**27.10 LEASEHOLD INTEREST**

[Some] [All] of the property taken was rented to a tenant. You must decide whether the owner must pay a part of the just compensation award to the tenant.

To do this, you must determine:

(1) the present value of the total rent the tenant agreed to pay during the time that was left on the lease; and

(2) the present value of the total fair market rent for the property for this time period.

Fair market rent is similar to fair market value, except that fair market rent is the amount of rent a willing informed landlord would accept from a willing informed tenant on the open market. The instructions I have given you on fair market value apply here; however, you should consider the terms of the lease as well.

If the present value of the total rent due under the lease is less than the present value of the total fair market rent, then the tenant is entitled to the difference and you must enter that amount on the Special Verdict Form in the space provided.

If the present value of the total rent due under the lease is greater than the present value of the total fair market rent, then the tenant is not entitled to any recovery and you must enter "zero" on the Special Verdict Form in the space provided.

**Use Note**

This instruction should be given when the tenant claims a part of the just compensation award for land and improvements taken. See Articles 27.09 and 27.08 respectively for tenant claims for temporary lost profits and injury to personal property. See Comment to Article 27.00 regarding date of taking.

The bracketed language in the second paragraph should be included if the tenant was only renting some of the property taken.

**Comment**

A tenant is entitled to share in the condemnation award. See Wessells v. State, 562 P.2d 1042, 1045 (Alaska 1977); Fitzgerald v. Alaska State Housing Authority, 497 P.2d 917, 918 n.2 (Alaska 1972). The tenant can waive or contract away this right to compensation. Wessells, 562 P.2d at 1052.

A tenant's right of renewal of the lease is also a compensable interest in condemnation proceedings. See Wessells v. State, 562 P.2d at 1052; Stroh v. Alaska State Housing Authority, 459 P.2d 480, 482 (Alaska 1968). A right of renewal exists only when the option to renew at the end of the term is in writing. Stroh v. Alaska State Housing Authority, 459 P.2d at 482.

The tenant is entitled to the difference between the capitalized value of the use and occupancy of the leasehold for the remainder of the term, plus the value of the right to renew, and the capitalized value of the agreed rent which the tenant would pay for use and occupancy. Wessells v. State, 562 P.2d at 1052. This rule was expressly adopted from the United States Supreme Court's decision in Alamo Land & Cattle Co. v. Arizona, 424 U.S. 295 (1976):

'Ordinarily, a leasehold interest has a compensable value whenever the capitalized then fair market value for the remaining term of the lease, plus the value of any renewal right, exceeds the capitalized value of the rental the lease specifies. The Court has expressed it this way:

'The measure of damages is the value of the use and occupancy of the leasehold for the remainder of the tenant's term, plus the value of the right to renew . . . , less the agreed rent which the tenant would pay for such use and occupancy.' United States v. Petty Motor Co., 327 U.S. 372, 381, 66 S.Ct. 596, 90 L.Ed. 729.'

Wessells v. State, 562 P.2d at 1052 (quoting Alamo Land & Cattle Co. v. Arizona, 424 U.S. at 304).