

Benefit
Consulting
Client

HIGHLIGHTS

Lease Review

Building Operating
Expense Analysis

Escalations Bills
Audit

**\$1,250,000 In
Client Savings**

American Properties Uncovers Erroneous 6 Figure Client Liability And Executes Ancillary Analysis Resulting In 7 Figure Client Savings

Background

“Tenant” had signed a twenty (20) year lease for 125,000 square feet of space in a newly constructed building. They negotiated for an Operating Expense Base Year subject to an Occupancy Rate Adjustment of 95%. In addition, Tenant negotiated a “Cap” on one aspect to Operating Expenses that could not exceed \$10,000.00 in any year during the Lease.

Landlord established the Tenant’s Operating Base Year and billed an Operating Escalation of \$36,000 for the first comparison year of the lease term which Tenant paid. Tenant received no further bills for Operating Expense Escalations for the next four years. After which, the Landlord explained that the clause relating to the “Cap” had been misinterpreted and that increases for Comparison Year 2, 3, 4, and 5 were now due. The Landlord submitted new bills to Tenant totaling approximately \$325,000.00 detailed as follows:

Comparison Year 2	\$ 50,142.78
Comparison Year 3	\$ 99,081.01
Comparison Year 4	\$123,370.59
Comparison Year 5	\$54,145.00

In addition, the Tenant was asked to increase their monthly rental payments by \$11,000 per month to account for current increases in operating expenses above the base year.

Engagement

Tenant sought both legal and accounting advice on these bills. Among the alternatives considered were a refusal to pay the bills for Comparison Year 2 and 3 based on the assertion that the proper time for billing Tenant had lapsed. Another suggestion considered was to merely refuse payment based on the size of the claim and attempt to negotiate a lower payment amount. In addition, Tenant’s accountant conducted a preliminary audit in the hope of finding unsubstantiated charges. This proved unsuccessful.

American Properties’ Lease Administration, Management & Consulting Group was asked to review the situation and to make recommendations. Suggested areas they proposed to examine included:

1. 95% Occupancy Adjustment during the Base Year.
2. Overtime HVAC charges and credits.
3. Capital Improvements included in operating expenses.
4. Operating Expenses capitalized during the Base Year.
5. Services provided to other tenants beyond the scope of Tenants’ Lease.

The logo for American Properties Realty Inc. features the company name in a serif font. Above the letter 'i' in 'Properties', there is a stylized graphic of a red and white wave or ribbon. Below the main name, the words 'REALTY INC.' are written in a smaller, bold, red, sans-serif font.

American Properties
REALTY INC.

A LICENSED REAL ESTATE BROKER

Lease Administration, Management & Consulting Group

Lease & Real Estate Operational Auditing & Accounting

Lease Abstracting, Validation & Lease Abstract Design

Lease Administration Systems

FASB 13 Capital Lease Consulting

Cost Control Through Occupancy Cost Allocation Verification

Rent Roll Due Diligence

For more information:

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Results

After careful review, American Properties determined that the Base Year for Operating Expenses and comparison years were not calculated properly. In particular, the Landlord did not administer the occupancy adjustment clause correctly which had been negotiated in the Lease. The engagement achieved the following results:

Comparison Year 1: \$21,000.00
CREDIT TO TENANT (initial bill \$36,000 previously paid by Tenant)

Comparison Year 2: \$7,800.00
CREDIT TO TENANT (initial bill \$50,142.78)

Comparison Year 3: \$33,000.00
OWED TO LANDLORD (initial bill \$99,081.01)

Comparison Year 4: \$61,500.00
OWED TO LANDLORD (initial bill \$123,370.59)

Comparison Year 5: \$8,000.00
OWED TO LANDLORD (initial bill \$54,145.00)

Furthermore, the reduction of Landlord's initial bills of **\$325,000.00** to \$73,000.00, was followed by an additional savings of \$1,000,000.00 going forward. This was accomplished due to the fact that after proper calculation of the base year, the monthly estimated payment for increases in operating expenses was

reduced from \$11,000.00 per month to \$5,000.00 per month. Tenant would then benefit from the \$6,000.00 per month savings for the remaining Fourteen (14) Years of the lease which otherwise would have been paid in addition to future increases.

American Properties multi-level lease review and audit achieved an approximate savings of **\$1,250,000** for their client.

The logo for American Properties Realty Inc. features the company name in a serif font. 'American' is in dark blue, 'Properties' is in a larger dark blue font, and 'REALTY INC.' is in red. A red star with a wavy line above it is positioned above the 'i' in 'American'.

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