

CHAPTER THREE: ILLUSTRATIVE LANGUAGE OF A REAL ESTATE FINANCE 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 and the Guarantor pursuant to Section [] of the [Agreement] described below.

I. Background

1.1 Transaction Documents. We have acted as counsel to the Borrower and the Guarantor in connection with the preparation of the following documents relating to the Transaction:

- (a) Promissory Note dated as of _____, made by the Borrower (the “**Note**”).
- (b) [Mortgage/Deed of Trust/Deed to Secure Debt] dated as of _____, executed 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 real property, the “**Real Property**”).
- (c) Assignment of Leases and Rents dated as of _____, executed by the Borrower (the “**Assignment of Leases**”).
- (d) Security Agreement dated as of _____, executed by the Borrower (the “**Security Agreement**”).
- (e) Loan Agreement dated as of _____, executed by the Borrower and the Lender (the “**Agreement**”).
- (f) Guaranty dated as of _____, executed by the Guarantor (the “**Guaranty**”).

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 are referred to in this Opinion Letter as the “**Borrower Transaction Documents**.” The Transaction Documents described in items (b) through (d) above 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**.”

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

- (a) (i) [Certificate of Formation] of Borrower as filed in the office of the [Secretary of State of []]] 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 Borrower] as certified to us in the Client Certificates.
- (c) (i) [Certificate of Formation] of the Guarantor as filed in the office of the [Secretary of State of []]] 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 Borrower issued by state of Borrower’s organization, dated [_____]]; (ii) [certificate(s) of status of Borrower in any other states in which the Real Property is located, dated [_____]]; and (iii) [certificate of status of the Guarantor issued by state of the Guarantor’s organization, dated [_____]]; and (iv) [where relevant, certificates concerning tax status, certificates concerning Uniform Commercial Code filings, or certificates concerning title registration or ownership] (collectively, the “**Public Authority Documents**”).

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

1.3 Opinion Jurisdictions. The statutes, the judicial and administrative decisions, and the policies, rules, and regulations duly promulgated by the governmental agencies (collectively “**Law**”) covered by the opinions expressed in this Opinion Letter are limited to the Law of the State of [_____] (the “**State**”), [and the [Limited Liability Company Act and General Corporation Law] of the State of [Insert name of state where entity was formed] (“**Entity State**”)] (such jurisdictions, collectively, the “**Opinion Jurisdictions**”), in each case as currently in effect. [Except as set forth in Paragraphs 3.1, 3.2, and 3.3 below,] we express no opinion concerning the Law of any other jurisdiction, [the other Law of [Entity State,] or the effect thereof. Further, and without limiting the foregoing provisions of this Paragraph or other limitations on coverage, our opinions in this Opinion Letter relate only to such Law of the Opinion Jurisdictions that we, in the exercise of customary professional diligence, would reasonably recognize as being directly applicable to any or all of the Borrower, the Guarantor, or the Transaction. [References in this Opinion Letter to the “**Uniform Commercial Code**” or “**U.C.C.**” refer to the Uniform Commercial Code as in effect in the State.]

1.4 Scope of Review. [In connection with the opinions hereinafter set forth, we have reviewed copies or originals of the Transaction Documents and the Authority Documents, and we have given consideration to such matters of Law [and facts], as we have deemed appropriate, in our professional judgment, to render such opinions.]

1.5 Reliance on Other Sources Without Investigation. We have relied, without investigation or analysis, upon information in the Public Authority Documents. Except to the extent the information constitutes a statement, directly or in practical effect, of any legal conclusion at issue, we also have relied, without investigation or analysis, upon the information contained in representations and warranties made by both the Borrower and the Guarantor in the [Transaction Documents] and on information provided in the Client Certificates.

II. Assumptions

2.1 Assumptions. In rendering this Opinion Letter, we have relied, without investigation, upon the assumptions set forth below:

(a) A Borrower or Guarantor who is a natural person, and natural persons who are involved on behalf of either of the Borrower or the Guarantor, have sufficient legal capacity to enter into and perform the Transaction or to carry out their role in it.

(b) The Borrower holds the requisite title and rights in and to any property involved in the Transaction.

(c) Each party to the Transaction (other than the Borrower and the Guarantor) has satisfied those legal requirements that are applicable to it to the extent necessary to make the Transaction Documents

enforceable against it, and each such party's obligations set forth therein are enforceable against it in accordance with all stated terms.

(d) Each party to the Transaction (other than the Borrower and the Guarantor) has complied with all legal requirements pertaining to its status as such status relates to its rights to enforce the Transaction Documents against the Borrower and the Guarantor.

(e) Each Transaction Document, Authority Document, and other document submitted to us for review is accurate and complete, each such document that is an original is authentic, each such document that is a copy conforms to an authentic original, and all signatures on each such document are genuine. The form and content of all Transaction Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this Opinion Letter from the form and content of such Transaction Documents as executed and delivered.

(f) Each Public Authority Document is accurate, complete, and authentic, and all official public records (including their due and proper recordation or filing, and their due and proper indexing) are accurate and complete.

(g) The Security Documents have been or will be duly and properly recorded or filed and duly and properly indexed in all places necessary (if and to the extent necessary) to create the encumbrance and lien as provided therein.

(h) The description of the Collateral is accurate and reasonably identifies the Collateral.

(i) Legally adequate consideration has been given for the Transaction and the obligations of the Borrower and the Guarantor in the Transaction Documents.

(j) [There has not been any mutual mistake of fact or misunderstanding, fraud, duress, or undue influence.]¹

(k) [The conduct of the parties to the Transaction has complied and will continue to comply with any requirement of good faith, fair dealing, and conscionability.]

(l) [The Lender and any agent acting for the Lender in connection with the Transaction have acted in good faith and without notice of any defense against the enforcement of any rights created by the Transaction, or of any adverse claim to any property, lien, or security interest transferred, or created as part of the Transaction, or of any agreement, or court or administrative order, writ, judgment, or decree that would be violated by entering into the Transaction, or by execution, delivery, or performance of the Transaction Documents.]

(m) [There are no agreements or understandings among the parties, written or oral, and there is no usage of trade or course of prior dealing among the parties that would, in either case, define, supplement, or qualify the terms of the Transaction Documents.]

(n) [All statutes, judicial and administrative decisions, and rules and regulations of governmental agencies, constituting the Law of the Opinion Jurisdictions are generally available (i.e., in terms of access and distribution following publication or other release) to lawyers practicing in the Opinion Jurisdictions, and are in a format that makes legal research reasonably feasible.]

¹ Many opinion givers include assumptions as to the issues in some or all of the bracketed assumptions, Paragraphs (j) and following. Please refer to the corresponding sections of Chapter Two above for a full explanation of these bracketed assumptions, and more generally for a discussion of all of the provisions of this Illustrative Opinion Letter, bracketed and not.

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