THE WONDERFUL WORLD OF COMMON AREA MAINTENANCE

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I. HOW CAM CAN GO BAD FOR A TENANT

A. Runaway increases.

B. Initial estimates wildly inaccurate.

II. TYPES OF LEASES – LEASES COME IN VARIOUS FLAVORS

A. Gross – Tenant only pays for rent and maintenance responsibilities assigned to Tenant.

B. Triple Net. Tenant pays rent plus the following items:

a. Real Estate Taxes: Tenant pays taxes on its own personal property and a portion of the real estate taxes on the Landlord's land.

b. Insurance: Tenant pays for its own insurance on the premises and a portion of the insurance Landlord maintains on the entire building.

c. Common Area Maintenance: Tenant pays for a portion of the costs to maintain common hallways, parking lots, landscaping and driveways.

C. Modified Net/Modified Gross.

1. Base year for taxes and insurance. Tenant only pays for increases over and above initial base year.

2. Landlord and Tenant split maintenance expenses. Costs may be capped or Tenant may have a deductible amount that it has to pay before Landlord obligations commence.

D. Absolute Net.

1. Typically, no abated rent, even if a casualty.

2. All expenses paid by Tenant.

3. Frequently used in sale – leaseback arrangements.

III. COMMON AREA MAINTENANCE ("CAM")

A. Only applies to leases that are Triple Net/Modified Net/Modified Gross.

B. Usually expressed as a percentage of overall costs. Tenant's space compared to overall shopping center or office building.

C. How is Tenant's share of CAM calculated.

1. Total leaseable area vs current leased space.

2. Total square footage vs total leaseable area – question as to storage space and hallways.

3. Excluded tenants.

4. Excluded outparcels.

D. What's included in CAM.

1. Parking lot maintenance.

2. Landscaping.

3. Lawn maintenance.

4. Snow removal/salting.

5. Security.

6. Electric use on outdoor lighting and monument signage.

7. Janitorial.

8. Many other items.

E. What's not.

1. Enforcement actions against defaulting tenants.

2. Original development of Center.

3. Broker fees to bring in new tenants.

F. Common Areas of Debate.

1. Capital Costs.

2. Overhead/Administrative Costs.

IV. GROSS-UP PROVISIONS

A. Allows Landlord to round up expenses as if entire property was occupied.

B. Often found in office leases.

C. Used when only a portion of the building is occupied.

V. COMMON TENANT CAM PROTECTIONS

A. Limit on increases on CAM year to year. Expressed as a percentage by which CAM may increase each year.

1. Standard.

2. Cumulative.

3. Compounding.

4. Common exclusions from limitation. These are generally costs outside of Landlord's control.

a. Snow removal.

b. Taxes.

c. Insurance.

B. Audit provision.

1. End of each year has a CAM reconciliation.

a. CAM usually charged as an estimate.

b. Landlord checks estimate against actual incurred costs.

2. Allows for review of Landlord's calculation.

3. This is where the accountant comes in.

4. Common Issues.

a. How long is look back.

b. Need penalty provision – enforcement.

c. Who pays audit.

d. Landlord limitations.

i. How much can accountant charge?

ii. Audit only paid on hourly basis.

iii. Cap on costs of audit.

C. Stet specific amount of CAM for first year. Prohibit reconciliation adjustment.

VI. ALTERNATIVES TO STANDARD APPROACH TO CAM

A. Capped CAM charges.

B. Fixed CAM.