Five Provisions to Consider When Negotiating Industrial Outdoor Storage Leases

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Industrial outdoor storage (IOS) has emerged as one of the fastest-growing asset classes in commercial real estate. Driven by increasing demand for logistics, transportation, construction, and equipment-related uses, IOS properties serve a wide range of operational needs, from truck parking and container storage to contractor yards and equipment staging. As competition for these sites continues to increase, a thoughtfully negotiated lease can help align the parties' expectations, allocate risk appropriately, and minimize disputes over the course of the lease term.

While every property and tenant has unique operational needs, here are five key provisions (along with recommended strategies for each) to consider when negotiating an IOS lease:

1. Clearly Define the Permitted Use and Compliance Obligations

The lease should clearly describe how the property may be used and allocate responsibility for complying with applicable laws and regulations. The more precisely the parties understand the tenant's intended operations at the outset, the less likely they are to encounter issues later. Consider addressing the types of equipment and materials that may be stored on-site, whether maintenance or repair activities will be permitted, and any restrictions on vehicle parking or container stacking. In addition, IOS properties are often subject to zoning constraints, as well as environmental, stormwater, and other local regulatory requirements, making it important to clearly establish responsibility for maintaining compliance and responding to governmental notices or violations.

2. Allocate Environmental Responsibilities

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Outdoor storage operations can present environmental risks that may not exist in more traditional industrial settings. As a result, the lease should address matters such as spill prevention and response, the storage and handling of regulated materials, reporting obligations, and responsibility for investigation and remediation costs if contamination occurs. Particular attention should also be paid to state-specific environmental requirements that may be triggered by certain IOS uses. For example, in New Jersey, some operations may implicate the Industrial Site Recovery Act (ISRA), which can impose significant investigation, remediation, and regulatory compliance obligations in connection with transfers of ownership or operational changes at a site. Addressing these issues upfront can help avoid uncertainty and allocate environmental risk appropriately between the parties.

3. Plan for Lease Expiration and Site Restoration

IOS sites often include tenant-installed improvements, such as fencing, lighting, security systems, utility connections, and pavement enhancements. Because these improvements can be costly and time-consuming to remove, the lease should clearly identify which improvements must be removed at the end of the term, which may remain in place, and the landlord's remedies if the tenant fails to timely complete its restoration obligations.

4. Tailor Insurance Requirements to the Operation

Not all uses of IOS property present the same level of risk. Insurance requirements should be tailored to the tenant's specific operations and the nature of the property. The lease should clearly identify the types and amounts of coverage required, any additional insured requirements, and each party's ongoing obligations to maintain insurance throughout the lease term.

5. Preserve Flexibility

Long-term IOS leases should not unnecessarily limit a property owner's ability to adapt a site as business needs, market conditions, or redevelopment plans evolve. Where appropriate, a relocation

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right can provide the landlord with the flexibility to move the tenant to a comparable area of the property while minimizing disruption to the tenant's operations. If a relocation right is included, the lease should clearly define the circumstances under which it may be exercised, the standards for a comparable relocation area, and the parties' respective responsibilities and costs associated with the relocation process.

A thoughtfully drafted relocation provision can help balance a landlord's need for flexibility with a tenant's need for operational certainty.

Key Takeaway

Addressing these issues during IOS lease negotiations can help create a clear framework for both landlord and tenant, reducing uncertainty and allocating risk before problems arise. While no lease can eliminate every potential dispute, careful attention to these provisions can help the parties focus on their business objectives rather than resolving avoidable conflicts.

For further guidance or assistance negotiating your next IOS lease agreement, please contact the author or any member of the firm's Real Estate and Finance Industry teams. You can also check out additional IOS coverage below:

- Industrial Outdoor Storage: A Maturing Asset Class
- IOS and Zoning: Seven Common Pitfalls for Developers to Avoid

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