SAMPLE CLOSING CHECKLIST FOR ASSET PURCHASE AGREEMENT

[Date] [Purchaser's Name] [Seller's Name]

TRANSACTION

I. Conditions Precedent to Closing

A. Due Diligence Matters:

1. Gather and review due diligence items identified on separate due diligence checklist.

2. Do all required follow-up from due diligence checklist before closing.

B. Legal Research and Compliance Matters—Review all legal issues that may apply to the transaction, including:

1. Corporate/LLC law matters.

2. Tax issues.

3. Securities law issues.

4. Labor law matters, including WARN Act notices if required.

5. COBRA issues.

6. Other legal issues that may apply to the transaction (i.e., FCC, FAA).

C. Employment and Labor Matters:

1. Pay off by seller of all payroll, vacation, sick, personal days, and other compensation-related items (unless purchaser assumes these liabilities).

2. Are there severance pay or other items seller plans to consider? If so, handle appropriately (i.e., terminate, pay off obligations).

3. Review all union contracts and consider what actions need to be taken, and notices given, to comply with all union agreements.
4. Review all qualified and nonqualified retirement plan issues. (Are any of the plans multi-employer plans with withdrawal liability?)

5. COBRA issues and required notices.

D. State Matters:

1. Order certified articles of incorporation/articles of organization for all seller and purchaser entities.

2. Order certificate of good standing for each such entity.

3. File application for reservation of name.

E. Tax Matters:

1. Who pays applicable sales and transfer taxes?

2. Order and receive all necessary state tax clearance certificates.

3. Confirm that all payroll tax payments have been made by the seller entities.

4. Confirm all real and personal property taxes have been paid.

F. Consents and Approvals:

1. Prepare a complete list of all consents that may be required.

2. Typical consents to consider are from customer contracts, franchisors, landlords, lenders, suppliers, unions, and state and federal agencies.

G. UCC Matters:

1. UCC searches (search the seller's official name and all assumed names)--get all business addresses at which the seller does business and the taxpayer identification number of the seller.

2. Have all required UCC termination statements available at closing.

H. Antitrust Matters and Federal Approvals:

1. Hart-Scott-Rodino filings and approvals.

I. Identification of Assets Seller will retain, including:

1. Key-person life insurance policies.
2. Personal vehicles.

J. Financial Matters:

1. Receive all necessary bank/third-party financing and have all loan documents in place at closing (use a separate checklist or supplement this checklist for all bank/financing matters and documents).

2. Are there any brokers and, if so, who pays the brokerage commissions?

K. Real Estate Matters:

1. Surveys.

2. Title work.

3. Appraisals.

4. Environmental inspections and reports.

L. Inspections:

1. Real estate inspections.

2. Personal property inspections (inventory and tangible assets).

II. Non–Real Estate Documents for Signing and/or Delivery at the Closing

A. Asset Purchase Agreement, including schedules and exhibits. (It is often helpful to have the schedules and exhibits listed in a separate attachment to the checklist.)

B. Bill of Sale, along with appropriate schedules and exhibits

C. Escrow Agreement relating to, if relevant:

1. Post-closing adjustments.

2. Worker’s compensation.

3. Promissory note (pending finalization of purchase price).

4. Mortgage termination statements.

5. UCC termination statements.

7. Representations and warranties.

8. Other.

D. Assignment of third-party warranties.

E. Applicable personal service agreements, including:

1. Employment agreements.
2. Covenant-not-to-compete agreements.
5. Equity compensation arrangements (options, stock bonuses, etc.).

F. Certificate of fulfillment of conditions (bring-down certificate).

G. General releases.

H. Opinion of seller’s counsel.

I. Opinion of purchaser’s counsel.

J. Vehicle titles (note on an attached list if there are several; otherwise, list here).

K. Power of attorney by seller to purchaser relating to purchased assets.

L. Confidentiality agreement (if not included in the asset purchase agreement).

M. Affidavit regarding creditors.

N. Terminate all seller employees at closing (prepare joint letter to seller employees).

III. If the transaction is not for cash, the following may apply:

A. Promissory note for portion of purchase price not paid in cash.

B. Security agreement, with appropriate schedules and exhibits.

C. UCC financing statements:

1. UCC-1, UCC-1Ad (addendum), and UCC-1AP (additional party).
2. Perfection certificate (to be sure debtor has provided all information necessary to properly perfect the secured party’s security interest) (*i.e.*, entity name, employer identification number, and other UCC required information).

D. Bank/lender subordination agreement.

E. Purchaser shareholders’/members’ personal guarantees.

F. Life insurance collateral agreements.

G. Letter of credit.

H. Other security documents.

IV. **Seller Entity Matters**

   A. Seller shareholder and director authorizations approving the transaction, along with secretary’s certificate (if a corporate seller).

   B. Seller member and manager authorizations approving the transaction, along with member/manager certificate (if an LLC seller).

   C. Certificate of merger of seller subsidiaries into seller (if applicable).

   D. Amendment to seller’s articles in which seller changes its name to any acceptable name other than the name seller used and purchaser acquired.

   E. Termination by seller of assumed names (have a list of all names that seller is terminating in favor of purchaser).

V. **Purchaser Entity Matters**

   A. Purchaser director authorizations approving the transaction, along with secretary’s certificate (if a corporate purchaser).

   B. Purchaser member/manager authorizations approving the transaction, along with member/manager certificate (if an LLC purchaser).

   C. Certificates of Assumed Name.

   D. Amendment to the purchaser’s articles, if necessary.

VI. **Financial Considerations**

   A. If purchaser is to receive cash, certificates of deposit, and marketable securities, seller must make these funds and accounts available to purchaser.
B. Closing statement, along with, among other things, real and personal property tax prorations.

C. Cashier’s checks, direct deposit, or wire transfer, along with wiring instructions
   1. Prepare specific list of all checks/wires that need to be written or parties entitled to receive funds, including:
      a. Seller’s creditors.
      b. Escrow accounts.
      c. Secured parties who will issue releases of collateral.
      d. Seller.
      e. Seller’s officers, shareholders, members, managers (for covenant-not-to-compete, employment, consulting, and other personal agreements).
      f. Other.
   2. Letter from seller approving the issuance of the checks/wires as noted in VII(C)(1).

D. IRS Form 8594, regarding tax allocations.

VII. If the purchaser is newly formed for the transaction, the following must be finalized or considered before closing:

A. Articles of incorporation/articles of organization.

B. Bylaws/operating agreement.

C. Record book, including incorporator and director opening minutes and stock certificate issuances to purchaser shareholders (if a corporate purchaser).

D. Buy-sell agreement among purchaser’s owners.

E. Minutes appointing purchaser’s directors/managers.

F. Funding of purchaser (by both owners and lenders).

G. S election, if corporate purchaser (if appropriate).

H. Bank accounts.
I. Employment agreement between purchaser and key employees.

J. Purchaser’s taxpayer identification number (IRS Form SS-4).

VIII. Miscellaneous

A. Items relating to transfer of possession:
   1. Keys to all owned and leased real estate locations.
   2. Safe combinations.
   3. Security clearances and access codes.
   4. Access to all the purchased assets and seller records.
   5. Bank signature cards (if the purchaser acquires the seller’s cash and marketable securities).
   6. Warranties, owner’s manuals, and service records for purchased assets.

B. Authorization to do business in all states where seller does business and filing of all required state forms.

C. If purchaser is a non-State entity:
   1. Application for Certificate of Authority to Transact Business in State.
   2. Application for Registration of Corporate Name.

D. All purchaser insurance is in place, including, if applicable:
   1. Property and casualty.
   3. Worker’s compensation.
   4. Life insurance (as collateral security, for key-person purposes, or as otherwise necessary).
   5. Representation and warranty.
   6. Environmental.
7. Other.

E. Tax abatements.

F. Union contract notices and correspondence.

G. Powers of attorney for absent signatories.

IX. Post-closing

A. Seller dissolution and liquidation, including, if applicable:
   1. Plan of liquidation and dissolution (this should be part of the seller owner approval matters referred to in V.A and B above).
   2. Certificate of Dissolution:
      a. Certificate of Tax Clearance (order via Tax Clearance Request for Corporation Dissolution or Withdrawal).
      b. Power of Attorney.
   3. Withdrawing Corporate Property and Tax Certification.
   4. IRS Form 966.
   5. Other.

B. Confirm purchase price pursuant to the post-closing provisions of asset purchase agreement.

C. Receive all necessary surveys, title work, appraisals, inspection reports, and environmental reports, if not received in full before closing.

D. File certificates of assumed name, amendments to articles, UCC-financing statements, mortgages, etc., and get vehicle titles transferred.

E. Do COBRA notices, if required.

F. Receive seller retirement plan money into the purchaser’s qualified plans, if desired and appropriate.

G. Be sure all payroll procedures are in place.

H. Do announcements and press releases:
   2. Suppliers.
3. Employees.

4. Newspapers and trade publications.

I. Change charge plates.

J. Change name on utilities (telephone, electric, gas, and water).

K. Assign promissory notes and other agreement (i.e., covenant-not-to-compete) benefits to seller shareholders’ living trusts (if applicable).