

# THE WONDERFUL WORLD OF COMMON AREA MAINTENANCE

**Gary A. Kravitz, Esq.**

Maddin Hauser's  
**Tax Symposium**  
*28th Annual*

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# LEASES COME IN MANY FLAVORS





Absolute Net

Modified Net/Modified Gross

Triple Net

Gross

**NNN**

**Taxes**

**Insurance**

**Common Area Maintenance**

# TENANT'S SHARE OF CAM

## CALCULATION OF TENANT'S SHARE

- 1. Current leased space vs. Leasable Area**
- 2. Total square footage vs Leasable Area**
- 3. Excluded Tenants**
- 4. Excluded Property/Outparcels**

## WHAT IS CAM?

1. Snow removal
2. Janitorial
3. Security
4. Repairs
5. Etc.



# WHAT ISN'T CAM?

Any repairs, restoration or other work occasioned by fire, wind, the elements or other casualty; income and franchise taxes of Landlord; expenses incurred in leasing to or procuring of tenants, including without limitation leasing commissions, bonuses or other compensation payable to Landlord, Landlord's employees or a third party, and any renovations of space for other tenants; interest or principal payments on any mortgage or other indebtedness of Landlord, or payment under any ground lease; compensation paid to any employee of Landlord or its affiliates or agents above the grade of property manager; any depreciation allowance or expense; any overhead, interest or profit to the Landlord or one of its affiliates; costs and expenses of repairs and replacements, which under generally accepted accounting principles should be classified as capital expenditures, except for the current amortized portion of the costs and expenses (based upon amortization of the cost on a straight-line basis over the useful life of such items) of repairs or replacements of items in place on the date Tenant opens for business that are repaired or replaced due to wear and tear and not due to the initial construction or remodeling of the Building; any costs or expenses which are the responsibility of any particular tenant; . . .

any costs or legal fees incurred in connection with any particular tenant; any costs incurred as a result of any violation by Landlord of any law or the terms of any lease or mortgage; any costs or expenses incurred for the removal or remediation of pollutants, contaminants or hazardous materials as such terms are defined by governmental authorities or for any insurance covering such risk; any expense resulting from the negligence or willful misconduct of the Landlord, its agents, employees or contractors; the cost of any repair to remedy damage directly caused by or directly resulting from the negligence of any other tenants; reserves for anticipated future expenses; all interest and penalties incurred as a result of Landlord's negligently failing to pay any bill as the same shall become due; costs of purchasing sculptures, paintings or other art works; costs arising from political or charitable contributions; any costs or expenses for marketing, advertising or promotion of the Building or any event or entertainment thereon (including, without limitation, any costs or expenses associated with any merchant's association or similar association); any costs or expenses associated with any kiosk, childcare center, postal or packaging services facility or governmental offices located on the Building; . . .

any costs or expenses associated with any undeveloped portion of the Building; any costs or expenses associated with the operation of any valet parking service; the amount by which the sum of all property management, administrative, and similar fees, costs and expenses (whether paid to Landlord or a third-party) exceeds ten percent (10%) of total Operating Expenses (excluding any costs for utilities, taxes and insurance); any costs or expenses associated with any space occupied exclusively by Landlord or any of its affiliates or agents; any costs or expenses associated with the initial cost of paving or any pavement replacements, or the cost of pavement re-sealing more frequently than once every five (5) years; any cost or expense included within (or expressly excluded from) taxes and insurance amounts otherwise payable by Tenant pursuant to any other section of the Lease; any costs and expenses paid by any tenant whose floor area is not included in the denominator in calculating Tenant's proportionate share; or any costs and expenses incurred for operating or maintaining portions of the common areas outside the Premises where Tenant, at its cost and expense, maintains such similar areas within or about the Premises.

# BIG ISSUES

- 1. Capital Costs**
- 2. Administrative Costs**

# GROSS-UP SPREADSHEET

<u>Occupancy</u>	<u>Actual Costs</u>	<u>10% Tenant</u>	<u>Other Tenants</u>	<u>Landlord's Portion</u>
100%	\$10.00	10% = \$1.00	90% = \$9.00	\$0.00
50% (without gross up)	\$5.00	10% = \$0.50	40% = \$2.00	\$2.50
50% (with gross up)	\$(10.00*)	10% = \$1.00	40% = \$4.00	\$0.00

\*The actual cost is \$5.00 grossed up to \$10.00.

## CAM LIMITS

### Non-Cumulative 5% CAP

	2015	2016	2017	2018
<b>Costs</b>	<b>\$1.00/sq ft</b>	<b>\$1.03/sq ft</b>	<b>\$1.09/sq ft</b>	<b>\$1.14/sq ft</b>
<b>Applicable Cap</b>	<b>N/A</b>	<b>\$1.05/sq ft</b>	<b>\$1.08/sq ft</b>	<b>\$1.13/sq ft</b>

## CAM LIMITS

### Cumulative 5% CAP

	2015	2016	2017	2018
Costs	\$1.00/sq ft	\$1.03/sq ft	\$1.09/sq ft	\$1.14/sq ft
Applicable Cap	N/A	\$1.05/sq ft	\$1.10/sq ft	\$1.15/sq ft



## CAM LIMITS

### Cumulative CAP 5% Compounded

	2015	2016	2017	2018
Costs	\$1.00/sq ft	\$1.03/sq ft	\$1.09/sq ft	\$1.14/sq ft
Applicable Cap	N/A	\$1.05/sq ft	\$1.10/sq ft	\$1.16/sq ft

# PROTECTION AGAINST CAM ABUSES

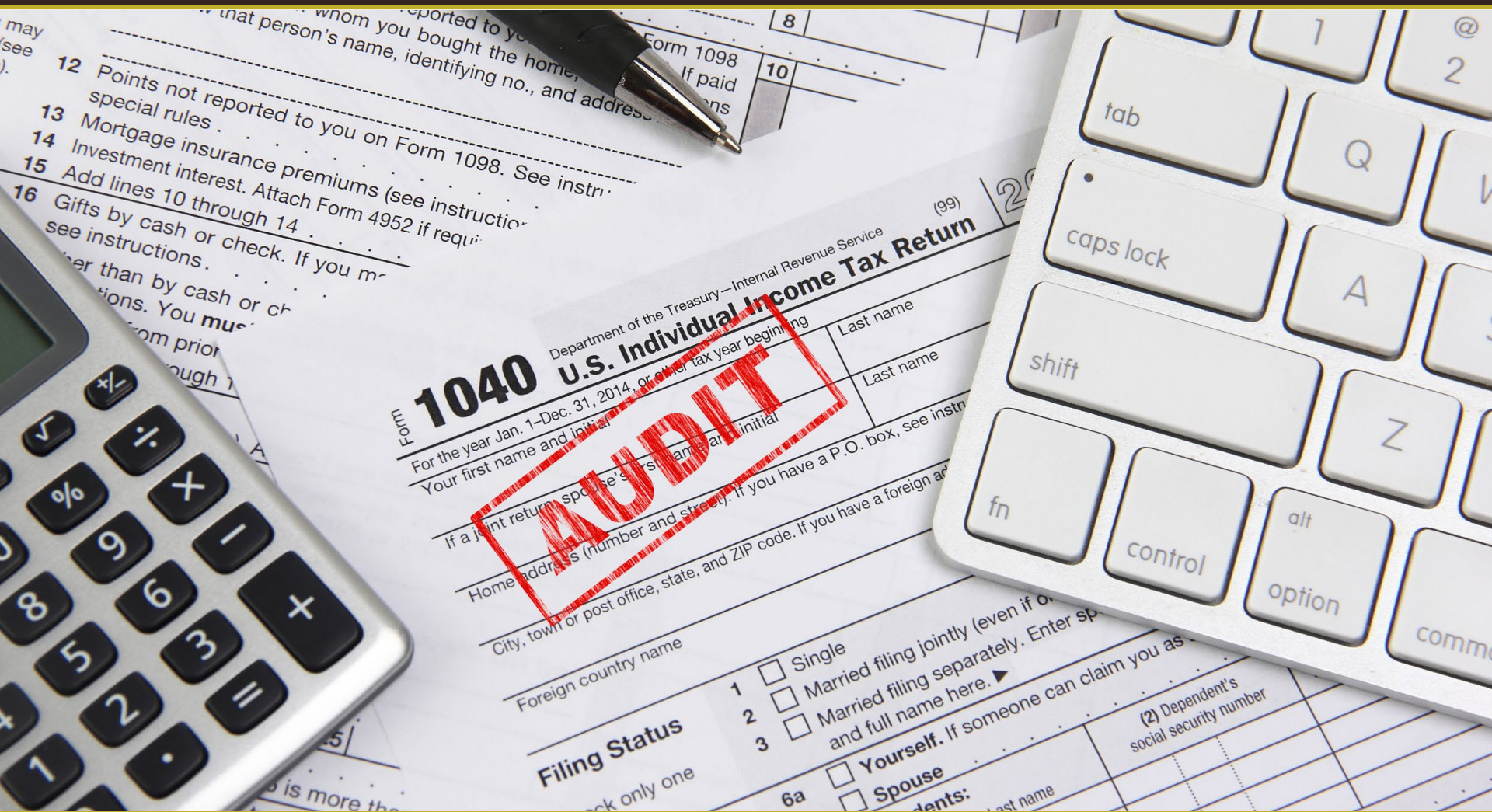
# WHAT ISN'T CAPPED?

## Costs that Landlord cannot control

1. Snow removal
2. Taxes
3. Insurance

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# CRITICAL AUDIT PROVISIONS

1. Look Back Period
2. How quickly review must be performed
3. Teeth



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## AUDIT TEETH

1. Landlord pays for audit
2. Threshold
3. How does accountant get reimbursed:  
hourly vs. commission?
4. Cap on audit fee