

SECOND AMENDMENT TO LOAN AGREEMENT

THIS SECOND AMENDMENT TO LOAN AGREEMENT (this “Amendment”) effective as of June [], 2017 (the “Effective Date”), among the **KENAI PENINSULA BOROUGH** (the “Issuer”), **SOUTHCENTRAL FOUNDATION** (the “Borrower”), and **WELLS FARGO BANK, NATIONAL ASSOCIATION** (the “Purchaser”).

WITNESSETH:

WHEREAS, the Issuer, the Borrower and the Purchaser have previously entered into the Loan Agreement, dated as of December 30, 1998, as amended by that certain Universal Amendment, dated October 29, 2007 (as so amended, the “Original Loan Agreement”), respecting the Issuer’s \$8,500,000 Revenue Bond, 1998 (Southcentral Foundation Project) (the “Bonds”); and

WHEREAS, the Issuer, the Borrower and the Purchaser wish to amend the provisions of the Original Loan Agreement as herein provided;

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

INTENTION OF PARTIES, LOAN AGREEMENT PROVISIONS

The Issuer and the Purchaser have entered into this Amendment pursuant to Section 9.3 of the Original Loan Agreement to amend their rights and obligations set forth in the Original Loan Agreement. The terms of the Original Loan Agreement, as amended by this Amendment (as so amended, the “Loan Agreement”), shall govern the rights and obligations of the Issuer, the Borrower and the Purchaser in connection with the transactions contemplated by the Loan Agreement. Capitalized terms used but not defined in this Amendment shall have the respective meanings assigned thereto in the Original Loan Agreement.

ARTICLE II

AMENDMENTS

Section 2.01. Amendments to Exhibit A of the Original Loan Agreement. Exhibit A to the Original Loan Agreement shall be amended as follows by deleting the paragraph under the heading “Interest Rate” therein and replacing it with the following:

“Variable Rate equal to the LIBOR Index Rate (as defined in the Bond).”

Section 2.02. Amendments to Article II of the Original Loan Agreement. Article II of the Original Loan Agreement shall be amended as follows by adding the following sections thereto:

Section 2.5 Authorized Denominations. The Bonds shall be issued as fully registered bonds without coupons in Authorized Denominations. Any partial optional redemption, transfer or exchange of the Bonds shall be in an Authorized Denomination, provided that any Bond or portion thereof remaining is also in an Authorized Denomination. “Authorized Denomination” means (a) during any Short-Term Rate Period or any Medium-Term Rate Period, \$100,000 and multiples of \$5,000 in excess thereof; (b) during any Fixed Rate Period, \$5,000 and integral multiples thereof; (c) during any Index Interest Rate Period, \$100,000 and multiples of \$5,000 in excess thereof; and (d) during any Direct Purchase Period, regardless of the Rate Period, \$250,000 and multiples of \$0.01 in excess thereof or, if less, the Principal Amount.

Section 2.6 Transfer Restrictions. The Bonds may only be transferred in Authorized Denominations to (x) an affiliate of a registered owner of the Bonds, (y) a trust or custodial arrangement established by a registered owner of the Bonds or one of its affiliates, the owners of the beneficial interests in which are limited to qualified institutional buyers, as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “1933 Act”), or (z) to a Person that is a qualified institutional buyer that is a commercial bank having a combined capital and surplus, determined as of the date of any transfer pursuant to this Section, of \$5,000,000,000 or more that has executed and delivered to the Purchaser, the Issuer and the Company an Investor Letter in the form of Exhibit B attached hereto. As long as Wells Fargo Bank, National Association, or its affiliate, is the owner of the Bonds, such bonds shall be issued in fully-registered physical form and not be subject to any Book Entry System.

Section 2.03. Execution of New Bond. On the Effective Date, the Original Bond shall be surrendered to the Issuer for cancellation the Issuer shall execute and deliver, and the Purchaser shall authenticate, a replacement bond in the form of Exhibit A hereto registered in the name of Wells Fargo Bank, National Association, and the Bonds shall not be subject to the Book-Entry System.

Section 2.04. Amendment to Exhibit C of the Original Loan Agreement. The Original Loan Agreement is hereby amended by adding Exhibit C thereto in the form attached hereto as Exhibit B.

ARTICLE III

FULL FORCE AND EFFECT

The Original Loan Agreement is hereby amended to the extent provided in this Amendment and, except as specifically provided herein, the Original Loan Agreement shall remain in full force and effect in accordance with its terms.

ARTICLE IV

GOVERNING LAW

THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AMENDMENT SHALL BE GOVERNED AS PROVIDED IN SECTION 9.8 OF THE ORIGINAL LOAN AGREEMENT.

ARTICLE V

HEADINGS

Section headings in this Amendment are included herein for convenience of reference only and shall not have any effect for purposes of interpretation or construction of the terms of this Amendment.

ARTICLE VI

COUNTERPARTS

This Amendment may be signed in any number of counterpart copies, but all such copies shall constitute one and the same instrument.

ARTICLE VII

REPRESENTATIONS

Each party hereto hereby represents and warrants to the other that this Amendment has been duly authorized and validly executed by it and that the Loan Agreement as hereby amended constitutes its valid obligation enforceable in accordance with its terms. The representations and warranties contained in the Original Loan Agreement are hereby remade by each party hereto as of the Effective Date. For the avoidance of doubt, all references in such representations and warranties to defined terms shall be deemed to refer to such terms as defined in the Original Loan Agreement, as amended by this Amendment.

The Purchaser hereby certifies that it is the legal, registered and beneficial owner of 100% in aggregate principal amount of the outstanding Bonds. The undersigned further hereby irrevocably waives any notice required to have been received by it and any and all other requirements which may otherwise be required as a condition to the execution, delivery and/or effectiveness of the Amendment or the amendments effected thereby.

ARTICLE VIII

CONDITIONS PRECEDENT

The parties hereto agree that this Amendment shall become effective only upon the occurrence of each of the following conditions:

(a) copies of the resolutions of the governing body of the Borrower approving the execution and delivery of this Amendment and the other matters contemplated hereby and thereby, certified by its Secretary as being true and complete and in full force and effect on the Effective Date;

(b) the organizational documents of the Borrower, certified to be in full force and effect as of a date not more than 30 days preceding the Effective Date by an appropriate official of the State and certified by its Secretary to be in full force and effect on the Effective Date;

(c) certificates issued by appropriate officials of the State, issued no more than 30 days preceding the Effective Date, stating that the Borrower is in good standing in such jurisdiction;

(d) executed originals of this Amendment and the replacement Bond;

(e) an Investor Letter, dated as of the Effective Date, substantially in the form attached hereto as Exhibit B, duly executed by the Purchaser;

(f) the following opinions, addressed to the Purchaser or on which the Purchaser is otherwise expressly authorized to rely:

(i) from counsel to the Borrower, as to the due authorization, execution and delivery of this Amendment, its validity, binding effect and enforceability, and such other customary matters as the Purchaser may reasonably request;

(ii) from Bond Counsel to the Issuer, in customary form, an opinion that the execution and delivery of this Amendment and the consummation of the transactions contemplated hereby (A) are permitted by the Loan Agreement and the Act, (B) will not adversely affect the exclusion of interest on the Bonds from gross income of the owners thereof for purposes of federal income taxation, and (C) will not adversely affect the qualification of the Bonds as “qualified tax-exempt obligations” under Section 265(b)(3) of the Code; and

(g) on or prior to the Effective Date, the Borrower shall have paid all costs and expenses of the Purchaser (including fees paid by the Purchaser to third parties and allocated costs of personnel of the Purchaser) in connection with the execution and delivery of this Amendment and any other documents delivered in connection with any of the foregoing including, but not limited to, the fees and expenses of counsel for the Purchaser, Bond Counsel and all costs associated with any title/lien searches, flood insurance searches, title insurance, appraisals, environmental due diligence and recordation.

ARTICLE IX

ELECTRONIC SIGNATURES

The parties agree that the electronic signature of a party to this Amendment, including all acknowledgements, authorizations, directions, waivers and consents thereto (or any amendment or supplement thereto) shall be as valid as an original signature of such party and shall be effective to bind such party to this Amendment. The parties agree that any electronically signed document (including this Amendment) shall be deemed (a) to be “written” or “in writing,” (b) to have been signed, and (c) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, “electronic signature” means a manually signed original signature that is then transmitted by electronic means; “transmitted by electronic means” means sent in the form of a facsimile or sent via the Internet as a pdf (portable document format) or other replicating image attached to an e-mail message; and, “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature. Paper copies or “printouts,” if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed, sealed and delivered in their names and on their behalf by their respective duly authorized representatives, all as of the day and year first above written.

KENAI PENINSULA BOROUGH, as Issuer

Attest:

Clerk

[SEAL]

By _____
Mike Navarre, Borough, Mayor

SOUTHCENTRAL FOUNDATION, as
Borrower

By _____
Lee Olson, Chief Financial Officer

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Purchaser

By _____
_____, Vice President

EXHIBIT A

BOND FORM

THIS BOND MAY NOT BE TRANSFERRED EXCEPT IN ACCORDANCE
WITH OF THE LOAN AGREEMENT.

UNITED STATES OF AMERICA

**KENAI PENINSULA BOROUGH
REVENUE BOND, 1998
(SOUTHCENTRAL FOUNDATION PROJECT)**

No. R-[__]

REGISTERED OWNER: WELLS FARGO BANK, NATIONAL ASSOCIATION

The Kenai Peninsula Borough (the “Issuer”), a municipal corporation of the State of Alaska, acknowledges itself indebted to, and for value received, hereby promises to pay (but only out of the sources hereinafter mentioned) to Wells Fargo Bank, National Association, or registered assigns, the principal sum of \$[____], plus interest on said principal sum from the date hereof calculated at the LIBOR Index Rate. The Purchaser shall determine the LIBOR Index Rate on each Computation Date, and such rate shall become effective on the LIBOR Index Reset Date immediately succeeding such Computation Date and interest shall accrue each day commencing on and including the Issue Date to but excluding the Maturity Date. If the LIBOR Index Rate is not determined by the Purchaser on the Computation Date, the Bonds shall continue to bear interest at the LIBOR Index Rate in effect on the immediately preceding LIBOR Index Reset Date until the Purchaser next determines the LIBOR Index Rate as required hereunder. The LIBOR Index Rate for the period commencing on and including the Issue Date until but excluding May 1, 2017, shall be equal to ____%. Promptly following the determination of the LIBOR Index Rate, the Purchaser shall give notice thereof to the Issuer and the Borrower. This Bond shall be payable on the first day of each month in an amount sufficient to provide payment of principal hereof through June 1, 2021 (the “Maturity Date”) pursuant to Schedule I attached hereto, plus a rate of interest hereon at the rate or rates described in the foregoing sentences; and provided further that all remaining principal plus accrued interest shall be due and payable on the Maturity Date. The following defined terms are applicable to this Bond:

“*Applicable Factor*” means [____%].

“*Applicable Spread*” means [_____] basis points (____%).

“*LIBOR Index*” means, for any date of determination, the per annum rate of interest determined on the basis of the rate on deposits in United States dollars of amounts equal to or comparable to the principal amount, offered for a term of one month, which rate appears on the display designated as Reuters Screen LIBOR01 Page (or any successor page), determined as of

approximately 11:00 a.m., London time, on each Computation Date for effect on the immediately succeeding LIBOR Index Reset Date, or if such rate is not available, another rate determined by the Purchaser of which the Borrower has received written notice. Notwithstanding anything herein to the contrary, during any period of time while the LIBOR Index, determined as provided above, would be less than 0.0%, the LIBOR Index shall be deemed to be 0.0%.

“LIBOR Index Rate” means a per annum rate of interest established on each Computation Date equal to the sum of (i) the Applicable Spread plus (ii) the product of (1) the LIBOR Index multiplied by (2) the Applicable Factor. The LIBOR Index Rate shall be rounded upwards to the fifth decimal place.

“LIBOR Index Reset Date” means the first Business Day of each month.

From and after 45 days after the occurrence of a default under the Loan Agreement (defined below), interest on this Bond shall accrue at a rate per annum equal to the rate stated above, plus 2.0%. Interest on this Bond also shall be subject to adjustment as provided in the Loan Agreement (defined below). A late charge equal to 3.0% of the payment amount shall be added to any installment payment not received on or before the tenth day after the due date for that installment payment. Both principal of and interest on this Bond shall be payable in lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Installments of principal and interest on this Bond shall be payable on the due date in immediately available funds at the principal office of Wells Fargo Bank, National Association in Anchorage, Alaska.

This Bond is authorized by the Issuer and is issued pursuant to a Loan Agreement, dated as of December 30, 1998, as amended by that certain Universal Amendment, dated October 29, 2007, as amended by that certain Second Amendment to Loan Agreement, dated as of May [___], 2017 (as amended, the “Loan Agreement”), among the Issuer, Southcentral Foundation, as borrower (the “Borrower”), and Wells Fargo Bank, National Association, as purchaser, to accomplish the public purpose of the Issuer by providing funds to pay the costs of constructing Phase II of the Anchorage Native Primary Care Center in Anchorage, Alaska (the “Project”). This Bond is payable solely from payments to be made by the Borrower under the Loan Agreement, and there shall be no other recourse under this Bond against the Issuer or any property now or hereafter owned by it. The Issuer has, concurrently with the issue hereof, assigned the Loan Agreement to the Registered Owner of the Bond.

THIS BOND IS A SPECIAL OBLIGATION OF THE ISSUER. THE PRINCIPAL AND INTEREST ON THIS BOND ARE PAYABLE SOLELY FROM THE AMOUNTS PAYABLE BY THE BORROWER UNDER THE LOAN AGREEMENT. THIS BOND DOES NOT CONSTITUTE AN INDEBTEDNESS OR OTHER LIABILITY OF TH ISSUER, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER IS PLEDGED FOR THE PAYMENT OF THIS BOND.

This Bond is subject to optional and mandatory redemption prior to its maturity as provided in the Loan Agreement.

This Bond has been designated by the Issuer as a “qualified tax exempt obligation” as the term is defined by Section 265(b)(3) of the Internal Revenue Code of 1986.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and statutes of the State of Alaska, and the ordinances of the Issuer to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, exist, have happened and have been performed in due time, form and manner as required by law and that the series of Bonds of which this is one, together with all indebtedness of the Issuer, is within every debt and other limit prescribed by law.

The Bond is issuable as a fully registered bond in the principal amount of \$250,000 and multiples of \$5,000 in excess thereof (an “Authorized Denomination”). This Bond, upon surrender hereof with a written instrument of transfer executed by the Owner hereof or such Owner’s attorney duly authorized in writing, may, at the option of the Owner hereof, be exchanged for an equal aggregate principal amount of Bonds of the same aggregate principal amount and tenor as the Bond being exchanged and of any Authorized Denomination. This Bond may be registered as transferred as provided in the Loan Agreement, subject to certain limitations therein contained, and only upon surrender of this Bond for registration of transfer accompanied by a written instrument of transfer (in substantially the form of the assignment attached hereto) duly executed by the Owner hereof or his/her duly authorized attorney. Thereupon, one or more new Bonds of any Authorized Denomination and in the same aggregate principal amount and tenor as the Bond surrendered (or for which registration of transfer has been effected) will be issued to the designated transferee or transferees.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Kenai Peninsula Borough has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of the Executive Director of the Issuer and its official seal to be impressed or imprinted hereon and attested by manual or facsimile signature of the Secretary of the Issuer, all as of the Issue Date referenced above.

KENAI PENINSULA BOROUGH

Attest:

By _____
Name _____
Title _____

By _____
Name _____
Title _____

[SEAL]

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ (Please print or typewrite the Name and Address, including the Zip Code of the Transferee, and the federal taxpayer identification or social security number) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration and transfer thereof, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature on this Assignment must correspond with the name as it appears upon the face of the within-mentioned Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed

By: _____

NOTICE: Signature(s) must be guaranteed by a member firm of the STAMP, SEMP or MSP signature guaranty medallion program.

[End of Form of Bond]

SCHEDULE I
PRINCIPAL REPAYMENT SCHEDULE

EXHIBIT B
FORM OF INVESTOR LETTER

[Date of Purchase]

Kenai Peninsula Borough
Soldotna, Alaska

Southcentral Foundation
Anchorage, Alaska

Birch, Horton, Bittner & Cherot
Anchorage, Alaska

\$5,800,000
Kenai Peninsula Borough
Revenue Bond, 1998
(Southcentral Foundation Project)

Ladies and Gentlemen:

[NAME OF PURCHASER] (the “Purchaser”) has agreed to purchase the above referenced bonds (the “Bonds”) in the amount of [AMOUNT] which were issued in the original aggregate principal amount of \$5,800,000 by the Kenai Peninsula Borough (the “Issuer”) bearing the Index Interest Rate as set forth in the Loan Agreement, dated as of December 30, 1998, as amended by that certain Universal Amendment, dated October 29, 2007, as amended by that certain Second Amendment to Loan Agreement, dated as of June [___], 2017 (as amended, the “Loan Agreement”), by and among the Issuer, Southcentral Foundation, as borrower (the “Borrower”), and Wells Fargo Bank, National Association, as purchaser (the “Purchaser”). All capitalized terms used herein, but not defined herein, shall have the respective meanings set forth in the Loan Agreement. The undersigned, an authorized representative of the Purchaser, hereby represents to you that:

1. The Purchaser has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Bonds.
2. The Purchaser has authority to purchase the Bonds and to execute this letter and any other instruments and documents required to be executed by the Purchaser in connection with the purchase of the Bonds.
3. The undersigned is a duly appointed, qualified and acting representative of the Purchaser and is authorized to cause the Purchaser to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the Purchaser.

4. The Purchaser is (a) an affiliate of a registered owner of the Bonds; (b) a trust or other custodial arrangement established by a registered owner of the Bonds or one of its affiliates, the owners of the beneficial interests in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “1933 Act”); or (c) a qualified institutional buyer that is a commercial bank having a combined capital and surplus of \$5,000,000,000 or more.

5. The Purchaser understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Bonds. The Purchaser has made its own inquiry and analysis with respect to the Issuer, the Borrower, the Project, the Bonds and the security therefor, and other material factors affecting the security for and payment of the Bonds.

6. The Purchaser acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the Borrower, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Issuer, the Borrower, the Project, the Bonds and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Bonds.

7. The Purchaser understands that the Bonds (a) are not registered under the 1933 Act and are not registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) are not listed on any stock or other securities exchange, and (c) carry no rating from any credit rating agency.

8. The Bonds are being acquired by the Purchaser for investment for its own account and not with a present view toward resale or distribution; provided, however, that the Purchaser reserves the right to sell, transfer or redistribute the Bonds in Authorized Denominations, but agrees that any such sale, transfer or distribution by the Purchaser shall be to a Person:

(a) that is an affiliate of a registered owner of the Bonds;

(b) that is a trust or other custodial arrangement established by a registered owner of the Bonds or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers; or

(c) that is a qualified institutional buyer that is a commercial bank having a combined capital and surplus of \$5,000,000,000 or more who executes an investor letter substantially in the form of this letter.

[PURCHASER]

By _____
Name _____
Title _____