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Data center leasing considerations - by Leah Rubega

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Data Centers

The market for data-center leasing in the United States, already on the rise, received an enormous boost in 2020 after COVID-19 made working remotely and online a new way of life. It's estimated that customers have leased close to triple the amount of data center capacity in 2020 than what was leased in 2019.

The increased demand for data-center space has absorbed the supply in leading markets, prompting evaluation of possible new space and new construction for data centers. Data centers pose unique leasing considerations for both landlords and tenants that varies significantly from traditional office or retail leases: Security, maintenance and utility services are among the most important issues for a data-center leases.

Security/Access:

- A landlord's access rights will be much more restricted than traditional retail or office leases, and data center tenants will require increased advance notice—possibly up to 15 business days—for routine entry.
- Data center tenants will also designate restricted or secured areas that the landlord and landlord's agents or employees, and prospective lenders or purchasers, will not have access to.
- Landlords will be subject to a tenant's security programs and confidentiality requirements to limit potential exposure to the tenant's proprietary, confidential information within the premises.
- The provisions under the lease for a tenant default may require lengthier notice times, and extensive negotiation around when a landlord can declare a default and terminate or enter the lease after a default has been declared.

Maintenance:

- The tenant will have responsibility for maintaining and repairing its premises and all equipment. Landlords will want to ensure that the tenant's equipment does not overload the floor capacity.
- Prior to entering into the lease—and depending on the site and the specific building features—the landlord and tenant must also determine what kind of alterations, installations and other work needs to be done to accommodate the data center, and who will perform the work.
- Telecommunications services providers or carriers of the tenant will also frequently need to access the premises for purposes of installing, testing, monitoring and maintaining the telephone and network connectivity to the premises.

Utilities:

- One of the most important aspects to a data-center lease is ensuring that the site has access to the appropriate utility services and that such services are not interrupted.
- Tenants will push for the installation of a generator if there is not already one at the site, and will also want strong language preventing the landlord from interfering or interrupting utility services.
- Tenants will also want the ability to step into the landlord's shoes in the event of a material disruption to cure the issue. Utility interruptions will also be the subject of rent abatement negotiations.

The demand for data centers is likely to increase, and there are many considerations when negotiating a lease for a data center. This article has briefly highlighted some of the major concerns. As always, landlords or tenants should consult with legal counsel to navigate the terms of a data center lease.

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