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Posts Tagged 'CAM Charges'

How to Avoid CAM and CAP Overcharges

Wednesday, July 16th, 2008

Avoid The CAP Blues
By Rick Burke

A common statement from clients or potential clients when analyzing their portfolio to determine how much money a lease audit program will save them is: "We don't worry about overcharges on these leases because our CAM and Real Estate costs are capped." Right?...Wrong!

A CAP should never be confused with a fixed amount, but quite often it is. There are several situations where the landlord can inadvertently or intentionally overcharge a tenant even though a CAP is in place. These include the actual cost being lower than the CAP amount, yet the landlord passes through the maximum cap amount. Another situation is the timing of the CAP and how it is calculated. Is it for the calendar year, lease year, annual or cumulative? Lastly, if the subsequent years' caps are based on the first year's cap, the calculation error grows each year, creating a large overcharge by the end of the lease term.

The same is true for landlords as well. Often landlords undercharge tenants by not calculating CAPS correctly or not excluding variable expenses allowed per the lease from the CAP.

To illustrate a CAP overcharge to a tenant with a short example: a lease states that the CAM cost for the first year cannot exceed $3.00 per square foot and increases 5% annually thereafter. The tenant moves in on July 1st, 2007 and has 10,000 square feet. The landlord invoices the tenant a CAM billing for year end 2007 that states CAM cost is $30,000 ($3.00 x 10,000 sf) and adjusts the estimated payments for the following year based on the new CAP of $3.15 psf. Is this correct? No.

1. The landlord charged the entire $3.00 CAP to the tenant when we don't know what the actual CAM cost is. The actual CAM cost could be less than the $3.00 psf.

2. The tenant moved in on July 1, 2007 and should only pay for the CAP for the period of July 1 – December 31, 07 for the year end 2007 CAM billing (i.e. 50% x 3.00 * 10,000 = 15,000). The following 6 months, January 1, 2008 – June 30, 2008, should also fall under the CAP for the next

billing thus reducing the actual cost for calendar year 2008 and reducing the tenant's estimated payments for 2008.

Furthermore, if the first year CAP is not reviewed in detail, the progression continues each year and the overcharge becomes greater and greater. If one does the math, the potential overpayment for a tenant with 10,000 sf that the actual CAM falls short of the CAP by 30% could overpay by as much as $30,000 in 3 years.

To avoid a CAP overcharge, the tenant should perform a detail desktop audit on the first years of a CAP. A good rule of thumb for reviewing CAPS is to ask the following questions about the CAP when reviewing the CAM Statement:

- Did the actual CAM cost exceed CAP?
- Was a partial year calculation applied correctly to the CAP?
- Was the CAP taken prior or after calculation of pro-rata share?
- Were the excluded expenses per the lease applied correctly to the CAP?
- Is the CAP annual or cumulative based?
- Does the CAP apply to subsequent years?

When it comes to CAPS, never assume that the CAP has been met. By asking the above few questions as you review a CAM statement with a CAP or if you're billing a statement with a CAP, will keep you from "Singing the CAP Blues."

Rick Burke is President of Lease Administration Solutions, LLC specializing in Lease Auditing, Lease Administration and Lease Abstracting for office, retail, industrial and telecom space.

Rick Burke works closely with AMTdirect users and clients on an ongoing basis to resolve their lease administration and lease audit problems
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Real Estate Management Associations

Thursday, May 29th, 2008

AMT*direct* has been an active member of the NRTA (National Retail Tenants Association) for sometime now, and in my opinion, it has always been one of the better organizations out there. There are numerous benefits of becoming a member of the NRTA, but one of my favorite benefits is the ability to access their message board.

Message Boards and User Forums provide industry experts with an online bulletin-board community that is responsible for uniting industry professionals in order to share thoughts, ideas, and provide technical assistance. The NRTA message board is a great online resource for industry professionals to obtain advice from fellow professionals.

For example, one of last month's NRTA posts dealt with removing prior year's CAM charges when a new management company is in place. Listed below is the question posted by a lease management professional on the message board along with fellow industry professionals' responses.