

Common Area Maintenance Note on Fair Practices in the Computation of Charges

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The Need: Common Area Maintenance Charges (CAM) has been a significant source of disconnect between the Shopping Centre Owners and Shopping Centre Space Users. Both parties believe that there is a lack of reasonableness on the part of the other. It was, therefore, felt that a document be created for both parties to collectively endorse, so that understandings may be harmonized.

Purpose:

1. To bring about a common understanding on the subject between all stakeholders.
2. To create a transparent mechanism of cost collection and distribution.

Principles:

1. CAM is a pass through cost that is incurred by the Owner and reimbursed by the Space User. It is not a profit center for the Owner.
2. For any cost to be included in CAM charges, it must be measured or be capable of computation using commonly acceptable standards.
3. CAM must benefit the Shopping Centre in its totality and must be incurred only in common areas or for common advantage.

4. The share of CAM charges payable by individual Space User is in the proportion that their occupied space bears to the total occupied / occupyable space.
5. No Space User would be required to subsidize any other Space User's CAM charges

Definitions:

1. **Common Area:** Common Area shall mean and include all premises contained in the Shopping Centre that are not dedicated to any individual or group of Space Users and which benefits, or is intended to benefit, all users of the Shopping Centre, in common and without distinction. Without limiting the generality of the foregoing the following shall be considered as common areas:
 - i. Roads, walkways, pavements, corridors, entrances, vestibules, stairways, atriums, terraces (with or without common rights of access) and gardens.
 - ii. Toilets, Loading and Unloading docks, dedicated Shopping Centre management and utility offices.
 - iii. Play areas, infant care areas.
 - iv. Free and non paid parking areas or where Parking charges recovery is credited to CAM Account.

2. **Common Facilities:** Common Facilities shall mean and include any equipment or service invested in or paid for by the Owner, whose benefit or output is enjoyed or enjoyable by all users of the Shopping Centre, in common and without distinction. Where any benefit or output is only fractionally enjoyed or enjoyable by all users, then the Common Facilities shall mean and include only that fraction that is commonly enjoyed or enjoyable. Further, where any such normally common benefit or output is preferentially enjoyed by any individual or group of Space Users, either in terms of volume or operations beyond the normal operating hours of the Shopping Centre, then such incremental usage, specifically measured or calculated on a reasonable theoretical basis, shall be excluded from Common Facilities. It is clarified that no rebate would be available to individual Space Users merely on the grounds of lower operating hours, vis. a vis. the Shopping Centre operating hours or on the grounds that locationally, such Space User and / or its customers have less need for any particular Common Facility. Without limiting the generality of the foregoing the following shall be considered as Common Facilities:
 - i. Vertical Transportation.

- ii. Air conditioning and Air quality management.
- iii. Power supply and captive power.
- iv. Electrical distribution and lighting systems.
- v. Fire detection, suppression and fighting equipment.
- vi. Sanitary, plumbing and water supply including storage.
- vii. Sewage and water treatment.
- viii. Safety and Security systems.
- ix. Music and public address.
- x. Parking systems where Owner does not collect any parking charges or where Parking Charges collected are credited to CAM Account.
- xi. Housekeeping and garbage handling.
- xii. Footfall and customer enumeration systems.
- xiii. Customer care and redressal systems.
- xiv. Safety & Security charges in the parking area regardless of whether parking charges are retained by the owner or not.” . The rationale is that while parking charges are for space utilization, the safety and security charges is a common and indivisible service rendered to customers.

Billable Services:

Billable Services shall mean and include all services rendered by the Owner, either directly or through third parties, for the use and upkeep of the Shopping Centre as a whole. As a general rule, all expenditure that is in the nature of Capital Expenditure or in the nature of Improvement to Land and Building shall be excluded from Billable Services. In recognition of the fact that all billable services are payable to third parties and that a substantial portion thereof is to public utilities, all such services will be collected on an estimated basis, in advance for each month, and thereafter adjusted with actual in the following month. In order to encourage promptness in such payment the Owner would be entitled to penal charges calculated at the rate of 20% on any overdue payment and 50% there from will be credited to CAM. The levy of penal charge is in addition to the other commercial rights that vest with the Owner to deal with payment delinquencies. The following shall be included under the head of ‘Billable Services’ and be paid on a monthly basis in advance:

- i. Output of Common Facilities to the extent consumed in the Common Area or provided for common benefit of all Space Users. Includes, power, air-

- conditioning, water, etc as enumerated under Common Facilities. Cost of utilities consumed in the Common Area would be at actual cost of energy, including the normal distribution loss, between the master meter & the total of all downstream meters); and fuel consumed for such generation and would include in the case of HVAC and Generated power the apportioned cost of depreciation of such equipment with the life of the asset being reckoned at 120 months.
- ii. Security
 - iii. Building repairs in the nature of general wear and tear and not in the nature of up-gradation or attributable to bad initial workmanship
 - iv. Equipment maintenance charges including AMC charges
 - v. Cost associated with music and public address, including the licensing fee thereof.
 - vi. Painting of areas inside / outside the Shopping Centre.
 - vii. Garbage removal and disposal
 - viii. Replacement cost of fittings and consumables like bulbs, taps etc
 - ix. Pest control
 - x. Water supply other than attributable to individual consumption by Space Users
 - xi. External and interior cleaning of the building
 - xii. Maintaining landscaping
 - xiii. Toilet maintenance
 - xiv. Common advertising, marketing and promotion
 - xv. Floor polishing
 - xvi. Costs incurred in complying with any direction of statutory authorities regarding Operations of the Shopping Centre. Example: Instructions of Health Inspector. (Costs associated with the ownership will generally be borne by the Owner)
 - xvii. Manpower costs of all employees who are directly and full time in the service of the Shopping Centre.
 - xviii. Promotion Fee
 - xix. Premium for Public Liability Insurance.

- xx. Management fee, not exceeding, 20% (Twenty Percent) of all costs towards Billable Charges. This fee is expected to cover all non site administrative costs of the Owner.

Security Deposit: The Users would be required to pay a Security Deposit equivalent of upto 3 (Three) months of the estimated CAM cost at the time of execution of the Agreement.

Rights reserved by Owner in the Common Areas

As a general rule the Common Areas are for the common benefit of all Space Users, their bonafide visitors, guests, customers, clients and employees. Notwithstanding such rule, the Owner shall reserve unto itself, at its sole discretion, the following rights in the Common Areas:

- i. The Owner's right to erect kiosks in the Common Areas upon such terms as the Owner may think fit and to receive and retain such incomes as the Owner may at its discretion determine. No CAM charges would be allocated to such kiosks unless they are permanent in nature. "Permanent" shall mean any structure that is erected for a continuous period of 30 days and / or for a cumulative period of 120 days in any calendar year. Any such permanent kiosks shall have the same obligations for the payment of CAM charges as any other Space User.
- ii. The Owner's right to permit at the Owner's discretion any person to hold any function or exhibition or promotion or display or theater or performance in the Common Areas (upon such terms as the Owner may think fit and to receive and retain such incomes as the Owner may at his discretion determine). CAM charges would be allocable for such usage only when the same is put to use for a continuous period exceeding 30 days and /or for a cumulative period exceeding 90 days in any calendar year. Any such event that exceeds the time limit prescribed shall have the same obligations for the payment of CAM charges as any other Space User.
- iii. The Owner's right to make available at the Owner's discretion to any person any surface, vertical or otherwise, internal or external other than a surface that may have given to any Space User (upon such terms as the Owner may think fit and to receive and retain such incomes as the Owner may at it discretion determine) so as to enable that person to display advertisements or relay broadcasts.

- iv. The Owner's right to permit at the Owner's discretion any person to hold any function or exhibition or promotion or display or theater or performance in the Terrace or other areas on the roof (upon such terms as the Owner may think fit and to receive and retain such incomes as the Owner may at his discretion determine).

Obligations of the Owner in respect of the Common Areas:

The Owner shall grant to the Space Users and his agents, servants, customers and others similarly authorized, legitimate easementary rights, in common with all other to whom the Owner has given similar rights.

More specifically, the Owner shall be obliged to maintain the following standards:

- i. All customer areas would be well lit, clean and hygienic
- ii. All elevations would be kept clean, attractive and in a state of good repair with suitable façade lighting
- iii. Toilets would be clean, hygienic, servable and odorless
- iv. Power system would be stable, reliable and back up power would be ensured to a level of 70% of peak load, with automatic changeover.
- v. Adequate provision for emergency lighting / UPS in Common Areas so as to provide safety to occupiers during the change over period.
- vi. Where Common Area air conditioning is proposed, the Owner shall specify the temperature and Rh design condition proposed for such Common Areas
- vii. Water supply would be ensured at all times
- viii. Security would be adequate, visible, courteous and effective
- ix. Safety systems would be fully compliant with codes and be periodically tested
- x. Way finding systems and Space User directory would be legible, updated and prominent
- xi. Vertical transportation systems will in operation during normal Shopping Centre operating hours and will be competently manned and maintained
- xii. Customer facilities for the physically challenged as also information access and complaint redressal would be in place and manned by competent personnel
- xiii. External and internal traffic management systems would be effective and courteous
- xiv. Garbage disposal would be done at least once a day

- xv. Cost would be kept at a minimum without sacrifice of standards or customer comfort.
- xvi. Effective / on line energy management system to keep a close check on consumption and to eliminate waste
- xvii. Common Areas would not be used for any purpose that impedes or causes nuisance to customers or compromises the Space Users' access.
- xviii. Take necessary Public Liability insurance for all persons visiting the Shopping Centre.
- xix. To the extent practical to provide individual metering devices for each Space User and for the common area for power and for each large Space User and common area for Chill Water supply
- xx. To share with all Space Users an annual business plan with respect to CAM charges
- xxi. To actively promote the Shopping Centre and to assist Space Users to achieve store sales growth.
- xxii. Provide an annual auditor's statement to the effect that the cumulative collections from all Space Users have not been in excess of the actual costs incurred by the Owner towards Common Area Maintenance. For the sake of clarity, actual costs shall exclude:
 - a) Any costs recovered or recoverable towards directly attributable cost to any individual Space User. That is, any subsidy of Billable Charges to any Space User would not be included in the Billable Charges to be recovered from non subsidized Space Users.
 - b) Any costs associated with bad debts, under-recoveries or arising out of space vacancies
 - c) Any costs not agreed to be part of Billable Charges
 - d) Any costs that are in the nature of penalties or interests for any delay, non compliance or deficiency on the part of the Owner

Obligations of the Space User:

The Space User shall pay the Owner Pro rated Common Area Maintenance Charges for the general maintenance of the Common Areas and for the consumptions in such areas of the Facilities.

The Space User shall respect the Owner’s rights reserved with regard to such Common Area as mentioned supra.

BTU Meters: All Anchors, Mini Anchors, Restaurants, Multiplex and any other User who have Air conditioning usage largely disproportionate in terms of quantum and/ or timings of use should be provided with a BTU meter and billing to them should be based on usage as recorded thru such BTU meters, the balance of the Users would be billed for in proportion of their areas used/ allotted.

Property Tax: Would be based on commercial understanding /contract and would be chargeable in addition.

