Due Diligence Checklist
for the Purchase of a Local Retail Business
(No Intellectual Property)\(^1\)

I. FINANCE/TAX

1. **Financial Matters.**

   1.1 Seller’s year-end financial statements for the past 5 years and audit reports thereon, if any, for the past four years.

   1.2 Seller’s loan agreements, credit agreements, promissory notes and other instruments pertaining to indebtedness incurred by Seller or indebtedness to Seller, including all indebtedness to any equity owner or affiliate.

   1.3 Seller’s documents evidencing other financial arrangements currently in effect, including guaranties, letters of credit, sale and repurchase or leaseback arrangements, capitalized leases, real estate and other installment purchases and any other similar arrangements.

   1.4 Seller’s Interim financial statements for the partial-period after the most recent year end.

   1.5 Information as to the quality of Seller’s accounts receivable, including aging of receivables as of the most recent date for which such information is available.

   1.6 Seller’s accounts receivable written off since formation of the business.

   1.7 Seller’s outstanding accounts receivable and an assessment of the timing and collectability thereof.

   1.8 A list of notes receivable from customers and a description of the terms of such notes and an assessment of the collectability thereof.

   1.9 Seller’s depreciation schedules and a description of depreciation methods used for book and tax purposes.

   1.10 Seller’s inventory detail as of the most recent date for which such information is available showing the quantity of each item on hand and value thereof.

   1.11 Information with respect to liens, encumbrances and other charges on any personal property owned or used by Seller.\(^2\)

\(^1\) This is a comprehensive list, so not all items may be applicable to the business you seek to purchase.
1.12 Copy of the annual payroll registers for the previous five years.

1.13 Bank reconciliations for all bank accounts including copy of the bank statements for the previous five years.

1.14 Detailed accounts receivable aging report for the previous five year-ends and most recent interim period.

1.15 Detailed accounts payable aging report for the previous five year-ends and most recent interim period.

1.16 Detailed information regarding any loans or liabilities not covered by any of the above requests, including but not limited to contingent liabilities, unmatured liabilities, environmental liabilities, tort liabilities, warranty service liabilities, and any other liabilities not clearly and/or fully reflected in the financial statements.

2. **Tax Matters**

2.1 Federal, state and local income tax returns for Seller and any predecessor entities for the past five years.

2.2 Federal and state payroll tax returns for Seller and any predecessor entities for previous five years.

2.3 Sales, use, and excise tax returns for Seller and any predecessor entities for previous five years.

2.4 Real, personal, and intangible property tax returns for Seller and any predecessor entities for previous five years.

2.5 Seller’s personal property tax and real estate property tax statements.

2.6 Documents relating to any claims, audits, actions, suits, proceedings or investigations now pending or threatened against or with respect to Seller in respect of any tax or assessment.

2.7 Information with respect to, and correspondence documenting all tax notices and tax audit activity (for all types of taxes of any taxing authority) for the previous five years and the current year, plus full written disclosure of all activity involving any

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2 You can search for personal property liens against the Seller on the Massachusetts Secretary of State’s website (if the Seller is located in MA or the Seller corporation or LLC is formed in MA) at http://corp.sec.state.ma.us/uccFiling/uccSearch/Default.aspx.

3 You should require the seller to obtain a tax good standing certificate and waiver of corporate tax lien from the MA Department of Revenue – see http://www.mass.gov/dor/businesses/programs-and-services/certificate-of-good-standing.html and http://www.mass.gov/dor/docs/dor/forms/miscform/pdfs/certgoodstanding.pdf. This is something the seller’s CPA should take care of and provide to the buyer.
taxing authority that is not documented by correspondence for Seller and any predecessor entities.

2.8 Agreements or outstanding disputes between Seller and any federal or other taxing authority as to tax or accounting matters, including any extension agreements.

II. ASSETS

3. Real Property.

3.1 Summary description of all physical facilities owned, leased or otherwise used or occupied by Seller (the “Real Properties”). Indicate with respect to each parcel of land included in the Real Properties:

(a) the address of the property;

(b) whether the property is owned or leased;

(c) copies of all notices of assessment received by Seller relating to the property or any work currently in progress which may result in any special assessments with respect to the property.

3.2 All title insurance policies (and/or lawyers’ abstract reports) covering the Real Properties owned by Seller and any surveys relating to such Real Properties.

3.3 All leases, licenses, concessions and mortgages (or other encumbrances) relating to or affecting the Real Properties. Indicate the extent to which any transfer by Seller of any of the Real Properties listed above will require the consent of a landlord, mortgagee, lender, lessee or other person having an interest in such Real Properties.

3.4 All environmental studies or reports relating to the Real Properties, or any notices or other correspondence relating to any possible environmental problem at any of the Real Properties.

4. Personal Property and Equipment.

4.1 All leases and other contracts to which Seller (as lessor or lessee) is a party relating to personal property (for example, equipment and vehicles).

4.2 All liens, restrictions on or conditions to transfer or assignment of assets of Seller, not previously identified, including all liens, security interests, pledges, changes, encumbrances and claims (the “Encumbrances”). Please furnish copies of documents, instruments or filings creating the Encumbrances.

4.3 All assets used in Seller’s business not owned by Seller, including any assets owned by its equity owners, their families or other affiliates.
4.4 All recent appraisals relating to Seller’s assets or business.

IV. MARKET

5. Certain Contracts and Arrangements.

5.1 All product licensing contracts or agreements with Seller. If any such agreements are oral, summarize the terms thereof.

5.2 All arrangements, understandings, agreements or contracts restricting the ability of Seller to compete, in any line of business, with any persons, or committing Seller to continue in any line of business.

5.3 All confidentiality agreements signed by Seller or signed by others in favor of Seller.

5.4 All long term or continuing contracts or arrangements with suppliers of Seller.

6. Publicity

6.1 All advertising, promotional, discount, rebate or other agreement or arrangements providing for incentives or allowances to Seller’s customers.

6.2 All press releases issued by Seller and any newspaper or magazine articles (in trade or other publications) relating to the business of Seller, to the extent available.

6.3 Representative sales and promotional brochures, pamphlets and other literature relating to the business of Seller.

V. PERSONNEL

7. Personnel.

7.1 Names and duties and compensation of each employee of Seller for the preceding fiscal year and the current year.

7.2 Names and addresses of each person or entity which has a power of attorney to act on behalf of Seller and copies of such powers of attorney.

7.3 All agreements with salesmen or others involving the payment of commissions or other consideration or discounts with respect to the licensing, sale or distribution of Seller’s products and services. If any such agreements are oral, summarize the terms thereof.

7.4 All written (and describe any oral) employment, labor or severance agreements to which Seller is a party or by which it is bound.
7.5 All consulting and management agreements, arrangements or understandings to which Seller is a party.

7.6 Describe all pending or threatened labor strikes, labor trouble, complaints, grievances or other proceedings experienced by Seller since formation of the company.

8. **Employee Benefits.**

8.1 All benefit plans covering any employee or former employee of Seller, such as qualified retirement plans, simplified employee pension (SEP) plans, or savings incentive match plans for employees (SIMPLE), including amendments, actuarial reports, communications with employees regarding same.

8.2 All employee benefit plans covering any employee or former employee of Seller providing medical and welfare benefits, including, but not limited to, group life insurance plans, major medical plans, medical reimbursement plans, supplemental benefit plans, or welfare or salary continuation plans.

8.3 All pension and/or profit-sharing plans covering any employee of Seller, including amendments thereto, and the related trust instrument, if any. Please provide the most recent actuarial reports for any pension plan.

8.4 All bonus plans and all deferred or incentive compensation programs and practices involving any employee of Seller.

8.5 Seller’s policy with regard to accrued vacations and sick leave, and the provisions for the payment thereof, and the amount of accrued vacation and sick leave per employee.

8.6 All severance or termination programs or plans of Seller.

8.7 Summary plan descriptions and employee handbooks describing employee benefits.

8.8 All other benefits not included above involving any employee of Seller (e.g., Seller automobiles, use of Seller facilities by employees, matching savings plans, etc.).

**VI. OPERATIONS**

9. **Corporate Matters.**

9.1 Seller’s charter and all amendments thereto.

9.2 Seller’s bylaws, operating agreement, etc. as amended to date.

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4 This applies if the business for sale is operated through a corporation, limited liability company or other entity (in other words, not a sole proprietor).
9.3 Seller’s stock or ownership records.

9.4 All agreements relating to contractual commitments to acquire any equity interest in Seller.

9.5 All indemnification agreements between Seller and its officers, directors or employees.

9.6 All agreements, instruments and other documents which in any way restrict or may restrict any sale, transfer, assignment or other disposition of the assets or equity capital of Seller.


10.1 All federal, state and local permits, licenses and approvals obtained or that should be obtained in connection with the business of Seller.

10.2 Describe the extent to which any of the permits, licenses and approvals referred to above will be affected by any change in the ownership of Seller or its assets.

10.3 Describe any proceeding, allegation or claim that Seller is acting in violation of any law, regulation, ordinance or other requirement of any governmental authority (domestic or foreign), including, but not limited to, any environmental regulations, worker safety regulations or regulations with respect to government contracts.

10.4 All correspondence with any regulatory agency (city, state or federal).

11. Scope of Activities.

11.1 All partnership or joint venture, or similar agreements to which Seller is a party. If any such arrangements are oral, summarize the terms thereof.

11.2 All contracts which are not described elsewhere which are material to Seller’s business.

12. Insurance.

12.1 All insurance policies and commitments (property, auto, liability, errors & omissions, etc.) in effect with respect to the assets of Seller, including loss payable endorsements and listings of insured values.

12.2 Describe all claims made by or against Seller or under or with respect to Seller’s product liability or other insurance policies since formation of the company.
13. **Litigation.**

13.1 Describe each threatened or pending claim, lawsuit, arbitration or investigation (including governmental matters) relating to Seller.

13.2 Describe any judgments, decrees or orders to which Seller presently is, or has been, subject.

13.3 The most recent response to auditors’ request for information about litigation and/or contingent liabilities of Seller.

13.4 Describe any workers compensation, employment discrimination, sexual harassment or other claims made by any employee against Seller since formation of the company.