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SEILLER WATERMAN BUSINESS PRACTICE LAW UPDATE

COMMON AREA MAINTENANCE PROVISIONS IN COMMERCIAL LEASES By [Pamela M. Greenwell](#)



In this uncertain economy it is important for both landlords and tenants to protect themselves from unexpected costs in the landlord/tenant relationship. One provision that has that potential to cause either party unexpected costs is the common area maintenance expenses provision—commonly called “CAM.”

Shopping Center leases typically include provisions regarding the common area maintenance expenses of a Shopping Center. CAM is used by landlords to shift the expense of maintaining the common areas of the Shopping Center from the landlord to the tenant. Clearly understanding and carefully negotiating CAM provisions are critical to both the landlord and the tenant in a commercial lease. CAM charges add to a tenant’s overall cost of leasing property and, from the landlord’s perspective, if properly drafted, can be a profit center for landlords. A common area maintenance provision in a lease allows a landlord to seek repayment from tenants for all or part of the costs expended to maintain the common areas of the facility not under the direct control of any one tenant.

They usually include:

- the parking lot
- landscaped areas
- hallways and restrooms, etc. of a Shopping Center
- roofs

Costs typically associated with common area maintenance include:

- resurfacing the parking lot, snow and ice removal
- updating and maintaining landscaping
- Security
- outdoor lighting and irrigation
- any repairs or maintenance to the exterior of the buildings
- and in the case of a mall to the interior common areas.

Each tenant typically pays their pro-rata share of the cost to maintain the common area or an agreed per square footage

charge. Pro-rata usually consists of the percentage of square footage each tenant occupies in relation to the total square footage in the Shopping Center, but that can be a subject for negotiation. Another method of calculating the tenant’s responsibility for CAM is to use the tenant’s square footage and divide it by only the area of the Shopping Center that is leased, thus discounting space that is not rented. This latter method results in an increased CAM cost per tenant and allows the landlord to recover more of its costs.

CAM is usually calculated on the same basis as the rent i.e. on a per square foot basis and made a part of the tenant’s monthly rent payment. It is not uncommon for landlords to agree to cap the common area maintenance costs at a certain level, regardless of the cost to the landlord for that particular month or year. However, some landlords will not allow a cap, requiring each tenant to pay its percent share regardless of whether the vast majority of improvements or maintenance actually affected the tenant charged. If a landlord agrees to a cap, it is typically only for what is defined as controllables, which are expenses the landlord believes it control and would not include taxes, insurance, utilities and snow removal. In order for both parties to be satisfied with their CAM expenses, it is important that lease agreements specify what they are each willing to pay for and at what pro-rata share. In cases where a tenant is required to pay a percentage of its sales as a surplus rent, some landlords will allow CAM charges to be offset against percentage rentals.



The items included in CAM expenses are all a subject of significant negotiation during overall lease negotiations. Tenants prefer to pay only for maintenance and not replacement of any items. Landlords commonly charge an administrative fee for managing the CAM responsibility.

The CAM provisions of a lease, including Tenant’s audit rights must be carefully considered and negotiated in all leases.

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