
Top 5 Retail Lease Red Flags Mini-Playbook
(clauses + sample language)

1) Co-Tenancy (Opening + Ongoing)

Red Flag

Vague “comparable replacement,” no cure time, nominal abatement cap, no termination right.

Why it matters

Anchor failure depresses traffic and sales; without leverage, tenant pays full rent for a dead center.

Target Terms

- Cure period: [120–180] days after notice.
- Objective replacement (by use/GLA).
- Abatement to [percentage/alternate rent] during failure.
- Termination if uncured by certain date [6 months to 1 year].

Sample Language

If the Anchor Condition fails and remains uncured for [180 days] after Tenant’s notice, Minimum Rent converts to [Percentage/Alternate Rent]. If the failure continues [1 year] after notice, Tenant may terminate on [30] days’ notice without fee.

Fallback

Shorten abatement to a fixed credit (e.g., [50%] Minimum Rent) and extend cure to [270] days.

2) CAM / Operating Expenses

Red Flag

Double-dip admin + mgmt fees, no cap on controllables, capital spend passed through broadly.

Why it matters

Uncapped and ambiguous CAM erodes deal economics post-signing.

Target Terms

- Management fee ≤ 3% of amounts actually collected; no separate admin fee.
- Controllables cap: not more than [5-7%] of previous year; CPI + [3–5%].
- CAPEX excluded except code/energy-saving items, amortized over useful life with reasonable interest.
- Express exclusions: owner overhead/profit, corporate salaries/benefits, unrelated marketing, debt service, ground rent.

Sample Language

“CAM excludes Landlord’s overhead and profit; corporate salaries/benefits; marketing not specific to the Center; debt service; ground rent; and capital expenditures except those required by changes in Legal Requirements after Commencement, amortized over useful life at a reasonable rate.”

Fallback

Mgmt fee ≤ 4%; controllables cap at CPI + [6-8%]; allow limited CAPEX if amortized.

3) Exclusive Use & Remedies

Red Flag

Narrow or porous exclusive, “reasonable efforts” only, no meaningful remedy for violations.

Why it matters

Overlapping-use competition erodes sales; remedy is the only enforcement mechanism.

Target Terms

- Clear exclusive language; center-wide.
- Landlord enforces against future conflicts.

- Remedies: rent abatement [50–100%] during violation + injunctive relief; termination if uncured within [90-120] days.

Sample Language

“During any Exclusive Violation exceeding [30] days after Tenant’s notice, Minimum Rent abates [50–100%] until cured. If uncured [90-120] days after notice, Tenant may terminate on [30] days’ notice.”

Fallback

Prospective-only enforcement + fixed credit of \$[X] per day during violation.

4) Delivery, Possession & Fixturing (Outside Date)

Red Flag

No outside delivery date, ambiguous “substantial completion,” permit risk shifted only to tenant.

Why it matters

Schedule slippage adversely affects openings and burns cash.

Target Terms

- Outside Delivery Date: firm date for premises with Landlord Work Substantially Complete.
- Per-diem rent credit for delay; termination if delivery not done by [X] days after Outside Date.
- Permits risk allocated to the party controlling design/scope; Landlord responsible for base-building compliance.

Sample Language

“If Landlord fails to deliver the Premises with Landlord Work Substantially Complete by [Outside Delivery Date], Tenant receives a credit of \$[____] per day until delivery; if delivery has not occurred within [X] days thereafter, Tenant may terminate and recover all amounts paid.”

Fallback

Credit only (no termination) for first [30] days of delay, then termination right.

5) Tenant Estoppels (Factual with Limits)

Red Flag

Overbroad forms (legal conclusions), stale dates, “waiver by silence.”

Why it matters

Buyers/lenders rely on estoppels; they should be short, factual, and current.

Target Terms

- Short-form, factual only (dates, amounts paid through [date], defaults/offsets, amendments).
- Actual-knowledge qualifier (no duty of inquiry).
- Timing/limits: deliver within [15] business days of request; not more than [2] routine requests/year (unlimited for sale/financing/refi); dated \leq [30] days before delivery
- No waiver by silence.

Sample Language

“Within [15] Business Days’ notice (no more than [two] times/year, except without limit for sale/financing/refi), Tenant shall deliver a short-form estoppel in the form of Exhibit [__], limited to factual matters and made to Tenant’s actual knowledge (without duty of inquiry), dated within [30] days. Failure to deliver is not an estoppel, and the Lease controls over any conflict.”

Fallback

Permit “in full force and effect” only to Tenant’s actual knowledge and subject to defenses arising after the certificate date.
