

CAM Negotiations

WHAT YOU NEED TO KNOW BEFORE SIGNING

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Common Area Maintenance (CAM) charges can be a contentious issue for Landlords and Tenants alike. CAM charges are one of the net charges billed to Tenants in a commercial lease, and may be charged in addition to base rent. On one hand, Landlords may feel that their expenses are high, and this is the chance to be refunded for the outlay. On the other hand, Tenants may feel squeezed by the rent, and are resentful of any additional charges. CAM becomes the rope in a tug-of-war.

Before entering CAM negotiations, it is important to understand the various aspects that go into factoring CAM charges. Typically, CAM charges are comprised of fees for expenses incurred in the maintenance of the common areas of the property. CAM usually provides for non-capital expenses, such as parking lot sweeping, snow removal, landscaping, common area janitorial costs, common area electricity, etc. CAM is commonly calculated on a pro rata share basis.

That said, historically, there were gross leases in which the CAM expenses were incorporated into the base rent. Because it was included in the rent, Landlords could not recover for expenses that significantly increased unexpectedly. That is why there has been a progression over time toward leases in which Landlords developed more sophisticated formulas for the recovery of CAM expenses. These formulas have led to increased points of conflict within CAM negotiations.

When entering CAM negotiations, there are considerations for both Tenants and Landlords. First, let's contemplate some questions Tenants would be wise to consider when negotiating CAM.

DO CAPITAL EXPENDITURES COUNT AS OPERATING EXPENSES?

Capital expenditures are upgrades to the physical assets of a property, such as roof repairs or the purchase of new equipment. These large ticket items go toward the improvement of the property. A Tenant can argue that property improvement is not an operating expense, and therefore should not be billed as part of CAM.

ARE FEES TACKED ONTO THE MANAGEMENT FEES?

While the Landlord may have the right to charge administration fees, the Tenant can argue against tacking on management fees over and above these Admin fees. Unless the lease specifically allows for this additional fee, Tenants may object to this as a form of "double dipping."

HOW LONG DOES THE TENANT HAVE TO CONDUCT A CAM AUDIT?

The Tenant has the right to audit the Landlord's expenses. But this right is not carte blanche. There are specific guidelines. The lease typically provides an audit window. If not, the statute of limitations varies by state, with a standard limit of three years.

DOES THE LANDLORD MAKE A PROFIT FROM THE CAM CHARGES?

It is understood that the Landlord is in business to make money. However, his profits should be gained from the rent itself, and not from the CAM charges. The CAM charges are intended to cover the expenses themselves, without padding the Landlord's pocket.



Let's consider some of the questions Landlords should contemplate when negotiating CAM.

ARE MANAGEMENT AND ADMINISTRATION FEES INCLUDED IN CAM CHARGES?

Management and administration fees are often tacked on as extras. It is understood that there are fees involved in managing the property's expenses. Management fees go towards the salary for the secretary or property manager. This may not be an operating expense, per se, but it is reasonable to include it within CAM fees. An administration fee is usually calculated as a percentage of the total operating expenses, between 5 and 10%.

ARE THE TYPICAL PROPERTY EXPENSES BEING PASSED ON TO THE TENANT?

Specific expenses can be included in the Lease CAM provision, according to the nature of each property. For example, if a property is located in an upscale neighborhood where landscaping is very important, the Tenants' leases may include the associated cost for upkeep of the grounds. Or a property situated in snowy area may include snow removal fees within CAM. It is important to focus on these typical expenses and make sure they are being passed through to the Tenants.

WHO IS ALLOWED TO PERFORM THE CAM AUDIT?

While the Tenant has the right to audit the Landlord's expenses, there should be guidelines in place for who performs the audit. The audit should be performed by someone who understands how lease language translates into quantified amounts. At times, the lease language may limit who is allowed to perform the audit. Most notable is the exception that no contingency fee companies may perform the audit.

WHO PAYS FOR THE CAM AUDIT?

The question of footing the bill for the CAM audit lies in the percentage of error. Typically, the Tenant takes care of the audit and he pays for it. However, if the audit shows that the Landlord was overcharging by a high percentage, typically 5% or more, then leases many times provide that the Landlord should pay for the audit in this scenario.

ARE YOU CAPPING YOUR CAM?

CAM caps give Tenants some predictability over their costs for the coming years. Landlords can include a first year CAM cap, as well as an ongoing cap. A first year CAM cap assures that the starting CAM will not exceed the amount declared in the initial lease negotiations. An ongoing CAM cap provides leeway for the Landlord to increase allowable expenses to account for inflation and normal growth. A CAM cap will help each side to negotiate the lease with more security and assurance.