

3 Tips for Negotiating Reduced CAM Costs

While there are many business factors and legal points to consider when negotiating a commercial lease, in today's uncertain economy, the "bottom line cost" of the lease often tops the list of concerns for a commercial tenant. You are probably aware that most commercial landlords pass the cost of all repairs and maintenance of the premises and the common areas to their tenants. Tenants often find, however, that their CAM charges are more expensive than anticipated. While there are many factors that need to be evaluated and provisions that need to be negotiated in a commercial lease, as you head into negotiations, we invite you to arm yourself with these three tips for keeping your CAM charges in line with your expectations. If you need assistance evaluating or negotiating your commercial lease, contact CBL.

1. Landlord's Work. When you negotiate your lease, you may designate certain things for which you, the tenant, will be responsible and certain other things for which the landlord will be responsible. For example, you may agree that the roof is the landlord's responsibility. Be careful! Just because you designate that the roof is the landlord's responsibility does not mean that the cost of the landlord's roof repairs and maintenance are not going to be passed back to you in CAM charges. Careful analysis of the entire lease and the addition and subtraction of specific language in multiple provisions are necessary to ensure that you won't be bearing the burden of these costs. In the example of the roof, you would want to specify that the landlord, at its sole cost and expense, will repair and maintain the roof in good condition and replace the roof as needed. You would also want to carefully review all provisions that discuss common area maintenance charges and/or additional rent and ensure that these provisions specifically exclude any costs related to the roof. Additionally, you would want to carefully review any provisions regarding charge backs for damage caused by you to ensure that the landlord's ability to blame you for damage to the roof (like from your HVAC contractor) are limited and that the landlord must engage in some form of dispute resolution before charging you for a repair. Finally, you will want to make sure you have distinguished CAM charges from capital improvements and expenditures which the Landlord may be required to make. If you need assistance in ensuring that your commercial lease properly places the cost of the landlord's work on the landlord, contact CBL.

2. Management Fees. Many commercial leases include a management fee of some percentage (usually 3-5%) that the tenant agrees to pay for property management. When objections are raised to this fee in negotiations, the landlord often explains that the fee is necessary to pay for the salaries and overhead of those folks who manage the property. Watch Out! You will want to make sure you are comfortable with how the percentage is calculated and that the landlord isn't double dipping. The landlord will likely want the management fee to be a percentage of gross payments, gross receipts or gross revenues. If you agreed to a management fee of 4% of gross revenues, your base rent just went up by 4%, your insurance just went up by 4%, your real estate taxes just went up by 4%, and all your maintenance and repair costs just went up by 4%. You may also find that you are actually paying an extra 4% on top of the property manager's salaries and overhead because the language defining CAM allows the landlord to charge you for salaries, utilities and office space, in addition to the management fee. Careful analysis and drafting of the language defining additional rent and common area maintenance costs are necessary to ensure that the management fee is fair and reasonable and doesn't result in an unnecessary payment by you. If you need assistance negotiating the management fee or CAM provisions of your lease, contact CBL.

3. Caps. If you agree to pay "all costs and expenses paid or incurred by the landlord at its election in connection with the premises" what incentive does the landlord have to keep costs to a minimum, particularly if as discussed above, the landlord's percentage management fee increases with increased CAM costs? You might consider requiring the landlord to produce and attach as an exhibit a specific, categorized budget for CAM for the first year. You might also establish an approval process for any expenses that cause either the entire budget or any category to exceed a specified cap or you might negotiate an absolute cap and provide that the landlord will bear any and all costs that exceed the cap. Another possibility is to consider agreeing on a flat fee for CAM, rather than a reimbursement. This would give the landlord the benefit of any savings but would provide you with a firm budget. If you would like to discuss options for bringing your CAM costs under control, please contact CBL.

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Mary M. Clapp, Esq.* **Clapp Business Law, LLC** 2518 S. Campbell Springfield, MO 65807

Office: 417-851-5386 Cell: 417-894-2920 mary@clappbusinesslaw.com website: www.clappbusinesslaw.com