

VII. Insurance

A. Fire and Extended Coverage.

Throughout the term, at no cost or expense to Lessor, Lessee shall keep, or cause to be kept, insured all improvements located on or appurtenant to the Property against loss or damage by fire and such other risks as are now or hereafter included in an extended coverage endorsement in common use for commercial structures, including vandalism and malicious mischief. The amount of the insurance shall be sufficient to prevent either Lessor or Lessee from becoming a co-insurer under the provisions of the policy, but in no event shall the amount be less than ninety percent (90%) of the then actual replacement cost. Lessor shall not carry any insurance the effect of which would be to reduce the protection or payment to Lessee under any insurance that this Lease obligates Lessee to carry. If there is any dispute as to whether the amount of insurance carried complies with the above which cannot be resolved by agreement, Lessor may, but no more frequently than once every twelve (12) months, request the carrier of the insurance then in force to determine the full insurable value as defined in this provision, and the resulting determination shall be conclusive between the two parties for the purpose of this Paragraph. Lessee may include the holder of any mortgage on the leasehold or other person, as a loss payee, so long as the amount payable to Lessor hereunder is not reduced thereby.

B. Proceeds of Fire and Extended Coverage Insurance.

Lessor shall, at no cost and expense to Lessor, cooperate fully with Lessee to obtain the largest possible recovery. All policies of fire and extended coverage insurance required by Paragraph A shall provide that the proceeds shall be paid to Lessor, Lessee or any mortgagee, as their interests may appear. Subject to any other conditions contained in this Lease, the proceeds from any policy insuring a casualty to the improvements shall first be used for the repair, restoration, alteration or reconstruction of the improvements. Any insurance proceeds remaining after complying with the provisions of this Lease relating to maintenance, repair or reconstruction of improvements shall be paid to Lessee or to Lessee's designee.

C. Builders Risk Coverage.

Before commencement of any demolition or construction Lessee shall procure and shall maintain in force until completion and acceptance of the work "all risks" Builders risk insurance, in an amount not less than the cost of demolition or construction, including vandalism and malicious mischief in form and with a company reasonably acceptable to Lessor, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractors', subcontractors' and construction manager's tools and equipment and property owned by contractors' or subcontractors' employees.

D. Other Insurance and Indemnification.

1. Public Liability Insurance.

Throughout the term of this Lease, at no cost and expense to Lessor, Lessee shall keep, or cause to be kept, in force for the mutual benefit of Lessor and Lessee comprehensive broad form general public liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways providing protection of at least One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person and at least Ten Million Dollars (\$10,000,000.00) for any one accident or occurrence and at least Five Hundred Thousand Dollars (\$500,000.00) for property damage. Every time there is an increase in the minimum rent under the terms of Paragraph III.B.1 hereof, there shall be a proportionate increase in the liability insurance coverage.

2. Other Insurance.

Lessee shall procure and keep in force in form and coverage reasonably satisfactory to Lessor insurance in amounts from time to time reasonably required by Lessor, against other insurable risks, if at the time they are commonly insured against for premises similarly situated and containing comparable improvement.

E. Policy Form, Contents, Insurer.

All insurance required by express provisions of this Lease shall be carried only with reasonable insurance companies licensed to do business in the State of California. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that (1) any loss shall be payable notwithstanding any act or negligence of Lessor that might otherwise result in a forfeiture of the insurance, (2) the insurer waives the right of subrogation against Lessor and against Lessor's agents and representatives, (3) the policies are primary and noncontributing with any insurance that may be carried by Lessor and (4) they cannot be cancelled or materially changed except after ten (10) days notice by the insurer to Lessor or Lessor's designated representative. Lessee shall furnish Lessor with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. Lessee shall furnish Lessor with binders representing all insurance required by this Lease. At the expiration of the term of this Lease, Lessor shall reimburse Lessee prorata for all prepaid premiums on insurance required to be maintained by Lessee, and Lessee shall assign all Lessee's right, title and interest to Lessor. Lessee may effect for its own account any insurance not required under this Lease. Lessee may provide by blanket insurance covering the Property and any other location any insurance required or permitted under this Lease provided it is acceptable to any mortgagees of all or part of the Property.

F. Failure to Maintain Insurance, Proof of Compliance.

Lessee shall deliver to Lessor in the manner required for Notices, copies or certificates of all insurance policies required by this Lease, together with evidence satisfactory to Lessor of payments required for procurement and maintenance of the policies.

If Lessee fails or refuses to procure or to maintain insurance as required by this Lease, or fails or refuses to furnish Lessor with required proofs that the insurance has been procured and is in force and paid for, Lessor shall have the right, at Lessor's election and without notice to procure and maintain such insurance. The premiums paid by Lessor shall be treated as added rent due from Lessee with interest at eight percent (8%) per annum, to be paid on the first (1st) day of the month following the date on which the premiums were paid. Lessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers. Interest shall run from the date of said notice.

G. Lessor's Non-Liability.

Lessor shall not be liable, and Lessee shall defend and indemnify Lessor against all liability and claims of liability, for damage or injuries to person or property on or about the Property arising out of Lessee's negligence or Lessee's use of the Property, or any fire thereon or nuisance made or suffered thereon, or any use or occupancy of the Property by Lessee or any person claiming by, through or under Lessee.

VIII. Condemnation

A. Definitions.

The following definitions apply in construing provisions of this Lease relating to a taking of, or damage to, all or any part of the Property or improvements or any interest in them by eminent domain or inverse condemnation;

1. "Taking" means the taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending. The taking shall be considered to take place as of the date actual physical possession is taken by the condemning authority.

2. "Total taking" means the taking of the fee title to all the Property and the improvements on the Property, which shall be considered to include any offsite improvement effected by Lessee to serve the Property or the improvements on the Property.

3. "Substantial taking" means the taking of so much of the Property or improvements or both that the remaining Property would not be economically suitable for a residential Condominium project.

4. "Partial taking" means any taking of the fee that is neither a total nor a substantial taking.

5. "Improvements" means all products of skill, artifice, plan or design for construction on, modification of, or planned use of existing structures, or natural or cultivated or earth contours on the Property.

6. "Notice of Intended Taking" means any notice or notification on which a reasonably prudent man would rely and which he would interpret as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing, containing a description or map of the taking reasonably defining the extent of the taking.

7. "Award" means compensation paid for the taking whether pursuant to judgment or by agreement or otherwise.

B. Notice of Other Party.

The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, content and the date of the notice received:

1. Notice of intended taking.
2. Service of any legal process relating to condemnation of the premises or improvements.
3. Notice in connection with any proceedings negotiations with respect to such a condemnation, or
4. Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

C. Representation of each Party.

Lessor, Lessee, and all persons and entities holding under Lessee shall each have the right to represent his, or its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of his or its claims. No agreement, settlement, sale or transfer to or with condemning authority shall be made without consent of Lessor and Lessee. Lessor and Lessee each agree to execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to condemnation.

D. Total Taking.

On a total taking, Lessee's obligation to pay rents shall terminate on the date of taking but Lessee's interest in the leasehold shall continue until the taking is completed by deed, contract or final order of condemnation.