

DUE DILIGENCE CHECKLIST FOR REAL ESTATE PURCHASE

Disclaimer: This was not prepared for any specific state and should not be relied on by anyone for any purpose without your own individual research and study. No warranty expressed or implied.

REAL PROPERTY CONSIDERATIONS:

- Legal description of all real property owned or leased by Seller indicating which is owned and which is leased.
- Copies of Deeds.
- Existing title policies.
- Rent Rolls.
- Leases (whether as lessor or lessee), subleases, assignments and other similar real property instruments relating to Seller.
- Existing surveys.
- Zoning approvals, variances or use permits.
- All notes, mortgages, deeds of trusts and other interests granted to third parties in respect of real property.
- All easements and rights of way owned or granted by Seller.
- Confirmation of public access to property.
- All encroachments from or onto Seller's property, access restrictions, and violations of buildings set-back requirements.
- Description of all recent completed construction and construction in progress.
- Physical Inspection of the Property.
- Utilities access and metering (electric, cable, gas, water, sewer).
- List of personal property included in the sale.

SELLER DOCS/INFO:

- Articles of Incorporation or organization, including all amendments.
- Bylaws or Operating Agreement, including all amendments.
- Schedule of owners.
- Foreign persons – FERPTA.
- Certificates of good standing, evidence of compliance with state franchise, income or other tax laws in each jurisdiction, evidence of qualification to do business in all jurisdictions where necessary.
- Copies of annual registration with Secretary of State.
- A list of all assumed or fictitious names used by Sellers, and copies of registrations.

CONTRACTS/AGREEMENTS:

- New construction, improvements, repair and maintenance contracts.
- Employment and consulting agreements and other agreements with other employees.
- Contracts or other agreements between Seller and any officer, director, nominee for election of director, or family member of the foregoing or any officer, director, nominee for director or family member who has any interest in any entity with whom Seller has contracted.
- Service and maintenance agreements.
- Patent and copyright licensing agreements and the like.
- All agreements and instruments securing indebtedness, e.g., mortgages, installment sales contracts, notes, deeds of trust, security agreements, pledge agreements and guarantee agreements.
- Open purchase orders or other documents constituting agreements to purchase goods or services.
- Description of all arrangements and copies of all contracts currently in place.

Real Estate Broker involvement

- Broker agreement.
- Commission arrangement.
- Is there a co-broker involved?
- Is a commission due regardless of closing?

FINANCIAL INFORMATION:

- Audited financial statements for past four fiscal years, together with Auditors' Report.
- Unaudited financial statements for period ended.

Tax Information.

- Copies of tax returns for past four years (federal, state and local) relating to Seller or its operations, all subsidiaries and controlled corporations and all partnerships and joint ventures in which Seller has an interest.
- Audit and revenue agent reports (federal, state and local).
- Evidence of exemption of property from local property taxes, if applicable.
- Copies of all correspondence, documentation and determination letters, if applicable, from or with the IRS, state and local taxing authorities.
- Copies of all tax sharing or tax indemnification agreements.

Debt and liabilities.

- All debt instruments, long term or short term, e.g., loan agreements, promissory notes, mortgages, installment sales contracts, capitalized leases, etc.

- Contingent/unrecorded liabilities.
- Guarantees;
- Indemnities;

Other (except litigation).

- Schedule of all other debt, installment sale agreements, financing leases, etc.
- Accounts payable.
- Accounts receivable review (quality, aging, special cases).
- Inventory valuations, valuation assumptions, turnover and obsolescence review.
- List of all bank accounts of Sellers, including account numbers and location, current banking resolutions.

ENVIRONMENTAL CONSIDERATIONS.

- All documents relating to the inspection of Seller's property for asbestos, PCB's and other environmental, health or other hazards and the abatement of any such hazards; including all documents related to any inspection of the water supplies to Seller's property or condition of drinking water in Seller's property.
- All documents relating to the Seller's compliance with, or potential, alleged or actual violation of, any state, federal, local or regional statute, code, regulation, ordinance, resolution, order, judgment or ruling or any common law doctrine pertaining to the disposal, release, movement, storage or handling of any hazardous substance and any petroleum product or any material regulated or controlled under any federal, state or local enactments addressing preservation of the environment.
- All Phase I and Phase II environmental reports.
- Description of procedures for disposing of active, toxic or other hazardous waste.
- Infectious or hazardous waste disposal agreements.

INSURANCE INFORMATION:

- Schedule of existing coverage including name of insurer, policy expiration date, amount and type of coverage, deductible and premium amounts.
- Provide copies of all policies or self-insurance agreements.
- List and descriptions of pending or threatened insurance claims.
- List of all current outstanding claims, insurance coverage available and reserves established regarding same.

LITIGATION AND LIABILITIES.

- Schedule of all existing and reasonably imminent or threatened judicial and arbitration proceedings (including, without limitation, tort, breach of contract, EEOC, workers' compensation, unemployment compensation claims, wage and hour complaints),

- identifying opposing parties, nature of claim, counsel for both sides, insurance coverage status and likely exposure. As to existing litigation, provide identification of counsel for each party, assessment of status, claim and defense prepared by Seller's counsel.
- Schedule of all known contingent liabilities.
- Schedule of all administrative proceedings (whether federal, state or local), pending or threatened.
- Schedule of all governmental investigations or inquiries, pending or threatened.
- Schedule of all labor disputes.
- Description of all agreements and arrangements with collection agencies and similar organizations regarding current litigation, assignment and collection guidelines on accounts receivable.
- Description of any injunctions, court orders or consent decrees to which Seller is a party.

REGULATORY (Including copies of all correspondence with governmental agencies in respect of such licenses or information).

- All business licenses or permits (including without limitation, operationally required licenses, limited sales tax permits, certificates of occupancy, pollution control permits, boiler permits, elevator permits, parking structure permits, etc.).
- Building Code compliance.
- All correspondence and filings with federal, state, local and any other regulatory bodies or agencies.
- Description of all multi-party contracts and agreements regarding pricing or delivery of services.
- Copies of all manuals, policies and similar information relating to compliance with regulatory requirements.

MISCELLANEOUS.

- List of patents, trademarks, trade names, service marks, trade secrets, or copyright materials.
- Description of any construction projects.
- Evidence of planning and zoning approvals including licensing approvals received to date for any construction project.
- Architect, general contractor or other contracts relating to any construction project.

By: Mark A. Robertson, Partner at Robertson & Williams



9658 N. May Avenue, Suite 200
 OKC, OK 73120-2718
 405-848-1944

info@robertsonwilliams.com
www.robertsonwilliams.com