



LEASEDESK · FREE GUIDE

# The 10 Clauses That Cost Landlords the Most *Money*

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The lease language that quietly drains commercial landlords' profit: what it is, why it costs you, and the exact wording that fixes it.

FROM THE COMMERCIAL LANDLORD'S HANDBOOK



## WHY THIS MATTERS

# Most landlords learn this the *expensive way*

They negotiate rent carefully, qualify tenants well, and manage the space professionally, then lose tens of thousands of dollars to a single poorly written clause.

This guide identifies the ten lease clauses most likely to drain your profit, explains why each matters, and gives you the language to fix it. These ten issues account for the majority of commercial lease disputes and losses. Study them. Make them non-negotiable in your favor before your next deal.

### 1. Weak or Capped CAM Recovery

Your CAM and operating-cost clause is the biggest lever on your net income, and it is the one landlords most often give away. The costly version under-recovers: it omits an administrative charge, lets the tenant cap it, or defines recoverable costs so vaguely that their accountant carves them out at reconciliation. Recover only your hard costs and you have run the building for free.

#### THE FIX

*Pass through the full cost of operating the building plus a 15% Administrative Charge on the aggregate of taxes and operating costs (the market-standard landlord position), add a gross-up so a partly vacant building is treated as fully occupied, and define operating costs broadly. Do not cap the administrative charge; it is yours to keep.*

### 2. CPI Escalation Without a Floor

Tying rent increases to CPI with no floor means flat or deflationary years stall your escalation, and every later year compounds on the shortfall. The floor is your protection; a ceiling only caps your upside in the high-inflation years the clause exists to capture.

#### THE FIX

*"Rent shall increase annually by the greater of 2% or the increase in the Consumer Price Index." Keep the floor; skip the ceiling; concede one only as a traded concession, never as a default.*

### 3. Overly Broad Exclusivity Language

A vague exclusivity clause lets a coffee shop argue a bakery with a coffee corner is "competing," leaving you unable to lease nearby space and handing the tenant renegotiation leverage.

#### THE FIX

*Define exclusivity narrowly: name the protected use specifically and list the uses it does not block (juice bars, bakeries, ice-cream shops, vendors not primarily selling coffee).*

#### 4. Guarantees and Indemnities That Quietly Expire

A guarantee tied only to the initial term, or one that lapses on renewal, assignment, or amendment, can leave you unsecured exactly when a struggling tenant needs someone creditworthy standing behind it. Many guarantees also force you to exhaust your remedies against the tenant before you can pursue the guarantor.

##### THE FIX

*Use durable, primary support: an indemnity rather than a bare personal guarantee, with the indemnifier liable jointly and severally so you can pursue both at once, written to survive renewals, extensions, assignments, and amendments instead of burning off at the end of the initial term.*

#### 5. TI Disbursement Without Milestone Requirements

"Disburse upon receipt of invoice" can have you writing a check before any work is done, and then the tenant abandons the project.

##### THE FIX

*Disburse the TI allowance in draws, for example 25% at construction start, 50% at rough completion, and 25% at final inspection, each requiring receipts, lien waivers, and sign-offs.*

#### 6. Assignment & Subletting Without Recapture or Profit Capture

Allowing assignment or sublet with no controls fails you twice: you lose your say over who occupies the building, and if the space has become more valuable, the tenant pockets the spread instead of you.

##### THE FIX

*Require your written consent and reserve a recapture right, so you can take the space back and re-lease it at market. Then add an excess-rent clause: any rent the tenant collects above the rent payable to you is paid over to you as additional rent. Recapture protects control; excess-rent capture protects the upside.*

#### 7. Early Termination With No or Low Penalty

A token early-termination fee lets a distressed tenant pay a little and walk, leaving you with the vacancy, the cost of re-leasing, and the unamortized money you already spent to land them.

##### THE FIX

*Do not permit a unilateral early-out. Price any negotiated exit as a fixed termination fee: your unamortized leasing costs (commissions, free rent, TI) plus a set number of months' rent. If a tenant defaults, recover the rent deficiency, crediting what you re-collect on reletting against what they owe. Charging full remaining rent and all re-leasing costs while you also collect rent from a new tenant is a double recovery courts strike down as an unenforceable penalty.*

## 8. Overly Broad Use Clause

"Any lawful purpose" lets a quiet consulting office become a high-traffic fitness studio, changing your insurance, liability, and the experience of other tenants.

### THE FIX

*Limit use to a specific named purpose, and bar retail, food service, fitness, manufacturing, or any high-traffic/high-noise use without prior written approval.*

## 9. Weak Holdover Language and Rent

Holdover at only 125% of last month's rent lets a tenant linger at an attractive rate and extract concessions because you'd rather renegotiate than evict.

### THE FIX

*Set holdover at 150% of final-year rent, month-to-month terminable by the landlord on 30 days' notice, with an additional 25% penalty for holdover beyond 30 days.*

## 10. Renewal Options at Predetermined Below-Market Rent

A renewal option at a rent "pre-set" years in advance locks you in below market if rents rise.

### THE FIX

*Tie renewal to fair market value (by agreement or independent appraisal at the tenant's cost), with a floor of "not less than 110% of the final-year rent."*

Every clause in your lease is a financial decision. Review these ten in your current template, and fix them before your next deal.

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GO DEEPER

## This is one bonus guide. *Here's the rest.*

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The Commercial Landlord's Handbook gives you the whole system: a 240+ page leasing playbook, 90+ editable Word templates (annotated leases, LOIs, notices, estoppels), 17 Excel calculators including CAM/NNN reconciliation, checklists, scripts, and the full bonus library this guide came from.

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