

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

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### **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.

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### **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  $\leq$  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  $\leq$  4%; controllables cap at CPI + [6-8%]; allow limited CAPEX if amortized.

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### **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.

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#### 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.

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#### 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 ≤[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.

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