

#### Trap for the Unwary: Failing to Decide

Many business owners put off the difficult decisions such as:

- Sell or transition to new management
  - Transition to next generation
  - Sell
- When to sell: planning takes time
- How to sell: planning the exit process
- Bad alternatives to planning:
  - Owner dies suddenly or is incapacitated
  - Unsolicited offer

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### Trap for the Unwary: Failing to Plan

#### What to plan:

- Timeline
- Corporate structure and ownership
- Tax optimization
- Management team
- Valuation
- Diligence/Clean up
- Who is your buyer?
  - Private equity, strategic buyer, existing customer, management?

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3

### Trap for the Unwary: Tax Planning

Timing – Tax optimization takes time and planning

Tax treatment of proceeds:

• Capital gain, ordinary income

#### Section § 1202 - Qualified Small Business Stock

- Can exclude 100% of gain up to the greater of \$10 million or 10 times the original basis.
- Less than \$50 million gross assets at time of issuance
- Qualified trade or business
- Eligible holder
- 5 year holding period
- Original issuance of stock from the corporation
- C-corporation

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## Trap for the Unwary: Failing to Build the Team of Advisors

- Wealth advisors
- Trust and Estate lawyers
- Transactional lawyers
- Accountants
- Tax team
- Investment bankers

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5

### Trap for the Unwary: Failure to Conduct Diligence

- Clean up the company before going to market
- Scrutinize business as a buyer would
  - Diligence request list (example follows)
  - Quality of earnings analysis
  - Audit

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# Trap for the Unwary Deal Time: Taking the Highest Bidder

- Form of consideration: cash, stock, seller note, rollover?
- Deal structure:
  - Merger, Stock Sale, Asset Sale?
  - Tax consequences:
    - Capital gain, ordinary income
- Does seller have to run the business after Closing?

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7

#### Contact Me



Partner & Co-Chair of the Business, Corporate, and Tax Department 310.281.6374

cmanderson@ecjlaw.com
linkedin.com/in/chris-manderson

Ervin Cohen & Jessup LLP 9401 Wilshire Boulevard, 12<sup>th</sup> Floor Beverly Hills, CA 90212

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## Exhibit: Diligence Request List

9

#### DUE DILIGENCE REQUEST LIST

This list requests information for the purpose of conducting the diligence in connection with project [...]. Flee provides depose of the documents described below with respect [...] for a. California corporation, and, makes the context detaily implies otherwise, to of its substituties (colorwise), the "Campacopy"). Inferences to any context, instrument, or other document include all amendments and updates theretos. To the extent that any context, instrument, or other document respected to any float the string, places provide a description of such context instrument, or other document, industing the mental turns thereof. The word "Including" in a specific request shall be interpreted to mean "including, without limitation" onlines the context deathy implies otherwise.

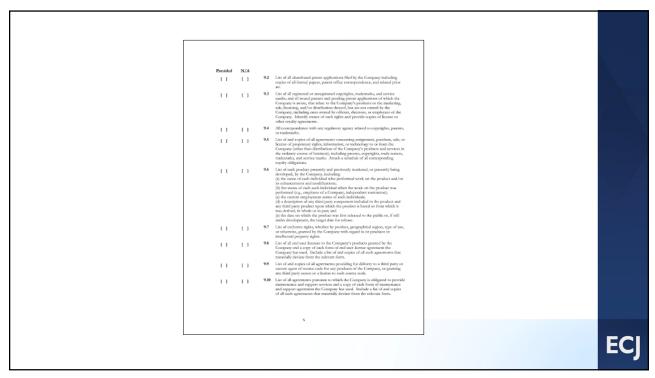
We realize that some of the information requested will be inapplicable to the Company; in sucleases, simply check "N/A." Please mark the upper right hand comer of the first page of each document with the section of this list to which such document pertains.

| Provided | N/A |   |
|----------|-----|---|
|          | 1.  | General Corporate Documents:  |
| [ ]      | [ ] | <ol> <li>Certificate of Incorporation or Certificate of Formation (or equivalent<br/>formation document).</li> </ol>  |
| 1-1      | [ ] | <ol> <li>Bylaws, Limited Liability Company Agreement, Parenership Agreement, or<br/>analogous document.</li> </ol>  |
| [ ]      | [ ] | 1.3 Minutes of all meetings of directors, committees of directors, and<br>stockholders [since [•]] (including written contents in lieu thereof).  |
| U        | [ ] | 1.4 Written materials, including notices, management reports, and financial projections, distributed to directors, commisse members, or stockholders in connection with the meetings or action by written consent described in the immediately perceding item [and held during the previous [4] years]. |
| 1 1      | [ ] | 1.5 The Company's Code of Ethics (or analogous document) as well as any other<br>written policies established by the Board of Directors and any committee<br>thereof.   |
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