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## **RE: Pay Attention to Your Lease**

**Location, location, location** — an oft-repeated phrase that can make or break a small business. In fact, so much attention is paid to getting the right location that once a lease is consummated, it is often filed away like a retired athlete's jersey. Trouble is, a lease gains in importance with each passing day that brings the tenant closer to its expiration date.

About ten years ago, I received a call from a restaurateur (let's call him Jim) who wanted to sell his business. He had been in business in the same location for more than a decade and he wanted to reap the fruits of his labor and retire. Unfortunately, Jim failed to renew his lease two years earlier and had been on month-to-month status ever since.

When an acceptable offer was secured, I accompanied Jim and the purchaser to his landlord to negotiate a new lease. Unfortunately, the landlord had other thoughts regarding the property's future. His son had recently returned to New Mexico from a stint in the Army and was seeking gainful employment.

The landlord, who knew that Jim had built a prosperous business in his building, decided that he would take advantage of Jim's enterprise and turn the site over to his son. Used restaurant equipment is fairly cheap, so he knew if Jim removed his furniture and equipment after being evicted, his son could have the restaurant reopened in less than a month.

When Jim protested, his arguments went unheeded. His landlord had made up his mind and all Jim had to show for his years in business was some used furniture and equipment, a refrigerator half full of food and some dog-eared menus. The landlord's

son took over the site, prepared similar food and prospered by serving Jim's old clientele (so much for customer loyalty).

Jim's lackadaisical attitude regarding his lease cost him a comfortable retirement and forced him to relocate to another, less desirable site that never produced the same profits as his old habitat.

This outcome could have been averted with the following "lease preventative maintenance program":

**1. Plan ahead.** Make a note to remind yourself to start the renewal process at least one full year prior to the expiration date of your lease. Read your lease carefully, understand your renewal options (if any) and determine whether or not you want to remain in that location for another lease period. This may be a good time to research more desirable sites without fear of losing your existing location.

**2. Get help.** Seek the assistance of a commercial leasing agent specializing in the type of lease you require. A leasing professional will ask you to sign a Tenant Representation Agreement in order to protect his or her interest in any potential transaction. This is generally an exclusive agreement, so choose your agent carefully. Exclusivity is not a negative because it also mandates accountability to you on the part of your agent.

**3. Know your needs.** (Give your agent all of your leasing criteria so a thorough search can be made of any comparable sites that might prove more advantageous or at least provide some leverage for negotiations with your current landlord. You can preserve your new or existing location through either a straight lease term or a lease term with renewal options. For example, you could control a property for ten years with an initial lease term of four years and two, three-year renewal options. Some

shopping center leases require you to pay your proportionate share (based on square footage) of the center's common area maintenance, property taxes and insurance costs. Make sure you understand the full impact of all of these additional lease requirements and charges.

**4. Stay Neutral.** Let your agent negotiate a new lease or extension of your existing lease. Having a third party negotiate on your behalf enables you to remain “politically neutral” while your agent endures all the adversarial trauma.

A professional armed with current market data, who is arguing key points from a position of knowledge rather than emotion, also creates a more businesslike atmosphere. Best of all, many commission agreements provide for the tenant representative's fee to be paid by the landlord as part of the normal transactional costs.

Business owners sometimes overlook their leases in lieu of the more immediate and demanding day-to-day operations. However, a \$350,000 investment in inventory, equipment and leasehold improvements can be dwarfed by a bad lease running over five years at \$7,000 per month — or even worse — the cost of having no lease at all.