



# **Due Diligence and the Commercial Closing**

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# Due Diligence and the Commercial Closing

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## DUE DILIGENCE - DEFINED

Due diligence is an investigation intended to uncover & mitigate risk – on behalf of the buyer.

When does due diligence occur?

- During due diligence period in the contract
- Prior to signing contract (“permitted exceptions”)
- Ongoing throughout, up to closing



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## Negotiating the Due Diligence Period

### Consider:

- Time frame
- Termination provision
- Extension provision
- Access
- Disturbing tenants
- Damage
- Governmental approvals



## The Due Diligence Team

- **Surveyor**
- **Zoning reporter**
- **Environmental assessor**
- **Municipal lien search company**
- **Property manager**
- **Property inspector // ADA compliance**
- **Insurance broker**
- **Land use expert**

## Today's Focus

- The Big Picture
- Reps & Warranties
- The Deliverables
- Environmental Assessments
- Zoning Reports
- What's on Your Checklist?



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# THE BIG PICTURE



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## The BIG Picture

- Property Objectives
- Types of Property and Uses
- Physical Conditions and Location
- Taxes, Land Use and Government Restrictions
- Leases, Tenant Concerns and Income Streams
- Title Requirements and Clearance Issues
- Financing



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## Property Objectives

- Owner occupied
- Investment
- Development - changing character or use



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# Types of Property and Uses

▲ Land

🏢 Building

📡 Fixtures

🏠 Other improvements

🏡 Entire fee title interest (including air & subterranean rights)

🤝 Development Rights



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## Physical Condition and Location

- Structural – Mechanical
- Warranties
- Access: roads, curb cuts, parking/loading
- Utilities
- Soil Tests
- Environmental concerns



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## Taxes, Land Use & Governmental Impositions

- Real estate taxes and assessments
- Zoning and Land Use - variances, design criteria, landscaping, parking and ADA concerns, height restrictions
- Licenses: liquor, outdoor dining, social distancing
- Private land use controls: CCRs, deed restrictions, ground leases, master leases



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## Leases and Income Streams

- Rent roll
- Lease review
- Security deposits
- Options and renewal rights
- Maintenance obligations
- Pre-paid rent
- Tenant mix, exclusives
- SNDAs

Current Tenants				
Tenant Name	Sqft	\$/Sqft	Gross Rent	Lease Expiration
LeverUp Communications	15,000	\$55	\$825,000	2029-Feb
Bank of Hoboken	80,000	\$60	\$4,800,000	2029-Mar
Stack Fitness	25,000	\$49	\$1,225,000	2026-Dec
Source Dynamics	100,000	\$52	\$5,200,000	2023-Jun
Bloomfield Diagnostics	62,000	\$55	\$3,410,000	2020-Apr
Wall Information	35,000	\$50	\$1,750,000	2022-Sep
<i>Total</i>	<i>317,000</i>	<i>\$54</i>	<i>\$12,050,000</i>	



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## Leases and Income Streams

- Sub-leases
- Signage
- Parking rights
- Ancillary income sources
- Seller controlled on site businesses
- Form of estoppel certificates



## Title Commitment and Clearance Issues

Review all instruments

Title policy endorsements

Easements - insuring

UCC, tax, judgment and lien searches

Estoppel certificates

## Financing

- Type
- Balloon Payment
- Renewal
- Collateral
- Guarantors
- Restrictions and requirements



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## Due Diligence – Working with Lender

Coordinate with lender and lender's counsel

- Get a copy of the loan commitment letter
- Review lender's checklist
- Review loan documents
- Confirm lender's requirements - endorsements
- Closing Agenda (from lender's counsel)



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# REPRESENTATIONS & WARRANTIES



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## The Role of Representations & Warranties

What is a “Representation”?

- A statement of present fact made to induce another to enter into a contract

What is a “Warranty”?

- A promise that a proposition of fact is true and will remain true in the future

*Many contracts will excuse buyer's performance if seller's reps/warranties were not true at time made or at closing*



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## Functions of Reps and Warranties

- Allows for sellers to disclose or amplify known risks
- Method for seller to disclose matters only known to seller  
(e.g. “attached rent roll is true, complete and correct list of all leases”)
- Allows the parties to allocate responsibility for risks amongst themselves.  
(e.g. Seller represents that the building is insured and will assign proceeds to buyer in event of pre-closing casualty)



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## Functions of Reps and Warranties



- Works in conjunction with, or may substitute for, buyer’s due diligence.

*BUT ... in a hot market, buyers can’t expect sellers to grant a wide range of reps and warranties*



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## Reps & Warranties – The Yin & Yang

### Buyer Wants

- As many reps and warranties as they can get
- Reps survive closing
- Expansive definition of “Knowledge”
- Holdbacks, indemnities, penalties & damages



### Seller Wants

- To give as few as possible and make contract AS IS
- Reps terminate at or soon after closing
- Limited definition of “Knowledge”
- No or limited penalties & damages

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## Reps & Warranties – The Yin & Yang

- What representations and warranties will you want from Seller when representing Buyer?
- What limitations will you, as Seller’s counsel, put on them?

**Representing  
the Buyer**



**Representing  
the Seller**

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## Due Diligence or Seller Reps?

- 1) Seller has not entered into any contract or arrangement affecting the property.
- 2) Seller has no notice of any pending municipal liens or violations, threatened litigation or condemnation proceedings.
- 3) Books and records of Seller are accurate, true and correct.
- 4) Seller is validly existing and in good standing.
- 5) Seller is not a foreign person, IRS Sec. 1445(b)(2)

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## Due Diligence or Seller Reps?

- 6) No hazardous substances on property violative of laws
- 7) No leases, occupancy agreements, options, ROFR
- 8) Property not subject to any associations
- 9) No public assessments pending or proposed
- 10) No pending tax appeals
- 11) Seller not on OFAC list
- 12) Seller not in receipt of any adverse notices from insurers
- 13) Seller has delivered all Due Diligence materials

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# Due Diligence: The Deliverables

3.1 (a) PURCHASER shall have until 11:59 p.m. Eastern Time on the first business day which occurs thirty-five (35) days after the earlier of (i) ten (10) days after the date of full execution hereof or (ii) the date that PURCHASER receives all of the information to be provided to PURCHASER pursuant to attached Exhibit "C" ("Inspection Period") within which to conduct due diligence investigations, inspections and reviews of the Property and Personal Property at PURCHASER'S sole cost and expense, the scope of which PURCHASER shall determine, provided that PURCHASER shall conduct its due diligence in a manner that will, as far as reasonably practicable, cause minimal disruption to SELLER'S business operations ...



## Due Diligence: The Deliverables

- Prior policies
- Leases (with amendments, extensions) & SNDAs
- Ground lease
- Surveys
- Environmental reports
- Zoning letters and reports
- Association articles and bylaws, budgets, reserves, Property Rules and Regulations
- Permits & licenses
- Entitlement documentation
- Ongoing 3<sup>rd</sup> party agreements



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## Due Diligence: The Deliverables

- Tax, lien and UCC search results
- Existing financing documents
- Documentation relating to the property (e.g. property tax bills and receipts, utility and fire safety, ADA compliance; 40-year recertification)
- Organizational documents
- Notes from site visit
- Litigation
- Marketing material
- Intellectual property material
- Human resources material
- Inventory of physical property
- Aerial photographs



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# Due Diligence: Environmental Site Assessments



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## Environmental Site Assessments (ESA)



### From Sample Contract:

*“(iii) the Property is free of any existing or potential environmental defect or contamination”*

*“PURCHASER may obtain, at its sole cost and expense, a Phase I environmental assessment of the Property, and otherwise inspect the Property and Personal Property to conduct its due diligence review thereof. PURCHASER may also obtain a Phase II environmental assessment of the Property, at its sole cost and expense, provided that PURCHASER’S applicable Phase I environmental assessment recommends a Phase II environmental assessment.”*



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## Due Diligence: Environmental Site Assessment (ESA)

### *What will the Phase I reveal?*

- Used to gather “Recognized Environmental Conditions”
- Identifies actual or potential environmental contamination via:
  - Records research
  - Site inspection (for sign of below ground tanks)
  - Interviews with owner and occupants

If Phase I reveals potential contamination, a Phase II will typically be required, which calls for soil boring sampling and lab tests



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## Due Diligence: Environmental Site Assessment (ESA)

- Does Loan Commitment letter require new Phase I?
  - Give yourself time for possible further investigation
- Obtain seller's reports, if any
  - Beware presence of Phase II in seller's file!
- Consider use of property: gas station, dry cleaners, and use by adjoining properties



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## Due Diligence: Environmental Site Assessment (ESA)

### Why the concern?

- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Sec. 9601
- **Strict liability law**, imposed on a person for release of hazardous substances even if the person was neither negligent nor the cause of the release
  - Thus, the buyer of lands that contains hazardous materials may be a “PRP” (potentially responsible party) even if the buyer did not cause the release



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## Due Diligence: Environmental Site Assessment (ESA)

### ***Innocent Purchaser Defense***

- To establish “innocent purchaser” defense, buyer must undertake “all appropriate inquiry” (“AAI”)
  - Buyer must have “undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice, in an effort to minimize liability ...”
    - 42 U.S.C. Sec. 9607(q)(1)(c)
- The AAI requirement is the rationale for performing a Phase I



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## Due Diligence: Environmental Site Assessment



What's needed to order ESA?

- Address
- ALTA survey
- Site map
- Size of the property
- Type, age, and size of improvements
- Indication if multiple or contiguous parcels
- All previous environmental reports
- Historical info and capital improvements



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## Due Diligence: Zoning Reports



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# Zoning Report

From Sample Contract:

*“(a) The Property and Personal Property, and SELLER’S use and operation thereof, comply with (i) all laws, statutes, ordinances, rules, codes, regulations and orders (including but not limited to zoning ordinances, building codes ...”*



# Due Diligence: Zoning Compliance Report

## ***Purpose:***


- Confirms current zoning and future land use
- Shows permitted uses and current requirements for that particular zone
- Compares the zoning requirements with property conditions shown on the land survey depicting the property
- Reveals any open violations, variances, special permits, conditions or exceptions, and if there are any nonconforming issues

# Confirm the Zoning and Future Land Use Designation

- Does zoning allow proposed use?
- If not, is rezoning feasible?
- Does the land use designation shown on the Future Land Use Map fit the proposed use?
- If not, is an amendment possible?
- Is a special exception available?
- Is a conditional use permit (CUP) available?
- Is a variance available?



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**Clay County Division of Planning & Zoning**  
Staff Report and Recommendation

**Application Number Z-16-03**

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**Owner / Agent Information**

**Owner / Petitioner** Clayton Dukes  
1692 Pelican Place  
Middleburg, FL 32068

**Agent:** Brennan Waldrop  
1855 Fruit Cove Woods Drive  
Jacksonville, FL 32259

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**Parcel, Zoning, Land Use, and Other Information**

**Parcel ID #** 008416-000-00 & 008568-000-00

**Physical Address** 3860 Doctor's Lake Drive

**Planning District:** 2 (Doctors Inlet / Ridgewood)

**Commission District:** 3 (Commissioner Hutchings)

**Existing Zoning District:** RB (Single Family) & RMHP (Residential Mobile Home Park)

**Proposed Zoning District:** PS-2 (Private Service)

**Future Land Use Category:** UC (Urban Core)

**Acreage:** 16 +/- acres

**Planning Commission Date:** May 3, 2016

**Board of County Commissioners Date:** May 24, 2016



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# Due Diligence: What's on Your Checklist?

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## What's on your Checklist?

Due Diligence Checklist					
Site Contact		Purchaser			
Name: <small>Click or tap here to enter text.</small>		Name: <small>Click or tap here to enter text.</small>			
Phone: <small>Click or tap here to enter text.</small>		Phone: <small>Click or tap here to enter text.</small>			
Email: <small>Click or tap here to enter text.</small>		Email: <small>Click or tap here to enter text.</small>			
	Date Requested	Date Received	Date Reviewed	Status	Resp. Party
<b>Property</b>					
Site plan					
Zoning Reports					
Environmental reports					
Address description					
Architectural plans & specs					
Certificates of Occupancy					
Licenses/permits/fees/awards					
Warranties					
ADA compliance					
Preventative maintenance program					
Engineering reports					
<b>Tenancy</b>					
Tenant leases & amendments					
Tenant related agreements					
Tenant lease abstracts					
Tenant credit quality					
Tenant files (i.e. correspondence, etc.)					
Security deposit info & reconciliation					
Copies of LOCs					
Tenant profiles - length of occupancy					
Brokerage commission agreements					
Current rent roll					
Parking agreements & amendments					
Tenant payment history reports (rent bills)					
<b>Financial Information</b>					
Last 3-year income & expense statements					
Current & next year budget					
Tenant recovery sched. (copy of tenant CAM/RE tax billing schedules)					
Copies of 3 years of audited financial statements					
5-year leasing cost information					
3-year capital expenditure history					
18-month agent responsible history					
Last 3-year real estate tax bills					
Tenant electric/consumption backup					
Listing of all unfunded capital projects in progress					
General ledgers for current year					

- Review Letter of Intent
- Review Purchase and Sale Agreement (PSA) and all addenda
- Send/confirm delivery of deposit(s)
- Calendar key dates – confirm Effective Date
- Confirm receipt of all “Deliverables”
- Confirm inspections performed and address issues raised

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## What's on your Checklist?

- Obtain & Review seller's prior policy and survey
- Order and review title commitment, send to seller's and lender's counsel with hard copies
- Perform UCC, litigation and judgment lien search (coordinate with lender's counsel)
- Commence compliance with BI requirements (e.g. corporate searches)
- Order survey and provide title commitment with hard copies to surveyor
- Review survey and share findings with client and lender's counsel
- Issue title and survey objection letter(s) and responses



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## What's on your Checklist?

- Obtain municipal lien & tax search report
- Environmental compliance – obtain Phase 1 assessment
- Obtain zoning compliance report
- Confirm new insurances & obtain receipts (e.g. hazard, builder's risk)
- Review existing service & management contracts and confirm assignment
- Obtain copies of licenses, permits & certificates and confirm assignment
- Obtain copies of surviving guarantees and warranties and confirm transferability



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## Identity of Parties – Seller Issues

- Seller entity
- Validly exist
- Good standing
- Entity has authority to convey
- Signatory has authority to bind
- Qualified to do business in jurisdiction
- FIRPTA

## Identity of Parties – Purchaser Issues

- Buyer entity – organized and in good standing
- Articles of Incorporation or Organization
- Entity has authority to own and operate
- Signatory has authority to bind
- Resolutions/Authorizations to purchase/borrow
- Incumbency certificate
- Qualified to do business in jurisdiction

## Organization is Key

### Calendar key dates

- Confirm Effective Date

Practice Tip: use Outlook calendar invites

### Use of Due Diligence Checklists

Cross-reference to:

- Contract deadlines & requirements
- Lender's checklist & requirements
- Title Commitment requirements



## That's a Wrap!



- The Big Picture
- Reps & Warranties
- The Deliverables
- Environmental Assessments
- Zoning Reports
- What's on Your Checklist?

## Due Diligence Checklist

Site Contact			Purchaser		
Name: Click or tap here to enter text.			Name: Click or tap here to enter text.		
Phone: Click or tap here to enter text.			Phone: Click or tap here to enter text.		
Email: Click or tap here to enter text.			Email: Click or tap here to enter text.		
	Date Requested	Date Received	Date Reviewed	Status	Resp. Party
<b>Property</b>					
Site plan					
Zoning Reports					
Environmental reports					
Access description					
Architectural plans & specs					
Certificates of Occupancy					
Licenses/permits/fire safety					
Warranties					
ADA compliance					
Preventative maintenance program					
Engineering reports					
<b>Tenancy</b>					
Tenant leases & amendments					
Tenant related agreements					
Tenant lease abstracts					
Tenant credit quality					
Tenant files (i.e. correspondence, etc.)					
Security deposit info & reconciliation					
Copies of LOCs					
Tenant profiles – length of occupancy					
Brokerage commission agreements					
Current rent roll					
Parking agreements & amendments					
Tenant payment history reports (rent bills)					
<b>Financial Information</b>					
Last 3-year income & expense statements					
Current & next year budget					
Tenant recovery sched. (copy of tenant CAM, RE tax billing schedules)					
Copies of 3 years of audited financial statements					
5-year leasing cost information					
5-year capital expenditure history					
18-month aged receivable history					
Last 3-year real estate tax bills					
Tenant electric cost/survey backup					
Listing of all unfunded capital projects in progress					
General ledgers for current year					

<b>Property Management Information</b>					
Property management agreement					
Service, utility & maintenance contracts					
2 years utility bills					
Employee list with desc., salary, etc.					
List of person property & equipment					
<b>Leasing</b>					
Exclusive brokerage agreement					
Schedule of unspent Tis & future LCs					
Terms of new/renewal lease negotiations					
<b>Legal / Insurance</b>					
Existing title report					
ALTA survey					
Underlying documentation & legal description					
Covenants / restrictions / easements					
Historic & pending litigation					
<b>Other Diligence</b>					
Tenant interviews					
PM/leasing interviews					
Retail diligence & ops review					
Building measurement					
Any un-sprinklered space					
Information to lender					
<b>Site Visits</b>					
Property & structural condition					
Environmental					
Appraisal					
MEP – Building systems					
Building security					
Cleaning					
Elevators					

# Buyer Due Diligence Checklist

- Comparable**
  - Contact area brokers
  - Demographic information
  - Leases – surrounding properties
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- Contract**
  - Review
    - Letter of intent
    - Contract
    - Escrow agreement
  - Calendar key dates
    - Due diligence expires \_\_\_\_\_
    - Financing contingency expires \_\_\_\_\_
    - Closing date \_\_\_\_\_
    - Title & survey object expires \_\_\_\_\_
  - Confirm
    - Brokers involvement
      - Buyer assurance
      - Seller assurance
    - Deposits
    - Effective date
    - Schedule inspections
    - Receipt of all deliverables
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- Environmental**
  - Phase 1
  - Phase 2
  - Warranties from seller
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- Title/Survey**
  - ALTA/NSPS survey checklist
  - Title commitment to
    - Buyer
    - Seller
    - Lender
  - Title objections
  - Title objection resolution
  - Title search
    - Update
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- Reports – order / review**
  - Judgment lien search
  - Municipal lien search
  - Property condition assessment
  - Restrictive covenants, easements & agreements
  - Tax report
  - UCC search
  - Updates
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- Misc.**
  - Business license
  - Create operating agreement
  - Earnest money deposit
  - Register legal entity
  - Set up bank account
  - Site tour
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_

# Buyer Due Diligence Checklist

## **Loan**

- Approved budget
- Appraisal
- Assignment of
  - Contracts
  - Leases
  - Rents
- Borrowing
  - Partnership / LLC authorization
  - Corporate resolution
- Confirm lender's insurance requirements
  - Send declaration pages
- Deed of Trust/Mortgage
- Escrow closing instructions
- Estoppels
- Fixture filing
  - UCC-1
- Lender checklist
- Loan agreement
- Loan commitment letter
- Attorney opinion letter
- Primary lender loan documents
- Proforma title insurance policy
- Promissory note
- SNDA
- Security agreement
- Seller financing
- Signature authorization form
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## **Insurance**

- Casualty & hazard
- Wind
- Flood
- E&O
- Cyber
- Medical
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

# Seller Due Diligence Checklist

- Assignable**
  - Access agreements
  - Approvals
  - Energy contracts
  - Leases
  - Licenses
  - Permits
  - Service contracts
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- Building**
  - Certificate of insurance
  - Easement agreements
  - Maintenance Log
  - Warranties
    - General
    - Equipment warranties (HVAC, roof, etc.)
    - Subcontractors
  - Zoning/governmental permits
  - Zoning compliance report (PZR)
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- Certificate of occupancy**
- Entity**
  - Approvals necessary for sale
  - Existence in good standing
  - Operating agreement, partnership agreements
  - \_\_\_\_\_
  - \_\_\_\_\_
- Existing**
  - ALTA or other survey
  - Environmental report
  - Owner's title policy
  - Property condition report
  - Soil testing reports
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- Non-foreign certification**
- Site/Building plans**
  - Drawings
  - Other surveys
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- Utility invoices/records**
  - Electric
  - Gas
  - Phone
  - Water
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- Employee(s)**
  - Actual hours worked
  - Hire date
  - Incentive programs
  - Title
  - Wage date
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- Tenants**
  - Delinquent rents
  - Estoppel certificates
  - Leases
  - Leasing commissions
  - List of improvements
  - Prepaids with support
  - Certified rent roll
  - Schedule of security deposits
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_



# Seller Due Diligence Checklist

- Financial audit (copies) past 2 +/- years**
  - Accounts payable detail
  - Accounts receivable detail
  - Balance sheet
  - Bank statements
  - Check register prior year & Y-T-D
  - Copy of loss report from insurance company last 3 years
  - Current invoices service contract providers
  - Current month to date bank deposit
  - Financial statements
  - General ledger
  - Insurance invoice with details
  - Leases
  - Merchant credit card monthly statements
  - Monthly operating income & expenses
  - Past 3 years & Y-T-D
    - Sales histories for tenants
    - Schedule of capital expenses
  - Property management summary
  - Reconciliations
  - Taxes
    - Registration account number
      - Sales tax
      - State unemployment tax
    - Property tax invoices/bills
    - Proof of payments
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

- Ready for review**
  - Cash receipts journals
  - Cash disbursements journals
  - Office lease
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_

- Personal property**
  - Books
  - Inventory
  - Ledgers
  - Leases
  - List of personal property
    - Description
    - Identification number
    - Picture
  - Promotional materials
  - Recall notice / information
  - Records
  - Seller's warranties
  - Warranties
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_

- Intellectual property**
  - Copyrights
  - Software licenses
  - Telephone & email lists
    - Advertisers
    - Clients
    - Service providers
    - Tenants
    - Utility providers
    - Vendors
    - Other
  - Trademarks
  - Trade secrets
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_

- Litigation (pending, notice or other)**
  - Citations
  - Civil
  - Condemnation
  - Foreclosure
  - Incidents which may give rise to litigation
  - Pending
  - Violations
  - \_\_\_\_\_
  - \_\_\_\_\_

**CLOSING CHECKLIST**

**PROPOSED LOAN IN THE ORIGINAL PRINCIPAL AMOUNT OF \$ \_\_\_\_\_  
TO BE MADE TO  
\_\_\_\_\_, A DELAWARE LIMITED LIABILITY COMPANY  
AND SECURED BY, AMONG OTHER THINGS, A FIRST MORTGAGE LIEN  
ON PROPERTY WITH AN ADDRESS AT \_\_\_\_\_  
(THE "PROPERTY")**

**Closing Date: on or about \_\_\_\_\_**

**PARTIES:**

Lender:

Lender's Counsel:

Borrower:

Guarantor:

Borrower's/Guarantor's Counsel:

Borrower's Florida Local Counsel:

Borrower's Delaware Local Counsel:

Lender's FL Local Counsel:

Title Company:

<u>Document</u>	<u>Responsible Party</u>	<u>Status/Comments</u>	<u>Final</u>
<b>A. <u>Loan Documents</u></b>			
1. Term Sheet	L		
2. Loan Agreement	LC		
3. Promissory Note	LC		
4. Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing	LC		
5. Assignment of Leases and Rents	LC		
6. Carve-out Guaranty	LC		
7. Environmental Indemnity	LC		
8. Pledge and Security Agreement executed by the Sole Member of Borrower as pledgor, and Lender, as pledgee, of interests in Borrower	LC		
9. Acknowledgement and Consent of Borrower (Exhibit A to Pledge Agreement)	LC		
10. Instruction to Register Pledge by GP and Limited Partner (Exhibit A to Pledge Agreement)	LC		
11. Confirmation Statement by Borrower (Exhibit B to Pledge Agreement)	LC		
12. Certificate Evidencing 100% of Membership Interests in Borrower (Schedule 2 to Pledge Agreement)	LC		
13. Power in Blank (Schedule 2 to Pledge Agreement)	LC		
14. Assignment of Plans, Specifications, Permits, Contracts, Licenses, Entitlements and General Intangibles	LC		
a. Form of Consent, Certification, Waiver and Agreement			
15. Assignment of Title Insurance Proceeds	LC		
16. UCC-1 Financing Statement (Fixture)	LC		
17. UCC-1 Financing Statement (Personalty)	LC		
18. UCC-1 Financing Statement with respect to the Sole Member in connection with the Pledge	LC		
19. Settlement Statement	L/B		
20. Post-Closing Obligation Letter	LC/BC	If applicable	
21. W-9 for Borrower	LC/BC		
<b>B. <u>Conveyance Documents</u></b>			
1. Purchase and Sale Agreement	BC		
2. Assignment of rights under Purchase and Sale Agreement	BC		
3. Deed	BC		
4. Transfer Tax Forms, together with evidence of payment of all transfer taxes	BC		

<u>Document</u>	<u>Responsible Party</u>	<u>Status/Comments</u>	<u>Final</u>
5. Additional documentation, as Lender may require	BC		
<b>C. <u>Organizational &amp; Authority Documents</u></b>			
1. Organizational Chart	BC		
2. Borrower			
a. Certificate of Formation (certified copy from DE Secretary of State)	BC		
b. Certificate of Authority to Conduct Business in Florida (certified copy from the Florida Secretary of State)	BC		
c. Operating Agreement	BC		
d. Written Consent	BC		
e. Good Standing Certificate – Delaware/Florida	BC		
f. Certificate as to Organization/Authority Documents	BC		
3. Sole Member			
a. Certificate of Formation (certified copy from DE Secretary of State)	BC		
b. Operating Company Agreement	BC		
c. Written Consent	BC		
d. Good Standing Certificate/DE	BC		
e. Certificate as to Organization/Authority Documents	BC		
5. Additional Members depending on org chart; Any and all other relevant org. docs and operating agreements for any other entities in the Borrower's organizational structure as may be requested by Lender upon receipt of the Organizational Chart	BC		
<b>D. <u>Legal Opinions and Certificates</u></b>			
a. Opinion of approved NY and FL and DE counsel as to enforceability of the loan documents, perfection and priority of mortgage lien, Pledged Interests, usury, choice of law, bankruptcy filing, due execution, formation, power, authority, litigation and other matters requested by Lender; application of NY law in the event of an enforcement of the subordinated lease.	BC		
b. Zoning Opinion	BC		
c. Non-Consolidation Opinion	BC		
<b>E. <u>Title Insurance Documents</u><sup>1</sup></b>			
1. Mortgagee Title Insurance Policy	TC		

<sup>1</sup> Subject to Lender's review of and satisfaction with, in its sole and absolute discretion, among other things, all due diligence items.

<u>Document</u>	<u>Responsible Party</u>	<u>Status/Comments</u>	<u>Final</u>
a. Title Insurance Commitment	TC		
b. Underlying Documents to Title Insurance Commitment	TC		
c. Owner's Affidavit	TC		
d. Survey Affidavit	TC		
e. Municipal Search Results	TC		
f. Pro Forma Loan Title Insurance Policy, together with the required endorsements thereto	TC		
g. Lender's Escrow Instructions to Title Insurance Company	TC		
2. Owner's Title Insurance Policy	TC		
3. Lender's Title Insurance Policy	TC		
4. UCC Insurance Policy	BC/LC/ UCC Insurer		
a. Insurance Policy premium	B		
b. Pledge and Security Agreements (fully executed)	LCB		
c. Certificate of Membership Interests and Endorsement in Blank (executed by Borrower)	LC		
d. UCC-1 Financing Statement	LC		
e. Sole Member formation and operative documents and consent	LC		
f. Borrower formation and operative documents and consent	B/BC		
g. Loan Agreement (fully executed)	B/BC		
h. Borrower or its counsel to provide written confirmation that it consents to its membership interests being governed by Article 8	LC/BC		
i. Certificate of Membership Interests LLC Agreement to specifically state that the interests shall be governed by Article 8	B/BC		
j. Limited Proxy by Sole Member in favor of Lender granting Lender voting rights with respect to the pledged interests opting out of Article 8	LC		
k. Copies of any and all previously issued membership certificates	LC		
1. All unrecorded agreements, documents, etc. relating to the acquisition and development of the Property.	B	If any	
<b>F. <u>Due Diligence Items/Closing Deliveries</u></b>			
1. Flood Hazard Certification, if applicable	B		

<u>Document</u>	<u>Responsible Party</u>	<u>Status/Comments</u>	<u>Final</u>
2. Evidence of Insurance / Certificate naming Lender as loss payee/additional insured, together with paid bill for first year's premium	L		
3. Flood Insurance, if applicable	B		
4. Survey certified to Lender	B		
5. Appraisal	B		
6. Phase I Environmental Report	B		
7. Environmental (Phase II)	B		
8. PZR Report	BC		
9. Geotech Soils Report	BC		
10. Engineering Report	BC		
11. Estoppel from Subordinate Tenant re post-closing Lease, and to include confirmation of waiver of option to purchase 10% indirect beneficial ownership interest in the property	BC		
12. Other licenses, permits and approvals required for the development of the Property	B		
13. All unrecorded agreements, documents, etc. relating to the acquisition and development of the Property	B		
14. Architect Agreement	B		
15. General Contract	B		
16. Pre-Development Budget	B		
17. Development Plan through initial maturity date	B		
18. Evidence that sewer, water, electrical, telephone and any other utility service is in adequate supply	B		
19. Taxpayer I.D. Number of Borrower	B		
20. Certified Financial Statements of Guarantor	B		
21. Bankruptcy, judgment, lien and related searches of Borrower and Guarantor and any entity or individual owning more than a 20% interest in Borrower	LC		
22. Independent Director	BC		
23. Proof of Payment of Taxes	BC/B		
24. Development Rights (if any)	BC/B		

THIS CHECKLIST IS FOR INFORMATION ONLY AND IS NOT INTENDED TO SUPERSEDE THE REQUIREMENTS OF LENDER. OMISSIONS FROM THIS CHECKLIST ARE NOT TO BE DEEMED TO BE WAIVERS OF THE LENDER'S REQUIREMENTS. LENDER MAY REQUIRE ADDITIONAL DOCUMENTATION BASED UPON ITS REVIEW OF THE FOREGOING. ALL DOCUMENTS MUST BE IN FORM AND SUBSTANCE ACCEPTABLE TO LENDER. NOTHING CONTAINED IN THIS CHECKLIST SHALL BE DEEMED A COMMITMENT BY LENDER TO MAKE THE LOAN DESCRIBED HEREIN OR ANY OTHER FINANCIAL ACCOMMODATION TO BORROWER, ABSENT AN EXPRESS WRITTEN AGREEMENT EXECUTED BY LENDER.

### CERTIFICATE OF ATTENDANCE

Certified Paralegals are required to record evidence of 50 hours of continuing legal education hours to renew the CP credential every 5 years. CLE hours are recorded in CPs' accounts through the [NALA online portal](http://www.nala.org). Of the 50 hours, 5 hours must be in legal ethics, and no more than 10 hours may be recorded in non-substantive areas. If attending a non-NALA sponsored educational event, this certificate may be used to obtain verification of attendance. Please be sure to obtain the required signatures for verification of attendance. The requirements to maintain the CP credential are available from NALA's web site at <https://www.nala.org/certification/certtest2view>. Please keep this certificate in the event of a CLE audit or further information is needed.

**PLEASE COMPLETE THE SPACES BELOW AND ATTACH A PROGRAM**

Session Length In Hours	Session Topics (Description and Speakers)	Validation of Attendance
1.0	Due Diligence and the Commercial Closing / Kara Scott	<i>Kara Scott</i>

Name of CP (Please Print)			NALA Account Number (On Mailing Label)		
			149113		
Signature of CP			Name of Seminar/Program Sponsor		
			Due Diligence and the Commercial Closing / ATFS, LLC		
Address			Authorized Signature of Sponsor Representative		
			<i>Kara Scott</i>		
			Date of Educational Event:		
City:		State (XX):			
Preferred e-mail address			Location:		
			Recorded Webinar		

For Office Use Only	
<b>Substantive hours</b>	
<b>Non-substantive hours</b>	
<b>Ethics</b>	



**FL BAR Reference Number: 2412183N**

**Title: Due Diligence and the Commercial Closing**

**Level: Intermediate**

**Approval Period: 02/01/2025 - 08/31/2026**

**CLE Credits**

General 1.0

**Certification Credits**

Real Estate 1.0