Business and Corporate Law Section
Life of a Deal - Asset Purchases - Due Diligence

I. Why do we need Due Diligence?

1. Mitigate risk and avoid post-closing surprises

2. Determine how to document and structure the transaction

3. Collect bargaining chips for negotiation of APA and ancillary agreements

4. Justify the purchase price and to confirm the strategic rationale of the acquisition

5. Plan post-closing operation and integration of the Business

II. My tips for a successful Due Diligence process.

1. Understand the goals of your Due Diligence process

2. Assemble the right internal/external team

3. Establish appropriate reporting channels and lines of communication

4. Prioritize areas of focus to balance thoroughness and speed

5. Begin with the end in mind

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NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
(A)	**CORPORATE**			
A1	Copies of all minutes of directors, committees of directors, and stockholders, including copies of notices of all such meetings where written notices were given, and copies of all written consents for the last three (3) years and stock record books of the Company and each subsidiary.			
A2	Articles (or Certificate) of Incorporation or Certificate of Partnership, as amended to date, for the Company and each subsidiary.			
A3	Bylaws (as amended) or Partnership Agreement for the Company and each subsidiary.			
A4	List of all states and foreign countries in which the Company and its subsidiaries are qualified to do business, have applied for qualification to do business, have substantial contacts (e.g., real or personal property owned or leased, employees, sales representatives, etc.) or in which their trade names are registered.			
A5	List of any subsidiaries of the Company.			
A6	List of all shareholders and partners (general and limited) of the Company and each subsidiary, and number of shares, options, warrants, partnership interests and other securities held by each.			
A7	List of any agreements regarding ownership of the Company, including any of the following:			
(a)	List of all options currently outstanding, including names and addresses of option holders, number of options held by each, grant date, expiration date and exercise price.			
(b)	Representative copies of stock certificates, option certificates, warrants and any other outstanding securities.			
(c)	Voting trust, stockholder agreement, buy/sell agreements, partnership agreement or other similar agreement covering any portion of the Company's securities.			
(d)	All communications with stockholders/partners for the last five (5) fiscal years, including annual reports to stockholders.			
(e)	Stock (or partnership interest) option plans and forms of option agreements which have been used.			
(f)	Purchase agreements which have been used for sale of equity securities.			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
(g)	Any other agreements relating to sales of securities by the Company.			
(h)	Any other agreements relating to registration rights in respect of securities.			
(i)	Warrant agreements and outstanding warrants.			
(j)	All proxy and information statements for last five (5) years.			
A8	List of the current officers and directors of the Company and each subsidiary, including divisions, business units, subsidiaries or other affiliates, which depicts the management structure of the Company.			
A9	Organizational charts of corporate structure, including subsidiaries.			
A10	Description of the company's business activities outside the boundaries of the United States, including foreign subsidiaries and contracts with foreign agents.			
A11	Name and position of all employees of the Company.			
A12	Schedule of all interests owned by the Company or any subsidiary in another Person.			
A13	Venture capital financing documents.			
A14	All private placement memoranda, offering circulars, investment letters, questionnaires and other documents relating to the offer or sale of debt or equity securities by the Company since its inception (whether or not such offering was consummated). Include copies of all documents filed with every state and federal authority in connection with any such offering of securities. Please explain how the proceeds from any offerings of securities have been used to date.			
A15	Documents related to material acquisitions and divestitures for the past five (5) years.			
(B)	**FINANCIAL STATEMENTS & AUDIT-RELATED DOCUMENTATION**			
B1	Audited balance sheets and income statements for the Company and its subsidiaries for the past three (3) fiscal years.			
B2	Most recent unaudited financial statements.			
B3	Description of depreciation policy.			
B4	Any correspondence with any securities exchange.			

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B5	Description of prepaid or deferred income and expenses.			
B6	Copy of any sales projections and estimates, and copy of current budget and any budget projections.			
B7	Description of any change in accounting policies or procedures during past three (3) years.			
B8	Management letters from auditors regarding internal accounting controls and compliance with Foreign Corrupt Practices Act issued in connection with all audits since the Company's inception.			
B9	All letters which have been sent to the Company in connection with all audits since the Company's inception.			
B10	Copies of all internal audit reports for the last three (3) fiscal years, including, without limitation, Audit Committee reports to the Board of Directors.			
B11	Copies of FAS 109 and FIN 48 audit workpapers for the past three (3) fiscal years.			
B12	Description of accounting procedures of the Company.			
(C)	**TAX MATTERS**			
C1	Copies of all federal, state, local and foreign income, franchise, payroll, excise and sales/use tax or information returns filed by the Company and its subsidiaries for the past three (3) years.			
C2	Description of all tax elections filed by the Company that are binding with respect to any preceding or future years.			
C3	List of all jurisdictions, foreign or domestic, in which the Company or any subsidiaries have, in any of the last three (3) years, filed a tax return.			
C4	Current good standing certificates from each state in which the Company conducts business operations.			
C5	Any inquiries, notices of audit or assessment, revenue agents' reports, etc. from federal, state or local tax/revenue authorities.			
C6	All closing letters or other materials relating to the initiation or termination of a dispute with relevant governmental authorities (foreign or domestic) regarding matters of taxation.			
C7	Any agreements or arrangements of the Company to indemnify or pay for the tax liability of its shareholders/partners.			

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C8	List of the Company's "open" tax years by jurisdiction (federal, state & local).			
C9	Schedule of ongoing or recently completed (within the previous three (3) years) tax examinations. This schedule should reflect federal and state income taxes, franchise tax, payroll tax, sales/use tax, excise tax and property tax.			
C10	A copy of the Information Document Requests ("IDRs") and Revenue Agent Reports ("RARs") for any ongoing or recently completed tax examinations.			
C11	List of any state tax amnesty petitions the Company has filed or considered in the last three (3) years.			
C12	Copies of any IRS determination letters for all periods for which the statute of limitations has not run.			
C13	List identifying any other applicable taxes or tax information.			
(D)	**EMPLOYEES, BENEFIT PLANS AND LABOR DISPUTES**			
D1	List of all labor union contracts and collective bargaining arrangements to which the Company or any subsidiary is a party, and any information relating to "labor unrest," unfair labor practices, pending or threatened requests for arbitration, grievance proceedings, labor disputes, strikes, work stoppages, etc., including internal documents, correspondence and memoranda.			
D2	Copies of all employee benefit plan documents (ex. profit sharing, 401(K), health, dental, life, long-term disability, golden parachute, COBRA), including the plan documents, summaries provided to employees, vendor contracts, audited financial statements, and governmental filings (ex. Forms 5500, IRS determination letters and applications for determination letters). In addition, provide the same information for any employee benefit plans terminated or frozen with the past four (4) years.			
D3	Information as to unfunded liabilities under any employment, bonus or consulting agreement, or any pension, profit sharing, deferred compensation, retirement, medical reimbursement, life insurance, disability or similar plan.			
D4	Description of all "prohibited transactions" (within the meaning of the Internal Revenue Code and ERISA) and "reportable transactions"			

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	(within the meaning of ERISA) that occurred at any time during the preceding five (5) plan years with respect to any of the Company's employee benefit plans, including a description of the transaction, the date of the transaction and the excise tax paid, if any.			
D5	Copies of all investment management agreements for any employee benefit plan in effect at any time during the preceding five (5) plan years.			
D6	Other Employment Related Information:			
(a)	List of all employees who received compensation and benefits exceeding $25,000 in the last fiscal year, including for each employee, the amount of compensation and benefits received.			
(b)	Description and copies of all written or oral employment agreements to which the Company or any subsidiary is a party or bound.			
(c)	Description of all secrecy, non-competition or similar agreements between the Company and any of its present or former owners, employees, consultants, directors, or prospective acquirers.			
(d)	Description of all independent contractor, consulting and management agreements, arrangements or understandings to which the Company or any subsidiary is a party.			
D7	Copies of all employee handbooks and personnel policies, and any communications to employees regarding employee benefits.			
D8	Description of all incentive compensation programs.			
D9	Description of all development, training or apprenticeship programs for employees of the Company.			
D10	Description of all affirmative action programs undertaken or maintained by the Company, as well as any documentation concerning any internal compliance review or governmental audit of such programs.			
D11	Description of policies and procedures for drug and substance abuse testing , treatment and discipline, including any documentation evidencing compliance with applicable federal and state law.			
D12	List of any obligations imposed by governmental authorities to employ a minimum number of employees.			
D13	Copies of any WARN compliance documentation.			
D14	Copies of any HIPAA compliance documentation, including copies of privacy notices issued to employees in the past three (3) years.			

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D15	List of all workers' compensation claims filed in the last three (3) years.			
D16	Copies of all employee Form I-9's.			
D17	Description of any Conflict of Interest policy between the Company and its officers, directors and key employees.			
D18	Copies of all indemnification contracts or similar arrangements for officers and directors of the Company.			
D19	Description of claims or charges past or pending against, or investigations of, the corporation, its affiliates, officers, directors, or employees alleging or relating to potential violations of any governmental law or rule.			
(E)	**PROPERTIES; LEASES; INSURANCE**			
E1	List of all owned real estate and copies of the following:			
(a)	Legal descriptions of each location.			
(b)	Surveys of each location.			
(c)	Deeds of conveyance for each parcel purchased by the Company.			
(d)	Title policies for each location.			
(e)	Easements, covenants and restrictions of records, and any other underlying documents affecting the real estate and/or the title policies.			
(f)	Copies of any engineering, physical and other inspection reports and/or third-party reports for each Owned or Leased Property, including mechanical, elevator, sprinkler, electrical, geotechnical, roof, and parking lot inspections.			
(g)	Copies of all Schedule B Documents for current title commitments for all owned and leased facilities.			
(h)	Current Alta/ "As-built" surveys for all owned and leased facilities.			
(i)	Copies of all existing leases and subleases for all owned and leased facilities.			
(j)	Estoppel Certificates from landlords on all leased facilities.			
(k)	Estoppel Certificates from tenants on all facilities with leases to third			

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	parties.			
(l)	Subordination non-disturbance agreements as applicable to facilities.			
(m)	Title Policies to be issued at closing for all owned and leased facilities with appropriate endorsements.			
(n)	Most recent tax bills for all owned and leased facilities and proof of payment.			
(o)	All written agreements regarding leases and/or the real estate.			
(p)	All unrecorded easements.			
(q)	Any verbal understandings regarding leases, subleases and/or the real property.			
(r)	The use of property and facilities located on each parcel of real estate (e.g., corporate offices, manufacturing, storage, distribution, etc.).			
(s)	Copies of appraisals completed in the past five (5) years.			
E2	List of all leased real estate and copies of all leases in connection therewith.			
E3	Property rights of the Company and related information:			
(a)	List of fixed assets, machinery and equipment (whether owned or leased), giving for each material asset or group of assets cost, depreciation reserve, method of depreciation, insured value, estimated remaining useful life, condition, suitability for use and appraised value, together with a list and description of all warranties and maintenance contracts, encumbrances or restrictions against transfer relating to such assets, machinery and equipment.			
(b)	List of all automobiles, trucks and other registered equipment, giving a brief description of equipment and lease provisions, if any, state of registration, registration number, cost, estimated or remaining useful life, and insured value.			
(c)	List of all patents, trademarks, trade names, domain names, copyrights, etc. (including applications pending) owned or used in the business of the Company or its subsidiaries, giving a brief description of use, registration number and date of issuance of registration, name and address of any person to or from whom such patent, trademark, trade name, copyright, etc. is licensed, and description of any arrangements or agreements relating thereto.			
(d)	Copies of all patent, trademark, trade name, copyright and other			

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	proprietary right licenses to which the Company is a party as licensor, licensee or otherwise.			
(e)	Procedures for protecting all patents, trademarks, trade names and copyrights.			
(f)	Identification of trade secrets, confidential information and methods of protecting the same.			
(g)	Documents relating to any trademark or prior-art searches.			
(h)	Agreements with third-party IT service providers regarding privacy policies and website terms and conditions.			
(i)	List of all significant computer software used in the operations of the Company or developed by the Company (or any director, officer, employee, shareholder or independent contractor of the Company).			
(j)	Policies on confidentiality, employee work product, assignment of inventions and copyrights and a list of reports filed thereunder.			
(k)	Agreements with third parties under which intellectual property was created, including all employee assignments and employee confidentiality agreements.			
(l)	Copies of all sales brochures and promotional materials.			
(m)	List and brief description of all liens, UCC filings, security interests or mortgages on the property of the Company.			
(n)	Copies of all material leases of or security agreements for personal property, including conditional sales contracts, equipment leases, chattel mortgages, accounts receivable financing agreements and factoring agreements.			
E4	Material building or construction agreements for construction or alteration of property, plant or equipment.			
E5	List of all insurance policies naming the insurance company, policy number, property or risk covered, appraisal value of covered property, extent of coverage, annual premium and amount of premiums which are prepaid or are unpaid from prior years.			
E6	Correspondence from insurers for the past three (3) years rejecting or accepting current and past claims.			
E7	Description of policies and procedures pertaining to data backup, storage and recovery and document retention and destruction.			

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(F)	CONTRACTS & ARRANGEMENTS			
F1	Copies of all contracts with advertising or public relations agencies.			
F2	Description of contractual or customary credit terms available from suppliers, and copies of all agreements with suppliers.			
F3	Copies of joint venture or partnership agreements to which the Company or any subsidiaries are a party.			
F4	Description of any contracts restricting the ability of the Company or any subsidiaries to compete in any line of business with any person, or committing the Company or any subsidiaries to continue any line of business.			
F5	Any facts or circumstances which may give rise to the cancellation or termination of, or claim for damages or loss under, any agreement, arrangement or understanding.			
F6	Copies of any contracts or agreements with customers or suppliers in excess of $10,000.			
F7	List and description of the Company's contracts, leases, security agreements, etc., which may require the consent of any third party to the proposed transaction.			
F8	Copies of purchase agreements for the purchase of the stock (or ownership units) or business assets of any companies by the Company (or any subsidiary) and any and all documents related thereto.			
F9	Copies of all letters of intent, commitments or term sheets for the purchase of the stock (or ownership units) or business assets of any companies by the Company (or any subsidiary) and any and all documents related thereto.			
F10	Copies of all communications (whether written or oral) regarding the potential purchase of the stock (or ownership units) or business assets of any companies by the Company (or any subsidiary) and the proposed terms thereof.			
F11	Copies of all contracts, agreements, cost-sharing or management services agreements or other documents relating to any transaction between the Company and directors, officers or owners of more than 5% of the stock of the Company or their affiliates.			
F12	Copies of other material agreements.			

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(G)	**LEGAL & LITIGATION. Documentation relating to pending of threatened litigation, assessments or claims, including:**			
G1	Schedule of litigation, administrative proceedings or governmental investigations or inquiries, pending or threatened, involving the Company, any principal shareholder, officer, director, principal, partner or member of the Company as a plaintiff or defendant, including names and telephone numbers of outside counsel retained to represent the Company in these matters within the last five (5) years.			
G2	Copies of documentation relating to any lawsuit and related pleadings.			
G3	List and description of all outstanding judgments, decrees or orders.			
G4	Auditor litigation correspondence regarding threatened or pending litigation, contingent liabilities, assessments or claims for the past five (5) years.			
G5	Correspondence, memoranda or notes concerning inquiries from federal or state environmental officials.			
G6	Correspondence, memoranda or notes concerning any dispute with suppliers, competitors, or customers regarding any claim for an amount in excess of $10,000, or which may otherwise have a material impact on the Company.			
G7	Correspondence, memoranda or notes concerning inquiries from federal or state tax authorities.			
G8	Correspondence, memoranda or notes concerning inquiries from federal or state occupational safety and hazard officials.			
G9	Correspondence, memoranda or notes concerning inquiries from federal or state authorities regarding equal opportunities violations.			
G10	Correspondence, memoranda or notes concerning inquiries from federal authorities regarding antitrust violations.			
G11	Correspondence, memoranda or notes concerning inquires from federal or state agencies regarding potential violations of any other law, rule or regulations.			
G12	Correspondence, memoranda or notes concerning any litigation involving a key supplier, distributor or customer which may have a material impact on the Company.			

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G13	A list of any settlement of litigation made for the past five (5) years to which the Company is a party or involving any person in his capacity as a shareholder, officer, director, principal, partner, member of employee of the company or any waiver or agreement canceling any claim or rights of substantial value involving the same, including related documents.			
G14	Attorneys' opinion letters to auditors in connection with audits.			
G15	Attorneys' opinion letters to Company concerning the potential effects of any significant proposed or pending changes in any state or federal law, rule or regulation.			
G16	Summary and description of material customer, supplier or competitor complaints in the past three years.			
G17	Description of events or circumstances which may give rise to litigation in the future.			
(H)	**LIABILITIES**			
H1	List and description of all long and short-term indebtedness of the Company and each subsidiary and copies of all loan agreements, indentures and other relevant documents.			
H2	List of guarantees or indemnity undertakings given by the Company or its subsidiaries.			
H3	List of banks or other lenders with whom Company has a financial relationship (briefly describe nature of relationship-lines of credit, etc.).			
H4	Bank acquisition and development loans, construction loans and lines of credit.			
H5	Lender correspondence including any compliance reports submitted by the Company or its independent public accountants.			
H6	Other loan agreements with non-banks, officers, directors or employees.			
(I)	**LICENSES**			
I1	List of all domestic and foreign governmental permits, licenses and approvals either held or required to be held by the Company or its subsidiaries for the conduct of their businesses. Copies of all			

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	applications and documentation relating thereto.			
I2	List of all governmental agencies that have jurisdiction over the operations of the Company and description of any notices or citations from such agencies.			
(J)	**RECEIVABLES**			
J1	Brief description of customary sales credit terms.			
J2	Brief description of aging of accounts receivable, giving collections since aging date and brief statement of reasons for receivables in excess of $5,000 past due.			
J3	Names of customers owing in excess of $5,000.			
J4	Description of basis of establishing bad debt reserve.			
J5	Current accounts receivable aging report.			
(K)	**ENVIRONMENTAL & REGULATORY**			
K1	Copies of all environmental studies, reports, assessments and audits with respect to any properties or assets of the Company and any hazardous or toxic substances, including pesticides, petroleum, asbestos and PCBs located at the Company's facility or in soil or groundwater at such facility.			
K2	List of any hazardous substances used or stored by the Company.			
K3	Copies of all waste-disposal contracts.			
K4	List of all machinery and equipment which uses or discharges any hazardous substances.			
K5	All correspondence, reports, records or other documents submitted to or received from any foreign, federal, state or local regulatory agency within the past five (5) years with respect to environmental and OSHA matters at the Company's facility, including permits, variances, notices of violations, reports of incidents or other issues regarding compliance with laws or regulations related to hazardous or toxic substances, pesticides, asbestos, PCBs, OSHA, air or water quality, or other types of environmental, health and safety regulation.			

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K6	A listing of all pending or threatened environmental proceedings, zoning proceedings, condemnation proceedings or other matters affecting the Company or its property, including a listing of any Superfund sites as to which the Company may be a potentially responsible party.			
K7	An inventory of all underground and above ground storage tanks currently or previously operated at the Company's facility, including the size, capacity, location, age, contents, tank material, leak monitoring or detection devices, spill information release control measures taken, removal dates and conditions, and other relevant information concerning the condition and use of the tanks.			
K8	All claims made to insurance companies by the Company or any of its predecessors pertaining to any environmental matter at the Company's facility.			
K9	A list of knowledgeable persons, including consultants retained by Company, regarding environmental, health and safety issues at the Company's facility.			
K10	All records regarding self-monitoring and compliance history with environmental permits at the Company's facility, including air, water, waste, and sewer permits under federal, state, or local government rules and regulations. Set forth any new events known of non-compliance with permits or other environmental regulations.			
K11	List of all transporters and sites historically or currently used by the Company for transfer, storage, treatment, recycling, or disposal of wastes.			
K12	A description of any past or current disposal of hazardous or solid waste at the Company's facility.			
K13	Information regarding the use of any drywells and/or septic tanks at the Company's facility.			
K14	An index of current Material Safety Data Sheets at the Company's facility.			
K15	A list of all oil filled electrical equipment and a confirmation that it is PCB-containing, PCB-contaminated or PCB free.			
K16	A description of any spill events and a description or documentation of their clean-up.			
K17	Copies of Company's environmental, health and safety policies and programs.			

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K18	All applications, filings, findings, reports, registration statements, correspondence, complaints, consent decrees, determinations, orders, etc. relating to federal regulatory agencies and all foreign, state and local agencies performing similar functions. Include all exhibits for all filings, unless duplicative of material otherwise requested herein.			
(L)	**MARKETING, SALES & OPERATIONS**			
L1	List and summary description of all products currently manufactured and/or sold by the Company and a list of all products manufactured and/or sold by the Company in the past ten years .			
L2	List and summary description of all services currently sold or planned to be sold by the Company.			
L3	Provide annual sales figures for each product or service for the past five (5) years.			
L4	Standard forms used in connection with the sale of products or services, including without limitation purchase orders, sales orders and quotation forms.			
L5	All warranties with respect to products manufactured or distributed or services provided by the Company.			
L6	Copies of all relevant sales literature, price lists and descriptive materials referring to the business and products being acquired.			
L7	Lists of ten (10) largest suppliers and customers.			
L8	List of five (5) largest competitors for each significant product or service sold by the Company.			
L9	All sales representative, independent contractor, distribution agreements and franchise agreements (written or oral) relating to the business being acquired.			
L10	Copies of all quality assurance and quality control policies and reports, and copies of all internal and external compliance reviews.			
L11	Summary of all products or initiatives currently under research and development.			
L12	Description of exporting initiatives and any related documentation, including policy manuals, decision matrices and personnel charged with ensuring compliance with internal and external policies pertaining to exports, including U.S. export controls, embargoes, boycotts, etc.			

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(M)	MISCELLANEOUS			
M1	List of surveys, appraisals and similar reports and market studies.			
M2	List of memberships and trade associations to which the company or any officer, director or key employee belongs.			
M3	All internal compliance memoranda and reports regarding state or federal environmental and employee safety compliance.			
M4	Copies of all business plans of the Company for the previous three years.			
M5	List of all bank and investment accounts and safe deposit boxes, including the name and location of each financial institution, the account numbers and names of authorized signatories.			
M6	Press clippings, news releases and brochures issued by or relating to the company.			
M7	Analysts' reports and industry surveys (by brokerage houses, technical experts, management consultants, etc.) concerning the Company.			
M8	List of parties whose consent to the proposed transaction will be required.			
M9	UCC, tax lien and judgment searches for each county and state in which the Company conducts business for the Company and for each shareholder selling stock in the Company.			
M10	Any other documents or information which, in your judgment, are significant with respect to the business being acquired, including without limitation any agreement as to which a default may occur as a result of the proposed transaction.			