiliated Community Medical Centers, P.A. ("**ACMC**") (such four (4) members shall be referred to as the "**Aligned Physician Governors**"); two (2) individuals appointed by CentraCare; and the Carris Chief Executive Officers as *ex-officio*, non-voting members; provided, however, that prior to appointment to the Carris Board, any individual nominated by the Rice Board or ACMC must first be approved by CentraCare. The majority of the Carris Governors shall be independent community members who are not members of Rice Memorial Hospital's Medical Staff or officers or employees of Carris. The names and terms of the initial Carris Board shall be as specified in Exhibit C, attached to and incorporated in this Affiliation Agreement by reference.

**2.5 CentraCare Board.** Two (2) Carris Board members proposed by the Carris Board, subject to approval by CentraCare and appointment by the CentraCare Board, will sit on the CentraCare Board; one (1) of these individuals will be a member of the Rice Board of Directors or other representative of the Willmar community approved by the Rice Board of Directors and one (1) of these individuals will be an Aligned Physician Governor approved by the Aligned Physician Governors of Carris.

**2.6 Carris Executive Leadership.** The Carris Board shall appoint the individuals serving, respectively, as the Rice Memorial Hospital Chief Executive Officer and the ACMC Chief Executive Officer immediately prior to the Possession Date to serve as the Co-Chief Executive Officers of Carris.

**2.7 Commitment to Delivery of Services at Rice.** During the term of the Lease, Carris agrees that it will continue to operate the Hospital in the City of Willmar as a licensed general acute care hospital and at minimum a Level 3 or such appropriate status trauma center and furnish such health care services as are deemed necessary and appropriate by the Carris Board of Governors (the "**Carris Board**") which services shall include inpatient beds, emergency department, surgery services, therapy services, ambulance services, and obstetrical services and will not materially limit, reduce or eliminate such core services without the prior approval of the Rice Board. Nothing herein shall limit in any manner the right and ability of Carris to perform any health care service at the Hospital that it may otherwise lawfully perform. During the term of the Lease, Carris and CentraCare shall work collaboratively to maintain and expand physician specialty services at Rice, which may include cardiology, gastroenterology, orthopedics, kidney care or specialties.

### ARTICLE III TREATMENT OF EMPLOYEES

**3.1 Carris Employment.** The City and Carris intend that all Rice Facilities-dedicated City employees ("**Rice Facilities Employees**") will have the opportunity to transition from City

employment to Carris employment as of the Possession Date, subject to the process set forth in this Article III.

**3.2** Process for Transition of Employment. Each employee of Rice who is actively employed or on a leave of absence from such active employment on the Possession Date will be offered employment by Carris, as applicable, with comparable position, hours and benefits, and at the wage or salary provided as of the Possession Date, subject only to the following pre-employment screening requirements: (i) professional licensure that is presently required for the position at Rice; (ii) criminal background check; (iii) immigration law compliance; and (iv) any other legally mandated requirements. Employees hired under this Article III are referred to as "**Transferred Employees.**" Continued employment of Transferred Employees by Carris will be subject to Carris' policies and procedures.

**3.3** Service Credit. Eligibility for benefits for Transferred Employees will begin on the first day of employment Carris. Carris shall treat employee service with Rice prior to the Possession Date as having been service with Carris and will waive, to the extent permitted by law, any length of service requirements, waiting periods, vesting periods or differential benefits based on length of service in any such employee benefit plans and defined contribution plans for which Transferred Employees may be eligible after the Possession Date.

**3.4** PTO Credit. Carris will grant credit for all unused paid time off ("**PTO**") accrued by Transferred Employees before the Possession Date, provided that such PTO credit effectively eliminates any claim for a payout of accrued PTO by such Transferred Employees. If a Transferred Employee does not consent to such credit, then the City will pay out all such accrued PTO as of the Possession Date, and the Transferred Employee will not be granted PTO credit.

**3.5** Communication with Rice Facilities Employees. The City will cooperate in the distribution of communications from Carris to the Rice Facilities Employees. The City is not authorized to make any representations to the City's employees as to the plans or intentions of Carris with respect to possible employment opportunities with Carris, the terms and conditions of employment that may be provided by Carris, or other factors related to any employment relationship with Carris. Nothing in this Affiliation Agreement shall create any rights in favor of any person not a party to this Affiliation Agreement, including the Rice Facilities Employees, or constitute an employment agreement or condition of employment for any employee of the City.

**3.6** Assumption of Collective Bargaining Agreements. Carris will assume all collective bargaining agreements related to the Transferred Employees in place on the Possession Date, subject to adjustment to reflect the National Labor Relations Act ("**NLRA**"), and will fully comply with the NLRA.

**3.7** WARN Notices. The City shall provide such notices as are required under the Federal WARN Act or under any similar state law.

#### ARTICLE IV CONDITIONS TO AFFILIATION

The obligations of the Parties are contingent upon the satisfaction of the following as of the Possession Date:

**4.1** No Actions. There are no actions, suits, or proceedings, pending or threatened, against or affecting either party, at law or in equity, which, if adversely determined, would materially affect this Affiliation Agreement, the Lease, or the transactions completed by this Affiliation Agreement.

**4.2** No Material Change. There has been no material change to the financial condition of the Rice Facilities and the bond financing relating to the Rice Facilities or a change to the physical condition of the Rice Facilities that will adversely affect the ability of the Rice Facilities to continue as a licensed hospital or skilled nursing facility.

ARTICLE V CITY  
COVENANTS

From the date of this Affiliation Agreement to the Possession Date of the Lease, the City agrees:

**5.1** Provision of Information. To provide CentraCare with all financial and operation information and data relating to the Rice Facilities as CentraCare may reasonable request.

**5.2** Satisfaction of Bond-Related Obligations. To make all principal and interest payments on all bonds that provided funding for the Rice Facilities and comply with all terms on provisions of such bonds so that no defaults shall occur. In addition, on or prior to the Possession Date, **[bond-related actions to be taken by the City]**.

ARTICLE VI  
MISCELLANEOUS

**6.1** Re-Transfer of Rice Facilities. It is the intent of the parties that Carris shall operate the Rice Facilities during the term of the Lease and return the Rice Facilities to the City in a manner which permits and facilitates the City's operation of the Rice Facilities upon termination of the Lease.

**6.2** Annual Report to City. Carris will provide a report to the City Council and the Rice Board within one hundred eighty (180) days of the end of each year and on a more frequent basis as requested by the Rice Board (a) with respect to the fulfillment of by Carris of its obligations and covenants under Sections 5.12 and 5.13 of the Lease and such other information as the City or the Rice Board may reasonably request in order to understand and confirm Carris' fulfillment of such obligations and covenants, (b) audited financial statements of CentraCare within one hundred eighty (180) days of the end of each fiscal year of CentraCare, and (c) audited financial statements of Carris within one hundred eighty (180) days of the end of each fiscal year of Carris. Carris shall also timely provide any reports and information as necessary to meet the requirements and covenants of the Bond Documents.

**6.3** No Amendment. Neither this Affiliation Agreement, nor any exhibit to this Affiliation Agreement, nor any of the covenants, provisions, terms, or conditions of this Affiliation Agreement to be kept or performed by either party shall be in any manner modified, amended, waived, or abandoned except by written instrument duly signed and delivered by the City and CentraCare.

**6.4** Notices. Any notice or other communication or payment herein required or permitted to be given shall be deemed given if and when personally delivered in writing or if and when mailed in a sealed wrapper by United States registered or certified mail, postage prepaid, properly addressed to the address specified in Section 14.1 of the Lease.

**6.5** Severability. If any term, condition, or provision of this Affiliation Agreement, or the application thereof to any person or circumstance, shall to any extent be held to be invalid or unenforceable, the remainder hereof, and any application of that term, provision, or condition other than that held invalid or unenforceable, shall not be affected thereby, and this Affiliation Agreement and all the terms, provisions, conditions, and applications thereof shall in all other respects continue to be effective and to be complied with to the full extent permitted by law.

**6.6** Successors and Assigns. All of the covenants, provisions, terms, and conditions of this Affiliation Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the parties to this Affiliation Agreement and their respective successors and assigns. This Affiliation Agreement may only be assigned by CentraCare if there is an assignment of the Lease, and then only pursuant to the terms of the Lease.

**6.7** Independent Covenants. Each covenant, agreement, obligation, term, condition, or other provision contained in this Affiliation Agreement shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making the same, and not dependent on any other provision of this Affiliation Agreement unless otherwise expressly provided.

**6.8** Authorization. The City and CentraCare jointly represent to each other that this Affiliation Agreement has been authorized by all appropriate actions of their respective governing bodies or boards.

**6.9** Counterparts. This Affiliation Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument.

**6.10** Governing Law. This Affiliation Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota.

**6.11** Assumed Name. After the Possession Date, the Rice Facilities may file with the secretary of state for the State of Minnesota an assumed name filing to reflect the name of Carris and its affiliation with the System. Such name shall be consistent with regulatory requirements.

**6.12** No Third-Party Beneficiary. Nothing in this Affiliation Agreement shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature under or by reason of this Affiliation Agreement.

*[The remainder of this page is intentionally blank. Signature page follows.]*

**CITY:**

**CITY OF WILLMAR, MINNESOTA**

By: \_\_\_\_\_

Its: Mayor

By: \_\_\_\_\_

Ike Holland  
City Administrator

**RICE BOARD:**

**RICE MEMORIAL HOSPITAL BOARD OF DIRECTORS  
D**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CENTRACARE:**

**CENTRACARE HEALTH SYSTEM**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CARRIS:**

**CARRIS HEALTH, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**LIST OF EXHIBITS**

- Exhibit A Carris Articles of Organization
- Exhibit B Carris Member Control and Operating Agreement Exhibit C  
Carris Board of Governors
- Exhibit D Lease
- Exhibit E Guarantee Agreement

Extract of Minutes of a Meeting of the  
City Council of the City of Willmar, Minnesota

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Willmar, Minnesota, was duly held at the Health and Human Services Building in said City on Monday, November 20, 2017, at 7:00 P.M.

The following members were present: Council Member Audrey Nelsen, Ron Christianson, Kathy Schwantes, Fernando Alvarado, Julie Asmus, Shawn Mueske, and Andrew Plowman

and the following were absent: Council Member Rick Fagerlie.

Member Christianson introduced the following resolution and moved its adoption:

**RESOLUTION NO. 17-132**

**RESOLUTION APPROVING THE DEEMED REISSUANCE OF THE CITY OF WILLMAR GENERAL OBLIGATION HOSPITAL REVENUE REFUNDING BONDS, SERIES 2012A (RICE MEMORIAL HOSPITAL PROJECT) AND HOSPITAL REVENUE NOTES, SERIES 2013 (RICE CARE CENTER PROJECT) IN CONNECTION WITH A LEASE OF RICE MEMORIAL HOSPITAL AND RELATED FACILITIES**

The motion for the adoption of the foregoing resolution was duly seconded by member Asmus, and after full discussion thereof and upon vote being taken thereon, the following voted in favor thereof: Council Member Audrey Nelsen, Ron Christianson, Kathy Schwantes, Fernando Alvarado, Julie Asmus, Shawn Mueske, and Andrew Plowman

and the following voted against the same: None

whereupon said resolution was declared duly passed and adopted.

**RESOLUTION APPROVING THE DEEMED REISSUANCE OF THE CITY OF WILLMAR GENERAL OBLIGATION HOSPITAL REVENUE REFUNDING BONDS, SERIES 2012A (RICE MEMORIAL HOSPITAL PROJECT) AND HOSPITAL REVENUE NOTES, SERIES 2013 (RICE CARE CENTER PROJECT) IN CONNECTION WITH A LEASE OF RICE MEMORIAL HOSPITAL AND RELATED FACILITIES**

BE IT RESOLVED, by the City Council (the "Council") of the City of Willmar, Minnesota (the "City") as follows:

**Section 1.        Description of the Project and Lease.**

(a)        The City has heretofore issued its (i) General Obligation Hospital Revenue Refunding Bonds, Series 2012A (Rice Memorial Hospital Project) (the "Bonds") and (ii) Hospital Revenue Notes, Series 2013 (Rice Care Center Project) (the "Notes" and together with the Bonds the "Obligations"), to finance or refinance renovations and improvements to the Facilities, defined below.

(b)        The City proposes to enter into a Lease (the "Lease"), with Carris Health, LLC, a Minnesota nonprofit limited liability company ("Carris") and CentraCare Health System, a Minnesota nonprofit corporation and the sole member of Carris ("CentraCare"). Under the terms of the Lease, Carris will lease and operate Rice Memorial Hospital, a 136-bed acute care hospital with services facility located at 301 Becker Avenue SW in the City and certain related health care facilities including Rice Hospice; Rice Care Center located at 1801 Willmar Ave. SW in the City; and Rice Home Medical facilities located at 1033 19th Avenue SW, Willmar, Minnesota; 115 18th Avenue W, Alexandria, Minnesota; 105 6th Avenue, Madison, Minnesota; and 1020 E Bridge Street, Redwood Falls, Minnesota (collectively, the "Facilities").

(c)        The Lease, among other terms, will provide that Carris will comply with the requirements of the resolutions authorizing the issuance of the Obligations and that the rental payments to be made by Carris will equal or exceed the amount required to pay the principal of and interest when due on the Obligations. The principal of and interest on the Obligations are expected to be paid from the rental payments to be made by Carris under the Lease and the Lease payments are further guaranteed by CentraCare.

(d)        The Lease is authorized under Minnesota Statutes, §447.47 and is permitted under Section 21.9 of the resolution authorizing the issuance of the Bonds and Section 20.9 of the resolution authorizing the issuance of the Notes.

**Section 2.        Tax-Exempt Status of the Obligations.**

(a)        The Obligations were not "private activity bonds," as defined in Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"), when issued. Section 1.141-2(c) of the Treasury Regulations (the "Regulations") issued under the Code provides that bonds are private activity bonds if they meet the private business use test and private security or payment test of Section 141(b) of the Code. Section 1.141-2(d) of the Regulations provides that an issue of bonds will become an issue of private activity bonds if the issuer takes a deliberate action subsequent to the issue date that causes the conditions of the private business use test and the private security or payment test to be met. The lease of the Facilities to Carris constitutes a deliberate action that causes the private business use test and the private security or payment test to be met.

(b)        Section 1.141-12(a) of the Regulations provides that an action that causes the private business use test and the private security or payment test to be met will not be treated as a deliberate action if the issuer takes a remedial action described in the Regulations and if certain conditions are met.

(c)        In order to prevent the Obligations from becoming private activity bonds the interest on which is included in gross income for purposes of federal income taxation, the City proposes to take the remedial action described in Section 1.141-12(f) of the Regulations and the City proposes to meet the requirements of Section 141-12(a)(1)-(5) of the Regulations.



(d) Based on the representations of the City and the transcript for the Notes, the City Council of the City hereby finds and determines that: (i) the City reasonably expected, on the date of issue of the Notes, that the Notes would meet neither the private business tests nor the private loan financing test for the entire term of the Notes; (ii) as of the issue date of the Notes, the weighted average maturity of the Notes was not greater than 120% of the average reasonably expected economic life of the property financed or refinanced with the proceeds of the Notes; and (iii) other than amounts held in a debt service reserve fund of the Notes, the entire principal amount of the Notes was expended on or before December 31, 2015, to (A) pay the costs of the renovation of the east wing of the long term care facility known as the Rice Care Center and the acquisition, construction and equipping of approximately four additional resident rooms to provide approximately 24 long-term single rooms, dining space, kitchen, and offices; (B) pay the costs of the renovation of the west wing of Rice Care Center and the acquisition, construction and equipping of approximately four additional resident rooms to provide approximately 24 long-term single rooms, dining space, kitchen, and offices; (C) pay the costs of the renovation of the central corridor to include the main entrance, central nurse's station, community dining room and the main kitchen, (D) refund the outstanding principal amount of the City of Willmar Hospital Revenue Notes, Series 2011 (the "Prior Notes") and (E) pay the costs of issuing the Notes.

(e) Based on the representations of the City and the transcript for the Bonds, the City Council of the City hereby finds and determines that: (i) the City reasonably expected, on the date of issue of the Bonds, that the Bonds would meet neither the private business tests nor the private loan financing test for the entire term of the Bonds; (ii) as of the issue date of the Bonds, the weighted average maturity of the Bonds was not greater than 120% of the average reasonably expected economic life of the property financed or refinanced with the proceeds of the Bonds; and (iii) other than amounts held in a debt service reserve fund of the Bonds, the entire principal amount of the Bonds was expended on or before February 28, 2014 to refund in advance of maturity the \$43,645,000 principal amount of the City's outstanding General Obligation Hospital Revenue Bonds, Series 2002 (Rice Memorial Hospital Project), (the "Prior Bonds") and pay the costs of issuing the Bonds.

(f) The Lease is a bona fide, arms-length agreement that was entered into in good faith by the City and provides for the payment by Carris of the fair market value for its use of the Facilities. In determining the fair market value of the Facilities, the City has taken into account the restrictions on the use of the Facilities under the terms of the Lease that serve a bona fide governmental purpose.

(g) The payments received by the City from Carris under the Lease will be treated by the City as "gross proceeds" (as defined in Section 148 of the Code) of the Obligations for purposes of Section 148 of the Code.

(h) The Facilities will be leased to Carris under the terms of the Lease and Carris will operate and manage the Facilities. Carris will not finance its obligations under the Lease, directly or indirectly, with the proceeds of another issue of tax-exempt bonds. Carris will not convey its interests in the Facilities or sublease the Facilities to any other person or entity unless such person or entity is an organization exempt from federal income taxation under Section 501(a) of the Code as a result of the application of Section 501(c)(3) of the Code. As of the effective date of the Lease, the Obligations will be treated as reissued for purposes of the Code, and the Obligations will satisfy all the applicable requirements for "qualified 501(c)(3) bonds" throughout the remaining term of the Obligations. All of the Base Rent or pursuant to a Prepayment Election (as those terms are defined in the Lease) derived by the City from the Lease will be applied to payment of the principal of and interest on the Obligations, to the extent due and payable, on the next available payment date on the Obligations after receipt of each payment under the Lease.

### Section 3. Public Approval.

(a) As required by the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the City Council has held a public hearing on the date hereof on the proposed lease of the Facilities to Carris under the Lease. All persons attending the public hearing were provided an opportunity to speak or submit written materials. The public hearing was preceded by a public notice published at least 14 days prior to the public hearing in a newspaper of general circulation in the City.

(b) As required by Section 147(f) of the Code the City Council, as the elected legislative body of the City, hereby approves the deemed reissuance by the City of the Obligations in connection with the lease of the Facilities to Carris under the Lease.

(c) The officers of the City are hereby authorized to execute and deliver all instruments, certificates, and other documents necessary to maintain the tax-exempt status of the Obligations, including an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038.

(d) Prior to the effective date of the Lease, the officers of the City and City staff are authorized and directed to execute and deliver all instruments, certificates, and other documents necessary and to take all other action necessary to implement this Resolution and to satisfy the requirements of the resolutions authorizing the Obligations and all other covenants and agreements executed in connection with the issuance of the Obligations including, without limitation, obtaining consent from the holders of Notes, notifying the rating agency for the Bonds, satisfying continuing disclosure requirements of the Bonds and satisfying any rebate requirements with respect to the Obligations.

s/s Marv Calvin  
Mayor

ATTEST:

s/s Judy Thompson  
City Clerk

Extract of Minutes of Meeting  
of the City Council of the City of  
Willmar, Kandiyohi County, Minnesota

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Willmar, Minnesota, was duly held at the Health and Human Services Building in said City on Monday, November 20, 2017, commencing at 7:00 P.M.

The following members were present: Council Member Audrey Nelsen, Ron Christianson, Kathy Schwantes, Fernando Alvarado, Julie Asmus, Shawn Mueske, and Andrew Plowman

and the following were absent: Council Member Rick Fagerlie

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Member Plowman introduced the following written resolution, the reading of which was dispensed with by unanimous consent, and moved its adoption:

**RESOLUTION NO. 17-133**

**A RESOLUTION AUTHORIZING THE SALE OF GENERAL  
OBLIGATION IMPROVEMENT BONDS, SERIES 2017A,  
SUBJECT TO CERTAIN PARAMETERS;  
FIXING THEIR FORM AND SPECIFICATIONS;  
DIRECTING THEIR EXECUTION AND DELIVERY;  
AND PROVIDING FOR THEIR PAYMENT**

BE IT RESOLVED By the City Council of the City of Willmar, Kandiyohi County, Minnesota (the "City") as follows:

Section 1. Sale of Bonds.

1.01. It is determined that:

(a) the assessable public improvements including the costs of various street and utility improvement projects (the "Improvements") have been duly ordered by the City;

(b) the City is authorized by Minnesota Statutes, Chapter 429 (the "Improvement Act") to finance all or a portion of the cost of the Improvements by the issuance of general obligation bonds of the City payable from special assessments levied against benefited property and ad valorem taxes;

(c) on November 6, 2017, the City Council adopted a resolution calling a public hearing on an Ordinance entitled "An Ordinance Authorizing the Issuance of \$1,100,000 General Obligation Improvement Bonds, Series 2017A, and Levying of Taxes to Secure the Payment Thereof" (the "Ordinance");

(d) a public hearing on the adoption of the Ordinance was held this same date, and, following the public hearing the City Council adopted the Ordinance;

(e) the construction of the Improvements to be financed by the Bonds (as defined below) have heretofore been ordered;

(f) it is necessary and expedient to the sound financial management of the affairs of the City to issue its General Obligation Improvement Bonds, Series 2017A (the "Bonds") in the approximate aggregate principal amount of \$1,100,000, subject to certain parameters provided herein, to provide financing for the Improvements pursuant to the Improvement Act to provide financing for the Improvements;

(g) the City hereby retains Springsted Incorporated ("Springsted") to act as an independent municipal advisor for the purpose of reviewing the pricing fairness associated with the purchase and subsequent reoffering of the Bonds. It being thus determined that the City has retained an independent financial adviser in connection with such sale, the City is authorized by Minnesota Statutes, Section 475.60, Subdivision 2(9) to negotiate the sale of the Bonds.

1.02 Pricing Committee. The City hereby establishes a pricing committee with respect to the Bonds comprising the Mayor (or a City Council member designated by the Mayor), the City Administrator and the City Finance Director (the "Pricing Committee"). The Pricing Committee is authorized and directed, upon satisfaction of the conditions for the issuance of the Bonds under the City Charter and with the advice of the City's municipal advisor, Springsted Incorporated, to (i) review proposals for the sale of the Bonds; (ii) award the sale of the Bonds to the prospective purchaser (the "Purchaser") in an aggregate principal amount not to exceed \$1,100,000, with a true interest cost not to exceed 3.25% and a final maturity not later than February 1, 2028; (iii) approve the dates for optional redemption or any mandatory sinking fund redemption schedule; and (iv) approve the tax levy for the repayment of the Bonds. The City hereby approves the sale of the Bonds

to the Purchaser, at the price, maturity schedule, and rates to be determined by the Pricing Committee based on the lowest true interest cost.

1.03. Terms and Principal Amounts of the Bonds. The City will forthwith issue and sell the Bonds pursuant to Minnesota Statutes, Section Chapters 429 and 475 (collectively, the “Act”), in an aggregate principal amount not to exceed \$1,100,000 bearing interest as determined by the Pricing Committee, and maturing on February 1 in the years and amounts as determined by the Pricing Committee.

1.04. Optional Redemption. The City may elect to prepay Bonds on the dates to be determined by the Pricing Committee. Redemption may be in whole or in part and if in part, at the option of the City and in such manner as the City will determine. Prepayments will be at a price of par plus accrued interest.

## Section 2. Registration and Payment.

2.01. Registered Form. Each Bond will be issued as a single typewritten bond, only in fully registered form. The interest thereon and, upon surrender of each of the Bonds, the principal amount thereof, is payable by check or draft issued by the Registrar described herein.

2.02. Dates: Interest Payment Dates. The Bonds will be dated as of the date of delivery. The interest on the Bonds will be payable on the dates to be determined by the Pricing Committee and set forth in the Bonds to the registered owners of record thereof as of the close of business on the fifteenth day of the immediately preceding month, whether or not that day is a business day.

2.03. Registration. The City appoints the City Finance Director as bond registrar, transfer agent, authenticating agent and paying agent (the “Registrar”). The effect of registration and the rights and duties of the City and the Registrar with respect thereto are as follows:

(a) Register. The Registrar must keep at its principal corporate trust office a bond register in which the Registrar provides for the registration of ownership of the Bonds and the registration of transfers and exchanges of the Bonds entitled to be registered, transferred or exchanged.

(b) Transfer of Bonds. Upon surrender for transfer of a Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar will authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer after the fifteenth day of the month preceding each interest payment date and until that interest payment date.

(c) Exchange of Bonds. When a Bond is surrendered by the registered owner for exchange the Registrar will authenticate and deliver one or more new Bonds of a like aggregate principal amount and maturity as requested by the registered owner or the owner’s attorney in writing.

(d) Cancellation. Bonds surrendered upon transfer or exchange will be promptly cancelled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When a Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the Bond until the Registrar is satisfied that the endorsement on the Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar will incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name a Bond is registered in the bond register as the absolute owner of the Bond, whether the Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on the Bond and for

all other purposes, and payments so made to a registered owner or upon the owner's order will be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. The Registrar may impose a charge upon the owner thereof for a transfer or exchange of Bonds sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to the transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Bonds. If a Bond becomes mutilated or is destroyed, stolen or lost, the Registrar will deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of the mutilated Bond or in lieu of and in substitution for a Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that the Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to it and as provided by law, in which both the City and the Registrar must be named as obligees. Bonds so surrendered to the Registrar will be cancelled by the Registrar and evidence of such cancellation must be given to the City. If the mutilated, destroyed, stolen or lost Bond has already matured or been called for redemption in accordance with its terms it is not necessary to issue a new Bond prior to payment.

(i) Redemption. In the event any of the Bonds are called for redemption, notice thereof identifying the Bonds to be redeemed will be given by the Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) to the registered owner of each Bond to be redeemed at the address shown on the registration books kept by the Registrar and by publishing the notice if required by law. Failure to give notice by publication or by mail to any registered owner, or any defect therein, will not affect the validity of the proceedings for the redemption of Bonds. The Bonds so called for redemption will cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the place of payment at that time.

2.04. Execution and Delivery. The Bonds will be prepared under the direction of the City Finance Director and executed on behalf of the City by the signatures of the Mayor and the City Clerk, provided that all signatures may be printed, engraved or lithographed facsimiles of the originals. If an officer whose signature or a facsimile of whose signature appears on the Bonds ceases to be such officer before the delivery of the Bonds, that signature or facsimile will nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until delivery. When the Bonds have been so prepared and executed, the City Finance Director will deliver the same to the Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore made and executed, and the Purchaser is not obligated to see to the application of the purchase price.

### Section 3. Form of Bonds.

3.01. Execution of the Bonds. The Bonds will be printed or typewritten in substantially the form as shown in EXHIBIT A.

3.02. Approving Legal Opinion. The City Finance Director will obtain a copy of the proposed approving legal opinion of Kennedy & Graven, Chartered, Minneapolis, Minnesota, which will be complete except as to dating thereof and will cause the opinion to be printed on or accompany the Bonds.

### Section 4. Payment; Security; Pledges and Covenants.

4.01. (a) Debt Service Fund. The Bonds are payable from the General Obligation Bonds, Series 2017A Debt Service Fund (the "Debt Service Fund") hereby created. The Finance Director will timely deposit the special assessments (the "Assessments") and taxes (the "Taxes") levied or to be levied for the Improvements, which Assessments and Taxes are pledged to that account of the Debt Service Fund. If any payment of principal or interest on the Bonds will become due when there is not sufficient money in the Debt Service Fund to pay the same, the City

Finance Director is directed to pay such principal or interest from the general fund of the City, and the general fund will be reimbursed for such advances out of the proceeds of Assessments and Taxes when received.

(b) Construction Fund. The proceeds of the Bonds, less the appropriations made in paragraph (a), together with any other funds appropriated during the construction of the Improvements financed by the Bonds will be deposited in a separate construction fund (the "Construction Fund") to be used solely to defray expenses of the Improvements and the payment of principal and interest on the Bonds prior to the completion and payment of all costs of the Improvements. Any balance remaining in the Construction Fund after completion of the Improvements may be used to pay the cost in whole or in part of any other improvement instituted under the Act or be deposited in the Debt Service Fund.

4.02. Covenants. It is hereby determined that the Improvements will directly and indirectly benefit abutting property, and the City hereby covenants with the holders from time to time of the Bonds as follows:

(a) The City has caused or will cause the Assessments for the Improvements to be promptly levied so that the first installment will be collectible not later than 2018 and will take all steps necessary to assure prompt collection, and the levy of the Assessments is hereby authorized. The City Council will cause to be taken with due diligence all further actions that are required for the construction of each Improvement financed wholly or partly from the proceeds of the Bonds, and will take all further actions necessary for the final and valid levy of the Assessments and the appropriation of any other funds needed to pay the Bonds and interest thereon when due.

(b) In the event of any current or anticipated deficiency in Assessments and Taxes, the City Council will levy additional ad valorem taxes in the amount of the current or anticipated deficiency.

(c) The City will keep complete and accurate books and records showing: receipts and disbursements in connection with the Improvements, Assessments and Taxes levied therefor and other funds appropriated for their payment, collections thereof and disbursements therefrom, monies on hand and, the balance of unpaid Assessments and Taxes.

(d) The City will cause its books and records to be audited at least annually and will furnish copies of such audit reports to any interested person upon request.

4.03. Pledge of Taxes. It is determined that at least 20% of the cost of the Improvements will be specially assessed against benefited properties. For the purpose of paying the principal of and interest on the Bonds, there is levied a direct annual irrevocable ad valorem tax (the "Taxes") upon all of the taxable property in the City, which will be spread upon the tax rolls and collected with and as part of other general taxes of the City. The taxes will be credited to the Debt Service Fund above provided and will be in the years and amounts as to be set for in the certificate of the Pricing Committee.

4.04. Certification as to Debt Service Fund Amount. It is hereby determined that the estimated collections of Assessments and the foregoing Taxes will produce at least 5% in excess of the amount needed to meet when due the principal and interest payments on the Bonds. The tax levy herein provided is irrevocable until the Bonds are paid, provided that at the time the City makes its annual tax levies the Finance Director may certify to the County Auditor of Kandiyohi County the amount available in the Debt Service Fund to pay principal and interest due during the ensuing year, and the County Auditor will thereupon reduce the levy collectible during such year by the amount so certified.

4.05. County Auditor Certificate as to Registration. If no Certificate of Intent is filed in accordance with Section 7.04(j) of the City Charter within 15 days after adoption of this resolution, the Clerk is hereby directed to file a certified copy of this resolution and a copy of the certificate of the Pricing Committee with the County Auditor of Kandiyohi County, Minnesota, together with such other information as he or she shall require, and to obtain the County Auditor's certificate that the Bonds have been entered in the County Auditor's Bond Register, and the tax levy required by law has been made.

Section 5. Authentication of Transcript.

5.01. City Proceedings and Records. The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to the attorneys approving the Bonds, certified copies of proceedings and records of the City relating to the Bonds and to the financial condition and affairs of the City, and such other certificates, affidavits and transcripts as may be required to show the facts within their knowledge or as shown by the books and records in their custody and under their control, relating to the validity and marketability of the Bonds, and such instruments, including any heretofore furnished, will be deemed representations of the City as to the facts stated therein.

5.02. No Official Statement or Prospectus. It is determined that no official statement or prospectus has been prepared or circulated by the City in connection with the sale of the Bonds and that the Purchaser has made its own investigations concerning the City as set forth in an investment letter of even date, receipt of which is hereby acknowledged.

Section 6. Tax Covenant.

6.01. Tax-Exempt Bonds. The City covenants and agrees with the holders from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bonds to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder, in effect at the time of such actions, and that it will take or cause its officers, employees or agents to take, all affirmative action within its power that may be necessary to ensure that such interest will not become subject to taxation under the Code and applicable Treasury Regulations, as presently existing or as hereafter amended and made applicable to the Bonds.

6.02. Rebate. The City will comply with requirements necessary under the Code to establish and maintain the exclusion from gross income of the interest on the Bonds under Section 103 of the Code, including without limitation requirements relating to temporary periods for investments, limitations on amounts invested at a yield greater than the yield on the Bonds, and the rebate of excess investment earnings to the United States if the Bonds (together with other obligations reasonably expected to be issued in calendar year 2017) exceed the small-issuer exception amount of \$5,000,000.

6.03. Not Private Activity Bonds. The City further covenants not to use the proceeds of the Bonds or to cause or permit them or any of them, or the Improvements, to be used, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

6.04. Qualified Tax-Exempt Obligations. In order to qualify the Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code, the City makes the following factual statements and representations:

- (a) the Bonds are not "private activity bonds" as defined in Section 141 of the Code;
- (b) the City designates the Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code;
- (c) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds which will be issued by the City (and all subordinate entities of the City) during calendar year 2017 will not exceed \$10,000,000; and
- (d) not more than \$10,000,000 of obligations issued by the City during calendar year 2017 have been designated for purposes of Section 265(b)(3) of the Code.



6.05. Procedural Requirements. The City will use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designations made by this section.

Section 7. No Requirement of Continuing Disclosure. The Purchaser need not comply with the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule"). Consequently, the City will not enter into any undertaking to provide continuing disclosure of any kind with respect to the Bonds.

Section 8. Defeasance. When all of the Bonds and all interest thereon have been discharged as provided in this section, all pledges, covenants and other rights granted by this resolution to the holders of the Bonds will cease, except that the pledge of the full faith and credit of the City for the prompt and full payment of the principal of and interest on the Bonds will remain in full force and effect. The City may discharge the Bonds which are due on any date by depositing with the Registrar on or before that date a sum sufficient for the payment thereof in full. If any Bond should not be paid when due, it may nevertheless be discharged by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

The motion for the adoption of the foregoing resolution was duly seconded by Member Mueske, and upon vote being taken thereon, the following voted in favor thereof: Council Member Audrey Nelsen, Ron Christianson, Kathy Schwantes, Fernando Alvarado, Julie Asmus, Shawn Mueske, and Andrew Plowman

and the following voted against the same: None

whereupon said resolution was declared duly passed and adopted by the City Council of the City of Willmar on November 20, 2017.

Approved:

s/s Marv Calvin

Mayor

Attested:

s/s Judy Thompson

City Clerk

**EXHIBIT A**  
**FORM OF BOND**

No. R-\_\_\_\_\_ UNITED STATES OF AMERICA \$\_\_\_\_\_  
STATE OF MINNESOTA  
COUNTY OF KANDIYOHI  
CITY OF WILLMAR

GENERAL OBLIGATION IMPROVEMENT BOND, SERIES 2017A

<u>Rate</u>	<u>Maturity</u>	<u>Date of Original Issue</u>
_____ %	February 1, 20__	_____ 1, 2017

REGISTERED OWNER:

The City of Willmar, Minnesota, a duly organized and existing municipal corporation in Kandiyohi County, Minnesota (the "City"), acknowledges itself to be indebted and for value received hereby promises to pay to \_\_\_\_\_, or registered assigns, in the manner hereinafter set forth, the principal sum of \$\_\_\_\_, on the February 1 in the years and in installment amounts as follows:

<u>Date</u>	<u>Installment</u>	<u>Date</u>	<u>Installment</u>
_____	_____	_____	_____

with interest thereon from the date hereof at the annual rate of \_\_\_% per annum, payable February 1 and August 1 in each year, commencing February 1, 20\_\_. For the prompt and full payment of such principal and interest as the same respectively become due, the full faith and credit and taxing powers of the City have been and are hereby irrevocably pledged.

The City may elect on February 1, 20\_\_, and on any day thereafter to prepay Bonds due on or after February 1, 20\_\_. Redemption may be in whole or in part and if in part, at the option of the City and in such manner as the City will determine. Prepayments will be at a price of par plus accrued interest.

This Bond is one of an issue in the aggregate principal amount of \$1,100,000 all of like original issue date and tenor, except as to number and redemption privilege, all issued pursuant to a resolution adopted by the City Council on November 20, 2017 (the "Resolution"), for the purpose of providing money to finance certain local improvements, pursuant to and in full conformity with, the City's Charter, the Constitution and the laws of the State of Minnesota, including Minnesota Statutes, Chapters 429 and 475 and the principal hereof and interest hereon are payable in part from special assessments levied against property specially benefited by local improvements, and in part from ad valorem taxes for the City's share of the cost of the improvements, as set forth in the Resolution to

which reference is made for a full statement of rights and powers thereby conferred. The full faith and credit of the City are irrevocably pledged for payment of this Bond and the City Council has obligated itself to levy additional ad valorem taxes on all taxable property in the City in the event of any deficiency in special assessments and taxes pledged, which taxes may be levied without limitation as to rate or amount. The Bonds of this series are issued only as fully registered Bonds in denominations of \$100,000 plus any integral multiple of \$1,000 in excess thereof.

The City Council has designated the issue of Bonds of which this Bond forms a part as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”) relating to disallowance of interest expense for financial institutions and within the \$10 million limit allowed by the Code for the calendar year of issue.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the principal office of the Finance Director of the City of Willmar, Minnesota (the “Registrar”), by the registered owner hereof in person or by the owner’s attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or the owner’s attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar will be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the City’s Charter, the Constitution and laws of the State of Minnesota to be done, to exist, to happen and to be performed preliminary to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done, do exist, have happened and have been performed as so required, and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory, or charter limitation of indebtedness.

This Bond is not valid or obligatory for any purpose or entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon has been executed by the Registrar by manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the City of Willmar, Kandiyohi County, Minnesota, by its City Council, has caused this Bond to be executed on its behalf by the facsimile or manual signatures of the Mayor and City Clerk and has caused this Bond to be dated as of the date set forth below.

Dated: \_\_\_\_\_, 2017

CITY OF WILLMAR,  
MINNESOTA

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

PROVISIONS AS TO REGISTRATION

The ownership of the principal of and interest on the within Bond has been registered on the books of the Registrar in the name of the person last noted below.

<u>Date of Registration</u>	<u>Registered Owner</u>	<u>Signature of City Finance Director</u>
_____, 2017	_____ Federal ID #	_____

STATE OF MINNESOTA  
COUNTY OF KANDIYOHI

COUNTY AUDITOR'S  
CERTIFICATE AS TO  
TAX LEVY AND  
REGISTRATION

I, the undersigned County Auditor of Kandiyohi County, Minnesota, hereby certify that a resolution adopted by the City Council of the City of Willmar, Minnesota, on November 20, 2017, and the accompanying Certificate of Pricing Committee levying taxes for the payment of its \$\_\_\_\_\_ General Obligation Improvement Bonds, Series 2017A, dated as of date of delivery, has been filed in my office and said obligations have been registered on the register of obligations in my office and that such tax has been levied as required by law.

WITNESS My hand and official seal this \_\_\_\_ day of November, 2017.

(SEAL)

\_\_\_\_\_  
County Auditor  
Kandiyohi County, Minnesota

\_\_\_\_\_  
Deputy

**RESOLUTION NO. 17-134**

**VACATING A PORTION OF A UTILITY EASEMENT**

Motion By: Christianson

Second By: Asmus

WHEREAS, the vacation of that portion of the utility easement as described below was petitioned by the Kwik Trip:

Legal description to vacate a portion of the utility easement as follows: The westerly 5' of Lot 2, Block 1, First Minnesota Addition

WHEREAS, the proposed vacation has been approved by the Planning Commission of the City of Willmar; and

WHEREAS, mailed notice of the proposed vacation was sent to Willmar Municipal Utilities and affected private utility companies as per by Subdivision 6 of Section 9.01 of Subdivision 4.A. of the Willmar City Charter; and

WHEREAS, the City Council of Willmar finds that it is in the best interest of the City of Willmar to vacate that portion of said utility easement;

NOW, THEREFORE, BE IT RESOLVED, that the above described portion of dedicated utility easement be, and hereby is, vacated.

BE IT FURTHER RESOLVED that a certified copy of the Resolution be filed with the Kandiyohi County Recorder on or after the 20th day of November, 2017.

Dated this 20th day of November, 2017.

s/s Marv Calvin  
MAYOR

Attest:

s/s Judy Thompson  
CITY CLERK

**RESOLUTION NO. 17-135**

**A RESOLUTION ENTERING INTO AN AGREEMENT FOR THE PURCHASE AND INSTALLATION OF PLAYGROUND EQUIPMENT TO MINNESOTA/WISCONSIN PLAYGROUND IN THE AMOUNT OF \$101,285.46.**

Motion By: Mueske Second By: Plowman

BE IT RESOLVED by the City Council of the City of Willmar, a Municipal Corporation of the State of Minnesota, the bid of Minnesota/Wisconsin Playground for the purchase and installation of playground equipment is accepted, and the Mayor and City Administrator of the City of Willmar are hereby authorized to enter into an agreement with the bidder for the terms and consideration of the contract in the amount of \$101,285.46.

Dated this 20th day of November, 2017

s/s Marv Calvin  
Mayor

Attest:

s/s Judy Thompson  
City Clerk

**RESOLUTION NO. 17-136**

**A RESOLUTION AWARDING THE CONTRACT FOR THE MILLER PARK IMPROVEMENTS TO DUININCK, INC. IN THE AMOUNT OF \$298,219.61.**

Motion By: Plowman Second By: Nelsen

BE IT RESOLVED by the City Council of the City of Willmar, a Municipal Corporation of the State of Minnesota, the bid of Duinck, Inc. for the Miller Park Improvements is accepted, and the Mayor and City Administrator of the City of Willmar are hereby authorized to enter into an agreement with the bidder for the terms and consideration of the contract in the amount of \$298,219.61.

Dated this 20th day of November, 2017

s/s Marv Calvin  
Mayor

Attest:

s/s Judy Thompson  
City Clerk