

Addendum

ILLUSTRATIVE OPINION LETTER

Below is an illustrative opinion letter (the “**Illustrative Opinion Letter**”) to accompany Local Counsel Opinion Letters in Real Estate Finance Transactions - A Supplement to the Real Estate Finance Opinion Report of 2012 (the “**Supplement**”). This Illustrative Opinion Letter is based on the Illustrative Language of a Real Estate Finance Opinion Letter (the “**2012 Illustrative Language**”), Chapter Three of the Real Estate Finance Opinion Report of 2012¹ (the “**2012 Report**”) with additions and changes that are discussed at length in the Supplement. As presented, this Illustrative Opinion Letter provides helpful guidance for addressing subjects not only common to local counsel opinion letters but also to opinion practitioners in commercial real estate finance transactions generally. Please refer to the 2012 Report and to the Supplement for a full discussion of the language of this Illustrative Opinion Letter and for the context in which such language is used, as this Illustrative Opinion Letter is not intended to be an independent document or to reflect fully the discussion in the text. Paragraph numbers in this Illustrative Opinion Letter correspond to the Paragraph numbers in Chapter Two of the 2012 Report and corresponding Paragraphs in the Supplement.

This Illustrative Opinion Letter could be used as a starting point to assist lead counsel or local counsel in connection with a real estate secured transaction. However, users are cautioned that many of the included opinions and provisions are illustrative only and will not be applicable in many contexts. Changes to and deletions from this Illustrative Opinion Letter will be necessary based on the facts and circumstances of each transaction and the law that is applicable.

Comments, notes, instructions, subheadings, numberings, and directions in italics and the footnotes in this Illustrative Opinion Letter are included for instructional purposes only and are not intended to be included in a final opinion letter. Bracketed items need to be selected or deleted in a final opinion letter.

[date]

[Name and Address
of Opinion Recipient]

Re: [\$_____] Loan (the “**Loan**” or the “**Transaction**”) from [_____] (the “**Lender**”) to [_____](the “**Borrower**”) [guaranteed by [_____] (the “**Guarantor**”)]

Ladies and Gentlemen:

We provide to you this letter (this letter, including any attachments, this “**Opinion Letter**”) at the request of the above-referenced Borrower [substitute for Borrower, or add, Guarantor, as applicable] [pursuant to Section _____ of the {Agreement} described below].

I. Background

1.1 Role of Counsel; Transaction Documents; Defined Terms. We have acted as counsel to the Borrower in the State of _____ (the “**State**”) [solely] for the purpose of providing this Opinion Letter in connection with the Loan.

¹ See 2012 Report, *supra* note **Error! Bookmark not defined.**, at 213.

In preparing this Opinion Letter, we have [been furnished with] [reviewed] unexecuted copies of the following documents relating to the Transaction [provided to us by ___][, each to be dated {as of the date of this Opinion Letter} {_____}]:

- (a) Promissory Note by the Borrower (the “**Note**”).
- (b) [Mortgage/Deed of Trust/Deed to Secure Debt] by the Borrower (the “**Mortgage**”) with respect to certain property including real property located [briefly describe location of property] and more particularly described in the Mortgage (such property to the extent comprising real property under the Law (defined below) of the State, the “**Real Property**”).
- (c) Assignment of Leases and Rents by the Borrower (the “**Assignment of Leases**”).
- (d) Security Agreement by the Borrower (the “**Security Agreement**”).
- (e) Loan Agreement by the Borrower and the Lender (the “**Agreement**”).
- (f) [Guaranty by the Guarantor (the “**Guaranty**”).
- (g) [A Uniform Commercial Code Fixture Financing Statement (the “**U.C.C. Fixture Financing Statement**”) naming the Borrower as debtor and the Lender as secured party].

The documents described in items [(a) through (f)] above are referred to in this Opinion Letter as the “**Transaction Documents**.” The Transaction Documents described in items [(a) through (e)] above [*correct the letters as appropriate*] are referred to in this Opinion Letter as the “**Borrower Transaction Documents**.” The Transaction Documents described in items [(b) through (d)] above [*correct the letters as appropriate*] are referred to in this Opinion Letter as the “**Security Documents**.” The Real Property, together with all other property described in any of the Security Documents in respect of which provision is made by the Security Documents for a lien or security interest, is referred to in this Opinion Letter as the “**Collateral**.”

NOTE: Unless all of the Transaction Documents are governed by the Law of the State and are intended to be addressed in the Opinion Letter, the scope of review should be tailored. In many cases, local counsel will limit its review to those documents or provisions of them that are governed by State Law, such as the Security Documents. If the opinions given are to be limited to certain documents, a statement to that effect should be made, added to the foregoing language. An example follows:

The Transaction Documents described in items [(a) and (e)] above [*correct letters as appropriate to refer to those documents that are not governed in whole or in part by the Law of the State*] are referred to in this Opinion Letter as the “**Other Transaction Documents**.” The Borrower Transaction Documents excluding the Other Transaction Documents are referred to in this Opinion Letter as the “**Opinion Transaction Documents**.”

In rendering our opinions, we have not reviewed the Other Transaction Documents except to the extent the Other Transaction Documents contain specific definitions that are expressly incorporated in the [Mortgage][Opinion Transaction Documents] and are necessary to our opinions. Our opinions are given (a) assuming that nothing in any of such Other Transaction Documents materially changes any of the terms of the [Mortgage][Opinion Transaction Documents], (b) assuming that such Other Transaction Documents will be enforced consistently with the opinions expressed in this Opinion Letter, (c) assuming that definitions incorporated in the [Mortgage][Opinion Transaction Documents] will be construed in accordance with the Law of the State if applicable, and (d) without regard to the effect of incorporation, by reference or otherwise. We express no opinions concerning the Other Transaction Documents.

NOTE: In some cases, Other Transaction Documents may not be provided for review by local counsel although such Other Transaction Documents may affect documents about which opinions are provided. For example, when defined terms are incorporated from a loan agreement that is not reviewed, an exception about unknown effects should be made. An example is:

We have not [been furnished with][reviewed] the [name of document(s)][Other Transaction Documents]. Our opinions are given (a) assuming that nothing in any of such Other Transaction Documents materially changes any of the terms of the Opinion Transaction Documents, (b) assuming that such Other Transaction Documents will be enforced consistently with the opinions expressed in this Opinion Letter, and (c) without regard to the effect of incorporation by reference or otherwise. We express no opinions concerning the Other Transaction Documents.

Terms used in this Opinion Letter with initial capital letters and not otherwise defined in this Opinion Letter shall have the meanings ascribed to them in the [Mortgage].

NOTE: When the scope of local counsel's role is limited to enforce-ability of a few documents that are governed (at least in part) by State Law, as is often the case, in place of providing a comprehensive list of transaction documents and creating defined terms for classes of documents, a more limited list of documents may appear, using the names of the specific documents in the opinions being provided. In the remaining portions of the Opinion Letter, reference to Borrower Transaction Documents or Opinion Transaction Documents might be replaced by reference to one or more specific documents. This Illustrative Opinion Letter does not provide all possible variations for this; and references to defined document groupings, such as Borrower Transaction Documents and Opinion Transaction Documents, in the text of this Illustrative Opinion Letter should be adjusted and coordinated as necessary.

1.2 Authority Documents.² In connection with this Opinion Letter we also have reviewed the following documents (collectively, the “**Authority Documents**”):

(a) (i) [Certificate of Formation] of the Borrower as filed in the office of the [name appropriate Public Authority] of the State and certified in the Public Authority Documents described below; and (ii) Operating Agreement of Borrower dated [_____] as certified to us in the Client Certificates described below (collectively, the “**Borrower Organizational Documents**”).

(b) [Consent/Resolution of partners, members, board of directors, or other necessary persons of the Borrower] as certified to us in the Client Certificates.

(c) (i) [Certificate of Formation] of the Guarantor as filed in the office of the [name appropriate public authority] of the State and certified in the Public Authority Documents described below; and (ii) Operating Agreement of the Guarantor dated [_____] as certified to us in the Client Certificates described below (collectively, the “**Guarantor Organizational Documents**”).

(d) [Consent/Resolution of partners, members, board of directors, or other necessary persons of the Guarantor] as certified to us in the Client Certificates.

(e) (i) [certificate of status of the Borrower issued by the state of the Borrower's organization, dated {_____]}; (ii) [certificate(s) of status of the Borrower in any other states in which the Real Property is located, dated {_____]}; (iii) certificate issued by the State [or a defined Public Authority of the State] stating that the Borrower [Guarantor, whichever is the owner of the Real Property] is qualified to do business in the State (the “**State Certificate**”); (iv) [certificate of status of the Guarantor issued by the state of the Guarantor's organization, dated {_____]}; and (v) [where relevant, certificates concerning tax status, certificates concerning U.C.C. filings, or certificates concerning title registration or ownership] (collectively, the “**Public Authority Documents**”).

(f) Certificate of the Borrower and Certificate of the Guarantor attached hereto (collectively the “**Client Certificates**”).

NOTE: If the Borrower or the Guarantor is organized outside of the State, local counsel will not opine about the entity aspects of the Borrower or the Guarantor and, therefore, will not need to review any of the

² This paragraph applies when the Opinion Letter is to cover entity matters pertaining to the Borrower or Guarantor.

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