

By: Bond Counsel  
Adopted: February 13, 2017  
Vote: Burney, Dryden, Graham, Harvey, Ledford, O'Barr in favor

**City of Wasilla  
Resolution Serial No. 17-07**

**A Resolution Of The Wasilla City Council Authorizing The Issuance And Sale Of Not To Exceed \$55,000,000 Revenue Bonds (Southcentral Foundation Project), Series 2017; The Execution And Delivery Of A Financing Agreement And An Assignment Agreement; The Execution And Delivery Of Other Documents Necessary Or Convenient To Carry Out The Terms Hereof; And Providing For Related Matters.**

WHEREAS, Southcentral Foundation (the "Borrower"), an Alaska nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), has requested that the City of Wasilla (the "City") assist it with providing financing for the purpose of the acquisition, construction and equipping of capital improvements at 4441 Diplomacy Drive, Anchorage, Alaska, consisting of a five-story medical office building and a parking garage to be owned by the Borrower (the "Project"), for the purpose of providing services to residents of Southcentral Alaska communities, including the City; and

WHEREAS, the City is authorized by Section 29.47.390 of the Alaska Statutes to issue obligations and loan the proceeds to finance any project that serves a public purpose of the City; and

WHEREAS, the City has determined that the Project serves a public purpose of the City because it supports the provision by the Borrower of services to residents of the City, and that the financing of the same through non-recourse revenue bonds issued by the City is in the best interest, and will promote the public purposes, of the City; and

WHEREAS, the City will loan the proceeds of the Bonds to the Borrower pursuant to a Financing Agreement (the "Financing Agreement") among the City, the Borrower and Wells Fargo Bank, National Association (the "Lender") under the terms of which the Borrower will be

obligated to pay an amount sufficient to pay when due the principal of, premium, if any, and interest on the Bonds, together with all expenses of the City properly incurred therewith; and

WHEREAS, the obligations of the Borrower under the Financing Agreement will be secured by a Deed of Trust from the Borrower as trustor with the City as beneficiary (the "Deed of Trust"), and the City will assign its interest under the Deed of Trust to the Lender pursuant to an Assignment Agreement (the "Assignment") between the City and the Lender; and

WHEREAS, there have been presented to the City the forms of the following documents which the City proposes to enter into connection with the issuance of the Bonds:

1. The form of the Financing Agreement; and
2. The form of the Assignment; and

WHEREAS, it appears that each of the instruments referred to above, which now is before the City, is in appropriate form and is an appropriate instrument for the purposes intended.

NOW, THEREFORE, BE IT RESOLVED BY THE WASILLA CITY COUNCIL, that:

**Section 1.** In order to provide funds for the acquisition, construction, and equipping of the Project, the issuance and delivery of the Bonds in the principal amount necessary for such purpose, but in no event to exceed \$55,000,000, and in substantially the form and content set forth in the Financing Agreement now before this meeting, subject to appropriate insertions and revisions, hereby are in all respects authorized, approved and confirmed, and the Mayor and Deputy Mayor, and the Clerk and Deputy Clerk of the City hereby are authorized, empowered and directed to execute the Bonds (either by manual or facsimile signature), seal the Bonds with the official seal of the City (manually or by facsimile), and deliver the Bonds on behalf of the City to the Lender.

**Section 2.** The Bonds shall not constitute an indebtedness or other liability of the City, but shall be payable solely from payments to be made by the Borrower under the Financing Agreement. Neither the faith and credit nor the taxing power of the City shall be pledged to the payment of the Bonds.

**Section 3.** Each of the Mayor, the Deputy Mayor and the Finance Director acting alone is hereby authorized to determine, in consultation with the Borrower and the Lender, the series designation, aggregate principal amount, maturity amounts, sinking fund installments, if any, interest rates, yields, dated date, principal and interest payment dates, redemption terms, if any, for the Bonds, and other details of the Bonds at the time of execution of the Financing Agreement.

**Section 4.** The Finance Director and Clerk each acting alone hereby is appointed as hearing officer to conduct the public hearing with respect to the Project and the Bonds that is required by Section 147(f) of the Code. After such hearing has been held, the Mayor or his designee is hereby authorized to approve, for the purpose of satisfying the requirements of Section 147(f) of the Code, the Bonds and the use of the proceeds of the Bonds to finance the costs of the Project.

**Section 5.** The form and content of the Financing Agreement and the Assignment hereby are in all respects authorized, approved and confirmed, and the Mayor, the Deputy Mayor and the Finance Director, each acting alone hereby is authorized, empowered and directed to execute and deliver to the counterparties each said document on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as shall to such officer seem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications,

additions or deletions therein from the form and content of the said documents now before this meeting, and from and after the execution and delivery of the said documents, the Mayor, the Deputy Mayor, the Finance Director, the Clerk and the Deputy Clerk, each acting alone hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the said documents as executed.

**Section 6.** The Mayor, the Deputy Mayor, the Finance Director, the Clerk and the Deputy Clerk or any other person authorized by the City each acting alone hereby is authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents, opinions or other papers and perform all other acts as they may deem necessary or appropriate order to implement and carry out the intent and purposes of this resolution, including a tax certificate and agreement with respect to maintaining the tax-exemption of interest on the Bonds.

**Section 7.** The provisions of this resolution hereby are declared to be separable, and if any section, phrase or provision hereof shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases, or provisions hereof.

**Section 8.** This resolution shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on February 13, 2017.

  
BERT L. COTTLE, Mayor

ATTEST:

  
JAMIE NEWMAN, MMC, City Clerk

[SEAL]




**CITY COUNCIL LEGISLATION STAFF REPORT**

**Resolution Serial No. 17-07: Authorizing the Issuance and Sale of Not to Exceed \$55,000,000 Revenue Bonds (Southcentral Foundation Project), Series 2017; the Execution and Delivery of a Financing Agreement and an Assignment Agreement; the Execution and Delivery of Other Documents Necessary or Convenient to Carry out the Terms Hereof; and Providing for Related Matters.**

Originator: T. Tankersley for Bond Counsel

Date: 2/2/2017

Agenda of: 2/13/2017

Route to:	Department Head	Signature	Date
X	Finance Director		2/2/17
X	Deputy Administrator		2/2/17
X	City Clerk		2/2/17

Reviewed by Mayor Bert L. Cottle:

 2/2/2017

**Fiscal Impact:**  yes or  no

- Attachments:** Financing Agreement (70 pages)  
 Assignment Agreement (5 pages)  
 Contracts and Permits Assignment Agreement (10 pages)  
 Resolution Serial No. 17-07 (5 pages)

**Summary Statement:** Resolution Serial No. 17-07 authorizes the issuance of not to exceed \$55,000,000 of revenue bonds (the "Bonds"). The proceeds of the Bonds will be loaned (the "Loan") to Southcentral Foundation ("Southcentral"), a 501(c)(3) nonprofit corporation, which offers a wide range of health and wellness services for Alaska Native and American Indian people, as well as other community members, living in Anchorage and the Matanuska-Susitna Borough. Wells Fargo Bank, National Association ("Wells Fargo") will purchase the Bonds from the City.

Southcentral will use the Loan proceeds to finance part of the cost of acquisition and construction of (i) a five-story approximately 90,000 square foot medical office building, including space for children's dental and dental training, obstetrics/gynecology, children's psychiatry and behavioral health, and children's neurological development; and (ii) an approximately 499 space seven-level parking garage; both located in Anchorage. This financing will benefit City residents who use these Southcentral health care facilities.

Under the Internal Revenue Code (the "Code"), the City may issue bonds whose interest is excluded from gross income for federal income tax purposes. The Code also allows the City to issue tax exempt bonds and loan the proceeds to a 501(c)(3) organization such as Southcentral. Because the interest that an investor receives on such a bond is not subject to federal income tax, the investor will accept a lower rate of interest on the bond than on a similar bond whose interest

is taxable. The interest cost savings associated with tax exemption, which can be significant, makes such a use of tax exempt bonds attractive to Southcentral as a borrower. In return for the City acting as issuer of the Bonds and providing Southcentral access to advantageous financing terms, Southcentral will pay the City a fee of \$25,000.

The Council also has been presented with drafts of documents that the City will enter into in connection with the Loan to Southcentral. Under the Financing Agreement among the City, Southcentral and Wells Fargo, the City will issue the Bonds, Wells Fargo will purchase the Bonds from the City, and the City will loan the proceeds of the Bonds to Southcentral. Under the Assignment Agreement between the City and Wells Fargo, the City assigns to Wells Fargo the City's interest in documents that provide security for Southcentral's obligation to repay the Loan.

The resolution, the Financing Agreement and the Bonds provide that the City is obligated to repay the Bonds only from Loan payments from Southcentral. Southcentral will make Loan payments directly to Wells Fargo, and will deal directly with Wells Fargo on matters of Loan administration and compliance with Southcentral's covenants in the Loan documents. Under this financing structure, Wells Fargo has no recourse against the City, but must look only to Southcentral for the payment of the Bonds and the Loan. If Southcentral defaults on its Loan obligations, the City has no liability and there will be no adverse effect on the City's credit.

**Recommended Action:** Adopt Resolution Serial No. 17-07

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**FINANCING AGREEMENT**

by and among

**CITY OF WASILLA,**

**SOUTHCENTRAL FOUNDATION**

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

Relating to:

\$55,000,000  
City of Wasilla  
Revenue Bonds (Southcentral Foundation Project)  
Series 2017

Dated as of February 1, 2017

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## FINANCING AGREEMENT

**THIS FINANCING AGREEMENT** is dated as of February 1, 2017 (this "Agreement"), is made and entered into by and among City of Wasilla (the "Issuer"), Southcentral Foundation (the "Borrower") and Wells Fargo Bank, National Association (the "Purchaser"). All capitalized terms used herein and not otherwise defined shall have the meanings assigned in Section 1.01 and Exhibit A or as otherwise provided in Section 1.02.

### WITNESSETH:

WHEREAS, the Issuer is a first class city organized and validly existing under the laws of the State of Alaska; and

WHEREAS, the Issuer is authorized by Section 29.47.390 of the Alaska Statutes (the "Act") to issue obligations and loan the proceeds to finance any project that serves a public purpose of the Issuer; and

WHEREAS, in furtherance of the public purpose for which the Issuer was created, the Issuer proposes to issue its Revenue Bonds (Southcentral Foundation Project), Series 2017 (the "Bond" or "Bonds") in an aggregate principal amount of \$55,000,000 pursuant to this Agreement, to finance the construction, development, renovation, furnishing and equipping of Borrower's medical office building and parking garage located in Anchorage, Alaska (as further defined below, the "Facilities") to be used by the Borrower and to lend the proceeds of the sale of the Bonds to the Borrower pursuant to the terms and conditions hereof; and

WHEREAS, the Borrower desires to borrow the proceeds of the Bonds upon the terms and conditions set forth in this Agreement; and

WHEREAS, the Purchaser has agreed to purchase the Bonds from the Issuer; and

WHEREAS, all things necessary to make the Bonds, when issued, executed and delivered by the Issuer, to the extent required pursuant to this Agreement, the valid, binding and legal obligations of the Issuer according to the import thereof, except as otherwise stated herein, have been done and performed, and the creation, execution and delivery of this Agreement, and the issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, including the covenants, terms and conditions hereinafter contained, and to induce the Issuer to make the Loan and the Purchaser to purchase the Bonds, the Issuer, the Borrower and the Purchaser agree as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.01. Definitions.** In addition to terms defined at other places in this Agreement, including Exhibit A, the following words and terms as used in this Agreement and the recitals

hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

*“Acquisition”* means, when used with reference to the Facilities, the acquisition, construction, restoration, improvement, renovation, installation, equipping and general development of the Facilities.

*“Act”* has the meaning assigned to such term in the recitals hereto.

*“Act of Bankruptcy”* means any of the following events:

(a) The Borrower (or any other Person obligated, as guarantor or otherwise, to make payments on the Bonds or under the Continuing Covenant Agreement) or an “affiliate” of the Borrower or such other Person as defined in Bankruptcy Code § 101(2) or the Issuer shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the Borrower (or such other Person) or the Issuer or of all or any substantial part of their respective property, (ii) commence a voluntary case under the Bankruptcy Code, (iii) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts or (iv) take any corporate or official action to authorize any of the foregoing; or

(b) A proceeding or case shall be commenced, without the application or consent of the Borrower (or any other Person obligated, as guarantor or otherwise, to make payments on the Bonds or under the Continuing Covenant Agreement) or an “affiliate” of the Borrower or such other Person as defined in Bankruptcy Code § 101(2) or the Issuer in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts, of the Borrower (or any such other Person) or the Issuer, (ii) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the Borrower (or any such other Person) or the Issuer or of all or any substantial part of their respective property or (iii) similar relief in respect of the Borrower (or any such other Person) or the Issuer under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts.

*“Advance Termination Date”* has the meaning assigned to such term in Section 2.04.

*“Advances”* means all advances of the purchase price of the Bonds made by the Purchaser pursuant to the Continuing Covenant Agreement prior to the Advance Termination Date.

*“Affiliate”* has the meaning assigned to such term in the Continuing Covenant Agreement.

*“Agreement”* means this Financing Agreement.

*“Applicable Law”* means (a) all applicable common law and principles of equity and (b) all applicable provisions of all (i) constitutions, statutes, rules, regulations and orders of all Governmental Authorities, (ii) Governmental Approvals and (iii) orders, decisions judgments, writs, injunctions and decrees of all courts (whether at law or in equity) and arbitrators.

“*Approving Opinion*” means, with respect to any action relating to the Bonds, the occurrence of which requires an Opinion of Counsel, an Opinion of Counsel delivered by Bond Counsel to the effect that such action (a) is permitted by this Agreement and the Act, (b) will not adversely affect the exclusion of interest on the Bonds from gross income of the Owners for purposes of federal income taxation.

“*Assignment Agreement*” means the Assignment Agreement, dated as of February 1, 2017, between the Issuer and the Purchaser.

“*Authorized Denomination*” means \$250,000 and multiples of \$0.01 in excess thereof or, if less, the Principal Amount.

“*Bankruptcy Code*” means Title 11 of the United States Code, as amended, and any successor statute or statutes having substantially the same function.

“*Bond*” or “*Bonds*” has the meaning assigned to such term in the recitals hereto.

“*Bond Counsel*” means Birch Horton Bittner & Cherot or any other attorney or firm of attorneys, which is admitted to practice law before the highest court of any state in the United States of America or the District of Columbia and nationally recognized and experienced in legal work relating to the issuance of tax-exempt bonds.

“*Bond Documents*” means, collectively, this Agreement, the Bonds, the Continuing Covenant Agreement, the Deed of Trust, the Assignment Agreement, any Swap and the Tax Regulatory Agreement.

“*Bond Proceeds*” means the principal of the Bonds and any investment earnings thereon less any original issue discount applicable thereto.

“*Borrower*” means Southcentral Foundation, an Alaska nonprofit corporation, and its permitted successors and assigns.

“*Borrower Representative*” means any one of the persons at the time designated to act on behalf of the Borrower by written certificate furnished to the Issuer and the Purchaser containing the specimen signatures of such persons and signed on behalf of the Borrower by the President and Chief Financial Officer of the Borrower.

“*Business Day*” means any day on which (a) the Federal Reserve System is in operation, (b) the New York Stock Exchange is not closed and (c) banks in the State and in the State of New York are open for business.

“*Closing Date*” means February [ ], 2017, subject to the satisfaction of the conditions precedent set forth in Article V.

“*Code*” means the Internal Revenue Code of 1986, as amended, and the rulings and regulations (including temporary and proposed regulations) promulgated thereunder, or any successor statute thereto.

“*Completion Date*” means, with respect to the Project, the earliest of (a) three years after the Issue Date, (b) the expenditure of all Advances, and (c) the date on which the Borrower Representative delivers a completion certificate to the Purchaser pursuant to Section 4.03

“*Contract*” means any indenture, contract, agreement (other than this Agreement), other contractual restriction, lease, mortgage, instrument, certificate of incorporation, charter or by law.

“*Continuing Covenant Agreement*” means the Continuing Covenant Agreement dated as of February 1, 2017 between the Borrower and the Purchaser.

“*Cost(s) of the Project,*” “*Cost*” or “*Costs*” means all costs and allowances which the Issuer or the Borrower may properly pay or accrue for the Project and which, under GAAP, are chargeable to the capital account of the Project or could be so charged either with a proper election to capitalize such costs or, but for a proper election, to expense such costs, including (without limitation) the following costs:

(a) fees and expenses incurred in preparing the Plans and Specifications for the Project (including any preliminary study or planning or any aspect thereof); any labor, services, materials and supplies used or furnished in site improvement and construction; any equipment for the Facilities; and all real and tangible personal property deemed necessary by the Borrower and acquired in connection with the Facilities;

(b) fees for architectural, engineering, supervisory and consulting services;

(c) any fees and expenses incurred in connection with perfecting and protecting title to the Facilities and any fees and expenses incurred in connection with preparing, recording or filing such documents, instruments or financing statements as the Borrower, the Purchaser or the Issuer may deem desirable to perfect or protect the rights of the Issuer or the Purchaser under the Bond Documents;

(d) any legal, accounting or financial advisory fees and expenses, including, without limitation, fees and expenses of Bond Counsel and Counsel to the Issuer, the Borrower and the Purchaser, any fees and expenses of the Issuer, the Purchaser or any rating agency, filing fees, and printing and engraving costs incurred in connection with the authorization, issuance, sale and purchase of the Bonds and the preparation of the Bond Documents and all other documents in connection with the authorization, issuance, sale and purchase of the Bonds;

(e) interest to accrue on the Bonds prior to the Completion Date;

(f) any administrative or other fees charged by the Issuer or reimbursement thereto of expenses in connection with the Project until the Completion Date; and

(g) any other costs and expenses relating to the Project which could constitute costs or expenses for which the Issuer may expend Bond Proceeds under the Act.

“*Counsel*” means an attorney or firm of attorneys, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia, including any Bond Counsel.

“*Deed of Trust*” means the Deed of Trust and Assignment of Rents and Leases dated as of February 1, 2017 from the Borrower, as trustor, for the benefit of the Issuer, as beneficiary, which has been assigned to Purchaser pursuant to the Assignment Agreement, as may be amended from time to time.

“*Default*” means the occurrence of any event or the existence of any condition which constitutes an Event of Default or the occurrence of any event or the existence of any condition which with the giving of notice, the passage of time or both, would constitute an Event of Default.

“*Default Rate*” has the meaning assigned to such term in the Continuing Covenant Agreement.

“*Eligible Funds*” means moneys held by the Issuer or the Purchaser under this Agreement which consist of any moneys if, in the written Opinion of Counsel experienced in bankruptcy law matters (which opinion shall be delivered to the Issuer and the Purchaser at or prior to the time of the deposit of such moneys with the Issuer or the Purchaser and shall be in form and substance satisfactory to the Issuer and the Purchaser), the deposit and use of such moneys will not constitute an avoidable preferential payment pursuant to Section 547 of the Bankruptcy Code, or an avoidable post-petition transfer pursuant to Section 549 of the Bankruptcy Code, recoverable from Owners of the Bonds pursuant to Section 550 of the Bankruptcy Code in the event of an Act of Bankruptcy.

“*Eminent Domain*” means the taking of title to, or the temporary use of, the Facilities or any part thereof pursuant to eminent domain or condemnation proceedings, or by any settlement or compromise of such proceedings, or any voluntary conveyance of the Facilities or any part thereof during the pendency of, or as a result of a threat of, such proceedings.

“*Environmental Laws*” means any federal, state or local law (whether imposed by statute, or administrative or judicial order, or common law), now or hereafter enacted, governing health, safety, industrial hygiene, the environment or natural resources, or Hazardous Materials, including such laws governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, discharge of, or exposure to, Hazardous Materials.

“*Event of Default*” shall have the meaning assigned to such term in Article XII.

“*Facilities*” means, collectively, (a) the real property and improvements located thereon as described in Exhibit E and (b) all materials, supplies, equipment, apparatus and other items of personal property owned by the Borrower and attached to, installed in or used in connection with the real property and improvements described in (a) above, including, without limitation, water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements.

“*Fiscal Year*” has the meaning assigned to such term in the Continuing Covenant Agreement.



“*Full Funding Date*” has the meaning assigned to such term in the Continuing Covenant Agreement.

“*GAAP*” means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States of America, that are applicable to the circumstances as of the date of determination, consistently applied.

“*Governing Body*” means the board, commission, council or other body in which the general legislative powers of the Issuer are vested.

“*Governmental Approvals*” means an authorization, consent, approval, permit, license, certificate of occupancy or an exemption of, a registration or filing with, or a report to, any Governmental Authority.

“*Governmental Authority*” means, to the extent applicable to the Issuer, the Borrower or the Purchaser, the government of the United States of America or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), or any arbitrator, mediator or other Person with authority to bind a party at law.

“*Hazardous Materials*” means any

(a) Substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to any or all of the following statutes and regulations, as the same may be amended from time to time:

(i) The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601, et seq. (“CERCLA”);

(ii) The Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.;

(iii) The Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq. (“RCRA”);

(iv) The Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq.;

(v) The Clean Water Act, 33 U.S.C. Sections 1251, et seq.;

(vi) Title 16 of the Alaska Statutes and Title 5 of the Alaska Administrative Code;

(vii) Title 18 of the Alaska Statutes and Title 7 of the Alaska Administrative Code;

(viii) Title 41 of the Alaska Statutes and Title 11 of the Alaska Administrative Code;

(ix) Title 46 of the Alaska Statutes and Title 18 of the Alaska Administrative Code; or

(x) All other existing and future federal, state and local laws, ordinances, rules, regulations, orders, requirements, and decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material;

(b) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability (i) under any of the statutes or regulations described in clauses (i) through (x) of Section (a) above; (ii) under any statutory or common law theory, including negligence, trespass, intentional tort, nuisance or strict liability; or (iii) under any reported decisions of any state or federal court;

(c) Petroleum, petroleum products and by-products, gasoline or crude oil, other than petroleum and petroleum products contained within regularly operated motor vehicles (including without limitation golf carts and lawn maintenance vehicles); and

(d) Asbestos or asbestos containing materials.

*“Initial Mandatory Purchase Date”* means August 1, 2033.

*“Initial Swap”* means the [IDENTIFY] Swap, which is in effect on the [Issue Date.]

*“Insurance Proceeds”* means the insurance claims under and the proceeds of any and all policies of insurance covering the Facilities or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Facilities, in each case whether now or hereafter existing or arising.

*“Issue Date”* means the date on which the Bonds are delivered to the Purchaser upon original issuance.

*“Issuer”* means the City of Wasilla, a first class city of the State of Alaska, or any successor to its rights and obligations under this Agreement.

*“Issuer Fees and Expenses”* means has the meaning set forth in Section 3.06 hereof.

*“Issuer Issuance Fee”* means \$[ ] payable on the Issue Date.

*“Issuer Representative”* means any one of the persons at the time designated to act on behalf of the Issuer by written certificate furnished to the Borrower and the Purchaser containing the specimen signatures of such persons and signed on behalf of the Issuer by its Mayor.

“*Lien*” means, with respect to any asset, any mortgage, deed of trust, lien, pledge, charge, security interest, hypothecation, assignment, deposit arrangement or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected or effective under Applicable Law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital or finance lease or other title retention agreement relating to such asset and, in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“*Loan*” means the loan from the Issuer to the Borrower of the proceeds of the Bonds, the repayment obligation of which is evidenced by this Agreement.

“*Mandatory Purchase Date*” means (i) the Initial Mandatory Purchase Date, and (ii) if later, the date provided by the Purchaser in response to the Borrower’s written request for an extension pursuant to Section 2.09(e) hereof.

“*Maturity Date*” means February [ ], 2047.

“*Net Proceeds*” means, when used with respect to any Insurance Proceeds or proceeds resulting from Eminent Domain, the gross proceeds therefrom less all expenses (including attorneys’ fees) incurred in the realization thereof.

“*Opinion of Counsel*” means any opinion of Counsel delivered pursuant to this Agreement. Each such opinion shall be addressed to the Borrower, the Issuer and the Purchaser.

“*Outstanding*” means, for any date of determination, all Bonds that have been executed and delivered to the Purchaser hereunder, except:

- (a) Bonds cancelled or delivered for cancellation at or prior to such date;
- (b) Bonds in lieu of which others have been authenticated under Sections 2.06 and 2.07;
- (c) Bonds, the principal of which has been previously paid or redeemed; and
- (d) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the Owners of a specified percentage of Outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer, the Borrower or any affiliate of the Borrower or the Issuer; provided, however, that if all of the Bonds are at any time held by or for the account of the Borrower or the Issuer or any affiliate of the Borrower or the Issuer, then such Bonds shall be deemed to be Outstanding at such time for the purposes of this subparagraph (d).

“*Owner*” means the registered owner of a Bond.

“*Parity Periodic Swap Payments*” means Periodic Swap Payments which are designated, with the prior written consent of the Purchaser, as having a priority of payment on a parity, equally and ratably, with the Bonds. Periodic Swap Payments under the Initial Swap shall be Parity Periodic Swap Payments.

“*Parity Swap Termination Payments*” means Swap Termination Payments which are designated, with the prior written consent of the Purchaser, as having a priority of payment on a parity, equally and ratably, with the Bonds. Swap Termination Payments under the Initial Swap shall be Parity Swap Termination Payments.

“*Periodic Swap Payment*” means the net amount payable by the Borrower from time to time under a Swap to the Swap Provider prior to the termination of such Swap.

“*Permitted Liens*” means:

- (a) liens created pursuant to any Bond Document;
- (b) liens for taxes, assessments or governmental charges or claims the payment of which is not, at the time, required or which is being contested in accordance with the terms set forth in Section 6.06 of the Continuing Covenant Agreement;
- (c) liens, pledges or deposits under worker’s compensation, unemployment insurance or other social security legislation (other than the Employee Retirement Income Security Act), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the collateral on account thereof;
- (d) judgment liens which do not constitute an Event of Default, which have been bonded, and which do not involve any material risk of the sale, forfeiture or loss of all or any material part of the Facility, or any material interest therein and shall not interfere in any material respect with the use or disposition of the Facility, or any material part thereof, or the payment of the Loan;
- (e) statutory liens of banks and rights of set-off, mechanics’ liens, and other liens imposed by applicable law, in each case arising in the ordinary course of business or incident to the operation of the Facility in respect of sums not yet delinquent or sums which are being contested in accordance with the terms set forth in the Continuing Covenant Agreement;
- (f) easements, rights-of-way, restrictions, minor defects, restrictions, encroachments or irregularities in title and other similar charges or encumbrances incurred in the ordinary conduct of the business of the Borrower and encumbrances consisting of zoning restrictions, licenses, restrictions on the use of property or minor imperfections in title which in each case do not materially impair the property affected thereby for the purpose for which title was acquired or interfere with the operation of the Facility and which individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect (as defined in the Continuing Covenant Agreement);
- (g) rights reserved to or vested in any Governmental Authority by the terms of any authorization with respect to the Facility or the use of such Facility in any manner which do not materially impair the operation of the Facility;

(h) any obligations or duties, affecting any part of the Facility, to any Governmental Authority with respect to any authorization which do not materially impair the operation of the Facility;

(i) liens upon standard and ordinary office equipment;

(j) deposits to secure statutory obligations, surety and appeal bonds and other obligations of like nature arising in the ordinary course of business so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Facility on account thereof;

(k) those matters listed as exceptions to title as set forth in the Borrower's title insurance policy for the Facility; and

(l) Liens in favor of the Purchaser or Liens securing any debt of the Borrower or its Affiliates on their Property, whether now owned or hereafter acquired which have been approved in writing by the Purchaser.

*"Person"* means an individual, a corporation, a partnership, an association, a joint venture, a trust, a business trust, a limited liability company or any other entity or organization, including a governmental or political subdivision or an agency or instrumentality thereof.

*"Plans and Specifications"* means the plans and specifications used in connection with the Acquisition of the Facilities, as the same may be revised from time to time by the Borrower in accordance with Section 4.05.

*"Principal Amount"* means the sum of all Advances as reflected on the Table of Advances attached to the Bonds, less any redemptions of Bonds as reflected on the Table of Partial Redemptions attached to the Bonds.

*"Project"* means the financing the Acquisition of the Facilities.

*"Property"* means, when used in connection with any Person, any and all rights, title and interests of such Person in and to any and all property (including cash) whether real, personal or mixed, or tangible or intangible, and wherever situated.

*"Purchase Price"* means, for any date of determination, an amount equal to 100% of the principal amount of any Bond Outstanding, plus accrued and unpaid interest thereon to the date of purchase.

*"Purchaser"* means (a) if there is a single Owner of all of the Bonds, the Owner of the Bonds and (b) if there is more than one Owner of the Bonds, the Owners owning a majority of the aggregate Principal Amount of the Bonds. On the Issue Date, the initial Purchaser of the Bonds is Wells Fargo Bank, National Association.

*"Requisition"* has the meaning assigned to such term in Section 4.02.

*"Reserved Issuer Rights"* means the Issuer's rights to fees and expenses, indemnification, notices, opinions, certifications, information, inspections and consents pursuant to this Agreement and the Tax Regulatory Agreement.

“*Revenues*” means all legally available revenues of the Borrower excluding the rights to receive any gifts, donations, pledges, grants, legacies, bequests, demises or contributions heretofore or hereafter made and designated or specified by the donor or maker thereof as being for a specific purpose other than the Facilities and thus not legally available for payment of debt service on the Bonds.

“*State*” means the State of Alaska.

“*Stated Principal Amount*” has the meaning assigned to such term in Section 2.04.

“*Subordinated Periodic Swap Payments*” means all Periodic Swap Payments other than Parity Periodic Swap Payments.

“*Subordinated Swap Termination Payments*” means all Swap Termination Payments other than Parity Swap Termination Payments.

“*Swap*” means any agreement or arrangement (contractual or otherwise) between the Borrower and a Swap Provider related to the Borrower’s obligations to make payments pursuant to Section 3.02 which functions as an interest rate swap, interest rate cap, interest rate floor, interest rate collar or which otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt, or any agreement or other arrangement to enter into any of the above on a future date or upon or after the occurrence of one or more future events.

“*Swap Provider*” means any counterparty to the Borrower with respect to any Swap.

“*Swap Termination Payment*” means all amounts payable by the Borrower under any Swap that are not Periodic Swap Payments.

“*Tax Regulatory Agreement*” means the Tax Regulatory Agreement between the Borrower and the Issuer dated the Closing Date.

“*Unremarketed Bonds*” means Bonds which, on the Mandatory Purchase Date, have not been successfully remarketed to a Person other than the Purchaser.

“*Written*” or “*in writing*” means any form of written communication or a communication by means of a facsimile device.

**Section 1.02. Incorporation of Certain Definitions by Reference.** Each capitalized term used herein and not otherwise defined herein shall have the meaning provided therefor in the Continuing Covenant Agreement, unless the context otherwise requires.

**Section 1.03. Computation of Time Periods.** In this Agreement, in the computation of a period of time from a specified date to a later specified date, unless otherwise specified herein, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including.”

**Section 1.04. Relation to Other Documents; Incorporation by Reference.**

(a) Nothing in this Agreement shall be deemed to amend or relieve the Issuer or the Borrower of any of its obligations under any Bond Document to which it is a party. Conversely, to the extent that the provisions of any Bond Document allow the parties hereto to take or not take certain actions, the parties hereto nevertheless shall be fully bound by the provisions of this Agreement.

(b) Except as provided in subsection (c) below, all references to this Agreement or any other documents, including, without limitation, the other Bond Documents, shall be deemed to include all amendments, restatements, modifications and supplements thereto to the extent such amendment, restatement, modification or supplement is made in accordance with the provisions of such document and this Agreement.

(c) All provisions of this Agreement making reference to specific Sections of any Bond Document shall be deemed to incorporate such Sections into this Agreement by reference as though specifically set forth herein (with such changes and modifications as may be herein provided) and shall continue in full force and effect with respect to this Agreement notwithstanding payment of the Bonds and all amounts due under or secured by the Bond Documents, the termination or defeasance thereof or any modification thereto or any waiver given in connection therewith, so long as this Agreement is in effect and until all amounts due and owing under this Agreement, the Bonds and the other Bond Documents are paid in full.

**Section 1.05. Construction.** Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. The word “including” shall be deemed to mean “including but not limited to,” and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The Section headings contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Article, section, subsection, exhibit, schedule and annex references are to this Agreement unless otherwise specified. Any exhibit, schedule or annex attached hereto is incorporated by reference herein and is a constituent part of this Agreement.

**ARTICLE II**

**THE BONDS**

**Section 2.01. Authorized Amount of Bonds; Form of Bonds.**

(a) No Bonds may be issued under the provisions of this Agreement except in accordance with this Article. The total maximum principal amount of Bonds that may be issued and Outstanding hereunder is expressly limited to \$55,000,000. The Bonds shall be designated “\$55,000,000 City of Wasilla Revenue Bonds (Southcentral Foundation Project), Series 2017.”

(b) The Bonds shall be in substantially the form of Exhibit B hereto, with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or are required by law and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any Applicable Laws.

(c) The Bonds shall be in either typewritten or printed form, as the Borrower shall direct, on behalf of the Issuer; provided that any expenses, including but not limited to expenses of printing, incurred in connection therewith shall be paid by the Borrower.

**Section 2.02. Issuance of Bonds.** The Bonds shall bear interest from the Issue Date, until paid, at the rate set forth in Exhibit A, and shall mature, unless sooner paid, on the Maturity Date on which date all unpaid principal, redemption premium, if any, and interest on the Bonds shall be due and payable.

The Bonds shall be issued as fully registered bonds without coupons in Authorized Denominations. The Bonds shall be numbered from R-1 upwards bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Issuer. Upon the initial issuance of the Bonds, the Issuer shall execute and deliver the Bonds to the Purchaser, as the registered owner of the Bonds.

The Bonds shall be dated the Issue Date. All Bonds shall bear interest (i) from the Issue Date, if executed and delivered prior to the first Interest Payment Date, or (ii) otherwise from the Interest Payment Date that is, or that immediately precedes, the date on which such Bond has been executed and delivered (unless payment of interest is in default, in which case such Bond shall bear interest from the date to which interest has been paid).

The principal and Purchase Price of, redemption premium, if any, and the interest on the Bonds shall be payable in lawful currency of the United States. The principal and Purchase Price of and redemption premium, if any, on the Bonds shall be paid to the Purchaser (without any presentment thereof, except upon the payment of the final installment of principal, and without any notation of such payment being made thereon), by the Purchaser debiting an account of the Borrower as may be provided in the Continuing Covenant Agreement or in such other manner and at such address in the United States as may be designated by the Purchaser in writing to the Borrower.

All payments made shall be accompanied by sufficient information to identify the source and proper application of such payment and, if any Bonds are sold or transferred, the Purchaser shall notify the Borrower in writing of the name and address of the transferee, the effective date of the transfer, the principal amount of the Bonds transferred and the payment information notated on the Bonds as hereinafter described, and it will, prior to delivery of such Bonds, make a notation on such Bonds of the date to which interest has been paid thereon and of the amount of any prepayments made on account of the principal thereof.

During any period that the Purchaser is the Owner of the Bonds, the Bonds shall not be (i) assigned a rating by any credit rating agency, (ii) registered with The Depository Trust Company



or any other securities depository, (iii) offered pursuant to any type of offering document or official statement or (iv) assigned a CUSIP number by Standard & Poor's CUSIP Service.

**Section 2.03. Interest Rate.** The Bonds shall bear interest as provided in Exhibit A from the Issue Date to the date of payment in full of the Bonds. Interest on the Bonds shall be calculated on the Principal Amount as described in Exhibit A.

**Section 2.04. Advance of Bond Proceeds.** The Issuer acknowledges and agrees that prior to the earliest to occur of (i) the date when the sum of the aggregate Advances made hereunder equals \$55,000,000 (the "Stated Principal Amount"), (ii) the Completion Date, (iii) the Full Funding Date, or (iv) a Determination of Taxability (the "Advance Termination Date"), the Bond Proceeds will be disbursed in installments through the making of Advances by the Purchaser in accordance with the Continuing Covenant Agreement. The date and amount of each Advance shall be noted on the Table of Advances attached to the Bond; provided, that the failure to record any such Advance on the Table of Advances shall not affect the Principal Amount due. In no event may the total amount of all Advances exceed the Stated Principal Amount. Notwithstanding anything else herein contained, interest payable on the Bonds shall be determined based on the Principal Amount of the Bonds. Following the Advance Termination Date, no additional Advances may be made and, to the extent that, on the Advance Termination Date the Stated Principal Amount is higher than the Principal Amount (excluding for this purpose any partial redemptions of principal), then the difference between the Stated Principal Amount and the Principal Amount shall be deemed to have been redeemed automatically and without any further notice or act by the Issuer or any other Person. Any such automatic redemption of principal shall not be taken into consideration in determining the Principal Amount of the Bonds and shall not be recorded on the Table of Partial Redemptions attached to the Bonds.

**Section 2.05. Execution; Limited Obligation.** The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Issuer Representative and attested by the manual or facsimile signature of the Clerk or Deputy Clerk of the Issuer and shall have impressed or imprinted thereon the seal (or a facsimile thereof), if any, of the Issuer. In case any officer whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes.

None of the Issuer, its officers and employees or any person executing this Agreement or the Bonds on behalf of the Issuer shall be liable personally on the Bonds or subject to any personal liability or accountability by reason of the execution hereof. The Bonds shall be limited obligations of the Issuer. The principal and Purchase Price of, redemption premium, if any, and interest on the Bonds shall not be deemed to constitute or create an indebtedness, liability or obligation of the Issuer, the State or any political subdivision or agency thereof within the meaning of any State constitutional provision or statutory limitation or a pledge of the faith and credit or the taxing power of the State or any such political subdivision or agency, including the Issuer. The principal and Purchase Price of, redemption premium, if any, and interest on the Bonds are payable solely from Revenues, all as described in and subject to limitations set forth in this Agreement, for the equal and ratable benefit of the Owners, from time to time, of the Bonds.

THE ISSUANCE OF THE BONDS WILL NOT CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE ISSUER OR THE STATE, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WILL BE PLEDGED TO THE PAYMENT OF THE BONDS. NEITHER THE ISSUER, THE STATE, NOR ANY POLITICAL SUBDIVISION OF THE STATE SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OR PURCHASE PRICE OF, REDEMPTION PREMIUM, IF ANY, OR INTEREST ON ANY OF THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT UNDERTAKEN BY THE ISSUER EXCEPT TO THE EXTENT THAT THE MONEYS PLEDGED THERETO ARE SUFFICIENT THEREFOR. NO OWNER OF ANY BOND HAS THE RIGHT TO COMPEL ANY EXERCISE OF TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE BONDS OR THE INTEREST THEREON, AND THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE, OR A LOAN OF CREDIT OF ANY OF THE FOREGOING WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION.

**Section 2.06. Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute a new Bond of the same maturity, interest rate, principal amount and tenor in lieu of and in substitution for the Bond mutilated, lost, stolen or destroyed; provided, that there shall be first furnished to the Issuer evidence satisfactory to it of the ownership of such Bond and of such loss, theft or destruction (or, in the case of a mutilated Bond, such mutilated Bond shall first be surrendered to the Issuer), together with indemnity satisfactory to the Issuer and compliance with such other reasonable regulations as the Issuer may prescribe. If any such Bond shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Bond the Issuer may pay the same without surrender thereof, upon receipt of such evidence, indemnification and payment of fees and expenses as described herein. The Issuer may charge the Owner of such Bond with its reasonable fees and expenses incurred in connection with this Section.

**Section 2.07. Exchangeability and Transfer of Bonds; Persons Treated as Owners.** The Borrower shall keep a registration book showing the name and address of the Owner of the Bond.

Notwithstanding any other provision hereof, the Loan is nontransferable, except in connection with the transfer of the Bonds. Any Owner of a Bond, in person or by such Owner's duly authorized attorney, may transfer title to such Owner's Bond upon surrender thereof at the principal office of the Issuer, by providing the Issuer with a written instrument of transfer (in substantially the form of assignment attached to the Bond) executed by the Owner or such Owner's duly authorized attorney, and thereupon, the Issuer shall execute and deliver in the name of the transferee or transferees a new Bond or Bonds of the same aggregate principal amount and tenor as the Bond surrendered (or for which transfer of registration has been effected) and of any Authorized Denomination(s).

Bonds may be exchanged upon surrender thereof at the principal office of the Issuer with a written instrument of transfer satisfactory to the Issuer executed by the Owner or such Owner's attorney duly authorized in writing, for an equal aggregate principal amount of Bonds of the same

tenor as the Bonds being exchanged and of any Authorized Denomination(s). The Issuer shall execute and deliver Bonds that the Owner making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

Such registrations of transfer or exchanges of Bonds shall be without charge to the Owners of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Owner of the Bond requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Issuer for any such registration of transfer or exchange and all reasonable expenses of the Issuer and the Purchaser shall be paid by the Borrower. In case of any transfer, the Purchaser shall give the Borrower written notice of the name and address of the transferee.

The person in whose name any Bond shall be registered pursuant to the original issuance thereof or any subsequent transferee as may be provided for herein shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of either principal or interest shall be made only to or upon the order of the registered owner thereof or such Owner's duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

All Bonds issued upon any registration of transfer or exchange of Bonds shall be legal, valid and binding limited obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefits under this Agreement, as the Bonds surrendered upon such registration of transfer or exchange.

Notwithstanding the foregoing, the Bonds may only be transferred in accordance with the Continuing Covenant Agreement and in Authorized Denominations to (x) an affiliate of an Owner of the Bonds, (y) a trust or custodial arrangement established by an 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 Issuer and the Borrower an Investor Letter in the form of Exhibit C.

**Section 2.08. Cancellation.** All Bonds that have been surrendered to the Issuer pursuant to Sections 2.06 or 2.07, for the purpose of purchase upon the Mandatory Purchase Date or for payment upon maturity or redemption prior to maturity, shall be cancelled and destroyed by the Issuer.

**Section 2.09. Mandatory Purchase of the Bonds.**

(a) ***Mandatory Purchase on Mandatory Purchase Date.*** The Bonds shall be subject to mandatory tender for purchase on the Mandatory Purchase Date at the Purchase Price thereof. The Owner shall tender the Bonds to the Issuer by 10:00 a.m., Local Time, on the Mandatory Purchase Date.

(b) ***Bonds Deemed Tendered.*** If an Owner fails to deliver such Bond to the Issuer on or before the Mandatory Purchase Date, then such Bond that is not delivered to the Issuer shall be deemed to have been properly tendered (such Bond being hereinafter referred to as an “Undelivered Bond”) and, to the extent that there shall be on deposit with the Issuer on the date purchase thereof is required as provided herein Eligible Funds sufficient to pay the Purchase Price thereof, such Undelivered Bond shall cease to constitute or represent a right to payment of principal or interest thereon and shall constitute and represent only the right to the payment of the Purchase Price payable on such date.

(c) ***Source of Funds for Purchase of Bonds.*** On the Mandatory Purchase Date the Issuer shall purchase (but solely from funds set forth below) the Bonds tendered (or deemed tendered) for purchase in accordance with this Section at the applicable Purchase Price. Funds for the payment of the Purchase Price for such Bonds shall be paid by the Issuer solely from moneys furnished by the Borrower and available for such purpose.

(d) ***Failure to Purchase on the Mandatory Purchase Date.*** Notwithstanding anything in this Agreement to the contrary, in the event the Bonds are not purchased or remarketed on the Mandatory Purchase Date, such Bonds shall constitute Unremarketed Bonds and such Unremarketed Bonds shall bear interest at the rates and shall be payable and redeemed on the dates and in the amounts set forth in the Continuing Covenant Agreement.

(e) ***Extension of Mandatory Purchase Date.*** Not later than 180 days prior to the Mandatory Purchase Date, the Borrower may in writing request an extension of the Mandatory Purchase Date up to and including the Maturity Date. The Purchaser shall, not later than 60 days following receipt of Borrower’s written request for an extension, provide a written response to the Borrower indicating whether such extension is approved and the new applicable interest rate and prepayment premium, if any. Any failure of the Purchaser to respond shall be construed as a denial of the request. If such new interest rate and prepayment premium schedule are not acceptable to the Borrower, the Bonds shall be tendered for purchase on the Mandatory Purchase Date in accordance with Section 2.09(a). In connection with the extension of the Mandatory Purchase Date, the Borrower shall cause to be delivered to the Issuer a notice of such extension and the new interest rate and prepayment premium schedule, and to the Issuer and the Purchaser an opinion of Bond Counsel that such extension will not, in and of itself, adversely affect the exclusion of the interest on the Bonds from the gross income of the recipients thereof for purposes of federal income taxation. The Purchaser, the Issuer and the Borrower shall enter into an amendment to this Agreement to reflect the terms of any extension of the Mandatory Purchase Date pursuant to this Section.

## **Section 2.10. Redemption of Bonds.**

(a) ***Optional Redemption.*** Subject to any limitations set forth in the Continuing Covenant Agreement, the Bonds are subject to redemption in Authorized Denominations on any Interest Payment Date by the Borrower in accordance with Section 3.05, on behalf of the Issuer, in whole or in part, at a redemption price equal to the principal amount of the Bonds to be redeemed plus accrued interest thereon to, but not including, the redemption

date. Notwithstanding anything herein to the contrary, the Bonds may be redeemed in amounts less than Authorized Denominations as required by Section 3.01(b) of the Continuing Covenant Agreement.

(b) ***Extraordinary Optional Redemption.*** The Bonds are subject to redemption in whole, by the Borrower, on behalf of the Issuer, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus accrued interest thereon to, but not including, the redemption date, on any date for which the requisite notice of redemption can be given, within one hundred eighty (180) days of the occurrence of any of the following events:

(i) the Facilities shall have been damaged or destroyed to such an extent that in the judgment of the Borrower (A) it cannot reasonably be restored within a period of three (3) consecutive months to the condition thereof immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations at the Facilities for a period of three (3) consecutive months, or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

(ii) title in and to, or the temporary use of, all or substantially all of the Facilities shall have been taken under the exercise of the power of Eminent Domain by any Governmental Authority or any Person acting under governmental authority (including such a taking as, in the judgment of the Borrower, results in the Borrower being prevented thereby from carrying on its normal operations at the Facilities for a period of three (3) consecutive months);

(iii) as a result of any changes in the constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), this Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein;

(iv) unreasonable burdens or excessive liabilities shall have been imposed on the Borrower with respect to the operations of the Facilities, including, without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Agreement that, in the judgment of the Borrower, render the continued operation of the Facilities uneconomical;

(v) changes which the Borrower cannot reasonably control or overcome in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Facilities for the purposes contemplated by this Agreement shall have occurred or technological changes that the Borrower cannot reasonably overcome shall have occurred that, in the judgment of the Borrower, render the continued operation of the Facilities uneconomical;

(vi) legal curtailment of the Borrower's use and occupancy of all or substantially all of the Facilities for any reason other than that set forth in (ii) above, which curtailment shall, in the judgment of the Borrower, prevent the Borrower from carrying on its normal operations at the Facilities for a period of three (3) consecutive months; or

(vii) this Agreement is terminated prior to its expiration for any reason other than the occurrence of an Event of Default under this Agreement.

Notwithstanding the foregoing provisions of this paragraph (b), any redemption under this paragraph (b) shall be subject to the provisions of the Continuing Covenant Agreement and the written direction or consent of the Purchaser.

(c) ***Mandatory Sinking Fund Redemptions.*** The Bonds are not subject to mandatory sinking fund redemption.

(d) ***Reserved.***

(e) ***Redemption of Unremarketed Bonds.*** Unremarketed Bonds are subject to special mandatory redemption by the Borrower, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus accrued interest thereon to but not including the date of such redemption, on the dates, in the amounts and in the manner set forth in the Continuing Covenant Agreement.

(f) ***Selection of Bonds to be Redeemed.*** If less than all the Outstanding Bonds shall be called for redemption, the Issuer shall select or arrange for the selection, in such manner as it shall deem fair and equitable and pursuant to its rules and procedures of the Bonds, in Authorized Denominations, provided that any Bond or portion thereof remaining Outstanding shall be in an Authorized Denomination. If there shall be called for redemption less than the principal amount of a Bond, (i) the Issuer shall execute and deliver, upon surrender of such Bond, without charge to the Owner thereof in exchange for the unredeemed principal amount of such Bond at the option of such Owner, Bonds in any of the Authorized Denominations, or (ii) to the extent provided in the form of the Bond, the Owner may reflect the amount of the Bonds being redeemed in the Table of Partial Redemptions without further action.

**Section 2.11. Notice of Redemption.** The Borrower may exercise its option to prepay the Loan in whole or in part and thereby cause a redemption of Bonds in whole or in part pursuant to Section 2.10(a) or (b) by giving written notice to the Issuer and the Purchaser, not less than sixty (60) days prior to the date selected for redemption; provided, however, that, if such redemption is pursuant to Section 2.10(b), the Borrower shall also deliver a certificate of a Borrower Representative certifying that the conditions precedent to such redemption have been met, and that any conditions to such redemption set forth in a Continuing Covenant Agreement have been met. Notwithstanding the foregoing, the Borrower is not required to provide any notice of redemptions pursuant to Section 2.10(a) which are effected as required by Section 3.01(b) of the Continuing Covenant Agreement. A notice of optional redemption shall describe whether and the conditions under which the call for redemption shall be revoked. All Bonds properly called for redemption

will cease to bear interest on the date fixed for redemption, provided Eligible Funds for their redemption have been duly deposited with the Issuer and, thereafter, the Owners of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Issuer and a new Bond for any portion not redeemed. On a date no later than the date fixed for redemption in such notice, the Borrower shall pay, on behalf of the Issuer, to the Owner moneys in an amount sufficient, together with other moneys, if any, held by the Owner and available for the redemption of the Bonds, to redeem the Bonds at the redemption price set forth above.

### ARTICLE III

#### THE LOAN AND ACCOUNTS

**Section 3.01. Loan of Bond Proceeds.** To provide funds for the financing the Acquisition of the Facilities, the Issuer agrees that it will sell, issue and deliver the Bonds in the aggregate principal amount not to exceed \$55,000,000 to the Purchaser. The Issuer agrees, upon the terms and conditions contained in this Agreement, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. The Loan shall be made by transferring \$[ ] of the proceeds of the initial sale Bonds to Fidelity Title Agency of Alaska, LLC to pay certain costs of issuance of the Bonds, and to pay the original issue discount to the original Purchaser; and the remainder of the Loan shall be made by depositing the proceeds of the sale thereof in one or more Advances to be made into an account of the Borrower with the Purchaser. Such proceeds shall be disbursed to or on account of the Borrower as provided in Section 4.02. The Purchaser is purchasing the Bonds at a discount to the principal amount of the Bonds. The Purchaser's purchase price of the Bonds, and accordingly, the proceeds of the Loan, shall be subject to Purchaser's original issue discount of \$137,500.

**Section 3.02. Repayment of Loan.** The Borrower hereby agrees to repay the Loan by making the following payments:

(a) The Borrower shall pay or cause to be paid, on behalf of the Issuer, to the Owner on or before any Interest Payment Date for the Bonds or any other date that any payment of interest, redemption premium, if any, or principal is required to be made in respect of the Bonds pursuant to this Agreement or pursuant to Section 3.01(b) of the Continuing Covenant Agreement, until the principal of, redemption premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with this Agreement, a sum which will enable the Issuer to pay the amount payable on such date as principal of (whether at maturity or upon redemption or acceleration or otherwise), redemption premium, if any, and interest on the Bonds as provided herein.

It is understood and agreed that all payments payable by the Borrower under this Section 3.02 are assigned by the Issuer to the Owners of the Bonds, as their interests may appear. The Borrower assents to such assignment. The Issuer hereby directs the Borrower, and the Borrower hereby agrees, to pay directly to the Owners, in immediately available funds, all payments payable by the Borrower pursuant to this Section 3.02(a). The Issuer

covenants that it will not pledge the payments payable by the Borrower under this Section 3.02 other than to secure the Bonds.

(b) The Borrower also shall pay or cause to be paid the Issuer Fees and Expenses in accordance with Section 3.06 hereof. The Borrower also shall pay to the Purchaser any amounts owed to the Purchaser under the Continuing Covenant Agreement.

(c) The Borrower also shall pay or cause to be paid when due and payable the reasonable fees and expenses of the Issuer related to the Facilities and the issuance of the Bonds, including without limitation, attorneys' fees and expenses.

(d) The Borrower also shall pay or cause to be paid, when due to the Owners the Purchase Price of Bonds on the Mandatory Purchase Date, all as more particularly described in Section 2.09 of this Agreement.

(e) In the event the Borrower shall fail to make any of the payments required in this Section 3.02, the item or installment so in default shall continue as an obligation of the Borrower and shall bear interest at the Default Rate until the amount in default shall have been fully paid.

### **Section 3.03. Security.**

(a) The principal and Purchase Price of, and redemption premium, if any on the Bonds are payable from Revenues all as described and subject to the limitations set forth in this Agreement, for the equal and ratable benefit of the Owners, from time to time, of the Bonds. To secure the payment obligations of the Borrower hereunder, the Borrower has executed and delivered the Deed of Trust.

(b) The Borrower shall, at its expense, record, or cause the recordation of, the Deed of Trust and all amendments thereto in the Official Records of the Anchorage Recording District. Within 10 days after request for any confirmation of any filing required by this Section, the Borrower shall deliver to the Purchaser, as assignee of the Issuer, the signed documents requested or evidence satisfactory to the Purchaser to the effect that such filing has been duly accomplished. The Borrower hereby authorizes the Purchaser to file such financing statements (and all amendments or continuations thereto) as may be necessary to perfect the Purchaser's security in a form satisfactory to the Purchaser.

(c) The Issuer, the Borrower and the Purchaser agree that the Deed of Trust, and UCC-1 financing statement may be amended or terminated at any time with the prior written consent of the Purchaser. The consent of the Issuer shall not be required for any such amendment or termination.

(d) As additional security for the Bonds, the Issuer has, as of the date hereof, made a complete assignment to the Purchaser of all of the Issuer's rights, title interest and obligations in, to and under the Deed of Trust pursuant to the Assignment Agreement. The Borrower hereby consents to such assignment.



**Section 3.04. Unconditional Obligations.** The obligation of the Borrower to make the payments required by Section 3.02 shall be absolute and unconditional. Except as expressly provided for herein, the Borrower shall pay all such amounts without abatement, diminution or deduction (whether for taxes or otherwise) regardless of any cause or circumstance whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim that the Borrower may have or assert against the Issuer, the Purchaser or any other Person.

**Section 3.05. Prepayments of Loan.** The Borrower may prepay all or any part of the amounts required to be paid by it under Section 3.02 (and thereby cause a full or partial redemption of Bonds, as applicable) at the times and in the amounts provided in Section 2.10 for redemption of the Bonds, and in any such case, the Borrower shall cause to be furnished to the Owners, on behalf of the Issuer, such amounts at such time as may be required in connection with any redemption as provided in Section 2.10.

**Section 3.06. Costs and Expenses of the Issuer.** The Borrower shall pay to the Issuer the following "Issuer Fees and Expenses":

(a) All taxes and assessments of any type or character charged to the Issuer affecting the amount available to the Issuer from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding any taxes based upon the capital or income of any other person other than the Borrower; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Issuer, at the Borrower's expense, to protest and contest any such taxes or assessments assessed or levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would materially adversely affect the rights or interests of the Issuer;

(b) The reasonable fees and expenses of such accountants, consultants, attorneys and other experts, including, without limitation, reasonable fees and expenses of the Issuer's in-house counsel, if any, as may be engaged by the Issuer to prepare audits, financial statements or opinions or provide such other services as are required in connection with the Bond Documents and the Bonds;

(c) The Issuer Issuance Fee and the reasonable fees and expenses of the Issuer or any agent or attorney selected by the Issuer to act on its behalf including, without limitation, reasonable fees and expenses of the Issuer's in-house counsel, if any, in connection with the Loan under this Agreement, the Tax Regulatory Agreement or any other documents contemplated hereby or thereby, including, without limitation, any and all reasonable expenses incurred in connection with any litigation, investigation or other proceeding which may at any time be instituted involving this Agreement, the Tax Regulatory Agreement or any other documents contemplated hereby or thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of this Agreement,

the Tax Regulatory Agreement, or any other documents contemplated hereby or thereby;  
and

(d) Such amounts as may be necessary to satisfy the rebate requirements in accordance with the Tax Regulatory Agreement and to pay the cost of calculation of such rebate requirements when required by the Code if the Borrower does not do so directly. To the extent the Borrower does not satisfy any of the exceptions to rebate, any rebate calculations must be computed by a third party rebate analyst and may not be computed solely by the Borrower.

The Issuer Fees and Expenses shall be billed to the Borrower by the Issuer from time to time, together with supporting documents for one or more of the above items. Amounts so billed shall be paid by the Borrower within 30 days after receipt of the bill by the Borrower. Notwithstanding the foregoing, the Issuer shall not be required to submit a bill to the Borrower for payment of any amount due with respect to arbitrage rebate under Section 148 of the Code, the calculation and payment for which is the responsibility of the Borrower. The Issuer Issuance Fee shall be paid to the Issuer by the Borrower on the Issuance Date. The Borrower's obligation to pay the Issuer Issuance Fee shall in no way limit amounts payable by the Borrower to the Issuer under the Borrower Documents, including the enforcement thereof.

**Section 3.07. Swaps.** The Borrower may enter into a Swap relative to its obligation to pay interest under Section 3.02. The Borrower shall timely make to the Swap Provider all payments required by the Swap. The Borrower hereby grants a security interest in and to its interest in any Swap and all payments made thereunder, together with any proceeds thereof, to the Owners and the Swap Provider and such security interest shall constitute part of the security for the Bonds. The Borrower shall direct the Swap Provider to make all payments pursuant to the Swap directly to the Owners. To the extent a Periodic Swap Payment made by the Swap Provider is actually received by the Owners, the Borrower shall receive a credit on that amount against its obligation to make an interest payment as required by Section 3.02.

## ARTICLE IV

### ACQUISITION OF THE FACILITIES

**Section 4.01. Agreement to Undertake and Complete the Acquisition of the Facilities.** The Borrower covenants and agrees to undertake and complete the Acquisition of the Facilities. Upon written request of the Issuer, the Borrower agrees to make available to the Issuer (for review and copying) all the then current Plans and Specifications for the Facilities. The Borrower shall obtain or cause to be obtained all necessary permits and approvals for the Acquisition, operation and maintenance of the Facilities.

The Borrower agrees to cause the Facilities to be completed as soon as may be practicable and to cause all Bond Proceeds to be expended no later than three years from the Issue Date. For Costs of the Project incurred prior to receipt by the Issuer of the Bond Proceeds, the Borrower agrees to advance all funds necessary to reimburse the Issuer for such purpose. Such advances may be reimbursed to the extent permitted by the Code and Section 4.02.

**Section 4.02. Advances of Loan Proceeds.** Each Advance for a Cost of the Project shall be made only upon the receipt by the Purchaser of a requisition and certificate, substantially in the form of Exhibit D (each, a "Requisition") signed by the Borrower Representative and approved by the Purchaser and otherwise meeting the requirements and conditions of the Continuing Covenant Agreement. The Issuer and the Borrower acknowledge and agree that the Purchaser shall not be obligated to make Advances except in accordance with the terms of this Agreement and the Continuing Covenant Agreement.

The Borrower further agrees that it will not request any Advance which, if paid, would result in (i) less than substantially all (at least ninety-five percent (95%)) of the Bond Proceeds being used to provide land or property subject to the allowance for depreciation under Section 167 of the Code, (ii) less than all of the Bond Proceeds being used to provide the Project under the Act, or (iii) the inclusion of the interest on any of the Bonds in the gross income of any Owner for purposes of federal income taxation. Notwithstanding the foregoing, the Borrower may request an Advance to pay costs of issuance with respect to the Bonds not to exceed in total 2% of the Bond Proceeds expected to be available to pay Costs of the Project.

**Section 4.03. Establishment of Completion Date and Certificate as to Completion.** Within thirty (30) days following the completion of Acquisition of the Project, the Borrower Representative shall sign and deliver to the Purchaser a certificate stating that, except for amounts retained by the Purchaser for Costs of the Project not then due and payable, or the liability for which the Borrower is, in good faith, contesting or disputing, (a) the Facilities have been completed to the satisfaction of the Borrower, and all labor, services, materials and supplies used in such Acquisition have been paid for, and (b) the Facilities are suitable and sufficient for the efficient operation as a "project" (as defined in the Act). Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

**Section 4.04. Borrower Required to Pay Costs in Event Bond Proceeds Insufficient.** If the Bond Proceeds should not be sufficient to make payments of the Costs of the Project in full, the Borrower agrees to pay directly (or to deposit moneys in the Borrower's deposit account with the Purchaser for the deposit of Advances for the payment of) such costs of completing the Acquisition of the Facilities as may be in excess of the Bond Proceeds. THE ISSUER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION (EITHER EXPRESS OR IMPLIED) THAT THE BOND PROCEEDS WILL BE SUFFICIENT TO PAY ALL OF THE COSTS OF THE ACQUISITION OF THE FACILITIES OR THAT THE FACILITIES WILL BE SUITABLE FOR THE PURPOSES OF THE BORROWER. If, after exhausting the Bond Proceeds for any reason, the Borrower pays, or deposits moneys in the Borrower's deposit account with the Purchaser for the payment of, any portion of the Costs of the Project pursuant to the provisions of this Section, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, nor shall it be entitled to any diminution of the amounts payable under Section 3.02.

**Section 4.05. Plans and Specifications.** The Borrower shall maintain a set of Plans and Specifications at the Project which shall be available to the Issuer and the Purchaser for inspection and examination during the Borrower's regular business hours. The Issuer and the Borrower agree that the Borrower may supplement, amend and add to the Plans and Specifications, and the Borrower may omit or make substitutions for components of the Project, without the approval of

the Issuer, but subject to the requirements of the Continuing Covenant Agreement, including any required consent of the Purchaser, and, provided that no such change shall be made which, after giving effect to such change, would cause any of the representations and warranties set forth in Article VI to be false or misleading in any material respect, or would result in a violation of the covenant set forth in Section 10.04. If any such change would render materially incorrect or inaccurate the description of the initial components of the Project as previously described in writing by the Borrower to the Purchaser, the Borrower shall deliver to the Issuer and the Purchaser an Approving Opinion and thereafter, the Borrower, the Purchaser and the Issuer shall amend Exhibit E to this Agreement to reflect such change. No approvals of the Issuer shall be required for the Acquisition of the Project or for the solicitation, negotiation, award or execution of contracts relating thereto.

## ARTICLE V

### CONDITIONS PRECEDENT TO PURCHASE OF BONDS

**Section 5.01. Documentary Requirements.** The obligation of the Purchaser to purchase the Bonds is subject to the conditions precedent that the Purchaser shall have received, and the obligation of the Issuer to issue the Bonds is subject to the conditions precedent that Issuer shall have received, on or before the Closing Date, the items listed below in this Section, each dated and in form and substance as is satisfactory to the Purchaser and the Issuer. However, should the Purchaser purchase the Bonds prior to its receipt of and approval of any of the following items, such purchase shall not be deemed to be a waiver of any documentary requirement.

- (a) Each of the items listed in Section 4.01 of the Continuing Covenant Agreement.
- (b) Each of the Bond Documents duly executed by the parties thereto.
- (c) Evidence that the financing of the Facilities has been approved by the Mayor of the Issuer and the Mayor of the Municipality of Anchorage, in each case after a public hearing held upon reasonable notice.
- (d) A certificate of the Governing Body of the Issuer certifying the names and signatures of the Persons authorized to sign, on behalf of the Issuer, this Agreement and the other Bond Documents to which it is a party and the other documents to be delivered by it hereunder or thereunder.
- (e) An Opinion of Counsel to the Issuer to the effect that this Agreement and the other Bond Documents to which the Issuer is a party have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding agreements of the Issuer enforceable against the Issuer in accordance with their terms.
- (f) An Opinion of Counsel given by Bond Counsel to the effect that the Bonds have been duly authorized and validly issued, and that interest on the Bonds will not be included in gross income of the Owners thereof for federal income tax purposes.

(g) An opinion of counsel to the Borrower, addressed to Bond Counsel, the Lender and the Issuer, in the form and substance reasonably acceptable to the Issuer

(h) A certificate of the Issuer, dated the Closing Date, stating that: (i) the representations and warranties of the Issuer contained in this Agreement and in the other Bond Documents to which it is a party are correct on and as of the Closing Date as though made on and as of such date; (ii) no petition by or against the Issuer has at any time been filed under the Bankruptcy Code or under any similar law; (iii) no Default or Event of Default has occurred and is continuing, or would result from the Issuer's execution and performance of this Agreement or the other Bond Documents to which it is a party; (iv) all conditions precedent to the issuance of the Bonds have been satisfied and the Issuer has duly executed and delivered the Bonds to the Purchaser.

(i) Evidence of payment of the Issuer Issuance Fee.

(j) An investor letter of representations executed by the Purchaser, in the form attached hereto as Exhibit C and such other certificates of the Purchaser reasonably requested by Bond Counsel and counsel for the Issuer.

(k) Such other documents, instruments, approvals and, if reasonably requested by the Purchaser of the Issuer, certified duplicates of executed originals thereof, and opinions as the Purchaser or the Issuer may reasonably request.

**Section 5.02. Incorporation by Reference.** The conditions precedent contained in Article IV of the Continuing Covenant Agreement are hereby incorporated by reference and shall have the same force and effect as if set forth herein.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF BORROWER

The Borrower represents and warrants as of the Closing Date as follows, which representations and warranties shall survive the execution of this Agreement:

**Section 6.01. Organization; Power; Qualification.** The Borrower (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (b) has the power and authority to own its Property and to carry on its businesses as now being conducted and as currently contemplated to be conducted hereafter and (c) is duly qualified and authorized to do business in each jurisdiction in which the character of its Property or the nature of its business requires such qualification and authorization.

**Section 6.02. Authorization; Enforceability.** The Borrower has the right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Agreement and each of the other Bond Documents to which it is a party in accordance with their respective terms. This Agreement and each of the other Bond Documents to which it is a party have been duly executed and delivered by the duly authorized officers of the Borrower, and each such document constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as such enforceability may be limited

by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Section 6.03. Noncontravention.** The execution, delivery and performance by the Borrower of this Agreement and each of the other Bond Documents to which it is a party, in accordance with their respective terms, and the transactions contemplated hereby and thereby do not and will not (a) contravene or conflict with the Borrower's articles of incorporation, bylaws or other organizational documents, (b) require any consent or approval of any creditor of the Borrower, (c) violate any Applicable Law (including, without limitation, Regulations G, T, U or X of the Board of Governors of the Federal Reserve System, or any successor regulations), (d) conflict with, result in a breach of or constitute a default under any Contract to which the Borrower is a party or by which it or any of its Property may be bound or (e) result in or require the creation or imposition of any Lien upon any Property now owned or hereafter acquired by the Borrower except such Liens, if any, expressly created by this Agreement or the other Bond Documents.

**Section 6.04. Governmental Approvals.** No further authorizations, consents or approvals of Governmental Authorities are required in connection with the execution and delivery by the Borrower of this Agreement or the other Bond Documents to which the Borrower is a party or in connection with the carrying out by the Borrower of its obligations under this Agreement or the other Bond Documents to which the Borrower is a party.

**Section 6.05. Litigation.** There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any Governmental Authority pending, or, to the best knowledge of the Borrower, threatened against or affecting the Borrower wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bond Documents or (ii) the tax-exempt status of interest on the Bonds.

**Section 6.06. Title to the Property.** The Borrower has good, marketable title to the Facilities and to the Property subject to the Deed of Trust. None of the Facilities, or the Property of the Borrower subject to the Deed of Trust, is subject to any Lien, except Permitted Liens. The Borrower has complied with all obligations under all leases to which it is a party and under which it is in occupancy, and all such leases are in full force and effect. The Borrower enjoys peaceful and undisturbed possession under all such leases.

**Section 6.07. Absence of Defaults and Events of Default.**

(a) No Default or Event of Default has occurred and is continuing.

(b) No defaults by the Borrower or any of its Affiliates exist under any Contracts or judgments, decrees or orders, except for defaults that, singly or in the aggregate, have not had and will not have a Material Adverse Effect (as defined in the Continuing Covenant Agreement) or an adverse effect on the Borrower or the Borrower's ability to perform its obligations under this Agreement or any of the other Bond Documents.

**Section 6.08. Income Tax Status.** The Borrower is an organization described in Section 501(c)(3) of the Code, is not a "private foundation" as defined by Section 509(a) of the Code and

is exempt from federal income tax under Section 501(a) of the Code, except for taxes imposed on unrelated business income pursuant to Section 511 of the Code. The Borrower has not received any notice from the Internal Revenue Service that its respective returns are being audited or its respective status as an organization described in Section 501(c)(3) of the Code is being investigated or challenged. The Borrower is in continued compliance with all requirements of such status. The Borrower has not taken any action or omitted to take any action, and to the best of its knowledge, knows of no action taken or omitted to be taken by any other Person, which action, if taken or omitted, could adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes or the exemption of such interest from State personal income taxes.

**Section 6.09. Regarding the Facilities.**

(a) The Facilities are suitable for or used in connection with the business of the Borrower, and the estimated cost of financing the Facilities is not less than \$55,000,000.

(b) The financing of the Facilities as provided under this Agreement and commitments therefor made by the Issuer have induced the Borrower to expand, improve or locate its operations that benefit the residents of the Issuer.

(c) The Borrower anticipates that it will continue to operate the Facilities in furtherance of its charitable purpose until the Bonds have been paid in full.

(d) The Facilities are of the type authorized and permitted by the Act and the Facilities are substantially the same in all material respects to that described in the notices of public hearing published on January [ ] and [ ], 2017.

(e) The Borrower will cause all of the proceeds of the Bonds to be applied solely to pay for the Acquisition of the Facilities, and not more than 5% of the Facilities financed with the proceeds of the Bonds shall be used in any “unrelated trade or business” of the Borrower within the meaning of Section 513(a) of the Code.

(f) The Borrower presently in good faith estimates the costs of the Facilities to equal or exceed the original principal amount of the Bonds.

(g) The Facilities will be located wholly within the Municipality of Anchorage.

(h) No portion of the Facilities include any property used or to be used for sectarian instruction or study, as a place for devotional activities or religious worship, or primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

**Section 6.10. Tax-Exempt Status of the Bonds.** The Borrower will not take any action that would cause the interest on the Bonds to become includable in gross income of the recipient for federal income tax purposes under the Code (including, without limitation, intentional acts under Treas. Reg. § 1.148-2(c) or deliberate action within the meaning of Treas. Reg. § 1.141-2(d)), and the Borrower will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the interest on the Bonds do

not become includable in gross income of the recipient for federal income tax purposes under the Code (including, without limitation, the calculation and payment of any rebate required to preserve such exclusion). Without limiting the generality of the foregoing, the Borrower covenants that it shall comply with the requirements of the Tax Regulatory Agreement, which is incorporated herein as if fully set forth herein. This covenant shall survive the payment in full and prepayment of the Bonds.

**Section 6.11. Reporting Requirements.** The Borrower will deliver, or cause to be delivered, to the Issuer each of the following, which shall be in form and detail reasonably acceptable to the Issuer.

- (a) within 60 days of receipt of a written request from the Issuer, a written statement as to the unpaid outstanding balance of the Bonds and providing such other information relating to the use and operation of the Facilities as the Issuer may request; and
- (b) from time to time such other information as the Issuer may reasonably request.

**Section 6.12. Environmental Laws.**

- (a) The Borrower is in compliance in all material respects with all applicable Environmental Laws.
- (b) Neither the Borrower nor the Facility is the subject of a federal, state or local investigation evaluating whether any remedial action is needed to respond to any alleged violation of or condition regulated by Environmental Laws or to respond to a release of any Hazardous Materials into the environment.
- (c) The Borrower does not have any material contingent liability in connection with any release of any Hazardous Materials into the environment.

**Section 6.13. Anti-Terrorism Laws.**

- (a) Neither the Borrower nor any of its affiliates is in violation of any laws relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (the "USA Patriot Act").
- (b) Neither the Borrower nor any of its affiliates is any of the following:
  - (i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
  - (ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;



(iii) a person with which the Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(v) a person that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control (“OFAC”) or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list.

## ARTICLE VII

### REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE ISSUER

The Issuer represents, warrants, covenants and agrees as of the Closing Date that:

**Section 7.01. Organization; Power; Qualification.** The Issuer is a first class city duly organized and existing under and pursuant to the Constitution and laws of the State, including the Act, and is authorized by the Act to execute and to enter into this Agreement and the other Bond Documents to which it is a party and to undertake the transactions contemplated herein and therein and to carry out its obligations hereunder and thereunder.

**Section 7.02. Authorization of Bond Documents.** The Issuer represents, covenants and warrants that all requirements have been met and procedures have occurred such that the Bond Documents to which the Issuer is a party are valid and binding obligations of the Issuer enforceable in accordance with their respective terms except as enforcement may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting the enforcement of creditors rights generally, by equitable principles, by the exercise of judicial discretion in appropriate cases and by the limitation on legal remedies against agencies of the State. The Issuer has taken all necessary action and has complied with all applicable provisions of the Act, including but not limited to the making of any findings required by the Act, required to make the Bond Documents to which the Issuer is a party the valid and binding obligations of the Issuer.

**Section 7.03. Assignment.** Pursuant to this Agreement, the Issuer has assigned to the Purchaser all of the Issuer’s rights (except Reserved Issuer Rights) in the Facilities, this Agreement, the payments and any all other Bond Documents except the Tax Regulatory Agreement, including the assignment of all rights in any security interest granted to the Issuer by the Borrower thereunder.

**Section 7.04. No Conflict.** The execution and delivery of this Agreement and compliance with the provisions of this Agreement under the circumstances contemplated thereby will not in any respect conflict with, or constitute on the part of the Issuer a material breach or default under any agreement or other instrument to which the Issuer is a party, or any existing law, administrative regulation, court order or consent decree to which the Issuer is subject in a manner that is reasonably likely to have a material adverse effect on the Issuer’s ability to issue or deliver the

Bonds, or its ability to execute, deliver or comply with the Bond Documents to which it is a party and the transactions contemplated thereby.

**Section 7.05. Litigation.** To the current actual knowledge of the officers of the Issuer, there is no action, suit or proceeding pending before or by any court for which service of process has been duly completed as to the Issuer and, to the current actual knowledge of the Issuer's officers, there is no action, suit or proceeding before any court threatened against the Issuer or any proceeding, inquiry or investigation threatened by or pending before any public body against the Issuer, challenging the Issuer's authority to enter into the Bond Documents to which it is a party or any other action wherein an unfavorable ruling or finding would materially adversely affect the enforceability of the Bond Documents, or the exclusion of the interest on the Bonds from gross income for federal tax purposes under the Code, or would have a material adverse effect on the Issuer's ability to perform its obligations with respect to any of the transactions contemplated by this Agreement.

**Section 7.06. Form 8038.** The Issuer will submit or cause to be submitted to the Internal Revenue Service a Form 8038 (or other information reporting statement) at the time and in the form required by the Code.

**Section 7.07. No Conflict of Interest.** To the best knowledge of the Issuer's officers, no officer or other official of the Issuer has any financial interest whatsoever in the Borrower or in the transactions contemplated by this Agreement.

**Section 7.08. Tax Covenants of the Issuer.**

(a) The Issuer shall not take any action, or fail to take any action within its control and required of it by the Bond Documents to which it is a party, if such action or failure to take such action would result in the interest on the Bonds not being excluded from gross income for federal income tax purposes under Section 103 of the Code. Without limiting the generality of the foregoing, the Issuer covenants that it will comply with the requirements of the Tax Regulatory Agreement applicable to it which is incorporated herein as if fully set forth herein; provided, however, that with regard to the covenants of the Issuer to act or refuse to act in a certain manner in the future pursuant to this section or the Tax Regulatory Agreement, the Issuer is relying exclusively on the Borrower to act or refuse to act in the appropriate manner except to the extent a particular affirmative action by the Issuer is required or prohibited. Any requirement that the Issuer will not permit or allow an action, or similar requirement, shall pertain solely to the actions of the Issuer and the Issuer shall have no obligation to prevent, or to attempt to prevent, any action by the Borrower. This covenant shall survive the payment in full and prepayment of the Bonds.

(b) In the event that at any time the Issuer is of the opinion that for purposes of this Section it is necessary or helpful to restrict or limit the yield on the investment of any moneys under this Agreement, the Issuer shall so instruct the Borrower in writing accompanied by a supporting opinion of Bond Counsel, and the Borrower shall take such action as may be directed by the Issuer.

(c) Notwithstanding any provisions of this Section, if the Issuer provides to the Borrower an opinion of Bond Counsel to the effect that any specified action required under this Section is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the Bonds, the Borrower may conclusively rely on such opinion in complying with the requirements of this Section and the Tax Regulatory Agreement, and the covenants hereunder shall be deemed to be modified to that extent.

## ARTICLE VIII

### MAINTENANCE AND TAXES

**Section 8.01. Borrower's Obligations to Maintain and Repair.** The Borrower agrees that during the term of this Agreement it will keep and maintain all of its material properties and equipment (including the Facilities) necessary to the operation of its business in good condition, repair and working order, ordinary wear and tear excepted, at its own cost, and will make or cause to be made from time to time all repairs thereto (including external and structural repairs) and renewals and replacements thereto necessary for the operation thereof.

**Section 8.02. Taxes and Other Charges.** The Borrower will promptly pay and discharge or cause to be promptly paid and discharged, as the same become due, all taxes, assessments, governmental charges or levies and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Facilities imposed upon it or in respect of the Facilities before the same shall become in default, as well as all lawful claims which, if unpaid, might become a lien or charge upon such property and assets or any part thereof, except such that are contested in good faith by the Borrower for which the Borrower has maintained adequate reserves satisfactory to the Purchaser.

## ARTICLE IX

### INSURANCE, EMINENT DOMAIN AND DAMAGE AND DESTRUCTION

**Section 9.01. Insurance.** The Borrower will, during the term of this Agreement and at all times while any Bonds are outstanding, continuously maintain casualty and liability insurance on the Facilities in amounts and covering such risks as are customarily insured against by businesses of like size and type, paying as the same become due all premiums in respect thereof. In addition the Borrower shall comply, or cause compliance, with applicable worker's compensation laws of the State.

**Section 9.02. Provisions Respecting Eminent Domain; Damage; Destruction.** In case of a taking or proposed taking of all or any part of the Facilities or any right therein by Eminent Domain, the party hereto upon which notice of such taking is served shall give prompt written notice to the other parties hereto. Each such notice shall describe generally the nature and extent of the taking or proposed taking and any proceedings or negotiations related thereto. If at any time while any of the Bonds are Outstanding, the Facilities, or any portion thereof, shall be damaged or destroyed by fire, flood, windstorm or other casualty, or title to, or the temporary use of, the Facilities, or any portion thereof, shall have been taken by the power of Eminent Domain, the

Borrower (unless it shall have exercised its option to prepay all of the Bonds) shall cause the Net Proceeds or an amount equal thereto to be used for the repair, reconstruction, restoration or improvement of the Facilities or the redemption of the Bonds, or any combination thereof. In case of any damage to or destruction of all or any part of the Facilities exceeding \$50,000, the Borrower shall give prompt written notice thereof to the Issuer and the Purchaser. Notwithstanding the above, the Borrower shall comply with the terms of the Continuing Covenant Agreement relating to the use of Net Proceeds.

## ARTICLE X

### SPECIAL COVENANTS

**Section 10.01. Access to the Facilities and Inspection.** The Issuer and the Purchaser, and their respective agents and employees, or, at the written request of the Issuer to the Borrower and only pursuant to a request from the Internal Revenue Service, a representative of the Internal Revenue Service, shall have the right, at all reasonable times during normal business hours of the Borrower upon the furnishing of reasonable notice to the Borrower under the circumstances, to enter upon and examine and inspect the Facilities and to examine and copy the books and records of the Borrower insofar as such books and records relate to costs of the Facilities or the Bond Documents.

**Section 10.02. Further Assurances and Corrective Instruments.** Subject to the provisions of this Agreement, the Issuer and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments hereto and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement or the transactions contemplated hereby.

**Section 10.03. Recording and Filing; Other Instruments.** The Borrower hereby authorizes the Purchaser to cause this Agreement and the Deed of Trust (and any subsequent filings and recordings in connection therewith as may be necessary) to be recorded and filed in such manner and in such places as may be required by law to fully preserve and protect the security of the Owners and the rights of the Purchaser and to perfect any security interest created by this Agreement. The Borrower and the Issuer shall execute and deliver all instruments and shall furnish all information and evidence deemed necessary or advisable in order to enable the Purchaser to perfect its security interests in connection with the Bonds. The Purchaser shall file and re-file and record and re-record or shall cause to be filed and re-filed and recorded and re-recorded all instruments required to be filed and re-filed and recorded and re-recorded and shall continue or cause to be continued the liens of such instruments for so long as any of the Bonds shall be Outstanding and any other amounts remain due and payable under the Continuing Covenant Agreement.

**Section 10.04. Tax-Exempt Status.** The Borrower covenants and agrees that it has not taken and will not take or cause to be taken, and has not omitted and will not omit or cause to be omitted, any action which will result in interest paid on the Bonds being included in gross income of the Owners of the Bonds for the purposes of federal income taxation.

The Borrower covenants and agrees that it will take or cause to be taken all required actions necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds; and the Issuer covenants and agrees that it will take or cause to be taken all required actions to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds; provided that the Issuer has no obligation or responsibility to direct or cause the Borrower to take any action.

**Section 10.05. Indemnity Against Claims.** The Borrower will pay and discharge and will indemnify and hold harmless the Issuer and the Purchaser, and their respective directors, members, officers, employees and agents, from any taxes, assessments, impositions and other charges in respect of the Facilities. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer or the Purchaser, as the case may be, will give prompt written notice to the Borrower; provided, however, that the failure to provide such notice will not relieve the Borrower of the Borrower's obligations and liability under this Section and will not give rise to any claim against or liability of the Issuer or the Purchaser. The Borrower shall have the sole right and duty to assume, and shall assume, the defense thereof, with counsel acceptable to the Person on behalf of whom the Borrower undertakes a defense, with full power to litigate, compromise or settle the same in its sole discretion.

**Section 10.06. Release and Indemnification.** The Borrower covenants and agrees as follows:

(a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Issuer, and each of its past, present and future officers, governing directors, officials, employees, attorneys and agents (collectively, the "Indemnified Parties"), against any and all losses, damages, claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, including, without limitation, reasonable fees and expenses of the Issuer's in-house counsel, if any, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under or any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

(i) the Loan or the Bond Documents or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby (subject to any limitations and/or other claims and/or liability arising under Alaska law);

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees, tenants) or licensees in connection with the Facilities, the operation of the Facilities, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about the Facilities or any part thereof;

(iii) any lien or charge upon payments by the Borrower to the Issuer hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer in respect of any portion of the Facilities;

(iv) any violation of any environmental regulations with respect to, or the release of any hazardous materials from, the property of the Borrower or any part thereof;

(v) the defeasance or prepayment, in whole or in part, of the Loan;

(vi) any Determination of Taxability of interest on the Bonds, or allegations that interest on the Bonds is taxable or any regulatory audit or inquiry regarding whether interest in the Bonds is taxable;

(vii) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in any offering statement or disclosure or continuing disclosure document for the Loan or any of the documents relating to the Loan, or any omission or alleged omission from any offering statement or disclosure or continuing disclosure document for the Loan of any material fact necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

provided that the foregoing indemnification shall not be available to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Borrower and reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if in the reasonable judgment of such Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not reasonably agree as to the action (or inaction) of counsel.

(b) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to this Agreement shall survive the final payment or prepayment of the Bonds. The provisions of this Section shall survive the termination of this Agreement.

### **Section 10.07. Non-Arbitrage Covenant.**

(a) The Borrower and the Issuer covenant that they will (i) not take, or fail to take, any action or make any investment or use of the proceeds of the Bonds that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and (ii) comply with the requirements of Section 148 of the Code.

(b) In the event that all of the proceeds of the Bonds, including the investment proceeds thereof, are not expended by the date which is six (6) months following the Issue Date, or if for any other reason a rebate is payable to the United States pursuant to Section 148 of the Code, the Borrower shall calculate, or cause to be calculated, the amount of the required rebate to the United States of America, as described in the Tax Regulatory Agreement (the “Rebate Amount”). The Borrower agrees to pay the amount so calculated, together with supporting documentation, to the Purchaser so as to permit the Purchaser to pay such rebate to the United States of America at the times required by the Code. The amount paid by the Borrower to the Purchaser shall be deposited into a special fund designated as the Rebate Fund, which shall be created and maintained in accordance with the terms of the Tax Regulatory Agreement. The Borrower shall maintain or cause to be maintained records of the determinations of the rebate, if any, pursuant to this Section 10.07(b) until six (6) years after the retirement of the Bonds. This Section 10.07(b) shall be construed in accordance with Section 148(f) of the Code, including, without limitation, any applicable tax regulations promulgated under the Code. Nothing contained in this Agreement shall be interpreted or construed to require the Issuer to pay any applicable rebate, such obligation being the sole responsibility of the Borrower. The Borrower shall pay all fees, costs and expenses associated with calculation of the Rebate Amount and upon request from the Issuer provide the Issuer with a copy of such calculation. The Issuer covenants that, if so requested by the Borrower, it shall execute any form required to be signed by an issuer of tax-exempt bonds in connection with the payment of any rebate or the recovery of overpayment of any rebate amount under the Code (including Internal Revenue Service Form 8038-T and Internal Revenue Service Form 8038-R). The Borrower shall supply all information required to be stated in such form and shall prepare such form. Except for the execution and delivery of such form upon timely presentation by the Borrower, the Issuer shall have no responsibility for such form or the information stated thereon.

**Section 10.08. Notice of Determination of Taxability.** Promptly after the Borrower first becomes aware of the occurrence of a Determination of Taxability or an event that could trigger the occurrence of a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer and the Purchaser.

**Section 10.09. Duties and Obligations.** The Borrower covenants and agrees that it will fully and faithfully perform all the duties and obligations that the Issuer has covenanted and agreed in this Agreement to cause the Borrower to perform and any duties and obligations that the Borrower is required to perform. The foregoing shall not apply to any duty or undertaking of the Issuer that by its nature cannot be delegated or assigned.

**Section 10.10. Financial Statements.** The Borrower shall, upon request, deliver to the Purchaser and the Issuer as soon as practicable and in any event within 120 days after the end of each Fiscal Year, the audited financial statements of the Borrower for such Fiscal Year.

**Section 10.11. Compliance with Laws.** The Borrower shall comply with all Applicable Laws.

**Section 10.12. Maintenance of Existence.** The Borrower agrees that it will maintain its organizational existence, will not dissolve or otherwise dispose of all or substantially all of its Property and will not consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into it, except in strict compliance with the terms of Applicable Law and the Continuing Covenant Agreement.

**Section 10.13. Issuer as Taxpayer.** The Borrower covenants and agrees that in any investigation of the Bonds by the Internal Revenue Service (the "IRS") only the Issuer, as taxpayer, shall be entitled to representation before the IRS.

## ARTICLE XI

### ASSIGNMENT, LEASE AND SALE

**Section 11.01. Restrictions on Transfer of Issuer's Rights.** The Issuer agrees that, except for the assignment of certain of its rights, title and interests under this Agreement (or under the Deed of Trust or as otherwise contemplated hereunder) to the Purchaser, it will not during the term of this Agreement sell, assign, transfer or convey its rights, title and interests in this Agreement except as provided in Section 11.02.

**Section 11.02. Assignment of Agreement by the Borrower or Lease or Sale of Facilities.** All or a portion of the rights, duties and obligations of the Borrower under this Agreement may be assigned by the Borrower and the Facilities may be leased or sold as a whole or in part by the Borrower, without having to obtain the consent of the Issuer; provided that unless permitted in the immediately succeeding sentence, the Borrower shall not be released from its obligations hereunder in connection with any such assignment, lease or sale. Upon the assignment of all of the Borrower's rights, duties and obligations under this Agreement or the lease or sale of the Facilities as a whole, the Purchaser may execute a release of the Borrower from its obligations hereunder and under the other Bond Documents and all references to the "Borrower" in this Agreement, the other Bond Documents and the Bonds shall mean the assignee, lessee or purchaser if (i) such assignee, lessee or purchaser assumes the Borrower's obligations hereunder in writing, (ii) such assignee, lessee or purchaser has a consolidated tangible net worth (after giving effect to such assignment, lease or sale) of not less than the consolidated tangible net worth of the Borrower and its consolidated subsidiaries immediately prior to such assignment, lease or sale; (iii) no Event of Default has occurred and is continuing hereunder, and (iv) the Purchaser has consented in writing to such release. Prior to any assignment, lease or sale pursuant to this Section, the Borrower shall have caused to be delivered to the Issuer and the Purchaser, an Approving Opinion, satisfactory in form and substance to each of them. For purposes of this Section, the term "*consolidated tangible net worth*" means the difference obtained by subtracting total consolidated



liabilities (not including as a liability any capital or surplus item) from total consolidated tangible assets of the Borrower and all of its consolidated Affiliates, computed in accordance with GAAP.

**Section 11.03. Assumption of Agreement by Purchaser of Facilities Upon Foreclosure.** With the prior written consent of the Issuer, any Person who purchases the Facilities upon foreclosure may assume the Borrower's rights, duties and obligations hereunder by delivering to the Issuer and the Purchaser, (a) a written assumption of such rights, duties and obligations satisfactory in form and substance to the Issuer and the Purchaser, and (b) an Approving Opinion, satisfactory in form and substance to the Issuer and the Purchaser. From and after the date of such assumption, the Borrower shall be deemed to be released from its rights, duties and obligations hereunder and all references to the "Borrower" in this Agreement, the other Bond Documents and the Bonds shall mean the Person who purchased the Facilities upon foreclosure.

## ARTICLE XII

### EVENTS OF DEFAULT

**Section 12.01. Events of Default.** The term "Event of Default" shall mean any one or more of the following events:

- (a) Failure by the Borrower to make any payment required to be paid pursuant to Section 3.02;
- (b) The occurrence of an Event of Default under the Continuing Covenant Agreement;
- (c) Any representation or warranty made or deemed made by or on behalf of the Issuer or the Borrower contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement proves false or misleading in any material respect as of the date of the making or furnishing thereof;
- (d) Failure by the Issuer to observe or perform any of its other covenants, conditions, payments or agreements under this Agreement or the Bond for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Issuer by the Borrower or the Purchaser;
- (e) Failure by the Borrower to observe or perform any of its other covenants, conditions, payments or agreements under this Agreement (other than as described in Sections 12.01(a) or 12.01(b)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the Issuer or the Purchaser;
- (f) The Borrower shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, assignee, sequestrator, trustee, liquidator or similar official of the Borrower of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary

case under the Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other federal or state law relating to bankruptcy, insolvency, reorganization, arrangement, winding-up or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against the Borrower in an involuntary case under the Bankruptcy Code, or (vii) take any corporate action for the purpose of effecting any of the foregoing; or

(g) A proceeding or case shall be commenced, without the application or consent of the Borrower, in any court of competent jurisdiction and shall remain undismissed for a period of sixty (60) days, seeking (i) the liquidation, reorganization, arrangement, dissolution, winding-up, composition or adjustment of debts of the Borrower, (ii) the appointment of a trustee, receiver, custodian, assignee, sequestrator, liquidator or similar official of the Borrower or of all or any substantial part of its assets, or (iii) similar relief in respect of the Borrower under any law relating to bankruptcy, insolvency, reorganization, arrangement, winding-up, composition or adjustment of debts, or an order for relief against the Borrower shall be entered in an involuntary case under the Bankruptcy Code.

#### **Section 12.02. Rights and Remedies.**

(a) Upon the occurrence of an Event of Default, the Purchaser (i) may by notice to the Issuer and the Borrower, declare the obligations of the Issuer under the Bond and the obligations of the Borrower hereunder, under the Loan and under the Continuing Covenant Agreement to be immediately due and payable, and the same shall thereupon become immediately due and payable (provided that, the obligations of the Issuer and the Borrower shall be and become automatically and immediately due and payable without such notice upon the occurrence of an Event of Default described in Section 12.01(f) or (g)), without demand, presentment, protest or further notice of any kind, all of which are hereby expressly waived by the Issuer and the Borrower; (ii) may cure any default, event of default or event of nonperformance under this Agreement or any of the other Bond Documents (in which event the Borrower shall reimburse the Purchaser therefor pursuant to the Continuing Covenant Agreement); (iii) may exercise its banker's lien or right of set off, (iv) may proceed to protect its rights by suit in equity, action at law or other appropriate proceedings, whether for specific performance of any covenant or agreement of the Issuer or the Borrower herein contained or in and of the exercise of any power or remedy granted to the Purchaser hereunder or under any of the Bond Documents and/or (v) may exercise any other rights or remedies available under any Bond Document, any other agreement or at law or in equity. The rights and remedies of the Purchaser specified herein are for the sole and exclusive benefit, use and protection of the Purchaser, and the Purchaser is entitled, but shall have no duty or obligation to the Issuer, the Borrower or otherwise, (A) to exercise or to refrain from exercising any right or remedy reserved to the Purchaser, or (B) to cause any other party to exercise or to refrain from exercising any right or remedy available to it under any of the Bond Documents.

(b) From and after the occurrence of an Event of Default, all amounts owing to the Purchaser hereunder, under the Bond or under the other Bond Documents shall accrue

interest daily at the Default Rate. Interest accruing at the Default Rate shall be due and payable on demand.

(c) If the Purchaser shall have elected in its sole discretion the remedy set forth in Section 12.02(a)(i), the Issuer and the Borrower shall immediately pay all amounts outstanding hereunder, under the Bond and under the other Bond Documents.

**Section 12.03. Application of Moneys.** All of the moneys realized through the exercise of the remedies provided in Section 12.02 shall be used to pay principal and Purchase Price of and interest on the Bonds then due or overdue and costs incurred in the collection thereof (including reasonable attorneys' fees). If the available moneys are not sufficient on any payment date to pay principal and Purchase Price of and interest on the Bonds then due or overdue and costs incurred in the collection thereof (including reasonable attorneys' fees), they shall be applied first to the payment of costs incurred in the collection thereof (including reasonable attorneys' fees), second to interest then due on the Bonds, in the order of maturity of the installments of such interest, third to the payment of the unpaid principal or Purchase Price of the Bonds which shall have become due, by reason of maturity, redemption, acceleration or otherwise and, fourth to the payment of any other amounts owed by the Borrower to the Purchaser pursuant to the Bond Documents.

**Section 12.04. No Waiver; Remedies.** No failure on the part of the Purchaser to exercise, and no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver of such right, power or privilege; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or which the Purchaser would otherwise have.

## ARTICLE XIII

### MISCELLANEOUS

**Section 13.01. Amendments and Waivers.** No amendment or waiver of any provision of this Agreement nor consent to any departure by the Borrower or the Issuer from any such provision shall in any event be effective unless the same shall be in writing and signed by the Purchaser. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. In the event any agreement contained in this Agreement should be breached by the Borrower or the Issuer and thereafter waived by the Purchaser, such waiver shall be limited to the particular breach so waived for the specific period set out in such waiver and such waiver shall not constitute a waiver of such breach for any other period and shall not waive any other or similar breach hereunder.

**Section 13.02. Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 13.03. Notices.** Except as otherwise provided herein, all notices, approvals, consents, requests, and other communications hereunder (i) shall be in writing, (ii) shall be

delivered by hand, by overnight delivery service, or by facsimile transmission (with confirmed receipt) to the address or facsimile number set forth below, and (iii) shall only be deemed to have been given when the writing is delivered or first refused. Where required herein, notice shall be given by telephone, and promptly confirmed in writing, and shall be deemed given when given by telephone to the telephone numbers set forth below. The Issuer, the Borrower and the Purchaser may, by written notice given hereunder, designate any different addresses, phone numbers and facsimile numbers to which subsequent notices, certificates, approvals, consents, requests or other communications shall be sent.

- To the Issuer: City of Wasilla  
290 E. Herning Avenue  
Wasilla, AK 99654-7091  
Telephone: (907) 373-9090  
Facsimile: (907) 373-9085  
Attention: Finance Director
  
- To the Borrower: Southcentral Foundation  
4501 Diplomacy Drive  
Anchorage, Alaska 99508  
Telephone: (907) 729-4939  
Facsimile: (907) 729-5000  
Attention: Chief Financial Officer
  
- To the Purchaser: Wells Fargo Bank, National Association  
301 W. Northern Lights Boulevard  
Anchorage, Alaska 99503  
Telephone: (907) 265-2140  
Facsimile: (907) 263-2582  
Attention: Claire E. Hoffman

**Section 13.04. Severability.** If any provision of this Agreement is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or Sections of this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

**Section 13.05. Payments Due on Non-Business Days.** In any case where the date of maturity of interest on or redemption premium, if any, or principal of the Bonds or the date fixed for redemption or purchase of any Bonds shall not be a Business Day, then payment of such Purchase Price, interest, redemption premium or principal, unless otherwise provided herein, need not be made on such date but shall be made on the immediately succeeding Business Day, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and, in the case of such payment, no interest shall accrue for the period from and after such date.

**Section 13.06. Liability of the Purchaser.** Neither the Purchaser nor any of its officers, directors, employees or agents shall be liable or responsible for any of the following: (i) the use

that may be made of the Bond Proceeds, the Loan or any amounts made available by the Purchaser hereunder or for any acts or omissions of the Issuer or the Borrower in connection therewith; or (ii) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the Purchaser may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

**Section 13.07. Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State. This Agreement shall be enforceable in the State of Alaska, and any action arising out of this Agreement shall be filed and maintained in the trial courts for the State of Alaska in the Third Judicial District at Anchorage.

**Section 13.08. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

**Section 13.09. Successors and Assigns.** This Agreement is a continuing obligation and shall be binding upon and inure to the benefit of the Issuer, the Borrower, the Purchaser and their respective successors, endorsees and assigns (but no other Person shall have any benefit, right or interest under or because of this Agreement), except that neither the Issuer nor the Borrower may assign or transfer its rights or obligations hereunder without the prior written consent of the Purchaser.

**Section 13.10. Complete and Controlling Agreement.** This Agreement and the other Bond Documents completely set forth the agreements among the Issuer, the Purchaser and the Borrower and fully supersede all prior agreements, both written and oral, among the Purchaser, the Issuer and the Borrower relating to all matters set forth herein and in the Bond Documents.

**Section 13.11. Contractual Interpretation.** The parties acknowledge that they have read and fully understand the terms of this Agreement, have consulted with such attorneys, accountants, advisors, or other professionals as they have deemed appropriate prior to executing this Agreement with adequate opportunity and time for review thereof, and are fully aware of its contents and of its legal effect. Accordingly, neither this Agreement nor any ambiguity herein shall be construed against any party on the grounds that such party drafted this Agreement and instead, this Agreement shall be interpreted as though drafted equally by all parties.

**Section 13.12. Electronic Signatures.** The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such 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. 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.

**Section 13.13. Third Party Beneficiaries.** The Owners shall be third party beneficiaries of this Agreement, and as such also agree and contract with the parties hereto to carry out all of their obligations hereunder.

**Section 13.14. No Liability for Consents or Appointments.** Whenever any provision herein provides for the giving of consent or direction by the Issuer, the Issuer shall not be liable to the Borrower or to the Lender for the giving of such consent or direction or for the withholding of such consent or direction. The Issuer shall have no liability for appointments which are required to be made by it under this Agreement or any related documents.

**Section 13.15. Non-Liability of the Issuer.** No agreements or provisions contained in this Agreement nor any agreement, covenant, or undertaking by the Issuer in connection herewith shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way, except as may be payable from payments made pursuant to the Loan and their application as provided herein. No failure of the Issuer to comply with any term, covenant, or agreement contained herein, or in any document executed by the Issuer in connection herewith, shall subject the Issuer to liability for any claim for damages, costs, or other financial or pecuniary charge, except to the extent that the same can be paid or recovered from Payments made pursuant to the Loan. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement contained herein, or any obligations imposed upon the Issuer pursuant hereto, or the breach thereof. In making the agreements and provisions set forth in this Agreement, the Issuer has not obligated itself, except with respect to the application of Revenues made pursuant to the Loan hereunder.

**Section 13.16. Expenses.** The Borrower covenants and agrees to pay, and to indemnify the Issuer against all reasonable costs, charges and expenses, including fees and disbursements of attorneys, including, without limitation, fees and expenses of the Issuer's in-house counsel, if any, accountants, consultants and other experts, incurred by the Issuer in good faith in connection with the Loan and the Bond Documents. Notwithstanding the above, Borrower shall not be required to pay and/or to indemnify the Issuer for items described in this Section to the extent arising from the gross negligence by the Issuer in connection with the Loan and the Bond Documents.

**Section 13.17. No Personal Liability.**

(a) The Issuer shall not be obligated to pay the principal of or interest on the Issuer Loan, except from payments under the Loan and any other moneys and assets received by the Issuer for such purpose pursuant to this Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith

and credit of the Issuer is pledged to the payment of the principal or interest on the Bonds. Neither the Issuer nor its officers, directors, agents or employees or their successors and assigns shall be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind or any conceivable theory, under, by reason of or in connection with this Agreement or the Bonds, except only to the extent amounts are received for the payment thereof from the Borrower under this Agreement.

(b) The Borrower hereby acknowledges that the Issuer's sole source of moneys to repay the Issuer Loan will be provided by payments made by the Borrower under the Loan pursuant to this Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Borrower, the Issuer or any third party, subject to any right of reimbursement from the Issuer or any such third party, as the case may be, therefor but solely, in the case of the Issuer, from the payments made pursuant to the Loan (other than funds paid to the Issuer pursuant to Reserved Issuer Rights), other than with respect to any deficiency caused by the willful misconduct of the Issuer.

(c) No director, member, officer, agent or employee of the Issuer or any director, officer, agent or employee of the Borrower shall be individually or personally liable for the payment of any principal, prepayment premium, if any, or interest on the Bonds or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement, but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

**Section 13.18. Disclaimer of Warranties.** THE PURCHASER AND THE ISSUER MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, COMPLIANCE WITH SPECIFICATIONS, QUALITY OF MATERIALS OR WORKMANSHIP, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, USE OR OPERATION, SAFETY, PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENTS, TITLE OR FITNESS FOR USE OF THE FACILITIES OR ANY COMPONENT THEREOF OR ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT THERETO AND, AS TO THE PURCHASER AND THE ISSUER. All such risks, as between the Purchaser, the Issuer and the Borrower, are to be borne by the Borrower. Without limiting the foregoing the Purchaser and the Issuer shall have no responsibility or liability to the Borrower or any other person with respect to any of the following: (a) any liability, loss or damage caused or alleged to be caused directly or indirectly by the Facilities, any inadequacy thereof, any deficiency or defect (latent or otherwise) therein, or any other circumstances in connection therewith; (b) the use, operation or performance of the Facilities or any risks relating thereto; (c) any interruption of service, loss of business or anticipated profits or consequential damages; or (d) the delivery, operation, servicing, maintenance, repair, improvement or replacement of the Facilities. If, and so long as, no default exists under this Agreement, the Borrower shall be, and hereby is, authorized to assert and enforce, at the

Borrower's sole cost and expense, from time to time, whatever claims and rights the Borrower or the Purchaser may have against any prior title holder or possessor of the Facilities. In no event shall the Purchaser or the Issuer be liable for any loss or damage in connection with or arising out of this Agreement or the Facilities.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CITY OF WASILLA

By \_\_\_\_\_  
Bert Cottle, Mayor

[Signatures continued on following page]

[Signature Page to Financing Agreement]

SOUTHCENTRAL FOUNDATION,  
an Alaska nonprofit corporation

By \_\_\_\_\_  
Lee Olson, Chief Financial Officer

[Signatures continued on following page]

[Signature Page to Financing Agreement]

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Purchaser

By \_\_\_\_\_  
Claire E. Hoffman, Vice President

## EXHIBIT A

### INTEREST RATE PROVISIONS

**Section 1.01. Definitions.** In addition to words and terms defined elsewhere in the Agreement, for the purposes of calculating the interest rate on the Bonds, the following words and terms as used in the Agreement, the recitals thereto and this Exhibit A shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

“*Applicable Factor*” means 66.8%.

“*Applicable Spread*” means 94 basis points (0.94%).

“*Bond Interest is Taxable*” means that interest paid or to be paid on a Bond is or will be includable for federal income tax purposes in the gross income of the Purchaser or any other Owner thereof, but excluding the inclusion of interest on such Bond as an item of tax preference for purposes of the calculation of an alternative minimum tax imposed on the Purchaser or such other Owner.

“*Calculation Agent*” means Wells Fargo, and if Wells Fargo shall decline to act as Calculation Agent, means any other Person appointed by the Borrower, with the consent of the Purchaser in its sole discretion, to serve as calculation agent for the Bonds.

“*Computation Date*” means the Issue Date and thereafter the second London Business Day preceding each LIBOR Index Reset Date.

“*Determination of Taxability*” means (a) any determination, decision, decree or advisement by the Commissioner of Internal Revenue, or any District Director of Internal Revenue or any court of competent jurisdiction to the effect that Bond Interest is Taxable, or (b) the delivery to the Purchaser or any Owner of an Opinion of Counsel, delivered by Bond Counsel, to the effect that Bond Interest is Taxable. A Determination of Taxability also shall be deemed to have occurred on the first to occur of the following:

- (i) the date when the Borrower files any statement, supplemental statement, or other tax schedule, return or document, which discloses that Bond Interest is Taxable;
- (ii) the effective date of any federal legislation enacted or federal rule or regulation promulgated after the date of this Agreement which has the effect that Bond Interest is Taxable; or
- (iii) if upon sale, lease or other deliberate action within the meaning of Treas. Reg. § 1.141-2(d), the failure to receive an Approving Opinion.

“*Interest Payment Date*” means (a) the first Business Day of each calendar month; (b) with respect to Unremarketed Bonds, the dates set forth in the Continuing Covenant Agreement for the payment of interest on Unremarketed Bonds, (c) for Bonds subject to redemption in whole or in part on any date, the date of such redemption and (d) the Maturity Date.

“*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 Calculation Agent of which the Borrower has received written notice.

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

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

“*London Business Day*” means any day that is a day for trading by and between banks in Dollar deposits in the London interbank market.

“*Margin Rate Factor*” means the greater of (a) 1.0, and (b) the product of (i) one minus the Maximum Federal Corporate Tax Rate multiplied by (ii) 1.53846. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change.

“*Maximum Federal Corporate Tax Rate*” means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect from time to time or, if as a result of a change in the Code the rate of income taxation imposed on corporations generally shall not be applicable to the Purchaser, the maximum statutory rate of federal income taxation which could apply to the Purchaser.

“*Maximum Lawful Rate*” means the maximum, non-usurious, lawful rate of interest that may be contracted for, charged or received in connection with the relevant obligation under applicable law without regard to any filing made by a lender with respect to notice of rates in excess of any statutory or regulatory threshold interest rate.

“*Taxable Date*” means the date on which interest on the Bonds is first includable in gross income of an Owner (including, without limitation, any previous Owner) thereof as a result of a Determination of Taxability.

“*Taxable Rate*” means, for any date of determination, the rate of interest per annum equal to the product of the interest rate on the Bonds then in effect multiplied by 1.49701.

“*Wells Fargo*” means Wells Fargo Bank, National Association, and its successors and assigns.

**Section 1.02. Interest Rate on the Bonds.** The interest rate on the Bonds shall be calculated as follows:

(a) **General.** The Bonds shall bear interest from the Issue Date, until paid, at the rate set forth herein (computed on the basis of a 360-day year for the actual days elapsed).

(b) **Interest Accrual.** Interest accrued on the Bonds shall be paid on each Interest Payment Date (or, if such day is not a Business Day, the next succeeding Business Day) commencing on the first Interest Payment Date following the Issue Date. The interest rate on the Bonds will be determined as provided in this Exhibit A except that no rate shall exceed the Maximum Lawful Rate.

(c) **Index Interest Rate.** The Bonds shall bear interest at the LIBOR Index Rate. The Calculation Agent 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 Calculation Agent 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 Calculation Agent 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 \_\_\_\_, shall be equal to \_\_\_\_%. Promptly following the determination of the LIBOR Index Rate, the Calculation Agent shall give notice thereof to the Issuer, the Borrower and the Purchaser.

(d) **Determination of Rate Conclusive.** The determination of the interest rate on the Bonds, and its calculation of the amount of interest due for any period, by the Calculation Agent shall be conclusive and binding upon the Issuer, the Borrower, and the Owners absent manifest error.

(e) **No Liability.** In determining the interest rate or rates that the Bonds shall bear as provided in this Section, the Calculation Agent shall not have any liability to the Issuer, the Borrower or any Owner except for its gross negligence or willful misconduct.

(f) **Adjustments to Index Interest Rates.** Notwithstanding anything to the contrary herein, (i) from and after any Taxable Date, the interest rate on the Bonds shall be established at a rate equal to the Taxable Rate and (ii) subject to the interest rate limitations of Section 1.02(b) of this Exhibit A, upon the occurrence and continuation of any Event of Default, from and after the effective date of such Event of Default, the interest rate on the Bonds shall be established at a rate equal to the Default Rate. In the event that a Taxable Date and an Event of Default have occurred, the interest rate on the Bonds shall be established at a rate equal to the greatest of (A) the Default Rate, if any Event of Default has occurred, (B) the Taxable Rate, if a Taxable Date has occurred, and (C) the interest rate that otherwise would be applicable to the Bonds but for the provisions of this paragraph.

(g) **Excess Interest.** Notwithstanding anything in this Agreement to the contrary, if the rate of interest on the Bonds exceeds the Maximum Lawful Rate for such Bonds, then (i) such Bonds shall bear interest at the Maximum Lawful Rate and (ii) interest

calculated at the rate equal to the difference between (A) the rate of interest for such Bonds as calculated pursuant to this Agreement and (B) the Maximum Lawful Rate (the "Excess Interest") shall be deferred until such date as the Bonds bear interest at an interest rate below the Maximum Lawful Rate, as calculated pursuant to Section 1.02 of this Exhibit A, at which time Excess Interest shall be payable with respect to such Bonds in amounts that, when combined with the then-current interest due on the Bonds, do not exceed payment at the Maximum Lawful Rate. Payments of deferred Excess Interest shall no longer be due and payable upon the earlier to occur of the date on which the Bonds are tendered for purchase in accordance with the terms hereof and are so paid or such Bonds are paid in full.

**EXHIBIT B**  
**BOND FORM**

**THIS BOND MAY NOT BE TRANSFERRED EXCEPT IN ACCORDANCE WITH SECTION 2.07 OF THE AGREEMENT AND AS PROVIDED HEREIN**

**United States of America**

\$55,000,000

**City of Wasilla**

**Revenue Bonds (Southcentral Foundation Project), Series 2017**

No. R-\_\_

Interest Rate

Maturity Date

Issue Date

AS STATED BELOW

February [ ], 2047

February [ ], 2017

REGISTERED OWNER: Wells Fargo Bank, National Association

**FOR VALUE RECEIVED**, City of Wasilla, a first class city duly organized and existing under the Constitution and laws of the State of Alaska (the "Issuer"), hereby promises to pay to the Registered Owner specified above, or its registered assigns (each, an "Owner"), on the Maturity Date specified above, unless redeemed prior thereto, an aggregate principal amount equal to \$55,000,000 (the "Stated Principal Amount") or the Principal Amount (as herein defined), whichever is less, together with interest thereon at the rates determined as set forth in the Agreement (as hereinafter defined) from the Issue Date specified above, but only from the sources and in the manner provided in the Agreement on the first Business Day of each calendar month and on the Mandatory Purchase Date (each, an "Interest Payment Date") until the principal hereof is paid or duly provided for upon redemption or maturity; provided, however, that interest on this Bond shall be calculated on the sum of the Advances made by the Purchaser as described in Section 4.02 of the Agreement and as reflected in the "Table of Advances" attached hereto (the "Principal Amount"). On the Completion Date (as defined in the hereinafter described Agreement), the difference between the Stated Principal Amount and the Principal Amount (calculated without reduction for any prior partial redemptions) shall be deemed to have been redeemed automatically; provided that such redemption shall not be taken into account in determining the Principal Amount reflected on the Table of Partial Redemptions attached hereto. Payment of the principal and Purchase Price of, redemption premium, if any, and interest on this Bond shall be made in lawful money of the United States of America which on the respective dates of payment thereof shall be legal tender for the payment of public and private debts. The Issuer has agreed that all amounts payable to the Owner with respect to any Bond held by the Owner shall be made to the Owner (without any presentment thereof, except upon payment of the final installment of principal, and without any notation of such payment being made thereon) in such manner or at such address in the United States of America as may be designated by the Owner in



writing to the Issuer and the Borrower (as hereinafter defined). Partial payments of the principal on this Bond may be noted on the Table of Partial Redemptions attached herein in lieu of surrendering this Bond in connection with such payment. In any case where the date of maturity of the principal or Purchase Price of, redemption premium, if any, or interest on this Bond or the date fixed for redemption of this Bond shall not be a Business Day, then payment of such principal, Purchase Price, redemption premium or interest need not be made on such date but shall be made on the immediately succeeding Business Day, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and, in the case of such payment, no interest shall accrue for the period from and after such date.

This Bond shall be a limited obligation of the Issuer, the principal and Purchase Price of, redemption premium, if any, and interest on which are payable solely from and secured as described in the Agreement, all as described in and subject to limitations set forth in the Agreement, for the equal and ratable benefit of the Owners, from time to time of this Bond.

THE PRINCIPAL AND PURCHASE PRICE OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THIS BOND SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR A PLEDGE OF FAITH AND CREDIT OF THE ISSUER, THE STATE OF ALASKA OR ANY POLITICAL SUBDIVISION THEREOF. NEITHER THE ISSUER, THE STATE OF ALASKA NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE OBLIGATED TO PAY PRINCIPAL AND PURCHASE PRICE OF, REDEMPTION PREMIUM, IF ANY, OR INTEREST ON THIS BOND OR OTHER COSTS INCIDENT THERETO EXCEPT FROM REVENUES. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF ALASKA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL AND PURCHASE PRICE OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THIS BOND OR OTHER COSTS INCIDENT THERETO.

This Bond is one of the Bonds of a duly authorized issue of revenue bonds of the Issuer in the aggregate principal amount of \$55,000,000 known as City of Wasilla Revenue Bonds (Southcentral Foundation Project), Series 2017 (the "Bonds"), dated as of the Issue Date referenced above. All of the Bonds are issued under and pursuant to a Financing Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement"), dated as of February 1, 2017, among the Issuer, Southcentral Foundation (the "Borrower") and Wells Fargo Bank, National Association, as Purchaser (the "Purchaser"), and the Act, as defined in the Agreement. Reference is hereby made to the Agreement for the provisions, among others, with respect to the custody and application of the proceeds of the Bonds, the collection and disposition of revenues, a description of the funds charged with and pledged to the payment of the principal and Purchase Price of, redemption premium, if any, and interest on the Bonds, the nature and extent of the security for the Bonds, the terms and conditions under which the Bonds are or may be issued, the calculation of interest on the Bonds, the rights, duties and obligations of the Issuer and the rights of the Owners of the Bonds. By the acceptance of this Bond, the Owner hereof assents to all of the provisions of the Agreement. Capitalized terms used herein and not defined shall have the meanings assigned to them in the Agreement.

The Bonds have been issued for the purpose of (a) financing the acquisition, construction, development, renovation, furnishing and equipping of Borrower's medical office building, parking

garage and related facilities and (b) payment of certain costs incurred in connection with the issuance of the Bonds. The Issuer has agreed to lend the proceeds of the sale of the Bonds to the Borrower, and the Borrower has agreed to make payments in an amount, corresponding to the Principal Amount of, interest rate on, Purchase Price of and due dates of the Bonds.

The Bonds are issuable as fully registered Bonds in the principal amount of \$250,000 and multiples of \$0.01 in excess thereof (an "Authorized Denomination"). This Bond 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 as provided in the Agreement. This Bond may be registered as transferred as provided in the Agreement, subject to certain limitations therein contained, 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.

1. **Tender of Bonds for Purchase.** The Bonds are subject to mandatory tender for purchase prior to the Maturity Date as set forth in the Agreement.

2. **Redemption of Bonds.** Subject to any limitations set forth in the Continuing Covenant Agreement, the Bonds are subject to mandatory redemption, optional redemption, extraordinary optional redemption and mandatory sinking fund redemption as set forth in the Agreement. Notice of redemption shall be given as provided in the Agreement.

3. **Miscellaneous.** Under certain circumstances as described in the Agreement, the principal of all the Bonds may be declared due and payable in the manner and with the effect provided in the Agreement.

Modifications or alterations to the Agreement may be made only to the extent and in the circumstances permitted by the Agreement.

It is hereby certified that all acts, conditions and things required to happen, exist and be performed under the laws of the State of Alaska and under the Agreement precedent to and in the issuance of this Bond have happened, exist and have been performed as so required and that the issuance, authentication and delivery of this Bond have been duly authorized by the Issuer.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF, City of Wasilla** has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of the Mayor of the Issuer and attested by manual or facsimile signature of the Clerk of the Issuer, all as of the Issue Date referenced above.

**CITY OF WASILLA**

(SEAL)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Mayor

ATTEST:

\_\_\_\_\_  
Clerk

**ASSIGNMENT**

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Please print or type 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.





**EXHIBIT C**  
**FORM OF INVESTOR LETTER**

[Date of Purchase]

City of Wasilla  
Wasilla, Alaska

Southcentral Foundation  
Anchorage, Alaska

Birch Horton Bittner & Cherot  
Anchorage, Alaska

\$55,000,000  
City of Wasilla  
Revenue Bonds (Southcentral Foundation Project), Series 2017

Ladies and Gentlemen:

Wells Fargo Bank, National Association (“Purchaser”) has agreed to purchase the above-referenced bonds (the “Bonds”) in the amount of \$55,000,000 which were issued in the original aggregate principal amount of \$55,000,000 by City of Wasilla (the “Issuer”) bearing the Index Interest Rate as set forth in the Financing Agreement dated as of February 1, 2017 (the “Agreement”), among the Issuer, Southcentral Foundation (the “Borrower”) and Wells Fargo Bank, National Association. All capitalized terms used herein, but not defined herein, shall have the respective meanings set forth in the 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 an Owner of the Bonds, (b) a trust or other custodial arrangement established by an 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 Facilities, 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 Facilities, 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 (i) 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, (ii) are not listed on any stock or other securities exchange, and (iii) carry no rating from any credit rating agency.

8. None of Bond Counsel, the Issuer, their members, governing body, or any of their employees, counsel or agents will have any responsibility to the Purchaser for the accuracy or completeness of information obtained by the Purchaser from any source regarding the Borrower or its financial condition, or regarding the ability of the Borrower to pay the Loan, or the sufficiency of any security therefore. No written information has been provided by the Issuer to the Purchaser with respect to the Loan. The Purchaser acknowledges that, as between the Purchaser and all of such parties, the Purchaser has assumed responsibility for obtaining such information and making such review as the Purchaser deemed necessary or desirable in connection with its decision to purchase the Bonds.

9. 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 an Owner of the Bonds;

(b) that is a trust or other custodial arrangement established by an 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.



10. The Purchaser agrees to indemnify and hold harmless the Issuer with respect to any claim asserted against the Issuer that is based upon the Purchaser's sale, transfer or other disposition of the Bonds in violation of the provisions hereof or the Financing Agreement or any inaccuracy in any statements made by us in this letter, other than any claim that is based upon the gross negligence or willful misconduct of the Issuer.

[PURCHASER]

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT D**  
**FORM OF REQUISITION**

\$ \_\_\_\_\_

Requisition No. \_\_\_\_\_

**REQUISITION AND CERTIFICATE**

[DATE]

Wells Fargo Bank, National Association  
301 W. Northern Lights Boulevard  
Anchorage, Alaska 99503

Ladies and Gentlemen:

On behalf of Southcentral Foundation (the "Borrower"), I hereby requisition from the funds representing the proceeds of the sale of the City of Wasilla Revenue Bonds (Southcentral Foundation Project) Series 2017 (the "Bonds"), issued by City of Wasilla (the "Issuer"), and dated February [ ], 2017, which funds have been or are to be deposited in the Borrower's account as described in Section 4.02 of the Financing Agreement, dated as of February 1, 2017 (the "Agreement") among the Issuer, the Borrower and Wells Fargo Bank, National Association, as purchaser (the "Purchaser"), the sum of \$ \_\_\_\_\_ to be paid to the person or persons indicated below:

(1) \$ \_\_\_\_\_ for \_\_\_\_\_  
\_\_\_\_\_ payable to \_\_\_\_\_, and

(2) \$ \_\_\_\_\_ for \_\_\_\_\_  
\_\_\_\_\_ payable to \_\_\_\_\_.

I hereby certify that (a) the obligation to make such payment was incurred by the Issuer or the Borrower in connection with the Acquisition of the Facilities, is a proper charge against the Costs of the Project, and has not been the basis for any prior requisition which has been paid; (b) neither the Borrower nor, to the best of the Borrower's knowledge, the Issuer has received written notice of any lien, right to lien or attachment upon, or claim affecting the right of such payee to receive payment of, any of the money payable under this requisition to any of the persons, firms or corporations named herein, or if any notice of any such lien, attachment or claim has been received such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this requisition; (c) this requisition contains no items representing

payment on account of any retained percentages which the Issuer or the Borrower is entitled to retain at this date; (d) subject to the last sentence of this paragraph, the payment of this requisition will not result in (i) less than substantially all (95% or more) of the proceeds of the Bonds to be expended under this requisition and under all prior requisitions having been used for the acquisition and installation of real property or property of a character subject to the allowance for depreciation under the Internal Revenue Code of 1986, as amended (the "Code") or (ii) more than 2% of the proceeds of the Bonds having been used to pay for issuance costs within the meaning of Section 147(g)(1) of the Code; (e) no "Event of Default," or event which after notice or lapse of time or both would constitute such an "Event of Default" has occurred and not been waived and (f) the Advance Termination Date has not occurred. Notwithstanding the foregoing, the undersigned may requisition Costs of the Project to pay issuance costs with respect to the Bonds at any time and from time to time, so long as such requisition, together with all prior requisitions, do not include amounts to pay issuance costs that exceed in total 2% of the Bond Proceeds expected to be available to pay Costs of the Project.

Capitalized terms used in this requisition and certificate and not defined herein shall have the meanings assigned thereto in the Agreement.

The following paragraph is to be completed when any requisition and certificate includes any item for payment for labor or to contractors, builders or materialmen.

I hereby certify that insofar as the amount covered by the above requisition includes payments to be made for labor or to contractors, builders or materialmen, including materials or supplies, in connection with the Acquisition of the Project, (i) all obligations to make such payment have been properly incurred, (ii) any such labor was actually performed and any such materials or supplies were actually furnished or installed in or about the Project and are a proper charge against the Costs of the Project, and (iii) such materials or supplies either are not subject to any lien or security interest or, if the same are so subject, such lien or security interest will be released or discharged upon payment of this requisition.

SOUTCENTRAL FOUNDATION

\_\_\_\_\_  
[Name, Title]

APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Purchaser

By: \_\_\_\_\_  
[Name, Title]

## **EXHIBIT E**

### **DESCRIPTION OF THE FACILITIES**

Finance the cost of acquisition, construction, restoration, improvement, renovation, equipping and general development of the real property and improvements located at 4441 Diplomacy Drive, Anchorage, Alaska, consisting of a five-story medical office building, including space for children's dental and dental training, obstetrics/gynecology, children's psychiatry and behavioral health and children's neurological development, and a parking garage, to be owned by the Borrower.

**ANCHORAGE RECORDING DISTRICT**

**AFTER RECORDING, RETURN TO:**

Kutak Rock LLP

777 South Figueroa Street, Suite 4550

Los Angeles, California 90017

Attention: Sam Balisy, Esq.

---

Space above this line for recorder's use only

**ASSIGNMENT AGREEMENT**

THIS ASSIGNMENT AGREEMENT (this "Assignment Agreement") is made as of February 1, 2017, by and between the CITY OF WASILLA, a first class city organized and validly existing under the laws of the State of Alaska ("Assignor"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Assignee"), with respect to the following Recitals:

**WITNESSETH:**

A. Assignor has entered into that certain Financing Agreement, dated as of February 1, 2017 (the "Financing Agreement"), by and among the Assignor, the Assignee and Southcentral Foundation, an Alaska nonprofit corporation (the "Borrower"), pursuant to which Assignor has undertaken to loan the proceeds of the Bonds (as defined in the Financing Agreement) to the Borrower to finance a portion of the cost of acquisition, improving, renovating, remodeling, furnishing and equipping certain real property described on Exhibit A attached hereto.

B. Assignor desires to transfer and assign to Assignee, and Assignee desires to assume from Assignor, all of Assignor's right, title, interest and obligation in, to and under (a) the Deed of Trust and Assignment of Rents and Leases, dated as of February 1, 2017, by the Borrower to Fidelity Title Agency of Alaska, LLC, as trustee, for the benefit of Assignor, and (b) the Assignment of Contracts and Permits, dated as of February 1, 2017, by the Borrower for the benefit of the Assignor, being recorded concurrently herewith (the "Assigned Documents"):

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

**AGREEMENT**

1. **Assignment.** Assignor hereby grants, sells, conveys, transfers and assigns unto Assignee all of Assignor's right, title, interest and obligation in, to and under the Assigned Documents.

Assignor hereby covenants and warrants to Assignee that Assignor has not previously transferred or assigned its right, title or interest in, to or under the Assigned Documents, or any portion thereof, to any third party.

2. **Assumption.** Assignee hereby accepts the foregoing assignment and hereby assumes each and all of the obligations of Assignor under the Assigned Documents from and after the date of this Assignment Agreement.

3. **Further Assurances.** Assignor hereby covenants that it will, at any time and from time to time upon written request therefor, at Assignee's sole expense and without the assumption of any additional liability of Assignor therefor, execute and deliver to Assignee, and their successors and assigns, any new or confirmatory instruments and take such further acts as Assignee may reasonably request to fully evidence the assignment contained herein and to enable Assignee, and their successors and assigns, to fully realize and enjoy the rights and interest assigned hereby.

4. **Successors and Assigns.** The provisions of this Assignment Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

5. **Counterparts.** This Assignment Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Assignment Agreement attached thereto.

6. **Governing Law.** This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of Alaska without regard to any choice of law provisions thereof. This Assignment Agreement shall be enforceable in the State of Alaska, and any action arising out of this Assignment Agreement shall be filed and maintained in the trial courts for the State of Alaska in the Third Judicial District at Anchorage, unless Assignor waives this requirement.

[Signatures follow on next page]

IN WITNESS WHEREOF, the parties have caused their respective duly authorized representatives to execute this Assignment Agreement as of the date first above written.

ASSIGNOR:

CITY OF WASILLA

By \_\_\_\_\_  
Bert Cottle, Mayor

**ACKNOWLEDGMENT**

STATE OF ALASKA                    )  
  ) ss:  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of February, 2017 by Bert Cottle, Mayor of the CITY OF WASILLA, an Alaska municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

[Signature Page to Assignment Agreement-  
Southcentral Foundation]





**EXHIBIT A**

**LEGAL DESCRIPTION**

THE FOLLOWING REAL PROPERTY LOCATED IN THE ANCHORAGE RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA:

[Insert Legal Description]

## CONTRACTS AND PERMITS ASSIGNMENT AGREEMENT

**This Contracts and Permits Assignment Agreement** (this "Assignment") is made to be effective as of February 1, 2017, by **Southcentral Foundation**, an Alaska nonprofit corporation ("Borrower"), to and for the benefit of the **City of Wasilla**, a first-class city organized and validly existing under the laws of the State of Alaska, as secured party (the "Secured Party").

A. Borrower is the fee owner of the real property and the owner of certain improvements described in **Exhibit A** attached hereto (the "Land") on which Borrower intends to construct, install, equip and furnish a medical office building and related facilities on the Land (the "Project").

B. Borrower has agreed to execute and deliver this Assignment to the Secured Party as security for the performance of Borrower's obligations under that certain Financing Agreement, dated as of February 1, 2017, (the "Financing Agreement"), among Borrower, the Secured Party, as issuer, and Wells Fargo Bank, National Association, as Purchaser (the "Purchaser"). Capitalized terms used herein shall have the meanings given in the Financing Agreement unless otherwise defined herein.

**NOW THEREFORE**, Borrower hereby agrees as follows:

1. Borrower hereby assigns, conveys and transfers to the Secured Party, as security for Borrower's obligations under the Financing Agreement, all of Borrower's right, title, interest, privilege, benefit and remedies in, to and under the following:

(a) the agreements listed in **Exhibit B** attached hereto;

(b) all plans, specifications and drawings with respect to the Project (the "Plans"), which shall include, without limitation, the plans, specifications and drawings for any and all improvements, streets, sewers, water and drainage and all tentative and final tract maps pertaining to the Project;

(c) all permits, licenses, and approvals (including without limitation all building permits) heretofore or hereafter issued to Borrower from time to time with respect to the Land and the Project; and

(d) any and all present and future amendments, modifications, supplements, change orders and addenda to any of the items described above.

A complete, true and correct copy of each document listed on Exhibit B has been provided to the Secured Party concurrently with delivery of this Assignment.

2. Borrower agrees to obtain and deliver to Secured Party, concurrently with its delivery of this Assignment, a Consent to Assignment substantially in the form of **Exhibit C** hereto (a "Consent") from each party to the agreements listed in Exhibit B other than Borrower. The agreements described in Section 1 above are referred to herein as the "Agreements." The other party to such Agreement is referred to herein as a "Contract Party."

3. This Assignment and the Consent to it do not relieve Borrower of its obligations under the Agreements. Secured Party does not hereby assume any of Borrower's obligations or duties concerning the Agreements, including, without limitation, any obligation to pay for the work done pursuant thereto.

4. Upon the occurrence of an Event of Default (as defined in the Financing Agreement) by Borrower, Secured Party may, at its option, upon written notice to the Contract Party and Borrower, exercise any or all of the rights and remedies granted to Borrower under the Agreements with the Contract Party as if Secured Party had been an original party to such Agreement. Secured Party may elect to assume the obligations of Borrower under the Agreements by giving notice to that effect to the Contract Party; provided however, that Secured Party shall cure any Borrower default under the Agreements as a condition to exercise of the Assignment including the payment of all compensation due to Contract Party under the Agreements.

5. Borrower hereby irrevocably constitutes and appoints Secured Party as its attorney-in-fact, which power is coupled with an interest, so that Secured Party shall have the right upon the occurrence of an Event of Default by Borrower under the Financing Agreement to demand, receive and enforce Borrower's rights with respect to the Agreements, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower, and to do any and all acts in the name of Borrower or in the name of Secured Party with the same force and effect as Borrower could have done.

6. Borrower hereby represents and warrants to Secured Party that no previous assignment of the Agreements has been made by Borrower, and agrees not to assign, sell, pledge, transfer or otherwise encumber its interest in the Agreements so long as this Assignment is in effect. Borrower represents and warrants that the copies of the Agreements provided by Borrower to Secured Party shall be the complete and entire agreement between the parties thereto.

7. If any provision of this Assignment shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of other provisions of this Assignment or of the Financing Agreement. This Assignment may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought.

8. Borrower shall indemnify, defend and hold Secured Party, its directors, officers, employees and agents (the "Secured Party Indemnified Parties"), harmless, for, from and against any and all actual or threatened liabilities, claims, actions, causes of action, judgment, orders, damages (including foreseeable and unforeseeable consequential damages), costs or expenses, fines, penalties, and losses, including sums paid in settlement of claims and all consultant, expert and reasonable legal fees and expenses of counsel (including the allocated cost of in-house counsel), directly or indirectly arising out of or resulting from this Assignment or Secured Party's exercise of its rights hereunder, except to the extent caused by the gross negligence or willful misconduct of the Secured Party Indemnified Party.

9. This Assignment shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of Secured Party, the other Secured Party Indemnified Parties, and their respective successors and assigns. Secured Party may assign all or any portion of its interest

in the Agreements or its rights created hereunder and, in such event, Borrower, at its sole expense, shall promptly execute, acknowledge and deliver such additional documents, instruments and agreements as may reasonably be required by Secured Party in connection with any such assignment.

10. Upon the satisfaction of all obligations of Borrower to Secured Party and the other Secured Party Indemnified Parties, this Assignment shall automatically terminate.

11. Concurrently with the execution of this Assignment, the Secured Party is assigning all of its right, title and interests herein to Purchaser pursuant to an Assignment Agreement, dated as of February 1, 2017, and upon such assignment, Purchaser shall have all of the rights, title and interest of the Secured Party hereunder.

12. This Assignment may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument and any of the parties hereto may execute this Assignment by signing any such counterpart. This Assignment shall be governed by and construed in accordance with the laws of the State of Alaska.

[Remainder of Page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed as of the date first set forth above.

**Southcentral Foundation**, an Alaska nonprofit

By \_\_\_\_\_  
[Name, Title]

Accepted:

**CITY OF WASILLA**

By \_\_\_\_\_  
[Name, Title]

[Signature Page to Contracts and Permits Assignment Agreement]

**EXHIBIT A TO ASSIGNMENT  
DESCRIPTION OF REAL PROPERTY**

**[TO BE PROVIDED]**

**EXHIBIT B TO ASSIGNMENT**  
**AGREEMENTS TO BE ASSIGNED**

1. Standard Form of Agreement Between Owner and Design-Builder, dated as of June 9, 2016, by and between Southcentral Foundation and Nesser Construction, Inc., as design-builder.

## **EXHIBIT C TO ASSIGNMENT**

### **FORM OF CONSENT TO CONTRACT ASSIGNMENT AGREEMENT**

The undersigned Contract Party hereby consents to the Contracts and Permits Assignment Agreement (the "Assignment"), effective as of February 1, 2017, by Southcentral Foundation, an Alaska nonprofit corporation ("Borrower"), to and for the benefit of the City of Wasilla, as secured party ("Secured Party"), and agrees to perform pursuant to the terms and conditions of the undersigned's Agreement with Borrower (the "Agreement") described in Exhibit B attached to said Assignment or otherwise entered into with Borrower.

The undersigned acknowledges that Secured Party is assigning all of its right, title and interests in the Assignment to Wells Fargo Bank, National Association, and upon such assignment, Wells Fargo Bank, National Association, shall have all of the rights, title and interest of Secured Party hereunder.

If requested by Secured Party in the exercise of its rights under the Assignment, the undersigned shall continue to perform its obligations under the Agreement for which the undersigned shall be compensated in accordance with the Agreement. The undersigned agrees that, upon request by Secured Party, undersigned shall provide a complete list of all of its subcontractors in connection with work for or on the Project and shall cooperate to provide and permit access to Secured Party or its agent for inspection of the Project and the work in process. The undersigned also agrees that, in the event of a breach by Borrower of any of the terms and conditions of the Agreement, the undersigned will give prompt written notice of such breach to Secured Party at Secured Party's address provided to undersigned. Secured Party shall have 30 days from the receipt of such notice of default to remedy or cure said default, provided, however that neither the Assignment nor this consent shall require Secured Party to cure said default, but Secured Party shall, in its sole discretion, have the option to do so.

The undersigned acknowledges that Borrower is relying on this Consent and the assurances herein and this Consent shall also be for the benefit of and bind any assignee or successors of Secured Party and the undersigned. All capitalized terms used in this Consent shall have the same meaning as in the Assignment. The Agreement between Borrower and the undersigned is in full force and effect as of the date hereof.



Dated as of February 1, 2017

[NAME OF CONTRACT PARTY]

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Secured Party Address

Address of Contract Party:

Wells Fargo Bank, National Association  
301 W Northern Lights Boulevard  
Anchorage, Alaska 99505  
Attention: Alaska Commercial Real Estate  
Group

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONSENT TO CONTRACT ASSIGNMENT AGREEMENT**

The undersigned Contract Party hereby consents to the Contracts and Permits Assignment Agreement (the "Assignment"), effective as of February 1, 2017, by Southcentral Foundation, an Alaska nonprofit corporation ("Borrower"), to and for the benefit of the City of Wasilla, as secured party ("Secured Party"), and agrees to perform pursuant to the terms and conditions of the undersigned's Agreement with Borrower (the "Agreement") described in Exhibit B attached to said Assignment or otherwise entered into with Borrower.

The undersigned acknowledges that Secured Party is assigning all of its right, title and interests in the Assignment to Wells Fargo Bank, National Association, and upon such assignment, Wells Fargo Bank, National Association, shall have all of the rights, title and interest of Secured Party hereunder.

If requested by Secured Party in the exercise of its rights under the Assignment, the undersigned shall continue to perform its obligations under the Agreement for which the undersigned shall be compensated in accordance with the Agreement. The undersigned agrees that, upon request by Secured Party, undersigned shall provide a complete list of all of its subcontractors in connection with work for or on the Project and shall cooperate to provide and permit access to Secured Party or its agent for inspection of the Project and the work in process. The undersigned also agrees that, in the event of a breach by Borrower of any of the terms and conditions of the Agreement, the undersigned will give prompt written notice of such breach to Secured Party at Secured Party's address provided to undersigned. Secured Party shall have 30 days from the receipt of such notice of default to remedy or cure said default, provided, however that neither the Assignment nor this consent shall require Secured Party to cure said default, but Secured Party shall, in its sole discretion, have the option to do so.

The undersigned acknowledges that Borrower is relying on this Consent and the assurances herein and this Consent shall also be for the benefit of and bind any assignee or successors of Secured Party and the undersigned. All capitalized terms used in this Consent shall have the same meaning as in the Assignment. The Agreement between Borrower and the undersigned is in full force and effect as of the date hereof.

Dated as of February 1, 2017

**NESSER CONSTRUCTION, INC.**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Secured Party Address

Address of Contract Party:

Wells Fargo Bank, National Association  
301 W Northern Lights Boulevard  
Anchorage, Alaska 99505  
Attention: AK Commercial Real Estate  
Group

2501 Blueberry Road  
Anchorage, Alaska 99503

## CONSENT TO CONTRACT ASSIGNMENT AGREEMENT

The undersigned Contract Party hereby consents to the Contract Assignment Agreement (the "Assignment"), effective as of February 1, 2017, by Southcentral Foundation, an Alaska nonprofit corporation ("Borrower"), to and for the benefit of Alaska Housing Finance Corporation, as secured party ("Secured Party"), and agrees to perform pursuant to the terms and conditions of the undersigned's Agreement with Borrower (the "Agreement") described in Exhibit B attached to said Assignment or otherwise entered into with Borrower.

The undersigned acknowledges that Secured Party is assigning all of its right, title and interests in the Assignment to Wells Fargo Bank, National Association, and upon such assignment, Wells Fargo Bank, National Association, shall have all of the rights, title and interest of Secured Party hereunder.

If requested by Secured Party in the exercise of its rights under the Assignment, the undersigned shall continue to perform its obligations under the Agreement for which the undersigned shall be compensated in accordance with the Agreement. The undersigned agrees that, upon request by Secured Party, undersigned shall provide a complete list of all of its subcontractors in connection with work for or on the Project and shall cooperate to provide and permit access to Secured Party or its agent for inspection of the Project and the work in process. The undersigned also agrees that, in the event of a breach by Borrower of any of the terms and conditions of the Agreement, the undersigned will give prompt written notice of such breach to Secured Party at Secured Party's address provided to undersigned. Secured Party shall have 30 days from the receipt of such notice of default to remedy or cure said default, provided, however that neither the Assignment nor this consent shall require Secured Party to cure said default, but Secured Party shall, in its sole discretion, have the option to do so.

The undersigned acknowledges that Borrower is relying on this Consent and the assurances herein and this Consent shall also be for the benefit of and bind any assignee or successors of Secured Party and the undersigned. All capitalized terms used in this Consent shall have the same meaning as in the Assignment. The Agreement between Borrower and the undersigned is in full force and effect as of the date hereof.

Dated as of February 1, 2017

**MCCOOL CARLSON GREEN**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Secured Party Address

Wells Fargo Bank, National Association  
301 W Northern Lights Boulevard  
Anchorage, Alaska 99505  
Attention: AK Commercial Real Estate  
Group

Address of Contract Party:

410 W 1<sup>st</sup> Avenue, Suite 300  
Anchorage, Alaska 99501