



	Approved	Denied
Action taken		9/23/02
Other:		
Verified by:	<i>R. Smith</i>	

WASILLA CITY COUNCIL MEMORANDUM

CM No. 02-48

TITLE: Library Lease With Carr Gottstein Properties

COUNCIL MEETING DATE: September 9 2002

ADMINISTRATION INITIAL: *Spalin*

REQUESTED BY: Library/Public Works

PREPARED BY: Public Works

Date Prepared: August 27, 2002

FISCAL IMPACT:

If yes, amount requested: \$ 212,685 Account No. 21-54-455-440-00

SUMMARY STATEMENT:

The attached lease has been negotiated with Carr Gottstein Properties through a Request For Proposal. The FY03 payment of \$236,970.00 assumes a seven-month lease beginning December 1. \$138,233.00 will pay the lease while \$74,452.00 will pay a pro-rated portion of the remodeling costs. The lease will be for ten years with future year funds budgeted in each annual operating budget.

The total cost of the remodeling will be \$382,896 spread over a 36-month period. The following shows the annual payment in each fiscal year for the remaining remodeling payments: FY4 and FY05 payments are \$127,632.00 and FY06 payment is \$53,180.00.

The supplemental appropriation of \$250,000.00 to the library fund that was approved by Council will pay for all FY03 lease and remodel costs and the balance of \$37,315.00 will pay for moving the library to the new site.

STAFF RECOMMENDED ACTION: It is recommended that the attached library lease with Carr Gottstein Properties be approved.

Attachments: Library lease with Carr Gottstein Properties

LEASE AGREEMENT

THIS LEASE, made and entered into as of the _____ day of _____, 2002, by and between Carr Gottstein Properties herein called the Lessor, and the City of Wasilla, herein called the Tenant,

WITNESSETH:

In consideration of the mutual covenants contained herein, the parties to this lease agree as follows:

1. PREMISES. Lessor does hereby lease, demise and let unto Tenant, and Tenant does hereby hire and take from Lessor, those premises, herein called the Demise Premises, described as 15,798 square feet, of net useable office space, on _____, at _____ Wasilla, Alaska, 99654.

2. TERM. The term of this lease shall be for ten (10) years, commencing on December 1, 2002 and ending on November 30, 2012. All terms are contingent on annual appropriation of funds.

3. RENT & TENANT IMPROVEMENTS. Tenant covenants and agrees to pay to the Lessor a rental of \$1.25 per square foot for 15,798 SF or \$19,747.50 per month from the date of occupancy throughout the term hereof. Said rental is due and payable monthly, in advance, on or before the 10th day of each month, at the office of the Lessor as shown in Paragraph 22 herein, or at such other place as the Lessor may designate in writing. The lease agreement terms, with regards to amount of the lease, may be adjusted for a mutually agreed cost.

In addition the Tenant agrees to pay Tenant Improvement Cost, which are amortized over the first 36 months of the Lease at \$10,636. per month.

4. TERMS OF THE REQUEST FOR PROPOSAL INCORPORATED. The terms, conditions, and specifications described in the Request for Proposal for Library Space, including attachments are attached hereto as Appendix 1, and are hereby incorporated into the terms of this lease.

5. BUILDING AND PERSONAL SAFETY.

A. Lessor warrants that the Demise Premises comply, and will be maintained for continued compliance, with all applicable Federal, State and Local statutes, codes and regulations, including but not limited to Zoning Ordinances, Building, Fire and Sanitation Codes, the Occupational Safety and Health Act (OSHA) of 1970 (or any authorized revision thereof), and all regulations issued thereunder, the Alaska OSHA Plan, and the Americans with Disabilities Act (ADA). Tenant acknowledges that it is responsible for compliance with all such statutes, codes and regulations as pertains to it's own operations within or upon the Demised Premises.

B. By the act of executing this lease, the Lessor covenants that the structure and premises which are the subject matter of this lease have been adequately inspected, by qualified inspectors, to determine the existence and potential for exposure of employees, occupants and users to any hazard or noxious materials, fumes or gasses, including, but not limited to, asbestos fibers, friable or otherwise. The Lessor further covenants that all means have been employed to abate exposure or the potential for exposure of occupants and users of the premises and structures to hazardous or noxious materials, fumes or gasses existing anywhere in the structure or on the premises, now or in the future.

C. The Lessor further covenants to indemnify, defend, save and hold the Tenant harmless from any claims, lawsuits or liabilities, including attorney's fees and costs, allegedly arising out of loss, damage or injury to persons or property by reason of the alleged exposure of users, employees or occupants to hazardous or noxious materials utilized in the construction of the building, or kept or maintained by Lessor anywhere in the structure or on the premises, during or after the term of this lease.

6. ALTERATIONS, INSTALLATION, REMOVAL OF EQUIPMENT AND FINISHINGS.

A. Tenant agrees not to make any alterations to the Demised Premises without prior written consent of Lessor, which consent shall not be withheld unreasonably. However, Tenant shall have the right, without prior consent of Lessor, to install equipment and furnishings as may be convenient for the conduct of its business as a normal office environment.

B. All equipment and furnishings constructed or installed in the Demised Premises at the expense of Tenant shall be the property of the tenant and may be removed by tenant upon the termination of this lease or at any time prior thereto. However, the cost of repairing any damage or disfigurement to the Demised Premises caused by such removal by Tenant shall be borne by Tenant. Tenant shall have no obligation to remove such equipment and furnishings and may, at its option, surrender the same along with the Demised Premises. Any of the same not removed by Tenant upon its vacation of the Demised Premises shall be deemed abandoned and shall become the property of Lessor, in which case Tenant shall not be liable for removal costs.

7. MAINTENANCE AND REPAIRS.

A. Lessor specifically agrees to furnish major and minor maintenance to the Demised Premises at no cost to Tenant. The Lessor agrees not to unduly disrupt library services while such maintenance is being done. If Lessor fails to commence making repairs, alterations or replacements within five (5) days after tenant gives notice requesting lessor to do so, or fails to complete the same promptly, Tenant may make such repairs, alterations or replacements and charge to Lessor the costs thereof. The

B. If the Premises are rendered wholly or partially unfit for occupancy by any damage or destruction or if for any reason, possession or beneficial use of premises is interfered with, the rent shall abate until the premises are fully restored to fitness for occupancy or such interference has ceased.

C. A minimum of every third year of contract, the Lessor shall repair and repaint walls as required. The City will be responsible for moving books and shelves.

D. If the Demised Premises are destroyed or damaged by fire, earthquake or other causes to such an extent that it cannot be restored to tenantable condition within ninety (90) days from the date of such destruction or damage, either party may terminate this lease as of the date of such destruction or damage by written notice given to the other party not later than thirty (30) days subsequent to the date of such destruction or damage.

8. RIGHT OF ENTRY. Lessor shall have the right to enter the Demised Premises at all reasonable times for the purpose of performing its obligations as stated in this lease, as may be appropriate for the safety and preservation thereof, including the making of repairs to the building of which the same is a part. Lessor agrees insofar as reasonably practicable not to interfere with the use and enjoyment of the premises by Tenant.

9. ASSIGNMENT AND SUBLETTING. Tenant shall not assign nor sublet this lease without the prior written consent of Lessor, which consent shall not be withheld unreasonably.

10. SERVICES AND UTILITIES. Lessor, at its own expense, shall provide the following services and utilities to the Demised Premises:

- **Natural Gas. **Electricity. **Landscaping. **Water. **Sewer.
- **Sidewalk and parking lot sweeping and/or snow removal and sanding as necessary.
- **Refuse removal and outside refuse containers.
- **Lighting maintenance, including weekly replacement of burnt-out light bulbs, light tubes, and ballasts.
- **Janitorial service as described in **Attachment A.**

Lessor further agrees to provide heating, cooling and/or air exchange system sufficient to maintain a constant and consistent interior temperature of between 70° F and 76° F. Ventilation must be at least 15 CFM/person to meet ASHRAE Standard 62-1989 or superseded regulations of indoor air quality (ASHRAE). Tenant will provide the telephone system & instruments and Lessor shall not be liable for any interruption or failure of any said services or utilities which shall be caused by labor disputes, accidents, necessary repairs or other matters beyond the reasonable control of Lessor.

If Lessor fails to provide utilities and service as required herein, or fails to provide janitorial services as stated in Attachment A, or fails to correct deficiencies in the

service within five (5) days after Tenant gives notice requesting Lessor to do so, Tenant may provide such utilities, services, or janitorial services, and deduct from the rent the cost thereof.

11. INDEMNITY. Tenant shall indemnify and hold Lessor harmless from any claim, action or demand deemed arising from any act or omission of Tenant or Tenant's agents, employees, invitees, or licensees; unless the claim, action or demand arises from Lessor's breach of any covenants, term or condition of this lease to be observed or performed by Lessor, in which case Lessor shall indemnify and hold Tenant harmless from the claim, action or demand. Lessor shall indemnify and hold Tenant harmless from any claim, action or demand deemed arising from any act or omission of Lessor or Lessor's agents, employees, invitees; unless the claim, action or demand arises from Tenants breach of any covenants, term or condition of this lease to be observed or performed by Tenant, in which case Tenant shall indemnify and hold Lessor harmless from the claim, action or demand.

12. DEFAULT BY TENANT. Should Tenant default in the payment of any rent or other monies provided hereunder to be paid by Tenant, or violate any other covenants of this lease, Lessor, at its option, may terminate and cancel this lease after thirty (30) days written notice to tenant, provided that the default or other violation is not corrected during said period or Tenant is not actively engaged in correcting same. With respect to any breach relating to the payment of money, the amount of which Tenant in good faith disputes, Lessor (if Tenant pays the undisputed portion hereof), shall have no right to declare such termination or cancellation until the existence of such alleged breach has been judicially determined and Tenant has not within thirty (30) days after such judicial determination complied herewith.

13. QUIET POSSESSION. Tenant, upon paying the rent and observing the covenants of this lease, shall and may lawfully and quietly hold and enjoy the Demised Premises during the term hereof without hindrance or interruption.

14. DEFAULT BY LESSOR. Should Lessor default in the performance or the observance of any covenants of the lease and fail to fully remedy such default within thirty (30) after written notice by Tenant, notwithstanding any other provision of this lease, may cure such default and deduct from the rent the cost thereof, or, may at any time after the expiration of such thirty (30) day period terminate this lease. All rental hereunder shall abate during the period of default. Where this lease provides for a shorter notice period for a specific occurrence of default and/or cure, such shorter notice period shall be controlling.

15. TERMINATION. The payments of rent by Tenant are conditioned upon an annual appropriation of funds by the Wasilla City Council. This lease may be terminated if no appropriation is made, or there is a lack of necessary funds. Tenant shall give written notice to Lessor of its intent to terminate for this reason not less than sixty (60) days in advance. Upon termination of this lease for any reason, Lessor shall refund to Tenant any unearned advanced rental paid by tenant.

16. HOLDING OVER. Should Tenant continue to hold possession of the Demised Premises after the expiration of the term of this lease, including extensions, Tenant shall become a tenant month-to-month at the last agreed upon monthly rental rate and subject to the terms and conditions contained in this lease.

17. NOTICES. Notices regarding this lease shall be given only by certified or registered letter or telegram and shall be deemed given when the letter is deposited in the mail or the telegram filed with the telegraph company, postage or charges prepaid, and addressed to the party for whom intended at such party's address as herein provided, or at such other address as the party may have substituted therefore by proper notice to other.

18. MODIFICATION OF LEASE. The terms, covenants and conditions of this lease may not be changed orally, but may be changed by an agreement in writing signed by both parties of this lease. The failure of either party to insist upon the performance of any term, covenant or condition of this lease shall not constitute a waiver or relinquishment for the future of any such term, covenant or condition.

19. SUCCESSOR AND ASSIGNS. The terms, covenants and provisions of this lease shall be binding upon the Lessor, Tenant, and their respective heirs, successors and assigns.

20. PARAGRAPH HEADINGS. The paragraph headings in this document are inserted only as a matter of convenience, and for reference, and in no way define, limit or describe the scope or reference, and in no way define, limit or describe the scope or intent of this lease or in any way affect its terms or provisions.

21. TAXES, INSURANCE & OTHER CHARGES. During the term of this lease, Lessor shall pay all taxes, assessments, service and utility charges as provided in paragraph 9, fire and casualty insurance, and mortgage payments on the Demised Premises, excepting taxes and insurance on the Tenant's property on the premises. If Lessor defaults at any time in any such payment or in the performance of the obligation of any mortgage or lien affecting the premises, Tenant may remedy such default in whole or in part, and charge to Lessor all costs incurred thereby and be subrogated to the rights of the holder of such mortgage or other lien.

22. INSURANCE COVERAGE. Tenant shall effect and maintain liability coverage to assure Lessor of indemnity, as required under Paragraph 10 herein, with minimum limits of liability for injuries, including accidental death, of One Million Dollars (\$1,000,000) for any one person, plus a Two Million Dollar (\$2,000,000) aggregate property damage limit. Certificates of such insurance shall be filed with the Lessor, if they be so required. Tenant and Lessor waive all rights of recovery against the other party to the extent covered by the claimant's fire or casualty insurance. Tenant reserves the right to provide insurance required of it through its "self-insured" program. Lessor will be provided thirty (30) days notice of any cancellation of insurance.

23. ADDRESSES: For the purpose of notifications regarding this lease, the address of the Tenant and Lessor shall be:

LESSOR:

TENANT:
City of Wasilla
290 E. Herning Avenue
Wasilla, Alaska 99654

It is understood and agreed that either party to this lease may, at any time, and from time to time, change its address from that shown in this section upon written notice to the other.

24. SIGNS. Tenant will not erect signs, poles, lights or advertising devices on the premises without first obtaining written approval of Lessor. Lessor agrees to allow Tenant to post signage indicating its presence in the building lobby, and at the entrance to the leased space.

25. INTERIOR FINISHING/TENANT IMPROVEMENTS: In the fifth year of the lease, Lessor agrees to re-paint the entire interior of the Library. Tenant agrees to move shelving and books as well as putting all shelving and books back in place after painting is complete. The painting to be completed at no expense to the city and the city is to select the paint color. Scheduling of this work shall be coordinated with the city to mitigate disruption of library services.

26. ENVIRONMENTAL MATTERS: Lessor represents and warrants that any handling, transportation, storage, treatment, or usage of hazardous or toxic substance that has occurred on the leased premises to date has been in compliance with all applicable Federal, State and Local Laws, Regulations and Ordinances.

Lessor further represents and warrants that no leak, spill, release, discharge, emission or disposal of hazardous or toxic substance has occurred on the leased premises to date and that the soil, groundwater, and soil vapor on or under the Leased Premises is free of toxic or hazardous substance as of the date that the term of this Lease Agreement commences.

27. INDEMNIFICATION FOR ENVIRONMENTAL MATTERS. Lessor and each of its general partners jointly agree to indemnify defend (with employees, and agents harmless from any claims, judgments, damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims), or loss including attorneys' fees, consultant fees, and expert fees (consultant and experts to be selected by Lessee) which arise during or after the term of this lease from or in connection with the presence or suspected presence of toxic hazardous substances in the soil, groundwater, or soil vapor on or under the leased premises, unless the toxic or hazardous substance are present solely as a result of the negligence or willful misconduct of Lessee, its officers, employees, or agents. Without limiting the generality of the foregoing, the indemnification provided in this paragraph shall specifically cover costs incurred in

connection with any investigation of the site conditions or any clean-up, remedial, removal, or restoration work required by any Federal, State, or Local Government Agency or Political Subdivision because of the presence or suspected presence of toxic or hazardous substance in the soil, groundwater, or soil vapor on or under the leased premise, unless the toxic or hazardous substances are present solely as a result of the negligence or willful misconduct of Lessee, its officers, employees, or agents. Without limiting the generality of any of the foregoing, the indemnification provided by this paragraph shall also specifically cover costs incurred in connection with:

A. Toxic or hazardous substances present or suspected to be present in the soil, groundwater, or soil vapor on or under the leased premises before the term of this lease agreement commences; or

B. Toxic or hazardous substances that migrate, flow, percolate, diffuse, or in any way move onto or under the lease premises after the term of this lease agreement commences, or

C. Toxic or hazardous substances present on or under the leased premises as a result of any discharge, dumping, or spilling (accidental or otherwise) onto the leased premises, during or after the term of this leased agreement by any person, corporation, partnership, or entity other than Lessee.

28. ALLOCATION OF CLEAN-UP EXPENDITURES. Tenant shall only bear that portion of the costs and responsibility of compliance with any Federal, State, or Local Laws which are applicable to Tenant's discharge, if any, of hazardous substances or waste at the premises during the lease term and landlord shall be responsible for paying and undertaking the balance.

29. TERMS SURVIVING TERMINATION OF LEASE. Paragraphs 25, 26 & 27 shall survive the expiration or early termination of this Lease Agreement.

30. SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT. Tenant agrees to complete and execute a subordination, non-disturbance, and attornment agreement, attached hereto as Appendix 2, which is hereby incorporated and made part of this Agreement.

31. WAIVER. One or more waiver of this lease by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent to or approval of any act by the other party of a nature requiring consent or approval shall not be deemed to waive consent to or approval of any subsequent or similar act.

32. SEVERABILITY. If any clause or term of this agreement shall be invalid by any court of law, the enforceability of the remaining clauses and terms of the agreement shall be unaffected.

33. ANNUAL FUNDING. Funding for this lease shall be solely dependent upon annual appropriation of funds for future years by the Wasilla City Council as part of their annual budget process.

IN WITNESS WHEREOF, Lessor and Tenant have respectively executed this agreement as of the day and year first above written.

TENANT:

LESSOR:

City of Wasilla

Sarah Palin, Mayor

NAME: _____

TITLE: _____

DATE: _____

DATE: _____

ATTEST:

Kristie VanGorder
City of Wasilla Clerk

DATE: _____

APPENDIX 1

1. SUPPLEMENTAL SPECIFICATIONS

- a. Separate restroom facilities for men and women capable of accommodating juveniles shall be provided within the library or no more than fifty (50) feet from the library entrance, in compliance with all applicable codes, handicap accessibility requirements, and the COW's safety regulations. Each toilet shall have a privacy arrangement.
- b. A drinking fountain or water cooler shall be provided no more than twenty feet from the entrance to the library.
- c. Power requirements shall be adequate to serve the needs of the library. Lighting levels of at least 100-foot candlepower shall be maintained at desk levels. The number, location, type and voltage of electrical outlets will be determined in meetings with the successful bidder. A minimum of 150 outlets will be used for planning purposes.
- d. Proposer will provide telephone and computer outlets at locations to be determined by the COW. There will be wiring for a minimum of 12 internal telephones, 3 public pay phones, and 46 computer terminals with minimum CAT 5 cable size. The phone system will be purchased and installed by the City of Wasilla.
- e. Ceiling heights must accommodate extensive shelving and be at least 10'6" in height and have sound proofing capability.
- f. Commercial grade carpeting to be installed throughout the facility excepting restrooms and the area immediately fronting sink, oven and refrigerator. Floor shall conform to standard load bearing requirements for libraries of at least 150 psf where bookshelves are located.
- g. The proposer shall provide and install exterior signage to identify the library and to guide the public to the space. This sign will read "WASILLA PUBLIC LIBRARY" and will have lettering a minimum of eighteen (18") inches high in a color selected by the City and at a location approved by the City.
- h. The proposer shall provide lighted parking area with at least 105 spaces including handicapped accessible spaces required by ADA.
- i. The proposer shall make provisions for an exterior book drop to be installed by the proposer at their expense. The design and location will be approved by the City of Wasilla.

- j. Perimeter base board heating fixtures are not acceptable because walls are needed for shelving. In-floor radiant heating may be acceptable due to requirement to anchor bookcases into the floor.
- k. Book stack area shall be open with interior no load walls and minimal number of columns. If there are load bearing columns, columns shall be no less than twenty-four (24) feet apart to accommodate bookshelves and ADA requirements for aisle width.
- l. Exterior roof shall be maintained in good condition to prevent leaks into the library area.
- m. Healthy ventilation and air-conditioning shall meet ASHRAE codes and adequate air circulation to handle a daily load of 500 people to prevent CO2 build up. This ventilation must be at least 15 CFM/person and meet ASHRAE Standard 62-1989 or superceded regulations of indoor air quality (ASHRAE).

Attachment A

Janitorial

3 nights full cleaning (Sunday, Tuesday, Thursday)

- Vacuum all carpeted areas
- Sweep and mop all hard surface floors
- Clean entry door and partition glass
- Clean, sanitize and deodorize restroom facilities
- Stock all needed restroom products
- Dust and clean all low and high horizontal surfaces
- Maintain clean dust free air vents
- Polish metalwork and woodwork
- Remove all waste, replace liners
- Clean entrance-lobby area, arrange items orderly
- Clean any visible carpet spots or stains
- Clean kitchen/lunchroom areas, sanitize contact surfaces

2 night light cleaning (Monday, Wednesday)

- Vacuum entrance areas
- Clean, sanitize and deodorize restrooms
- Clean kitchen/lunchroom areas
- Remove waste, replace liners

Infrequent Services

- Clean all carpeted areas using industry preferred pre-spray extraction method – 4X per year
- Vinyl floor maintenance finish removal and re-application – 4X per year
- Monthly customer walkthrough to ensure quality

Cleaning products and supplies are provided, but not restroom or kitchen paper products. Customer may contact a supply company directly, following is a list of Anchorage vendors Service Master uses:

- Asplund Supply 1-800-478-6431
- Unisource 1-907-276-1735
- Frontier Paper 1-907-272-4000

APPENDIX 2

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This AGREEMENT is made and entered into as of _____, 20____, by and among LASALLE NATIONAL BANK, AS TRUSTEE FOR CAPCO AMERICA SECURITIZATION CORPORATION COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 1998-D7 ("Lender"), WASILLA SHOPPING CENTER LLC, a Delaware Limited Liability Company ("Landlord") and the CITY OF WASILLA ("Tenant").

1. RECITALS.

1.1 Mortgage. Lender is the holder of a Promissory Note dated _____, in the principal amount of \$_____ of Landlord, which is secured, *inter alia*, by a Mortgage and Security Agreement (the "Mortgage") and Assignment of Lease and Rents (the "Lease Assignment") covering premises more particularly described in the Mortgage (the "Premises").

1.2 Lease. Landlord and Tenant entered into a Lease dated _____, 20____ (the "Lease"), whereby Landlord demised to Tenant a portion of the Premises (the "Demised Premises").

2. CONSIDERATION. The terms of the Lease constitute a material inducement to Lender's consent thereto and entering into and performing this Agreement.

3. SUBORDINATION OF THE LEASE. This Lease shall be and is hereby made subject and subordinate to the Mortgage.

4. NON-DISTURBANCE. Lender shall not, in the exercise of any right, remedy, or privilege granted by the Mortgage or the Lease Assignment, or otherwise available to Lender at law or in equity, disturb Tenant's possession under the Lease so long as:

- (a) Tenant is not in default under any provision of the Lease or this Agreement at the time Lender exercises any such right, remedy or privilege; and
- (b) The Lease at that time is in force and effect according to its original terms, or with such amendments or modifications as Lender shall have approved, if such approval is required by the terms of the Mortgage or the Lease Assignment; and
- (c) Tenant thereafter continues to fully and punctually perform all of its obligations under the Lease without default thereunder beyond any applicable cure period; and
- (d) Tenant attorns to or at the direction of Lender, as provided in Paragraph 5.

Without limiting the foregoing, and so long as the foregoing conditions are met, Lender agrees that (i) Tenant will not be named as a party to any foreclosure or other proceeding instituted by Lender to enforce the terms of the Mortgage or the Lease Assignment; (ii) any sale or other transfer of the Demised Premises or of the Landlord's interest in the Lease, pursuant to foreclosure or any voluntary conveyance or other proceeding in lieu of foreclosure, will be subject and subordinate to Tenant's possession under the Lease; and (iii) the Lease will continue in force and effect according to its original terms, or with such amendments as Lender shall have approved, if such approval is required by the terms and conditions of the Mortgage or the Lease Assignment.

5. ATTORNMENT. Tenant shall attorn to Lender, to any receiver or similar official for the Demised Premises appointed at the instance and request, or with the consent, of Lender and to any person who acquires the Demised Premises, or the Landlord's interest in the Lease, or both, pursuant to Lender's exercise of any right, remedy or privilege granted by the Mortgage, or otherwise at law or in equity.

attorn to any person or entity that acquired the Demised Premises pursuant to foreclosure of the Mortgage, or by any proceeding or voluntary conveyance in lieu of such foreclosure, or from Lender, whether by sale, exchange or otherwise. Any attornment to anyone other than Lender shall be conditioned upon Tenant receiving a non-disturbance from such entity.

Upon any attornment under this Paragraph 5, the Lease shall continue in full force and effect as a direct lease between Tenant and the person or entity to whom Tenant attorns, except that such person or entity shall not be:

- (i) liable for any breach, act or omission of any prior landlord; or
- (ii) subject to any offsets, claims or defenses which Tenant might have against any prior landlord; or
- (iii) bound by any rent or additional rent or other payment in lieu of rent which Tenant might have paid to any prior landlord more than 30 days in advance of its due date under the Lease or which such person or entity has physical possession of;
- (iv) bound by any notice given by Tenant to Landlord, whether or not such notice is given pursuant to the terms of the Lease, unless a copy thereof was then also given to Lender; or
- (v) be liable for any security deposit or other sums held by any prior landlord, unless actually received.

6. REPRESENTATIONS AND WARRANTIES.

6.1 Joint and Several. Landlord and Tenant hereby jointly and severally represent and warrant to Lender as follows regarding the Lease:

(a) A true and correct copy of the Lease (inclusive of all riders and exhibits thereto) is attached to the counterpart of this Agreement being delivered to Lender. There are no other oral or written agreements, understandings or the like between Landlord and Tenant relating to the Demised Premises or the Lease transaction.

(b) Tenant has accepted possession of the Demised Premises, is in occupancy thereof under the Lease, and the term commenced on _____, 20 ____.

(c) Under the Lease, Tenant is presently obligated to pay rent without present right of defense or offset, at the rate of \$_____ per month. Rent is paid through and including _____, 20 _____. No rent has been paid more than 30 days in advance, and Tenant has no claim against the Landlord for any deposits or other sums.

(d) The Lease has not been modified, altered or amended in any respect.

(e) All of the improvements contemplated by the Lease have been entirely completed as required therein.

(f) The addresses for notices to be sent to Tenant and Landlord are as set forth in the Lease.

(g) To Tenant's knowledge, Tenant has no right of first refusal, option or other right to purchase the Premises or any part thereof, including, without limitation, the Demised Premises.

6.2 Severally. Landlord and Tenant severally represent and warrant to Lender with respect to themselves, but not with respect to the other:

(a) The execution of the Lease was duly authorized, the Lease was properly executed and is in full force and effect and is valid, binding and enforceable against Tenant and Landlord and there exists no default, nor state of facts which with notice, the passage of time, or both, could ripen into a default, on the part of either Tenant or Landlord.

(b) There has not been filed by or against nor, to the best of the knowledge and belief of the representing party, is there threatened against or contemplated by, Landlord or Tenant, a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or of any state thereof, or any other action brought under said bankruptcy laws.

(c) There has not been any assignment, hypothecation or pledge of the Lease or rents accruing under the Lease, other than pursuant to the Mortgage and the Lease Assignment. Tenant makes the representation set forth in this subparagraph only to its best knowledge and belief.

7. RENTS. Landlord and Tenant jointly and severally acknowledge that the Lease Assignment provides for the direct payment to Lender of all rents and other monies due and to become due to Landlord under the Lease upon the occurrence of certain conditions as set forth in the Lease Assignment without Lender's taking possession of the Demised Premises or otherwise assuming Landlord's position or any of Landlord's obligations under the Lease. Upon receipt from Lender of written notice to pay all such rents and other monies to or at the direction of Lender, Landlord authorizes and directs Tenant thereafter to make all such payments to or at the direction of Lender, releases Tenant of any and all liability to Landlord for any and all payment so made, and shall defend, indemnify and hold Tenant harmless from and against any and all claims, demands, losses, or liabilities asserted by, through or under Landlord (except by Lender) for any and all payments so made. Upon receipt of such notice, Tenant thereafter shall pay all monies then due and becoming due from Tenant under the Lease to or at the direction of Lender, notwithstanding any provision of the Lease to the contrary. Tenant agrees that neither Lender's demanding or receiving any such payments, nor Lender's exercising any other right, remedy, privilege, power or immunity granted by the Mortgage or the Lease Assignment, will operate to impose any liability upon Lender for performance of any obligation of Landlord under the Lease unless and until Lender elects otherwise in writing. Such payments shall continue until Lender directs Tenant otherwise in writing. Tenant agrees not to pay any rent under the Lease more than 30 days in advance without Lender's consent. The provisions of this Paragraph 7 will apply from time to time throughout the term of the Lease.

8. CURE. If Tenant becomes entitled to terminate the Lease or offset, withhold or abate rents because of any default by Landlord, then Tenant shall give Lender written notice specifying Landlord's default. Lender then shall have the right, but not the obligation, to cure the specified default within the following time periods:

(a) Fifteen days after receipt of such notice with respect to defaults that can be cured by the payment of money; or

(b) Thirty days after receipt of such notice with respect to any other default; unless the cure requires Lender to obtain possession of the Demised Premises, in which case such thirty day period shall not commence until Lender acquires possession, so long as Lender proceeds promptly to acquire possession of the Demised Premises with due diligence, by foreclosure of the Mortgage or otherwise. Nothing contained in this Paragraph 8 shall require Lender to commence or continue any foreclosure or other proceedings, or, if Lender acquires possession of the Demised Premises, to continue such possession, if all defaults specified by Tenant in its notice are cured. Possession by a receiver, or other similar official appointed at the instance, or with the consent, of Lender shall constitute possession by Lender for all purposes under this Paragraph

9. ESTOPPEL LETTERS. Whenever reasonably requested by Lender, Landlord and Tenant from time to time shall severally execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications of all of the matters as set forth in Paragraph 6, whether Tenant has exercised any renewal option or options and any other information the Lender may reasonably require to confirm the current status of the Lease, including, without limitation, a confirmation that the Lease is and remains subordinated as provided in this Agreement.

10. CASUALTY AND EMINENT DOMAIN. Landlord and Tenant jointly and severally agree that the Mortgage permits Lender, at its option, to apply to the indebtedness from time to time secured by the Mortgage any and all insurance proceeds payable with respect to any casualty loss at the Demised Premises and any and all awards or other compensation that may be payable for the condemnation of all or any portion of the Demised Premises, or any interest therein, or by way of negotiated settlement or conveyance in lieu of condemnation; and Landlord and Tenant jointly and severally consent to any such application by Lender. Notwithstanding the foregoing, Landlord and Lender agree that any and all insurance or condemnation proceeds payable with respect to Tenant's property or the interruption or relocation of Tenant's business (except for rental loss insurance proceeds) will be paid to Tenant, so long as they do not reduce the proceeds otherwise payable to Lender.

11. NOTICES. All notices, demands, and other communications that must or may be given or made in connection with this Agreement must be in writing and, unless receipt is expressly required, will be deemed delivered or made 5 days after having been mailed by registered or certified mail, return receipt requested, or by express mail, in any event with sufficient postage affixed, and addressed to the parties as follows:

TO LENDEDER: c/o AMRESKO Services, L.P.
245 Peachtree Center Avenue, N.E.
Suite 1800
Atlanta, Georgia 30303
Attn.: Loan No. 400032918

TO LANDLORD: Wasilla Shopping Center LLC
4000 West Dimond Blvd. Suite 240
Anchorage, Alaska 99502

TO TENANT: City of Wasilla
290 E. Herning Avenue
Wasilla, Alaska 99654

Such addresses may be changed by notice pursuant to this Paragraph 11; but notice of change of address is effective only upon receipt. Landlord and Tenant jointly and severally agree that they will furnish Lender with copies of all notices relating to the Lease. All communications to Lender shall reference "AMRESKO Loan No.: 400032918".

12. SUCCESSORS AND ASSIGNS. As used in this Agreement, the word "Tenant" shall mean Tenant and any subsequent holder or holders of an interest under the Lease, as the text may require, provided that the interest of such holder is acquired in accordance with the terms and provisions of the Lease and the word "Lender" shall mean Lender or any other subsequent holder or holders of the Mortgage or any party acquiring title to the Demised Premises by purchase at a foreclosure sale, by deed of the Lender, or otherwise. Subject to the foregoing, this Agreement shall bind and inure to the benefit of Landlord, Tenant and Lender, their legal representatives, successors and assigns. The terms Lease, Mortgage and Lease Assignment shall include any and all amendments, modifications, replacements, substitutions, extensions, renewals and supplements thereto.

13. FURTHER ASSURANCES. Landlord and Tenant from time to time shall execute and deliver at Lender's request all instruments that may be necessary or appropriate to evidence their agreement hereunder provided such instrument neither increases Tenant's obligations or decreases its rights under the Lease.

14. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

15. SEVERABILITY. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or to any person or to particular circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

LENDER:
LASALLE NATIONAL BANK, AS TRUSTEE FOR CAPCO
AMERICA SECURITIZATION CORPORATION
COMMERCIAL MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 1998-D7

By: AMRESKO Services, L.P.,
its authorized agent

By: AMRESKO Mortgage Capital, Inc.,
Its general partner

By: _____

Name: _____
Title: Servicing Officer

LANDLORD:
WASILLA SHOPPING CENTER, LLC
A Delaware Limited Liability Company

Member: Labar Properties, Limited Partnership, an Alaska
Partnership

By: Carr-Gottstein GP, LLC, an Alaska LLC, Its general
Partner

By: _____
Robert Mintz
Authorized Agent

TENANT:
CITY OF WASILLA

Name: _____
Sarah Palin
Mayor