

This sample document is intended to serve as a starting point only, and should be tailored to meet your specific requirements. This document should not be construed as legal advice for any particular facts or circumstances. Note that this sample document presents an array of (often mutually exclusive) options with respect to particular deal provisions.

DUE DILIGENCE REQUEST LIST: LENDING TRANSACTIONS

Preliminary Note *This model due diligence request list is longer and more involved than what typically would be used in a given transaction in order to provide an overview of potentially relevant issues, as well as a road map and a reference source for the transaction parties.*

DUE DILIGENCE REQUEST LIST: LENDING TRANSACTIONS

1. Organizational Documents and Information.

(a) Organizational chart showing ownership structure, number of authorized and outstanding shares/membership interests of all classes, certificate numbers (if any) and equity percentage of each entity owned by a Loan Party or any of its subsidiaries. Include information on related options, warrants or other rights to acquire shares/membership interests.

(b) Organizational documents such as certificates of incorporation, by-laws, certificates of formation, limited liability company operating agreements and partnership agreements.

(c) All voting agreements, stockholders' agreements and registration rights agreements.

(d) Names of all directors/members; names of each executive officer who will sign any loan document or any other related document.

(e) Material communications to shareholders or members for the past three years.

(f) List of all jurisdictions in which each Loan Party is doing business or is required to be qualified to do business.

(g) Full legal name, address of the chief executive office (and, if different, the principal place of business), state of organization and federal tax identification number for each Loan Party and any change of name, address or corporate structure in the past four months.

2. Property and Assets.

(a) List of all real property and their locations. Indicate if owned or leased, name of record owner or lessor and lessee, approximate fair value, terms of leaseholds and encumbrances on the property. Include copies of recent title reports, surveys and appraisals, if available.

(b) List of types and locations of equipment and inventory and approximate value of assets at each location.

(c) List of accounts receivable balance by debtor and dollar book value.

(d) List all US and foreign patents and registered copyrights, trademarks and domain names, and applications for any of the foregoing, held or filed by each Loan Party, indicating in each case, as applicable, the dates of invention, authorship, first use, application, issue, registration and renewal, and provide copies of all related prosecution files; list all agreements and proposed agreements pursuant to which any intellectual property is assigned or licensed by a Loan Party to any third party, or to a Loan Party by any third party; and describe any past, current or pending threats, claims, settlements and litigation brought by or against a Loan Party alleging infringement of intellectual property of the Loan Party or a third party.

(e) List of all investments (including cash equivalents, stock and other ownership interests), indicating estimated fair value and maturity date (if any) of each.

(f) List of all promissory notes and other debt owed to a Loan Party, indicating payor, payee, amount and maturity date.

(g) List of all deposit accounts, indicating name of depository bank, account name, account holder, purpose and approximate average daily balance of each.

(h) List of commercial tort claims owed to a Loan Party, described with specificity, indicating the amount of each.

(i) List of letter of credit rights for which a Loan Party is beneficiary, indicating the amount of each.

(j) List of any other material assets by type, indicating fair value of each.

3. Debt Arrangements.

(a) List of all debt for borrowed money, indicating payor and payee, principal amount and maturity date.

(b) All documentation relating to debt (such as loan agreements, indentures, promissory notes, letters of credit, guaranties, hedge agreements, agreements for deferred purchase price of property or services, obligations to acquire capital stock and operating and capital leases) whether direct or contingent and whether secured or unsecured and all related amendments and waivers.

(c) List of all intercompany debt indicating the parties thereto, maximum principal amount available, maturity date and material terms.

- (d) Results of any recently completed lien searches.

4. Other Material Contracts and Agreements.

- (a) All material partnership, joint venture and cooperation agreements, indicating if a Loan Party is a general partner.
- (b) All agreements with affiliates that are other than on an arm's-length basis evidencing management or other financial advisory services.
- (c) All material agreements between any Loan Party or any of its significant subsidiaries, on one hand, and one or more of such person's affiliates, on the other hand.
- (d) All material operating agreements (including those with the largest vendors, suppliers and customers), and a listing of the largest vendors, suppliers and customers.
- (e) All material licenses (for which a Loan Party or its subsidiary is either licensee or licensor).
- (f) Contracts containing termination or other clauses or requiring consent of a third party in the event of a change of control, sale of assets, granting of liens, security interests or guarantees or payment of dividends by subsidiaries.
- (g) Any agreement restricting competition or engaging in a type of business or in a geographic location.
- (h) Any other material agreement that has substantial economic value, is essential to the viability of the business or poses significant risk or liability to any Loan Party or its subsidiaries.

5. Regulatory Matters.

- (a) Any orders, opinions or other correspondence by any governmental or regulatory authority arising from hearings, investigations or proceedings or relating to compliance with any laws, rules or regulations (such as securities laws, environmental laws, ERISA, insurance laws, tax laws and antitrust laws) during the last three years.
- (b) Material compliance reports and correspondence with any federal or state regulatory agencies relating to compliance with any laws, rules or regulations during the past three years.

6. ERISA.

(a) Each employee benefit plan and the most recent copy of each related periodic report.

(b) All notices or correspondence with the Pension Benefit Guaranty Corporation concerning minimum funding requirements or other reportable events under ERISA.

(c) All IRS determination letters and other material correspondence with the IRS concerning employee benefit plans.

7. Tax Matters.

(a) All tax sharing agreements affecting any Loan Party or its subsidiaries.

(b) Schedule of last audit date (by entity and tax jurisdiction), open tax years, and all material adjustments required by last audit.

(c) Schedule of unused loss and credit carry-overs (by entity and tax jurisdiction), including expiration date and restrictions on use.

(d) Information on deferred taxes, deferred intercompany transactions and other significant deferred items.

(e) Information regarding any other materially adverse tax matters or pending tax matters affecting any Loan Party or its subsidiaries.

8. Environmental.

(a) All environmental assessment reports and environmental compliance reports (both internally prepared and prepared by third parties).

(b) Information concerning all material hazardous substance remediation projects and the cost of each project.

9. Miscellaneous.

(a) Audit committee minutes and communications between the auditors and management or the audit committee for the past three years.

(b) List and description of all material contingent liabilities for which a reserve has been established on the most recent financial statements, indicating the potential exposure and the reserve amount.

(c) Any indemnities (such as tax or environmental) given or received by any Loan Party or any of its subsidiaries in connection with a sale or purchase of assets or stock, indicating any claims made or proposed to be made.

(d) The most recently prepared audited annual financial statements, subsequent unaudited quarterly financial statements, projections, budgets and business plans.

(e) Information regarding any material litigation, investigation or proceeding, including likelihood of adverse determination and amount of potential liability.

(f) Certificate of insurance, indicating type and coverage.