

# "Due Diligence" Investigation Check List

## **1. CORPORATE MATTERS**

- a. Articles of Incorporation and by-laws of the Company and Seller.
- b. Corporate minute books and stock transfer records of the Company.
- c. Federal and state tax returns and related reports of the Company including:
  - i. income tax returns,
  - ii. audit reports of taxing authorities including descriptions of any open issues,
  - iii. real estate tax bills and payment records,
  - iv. personal property tax bills and payment records,
  - v. franchise, license, capital stock, doing business, and similar tax reports, and
  - vi. any other material documents.
- d. Agreements and arrangements between the Company and Seller or any affiliate of the Company or Seller, including:
  - i. stock subscription agreements,
  - ii. loan, line of credit or other financing arrangements,
  - iii. tax sharing agreements or arrangements,
  - iv. overhead allocation agreements or arrangements,
  - v. management services or personnel loan agreements or arrangements,
  - vi. guarantees or keep-well arrangements for the benefit of creditors or other third parties, and
  - vii. any others.
- e. Shareholder agreements relating to stock of the Company or stock owned by the Company.
- f. Documents imposing restrictions or conditions on stock transfer or merger, including any arrangements granting rights of first refusal or other preferential purchase rights.
- g. Third-party or governmental consent or authorizations required for merger or acquisition.

## **2. FINANCIAL MATTERS**

- a. Financial statements, including:
  - i. audited financial statements for all periods beginning on or after ^, 19^, consisting, in each case, of at least a balance sheet and income statement,
  - ii. interim monthly unaudited financial statements for periods after the latest audited statements, and
  - iii. working papers relating to the foregoing.
- b. Bank accounts and depository arrangements.

- c. Credit agreements and credit instruments including loan agreements, notes, debentures and bonds, and files relating thereto.
- d. Performance and financial bonds.
- e. Letters of credit.
- f. Instruments or arrangements creating liens, encumbrances, mortgages, or other charges (including mechanics and materialmen's liens) on any real or personal property of the Company, including property held indirectly through joint ventures, partnerships, subsidiaries or otherwise.
- g. Receivables analysis including aging, turnover and bad debt experience.

### **3. MANAGEMENT AND OPERATIONS**

- a. Internal management reports and memoranda.
- b. Policy and procedures manuals including those concerning personnel policy, internal controls and legal and regulatory compliance.
- c. Budgets, financial projections, business plans and capital expenditure plans.
- d. Contracts and arrangements for supplies or services, including the following which were entered into or under which work was done during the past ^ years:
  - i. contracts for the sale or purchase of real estate,
  - ii. contracts for the purchase or sale of materials, equipment or other personal property or fixtures,
  - iii. contracts or other arrangements for legal, accounting, consulting, brokerage, banking or other services, and
  - iv. construction and engineering contracts or subcontracts.
- e. Proprietary information and documents, including:
  - i. patents and patent applications,
  - ii. copyrights,
  - iii. trademarks, service marks, logos and trade or assumed names,
  - iv. nonpatentable proprietary know-how,
  - v. federal and state filings relating to any of the foregoing,
  - vi. licensing agreements relating to any of the foregoing (whether the Company is a licensor or licensee), and
  - vii. confidentiality agreements relating to any of the foregoing.
- f. Partnership or joint venture agreements to which the Company is a party and any other arrangements with third parties concerning the management or operation of properties, facilities or investments of the Company.
- g. Reports to management, board of directors or shareholders prepared by outside consultants, engineers or analysts.
- h. Closing documentation and related files for each prior sale of Company stock and each material asset purchase or sale by the Company during the past ^ years.
- i. Leases, deeds and related instruments, including without limitation, office premises leases, equipment or vehicle leases, and any such instruments held indirectly through joint ventures, partnerships, subsidiaries or otherwise.

- j. Agreements or arrangements granting rights of first refusal or other preferential purchase rights to any property of the Company.
- k. Other material agreements or arrangements.

#### **4. EMPLOYEE MATTERS**

- a. Corporate policies concerning hiring, compensation, advancement and termination.
- b. Labor contracts together with a list of all labor unions that have represented or attempted to represent employees of the Company during the past ^ years.
- c. Agreements with individual employees, including:
  - i. executive employment agreements,
  - ii. bonus, profit-sharing and similar arrangements,
  - iii. postemployment agreements including "salary continuation" and "golden parachute" arrangements, and
  - iv. covenants not to compete by present or former employees.
- d. Names of any officers or key employees who have left the Company during the past years.
- e. Each of the following which the Company maintains or contributes to, together with filings with the Internal Revenue Service, Pension Benefit Guaranty Corporation (PBGC), Securities and Exchange Commission and Department of Labor, including without limitation Forms 5500 and 5310, summary plan descriptions, summary annual reports, IRS determination letters (for qualified plans), and PBGC reportable events:
  - i. Union-sponsored multiemployer plans,
  - ii. Defined benefit plans,
  - iii. Defined contribution plans including:
    - 1. money purchase pension plans,
    - 2. profit-sharing plans,
    - 3. stock bonus plans,
    - 4. employee stock ownership plans, and
    - 5. savings or thrift plans,
  - iv. Health and welfare plans, including:
    - 1. medical, surgical, hospital or other health care plans or insurance programs including HMOs,
    - 2. dental plans,
    - 3. short-term disability or sick pay plans or arrangements,
    - 4. long-term disability insurance or uninsured arrangements,
    - 5. group term or other life or accident insurance,
    - 6. unemployment or vacation benefit plans, and
    - 7. other welfare plans,
  - v. Nonqualified deferred compensation arrangements including:
    - 1. director or officer deferred fee plans,

2. excess benefit plans (providing benefits in excess of internal revenue code limitations for qualified plans), and
3. severance pay plans,
- vi. Incentive or bonus plans including:
  1. stock option plans,
  2. stock bonus plans,
  3. stock purchase plans, and
  4. cash bonus or incentive plans.

## **5. INSURANCE**

- a. Insurance policies including those covering:
  - i. fire,
  - ii. liability,
  - iii. casualty,
  - iv. life,
  - v. title,
  - vi. workers' compensation,
  - vii. directors' and officers' liability, and
  - viii. any other insured events or matters.
- b. Claim and loss histories, correspondence with insurance carriers and names of all insurance representatives relating to the foregoing.

## **6. REAL ESTATE AND EQUIPMENT AND OTHER PERSONAL PROPERTY**

- a. List of real estate (with legal descriptions), equipment and other personal property owned, leased or in the process of being acquired or sold by the Company, with the cost and book value of each item.
- b. Real estate, equipment and other personal property leases and conditional sale agreements.
- c. Information relating to title on all property listed in the items above, including motor vehicle title documents.
- d. Appraisals of real estate, personal property and equipment.

## **7. GOVERNMENTAL REGULATION**

- a. Licenses, permits, filings or authorizations obtained from, made with or required by any governmental entity.
- b. Correspondence with any governmental regulatory authority.
- c. Accident or injury reports to federal, state, local and foreign governmental entities.

## **8. LITIGATION AND CLAIMS**

- a. Pending or threatened litigation, regulatory investigations, governmental actions, arbitrations, or notices of violation or possible violation, including proceedings in

which the Company is a plaintiff or claimant, and the names and addresses of legal counsel advising or representing the Company in each matter.

- b. Files and records relating to the foregoing including opinions and evaluations.