

ILLUSTRATIVE FORM OF REAL ESTATE SECURED LENDING OPINION LETTER

PLEASE NOTE:

(1) This illustrative opinion letter is drafted on the assumption that the attorney rendering the opinion letter is not serving in a limited capacity, but is responsible for the typical loan opinions for the transaction, including organization, authorization and all loan documents. Without significant revision, this form is not appropriate for situations in which the attorney is serving as local counsel or limited counsel.

(2) This illustrative opinion letter does not include extensive commentary or recommendations regarding due diligence prior to issuing any particular opinion. For guidance on such issues, various resources are available from state and national bar and professional associations, including but not limited to (a) Real Estate Finance Opinion Report of 2012 of the ABA Section of Real Property, Trust and Estate Law, Committee on Legal Opinions in Real Estate Transactions, ACREL Attorneys' Opinion Committee, and ACMA Opinions Committee (http://www.americanbar.org/content/dam/aba/publications/real_property_trust_and_estate_law_journal/v47/02/2012_aba_rpte_journal_v47_no2_fall_real_estate_finance_opinion_report.authcheckdam.pdf), and (b) "Third-Party Legal Opinions in Business Transactions, Second Edition," dated March 31, 2004 (<https://ncbar.org/media/140618/reportofthirdpartylegalopinions.pdf>), as amended by Supplement to Report of the Legal Opinion Committee of the Business Law Section of the North Carolina Bar Association, adopted February 2009 (<https://ncbar.org/media/140634/supplementtothirdpartylegalopinions.pdf>).

(3) Optional language is provided in *italics* within brackets. Alternatives are separated by a forward slash surrounded by spaces (/). Recommendations or directions are provided in footnotes.

[Date]

[Addressee]

Ladies and Gentlemen:

We have acted as counsel to _____, a _____
_____ (the "**Borrower**") [and to _____, an
individual resident of the state of _____ ("**Individual Guarantor**"), and to
_____, a _____ ("**Entity Guarantor**";
and collectively with Individual Guarantor, or each individually, as the context may require,
"Guarantor") / , and to _____ ("**Guarantor**")] in connection with a loan in the
original principal amount of \$ _____ ("**Loan**") to be made by
_____ ("**Lender**") to Borrower (the "**Loan Transaction**").

Terms defined in the Uniform Commercial Code in effect in the State (the "**UCC**") and used herein shall have the meanings set forth in the UCC.

I. BACKGROUND

For purposes of rendering the opinions set forth herein, we have reviewed the following executed documents, all dated of even date herewith, unless otherwise noted below:¹

- (i) Promissory Note in the original principal amount of \$ _____ by Borrower payable to the order of Lender (the “**Note**”);
- (ii) Deed of Trust, Assignment of Rents and Leases and Security Agreement, granted by Borrower to a trustee named therein, for the benefit of Lender (the “**Deed of Trust**”), describing certain real property located in _____ County, North Carolina (the “**Real Property**”), fixtures attached thereto (the “**Fixtures**”) and personal property collateral (the “**Collateral**”), as security for the Loan (the Real Property and the Fixtures being hereinafter collectively called the “**Property**”), to be recorded in the Office of Register of Deeds of _____ County, North Carolina (the “**County Registry**”);
- (iii) Assignment of Rents, Leases and Profits, from Borrower to Lender (“**Assignment of Rents**”), to be recorded in the County Registry;
- (iv) [*Credit / Loan*] Agreement between Borrower and Lender (“**Credit Agreement**”);
- (v) Environmental Indemnity Agreement by Borrower [*and Guarantor*] for the benefit of Lender (“**Environmental Indemnity**”);
- (vi) Security Agreement between Borrower, as the debtor, and Lender, as the secured party (the “**Security Agreement**”);
- (vii) Guaranty Agreement by Guarantor in favor of Lender (the “**Guaranty**”);
- (viii) undated UCC financing statement naming Borrower as the debtor and Lender as the secured party (the “**Central Filing**”), describing the Collateral as well as other property of Borrower, to be filed in the Office of the Secretary of State of North Carolina² (the “**Central Filing Office**”);
- (ix) undated UCC financing statement naming Borrower as the debtor and Lender as the secured party, to be filed in the County Registry (the “**Fixture Filing**”), describing the Fixtures as well as other property of Borrower.

¹ Modify references below to recite the exact titles of documents examined. Delete any inapplicable documents and reference additional documents as appropriate.

² If Borrower is organized outside of North Carolina, the drafter will need to consider whether to exclude that state’s UCC filing here. If an out-of-state filing is included in the list of documents reviewed, (i) the language of this paragraph should be modified to indicate the different state’s central filing office in place of the Office of the North Carolina Secretary of State, and (ii) opinion 13 and references regarding the law of states other than North Carolina should also be modified.

[The Guaranty, / Guaranty and _____³ are collectively referenced herein as the “**Guarantor Documents**”).] The documents described and identified above, other than the Guarantor Documents, the Central Filing and the Fixture Filing, are herein referred to as the “**Borrower Documents**”. The Borrower Documents [*may also be / and* the {*Guaranty / Guarantor Documents*} are collectively] referenced herein as the “**Loan Documents**”). The Central Filing and the Fixture Filing are collectively herein referred to as the “**Financing Statements**”.

We have also reviewed (a) a copy of the [*articles of {incorporation / organization} / certificate of limited partnership*] of Borrower as certified by the North Carolina Secretary of State on _____, (b) the [*bylaws / operating agreement / partnership agreement*] of Borrower dated _____ [*and amendments thereto dated _____*], and (c) [*the resolutions of the board of directors / the action of {members / managers / partners}*] of Borrower dated _____ authorizing the Loan Transaction (collectively, the “**Borrower Organizational Documents**”).⁴

[*We have also reviewed (a) a copy of the {articles of [incorporation / organization] / certificate of limited partnership} of Entity Guarantor as certified by the North Carolina Secretary of State on _____, (b) the {bylaws / operating agreement / partnership agreement} of Entity Guarantor dated _____ {and amendments thereto dated _____}, and (c) {the resolutions of the board of directors / the action of [members / managers / partners]} of Entity Guarantor dated _____ authorizing the execution and delivery of {Guaranty / Guarantor Documents} and any other documents executed and delivered by Entity Guarantor in connection with the Loan Transaction (collectively, the “Guarantor Organizational Documents”).*]

We have reviewed such other documents, and have considered such matters of law and fact, in each case as we, in our professional judgment, have deemed appropriate to render the opinions contained herein. As to questions of fact, we have relied, to the extent we have deemed such reliance appropriate, on certificates and other communications from public officials and from [*officers / representatives of*] Borrower [*and Guarantor*][, *including, without limitation, that certain {Fact Certificate / Opinion Certificate} of Borrower {and Guarantor} of even date herewith {, a copy of which is attached hereto as Schedule _____⁵*], and on representations and warranties of Borrower [*and Guarantor*] set forth in the Loan Documents. We have not attempted to independently verify any factual matters in connection with the giving of the opinions set forth herein.

The phrase “**to our knowledge**” means the conscious awareness by lawyers in the primary lawyer group of factual matters such lawyers recognize as being relevant to the opinion or confirmation so qualified. Where any opinion or confirmation is qualified by the phrase “to

³ List any other documents executed by Guarantor and reviewed for the opinion letter.

⁴ In some transactions, the opinion giver may be asked to review organizational documents, and potentially provide opinions with respect to, entity managers, general partners, or trustees, etc. If any such documents are reviewed, they should be listed here, following the paragraph for Borrower Organizational Documents.

⁵ If one or more opinion certificates are used, reliance on any such certificate(s) should be stated in the opinion letter, but attachment of the certificate(s) is optional.

our knowledge,” the lawyers in the primary lawyer group are without knowledge, or conscious awareness, that the opinion or confirmation is untrue. “**Primary lawyer group**” means *[[insert name of attorney or attorneys directly involved in the transaction], who are the only attorneys in this firm who have been actively involved in our representation of Borrower in connection with negotiating or documenting the Loan Transaction and who, solely as to information relevant to a particular opinion or factual confirmation issue, are primarily responsible for providing the response concerning the particular opinion or issue]/ [any lawyer in this firm (i) who signs this opinion letter, (ii) who is actively involved in negotiating or documenting the Loan Transaction or (iii) solely as to information relevant to a particular opinion or factual confirmation issue, who is primarily responsible for providing the response concerning the particular opinion or issue]*⁶.

The opinions set forth herein are limited to matters governed by the laws of the State of North Carolina (the “**State**”) *[and the federal laws of the United States]*⁷, and no opinion is expressed herein as to the laws of any other jurisdiction. Our opinions in paragraphs 12⁸, 13 and 14 herein are limited to Article 9 of the UCC currently in effect in the State. We express no opinion concerning any matter respecting or affected by any laws other than applicable provisions of existing statutes, rules and regulations of *[the United States of America or]* the State (i) that are customarily covered by third-party legal opinions, and (ii) that a lawyer in the State exercising customary professional diligence would reasonably recognize as being directly applicable to Borrower *[, Guarantor]* and the Loan Transaction (collectively, “**Applicable Laws**”).⁹

II. ASSUMPTIONS

In giving the opinions set forth herein, with your express permission and without independent verification or investigation:

- i. We have assumed the legal competency of all individual signers of documents.
- ii. We have assumed that all signatures of parties are genuine.¹⁰

⁶ These options are just two possible examples. As one instance, lenders may require different language in situations where Borrower is represented by lawyers in the opinion giver’s firm who are not involved in the loan transaction.

⁷ If opinions are only given under the laws of the State of North Carolina, then references to federal issues or the United States in the rest of the opinion letter should be deleted or modified as appropriate.

⁸ Cross-references provided to paragraphs or opinions within this form (see also opinion 10 and qualification (O)) will need to be carefully checked in each case, as they may change when optional paragraphs are deleted.

⁹ The last two sentences of this paragraph should be modified in instances where any of the borrower or guarantor entities on which opinions are to be given is organized outside of the State, and in such a case, it may be advisable to move the definition of Applicable Laws to another part of the opinion letter.

¹⁰ If the opinion giver decides to not assume the genuineness of a party’s signature, then due diligence should be done to confirm genuineness, whether that be by witnessing execution or some other appropriate measure. As a result of the trend toward “mail away” closings, it has become more common to assume the genuineness of all signatures, though the unqualified assumption still may be resisted by lenders, especially where Borrower does not have an existing relationship with Lender.

- iii. We have assumed that all parties to the Loan Documents other than Borrower [*and Guarantor*]¹¹ have the right, power and authority to enter into and to execute, deliver and perform their respective obligations under the Loan Documents to which they are a party and all other documents required or permitted to be executed, delivered and performed thereunder, and have taken all necessary action to enter into, and have duly executed and delivered, each such document, and each such document is valid, binding and enforceable against them in accordance with its terms.
- iv. In those cases where we have examined original documents, we have assumed they are authentic, and where we have examined copies of documents, we have assumed that they are complete and accurate copies of the original documents, which themselves are authentic. We have also assumed that all public records are accurate, complete and properly indexed and filed. We have assumed that the Borrower Organizational Documents [*and the Guarantor Organizational Documents*] are accurate and complete.
- v. With respect to Borrower's existence, we have relied solely on a Certificate of Existence from the Secretary of State of [***State of Borrower's Organization***] dated _____. [*With respect to Entity Guarantor's existence, we have relied solely on a Certificate of Existence from the Secretary of State of {State of Entity Guarantor's Organization} dated _____.*] [*With respect to Borrower's authorization to do business in the State, we have relied solely on a Certificate of Authority from the Secretary of State of North Carolina dated _____.*] [*With respect to Entity Guarantor's authorization to do business in the State, we have relied solely on a Certificate of Authority from the Secretary of State of North Carolina dated _____.*]
- vi. We have assumed that Borrower holds the requisite title and rights to the Property and the Collateral to grant the liens and perform its obligations under the Loan Documents and the accuracy and sufficiency of the description of such Property and Collateral as contained in the Loan Documents.
- vii. We have assumed that there has not been any mutual mistake of fact or misunderstanding, fraud, duress or undue influence.
- viii. We have assumed that the conduct of the parties to the Loan Documents has complied with any requirement of good faith, fair dealing and conscionability, and that actions of the parties to the Loan Documents have been undertaken without notice of any defense against the enforcement of any rights created by any such Loan Document. We have assumed that the Loan Documents will be administered in accordance with their terms, that Lender will enforce its rights under the Loan Documents under circumstances and in a manner that are commercially reasonable, and that Lender will not act in such manner as to violate

¹¹ If any other entity is a manager, general partner, or trustee, etc. on behalf of an entity Borrower or Entity Guarantor, those other entities should be referenced here.

implied covenants of good faith, fair dealing and commercially reasonable conduct in connection with the Loan Documents.

- ix. We have assumed that the Loan Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and obligations of the parties thereunder, and 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 Loan Documents.
- x. We have assumed that the Deed of Trust, Assignment of Rents and Financing Statements¹² have been or will be duly recorded and indexed or filed and indexed in all places necessary (if and to the extent necessary) to create and perfect the encumbrances and liens as provided therein.
- xi. We have assumed that (i) the Loan Documents are supported by adequate consideration, (ii) proceeds of the Loan will be disbursed to Borrower or as directed by Borrower, and (iii) Lender has given “value” (as defined in North Carolina General Statutes (“**N.C.G.S.**”) Section 25-1-204) to Borrower.
- xii. We have assumed the accuracy of any certificate or other document on which we have relied (including, but not limited to, those, if any, in the Loan Documents [*and the {Fact / Opinion} Certificate*]), and, with respect to any such certificate or other document that was given or dated on or prior to the date hereof, the continued accuracy, insofar as is relevant to our opinions, from the date thereof through and including the date of this opinion letter.
- xiii. We have assumed that, except as set forth in the Loan Documents, there are no fees, expenses, interest or other benefits that have been paid or are payable, directly or indirectly, to Lender or any other person or entity having an interest in the Loan or other amounts owing in respect of the Loan Documents; and we have assumed that the fees, expenses and other amounts (other than amounts designated as interest) for services actually rendered and expenses actually incurred, will not exceed just and reasonable compensation and reimbursement, and are not sums paid for the use, forbearance or detention of money.

III. OPINIONS

Based upon and subject to the foregoing and the further assumptions, limitations and qualifications hereinafter expressed, it is our opinion that:

¹² Reference any other Loan Documents to be recorded or filed here.

1. Borrower is a [*corporation / limited liability company / {limited / general} partnership*] in existence under the laws of the State.¹³ Borrower is authorized to transact business in the State.¹⁴

2. Borrower has the [*corporate / limited liability company / partnership*] power to execute, deliver and perform its obligations under the Borrower Documents. Borrower has authorized the execution, delivery and performance of the Borrower Documents by all necessary action, and Borrower has duly executed and delivered the Borrower Documents.

3. The execution and delivery by Borrower of the Borrower Documents do not violate the Borrower Organizational Documents.

4. The execution and delivery by Borrower of, and the performance of its payment obligations in, the Borrower Documents, and the borrowing of the Loan by Borrower, do not (a) violate Applicable Laws, (b) to our knowledge, conflict with, breach or result in a default under any Other Borrower Agreements, (c) to our knowledge, violate the terms of any Borrower Court Order, or (d) to our knowledge, result in the creation or imposition of any lien, charge or encumbrance upon any assets of Borrower, except as contemplated by the terms of such Borrower Documents. For purposes of this paragraph, (I) the term “**Other Borrower Agreements**” means any [*written agreement, document or instrument (such as a loan agreement or a security agreement) to which Borrower is a party or subject or by which it or any of the Property is bound or affected, which in any way limits or restricts its right and power to incur debt, pledge assets, or make financial commitments of the type represented by the Borrower Documents / of the agreements and documents identified on Schedule ____ hereto*], and (II) the term “**Borrower Court Order**” means any judicial or administrative judgment, order, decree or arbitral decision, which names Borrower and is specifically directed to it or its properties [*and which is identified on Schedule ____ hereto, which Borrower has confirmed to us is complete / appearing in the civil litigation index, judgment docket or land records of _____ County, North Carolina as of _____ {a.m. / p.m.} on _____, 20__*] to which Borrower is subject, which impose any restrictions on it with respect to the execution and delivery of the Borrower Documents or the performance of its obligations thereunder or that affect the Property. Our opinion in clause (b) above does not cover, and we expressly disclaim any opinion as to,

¹³ In some transactions, the opinion giver may be asked to provide opinions 1-3 for entity managers, general partners, or trustees, etc. If any such entities are organized outside of North Carolina, opinions 1-3 should be given about those entities by an attorney licensed to practice in the state of such entity’s organization (whether within the opinion giver’s law firm or by virtue of another opinion letter from another law firm), or converted to assumptions for such entities.

In addition, certain lenders might insist on an opinion that borrower entities, and, if applicable, guarantor entities, are in good standing, notwithstanding that the State of North Carolina presently does not issue certificates of good standing. While not standard in North Carolina opinion letter practice, such an opinion may be given after completing due diligence for each relevant entity, which may include, without limitation, the following: (i) securing a certificate of existence from the Office of the North Carolina Secretary of State, (ii) securing a letter of good standing from the North Carolina Department of Revenue, and (iii) confirming that the entity is listed as being in “Current-Active” status with the Division of Corporations of the Office of the North Carolina Secretary of State (<http://www.sosnc.gov/search/index/corp>). In such instance, the opinion giver may also wish to expressly state that the opinion is based upon the specific due diligence completed.

¹⁴ Delete the preceding sentence if Borrower was organized in North Carolina.

breaches of financial covenants or defaults arising out of any “material adverse change” or “material adverse effect” clauses or similar language in any Other Agreements.

5. No consent, approval, authorization or other action by, or filing with, any governmental authority of [*the United States or*] the State, or any specifically granted exemption from any of the foregoing, is required for Borrower’s execution and delivery of the Borrower Documents and consummation of the Loan Transaction except for the filing and indexing of the Financing Statements and the recording and indexing of the Deed of Trust and the Assignment of Rents¹⁵.

6. With respect to Entity Guarantor¹⁶:

a. Entity Guarantor is a [*corporation / limited liability company / {limited / general} partnership*] in existence under the laws of the State;

b. Entity Guarantor is authorized to transact business in the State;¹⁷

c. Entity Guarantor has the [*corporate / limited liability company / partnership*] power to execute, deliver and perform its obligations under the [*Guaranty / Guarantor Documents*]. Entity Guarantor has authorized the execution, delivery and performance of the [*Guaranty / Guarantor Documents*] by all necessary action, and Entity Guarantor has duly executed and delivered the [*Guaranty / Guarantor Documents*];

d. The execution and delivery by Entity Guarantor of the [*Guaranty / Guarantor Documents*] do not violate the Guarantor Organizational Documents; and

e. No consent, approval, authorization or other action by, or filing with, any governmental authority of [*the United States or*] the State is required for Entity Guarantor’s execution and delivery of the [*Guaranty / Guarantor Documents*].

7. Individual Guarantor has duly executed and delivered the [*Guaranty / Guarantor Documents*].¹⁸

8. The execution and delivery by Guarantor¹⁹ of the [*Guaranty / Guarantor Documents*] do not (a) violate Applicable Laws, (b) to our knowledge, conflict with, breach or result in a default under any Other Guarantor Agreements, (c) to our knowledge, violate the terms of any Guarantor Court Order, or (d) to our knowledge, result in the creation or imposition

¹⁵ Reference any other Loan Documents to be recorded or filed here.

¹⁶ Delete opinion 6 if there is no Entity Guarantor. If there is an Entity Guarantor and any other entity is a manager, general partner, or trustee, etc. on behalf of an Entity Guarantor, similar opinions to those in opinion 6 regarding those other entities should be included.

¹⁷ Delete the preceding clause if Entity Guarantor was organized in North Carolina.

¹⁸ Delete this opinion if there is no Individual Guarantor.

¹⁹ Delete this opinion if there is no Guarantor.

of any lien, charge or encumbrance upon any assets of Guarantor, except as contemplated by the terms of [such Guaranty / such Guarantor Documents]. For purposes of this paragraph, (I) the term “**Other Guarantor Agreements**” means any [written agreement, document or instrument (such as a loan agreement or a security agreement) to which Guarantor is a party or subject or by which it or any of the Property is bound or affected, which in any way limits or restricts Guarantor’s right and power to incur debt, pledge assets, or make financial commitments of the type represented by the Guarantor Documents / of the agreements and documents identified on Schedule ____ hereto], and (II) the term “**Guarantor Court Order**” means any judicial or administrative judgment, order, decree or arbitral decision, which names Guarantor and is specifically directed to it or its properties [and which is identified on Schedule ____ hereto, which Guarantor has confirmed to us is complete / appearing in the civil litigation index, judgment docket or land records of _____ County, North Carolina as of _____ {a.m. / p.m.} on _____, 20__] to which Guarantor is subject, which impose any restrictions on it with respect to the execution and delivery of the [Guaranty / Guarantor Documents] or the performance of its obligations thereunder or that affect the Property. Our opinion in clause (b) above does not cover, and we expressly disclaim any opinion as to, breaches of financial covenants or defaults arising out of any “material adverse change” or “material adverse effect” clauses or similar language in any Other Agreements.

9. Each of the Borrower Documents constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its respective terms.

10. Without limiting the generality of opinion 9 above, the Borrower Documents do not provide for collection of interest, fees or other charges in excess of those permitted by the usury laws of the State.

11. The [Guaranty / Guarantor Documents] constitute the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with their terms.²⁰

12. The Security Agreement²¹ and the Deed of Trust are effective to create in favor of Lender a security interest in all of the right, title and interest of Borrower in the Collateral and Fixtures described therein in which a security interest may be created under Article 9 of the UCC.

13. The Central Filing is in proper form for filing in the Central Filing Office, and, upon the filing and proper indexing of the Central Filing in the Central Filing Office, Lender’s security interest in that portion of the Collateral and Fixtures described therein in which a security interest may be perfected by the filing of a financing statement under the UCC, but excluding fixtures as that term is defined by the UCC, timber to be cut, and as extracted collateral as that term is defined by the UCC (the “**Filing Collateral**”), will be perfected.

14. [The Fixture Filing is in proper form for recording in the County Registry, and, upon the recording and proper indexing of the Fixture Filing / The Deed of Trust is in proper

²⁰ Delete this opinion if there is no guaranty or other documents signed by guarantors.

²¹ Delete this and other references to a Security Agreement in the opinion letter if a stand-alone security agreement is not included with the Loan Documents.

form for recording in the County Registry, and, upon the recording and proper indexing of the Deed of Trust] in the County Registry, Lender's security interest in that portion of the Filing Collateral described in the Security Agreement and the Deed of Trust and consisting of goods that are or are to become fixtures, as that term is defined by the UCC, will be perfected.²²

IV. CERTAIN LIMITATIONS

The opinions expressed herein are subject to the following assumptions, qualifications and limitations:

(A) The validity, binding nature and enforceability of the Loan Documents may be limited by (1) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar State or federal debtor relief laws from time to time in effect and which affect the enforcement of creditors' rights or the collection of debtors' obligations in general; (2) general principles of equity, the application of which may deny Lender certain of the rights and remedies granted to Lender under the Loan Documents, including the rights to specific performance, injunctive relief and the appointment of a receiver; (3) general principles of commercial reasonableness and good faith to the extent required of Lender by applicable law; [and] (4) public policy considerations under certain circumstances. / ; and (5) *the Federal Tax Lien Act of 1966 as amended.*²³

(B) Certain rights, remedies, waivers and other provisions of the Loan Documents may not be enforceable, but, subject to the assumptions and other qualifications set forth in this opinion letter, such unenforceability will not render the Loan Documents invalid as a whole or preclude (1) the judicial enforcement of the obligation of Borrower to repay the principal, together with interest thereon, as provided in the Note [*and the judicial enforcement of the obligation of Guarantor to repay the amounts set forth in the Guaranty (to the extent not deemed a penalty and subject to any defenses of a surety that have not been or are incapable of being waived), as provided in the Guaranty*], (2) the acceleration of the obligation of Borrower to repay such principal, together with such interest, upon a material default by Borrower in the payment of such principal or interest or upon a material default in any other material provision of Loan Documents, and (3) either the judicial or nonjudicial foreclosure of the Deed of Trust upon maturity or upon acceleration pursuant to (2) above, subject in each case under parts (1), (2) and (3) of this paragraph to the economic consequences of delay and increased costs which may be

²² The opinion letter working group believes that in the majority of transactions, an opinion about the real property lien of the Deed of Trust or Assignment of Rents can be avoided when a loan title insurance policy is obtained, but because such an opinion has been customarily given in certain transactions, and because there may be circumstances where the additional risk to the opinion giver may be negligible (e.g., one who is certifying title as well as providing an opinion letter), we are providing here the customary form of such an opinion for reference: "The Deed of Trust and Assignment of Leases are in form satisfactory for recording in the County Registry. Upon the recording and proper indexing of the Deed of Trust in the County Registry, a valid deed of trust lien will be created on the interest of Borrower in the real property described in the Deed of Trust. Upon recording and proper indexing of the Assignment of Leases in the County Registry, a valid lien will be created on the interest of Borrower in the property described therein."

²³ Choose the former alternative if opinions on federal laws and regulations are generally excluded. Choose the latter if not.

occasioned by the unenforceability of such rights, remedies, waivers and other provisions. Provisions that are or may be unenforceable due to public policy concerns may include, but are not limited to, issues related to the waiver of procedural, substantive or constitutional rights or other legal or equitable rights, including, without limitation, the right of statutory or equitable redemption; the right to jury trial; the consent by Borrower or Guarantor to the jurisdiction of any court or to service of process in any particular manner; the confession or consent to any judgment; provisions that require waivers or amendments to be made only in writing; forum selection clauses; provisions in the Loan Documents that purport to waive any objection a person may have that a suit, action or proceeding has been brought in an inconvenient forum; disclaimers or limitations of liabilities; waiver of defenses, offsets and accountings for rent or sale proceeds; waiver of the homestead exemption and the consent to the garnishment of wages; waivers or discharges of defenses; any provisions relating to evidentiary standards or other standards by which the Loan Documents are to be construed; any provisions permitting the exercise, under certain circumstances, of rights without notice or without providing opportunity to cure failures to perform; any provisions that purport to create rights of setoff or to retain any assets of Borrower or Guarantor in satisfaction of obligations to Lender otherwise than in accordance with applicable law; the exercise of self-help or other remedies without judicial process; severability provisions in the Loan Documents; any provisions of the Loan Documents that purport to make void any act done in contravention thereof; any provisions of the Loan Documents that purport to authorize a party to act in its sole discretion or that provide that any determination by a party is conclusive; any provisions of the Loan Documents that purport to characterize any or all of the provisions of such Loan Document as being reasonable, commercially reasonable or not manifestly unreasonable; any provisions of the Loan Documents that purport to permit Lender to resolve any inconsistencies in such documents in Lender's sole discretion or in favor of Lender or which provide that a course of dealing by any party or the failure on the part of any party to exercise, in whole or in part, a right or remedy provided to such party shall not constitute a waiver of such party's rights or remedies or of any default; and provisions indemnifying or prospectively releasing a party, its representatives or agents with respect to liability for its own wrongful or negligent acts or omissions, failure to act with diligence or failure to perform obligations imposed upon them by law where release or indemnification is contrary to public policy.

(C) We express no opinion as to the enforceability of any provisions of any of the Loan Documents that (i) impose liquidated damages, penalties or forfeitures, or (ii) appoint Lender or others as the agent or attorney-in-fact for Borrower or Guarantor, or (iii) purport to assign or transfer any of Borrower's or Guarantor's rights under permits, licenses or other collateral to the extent the same are not assignable without the consent of a third party unless the consent of such third party is obtained, or (iv) state that enumerated remedies are not exclusive or that a party has the right to pursue multiple remedies without regard to other remedies elected or that all remedies are cumulative.

(D) We express no opinion as to enforceability of any provision in the Loan Documents providing that (i) in the case of any sale under the Loan Documents, all prerequisites to the sale shall be presumed or conclusively established to have been performed, (ii) in any conveyance given as a result of a sale under the Loan Documents, any statements of fact or recitals shall establish that the facts so stated or recited therein are true, or (iii) any warranty of

title shall be deemed made by Borrower in any instrument of conveyance executed by the trustee of the Deed of Trust or Lender under the Loan Documents.

(E) We express no opinion as to the enforceability of any provision of the Loan Documents purporting to require a party thereto to pay or reimburse attorneys' fees incurred by another party, or to indemnify another party therefor, which provisions may be limited by applicable statutes and decisions relating to the collection and award of attorneys' fees. Without limiting the foregoing, we note that under North Carolina law, the recovery of attorneys' fees is limited by and subject to the procedures and limitations set forth in Sections 6-21.2 and 6-21.6 of the N.C.G.S.

(F) We express no opinion as to the enforceability of any provision in the Deed of Trust allowing the trustee to require a deposit at the foreclosure sale without giving prior notice of such requirement in the notice of sale.

(G) We express no opinion as to any provision of any agreement or document which is incorporated into or attached to the Loan Documents by reference but not specifically set forth therein, unless such agreement or document so incorporated or attached is one of the Loan Documents.

(H) We express no opinion as to provisions of the Loan Documents that limit or alter laws requiring mitigation of damages. We express no opinion as to provisions allowing Lender to collect interest on interest or default interest at a default rate. We assume the rate of interest, as prescribed in the Loan Documents, is and will at all times be a readily ascertainable rate of interest.

(I) We express no opinion as to the enforceability of any provisions of the Loan Documents which purport to govern the rights or obligations of future tenants of the Real Property or any other third party, to impose a trust on any funds of any third party, or to give Lender rights provided by law to landlords.

(J) To the extent that the Loan Documents provide that disputes arising thereunder are subject to binding arbitration, our opinions as to the validity and enforceability of the Loan Documents are subject to the discretion afforded to an arbitrator under applicable law in rendering a binding and enforceable arbitration award. Also, we express no opinion as to the enforceability of any of the provisions of the Loan Documents to the extent to which such provisions purport to permit Lender or any representative or nominee of Lender to employ self-help remedies, conduct or participate in foreclosures, and enjoy similar remedies independently of an arbitration proceeding notwithstanding the fact that the alleged default on which such person or entity bases its rights to such remedies is disputed and is to be arbitrated.

(K) We express no opinion as to the enforceability of provisions in the Loan Documents which provide that, in the event any law is enacted under which a tax is imposed upon the Deed of Trust or upon the debt secured thereby, or other similar law, the grantor thereunder is responsible for the payment of same or the lender thereunder may require payment of the debt secured thereby, as such provision may be deemed to be in violation of public policy.

(L) We express no opinion as to the enforceability of any choice of law or analogous provisions in the Loan Documents.²⁴

(M) With respect to the [*Guaranty / Guarantor Documents*], we express no opinion as to the enforceability of any provision thereof against the estate of a deceased or incompetent guarantor to the extent of advances made on the Loan after such guarantor's death or incompetency.

(N) We call to your attention the following:

(i) Section 40A-68 of the N.C.G.S. provides that a lender may share in the amount of compensation awarded for a partial taking of real property only to the extent determined necessary to prevent an impairment of such lender's security, and without imposition of any prepayment penalty; and pursuant to Section 40A-31 of the N.C.G.S., a court may allocate the proceeds of a private condemnation to the parties entitled thereto, notwithstanding any agreement to the contrary;

(ii) We express no opinion as to the effectiveness, validity, enforceability or perfection of any security interest or lien contemplated by the Loan Documents in real property acquired by Borrower after the date of recording of the Deed of Trust, absent compliance with the rerecording requirements of Section 47-20.5 of the N.C.G.S.;

(iii) We express no opinion as to the effectiveness, validity or enforceability of any provision that provides that the Deed of Trust secures any future advance, i.e., any disbursement of funds or other action that increases the outstanding principal balance owing from Borrower, absent compliance with the requirements of Sections 45-67 through 45-70 of the N.C.G.S.;

(iv) Judicial decisions of the North Carolina courts have held that when a holder of a promissory note or other payment obligation regularly accepts late payments on the note or other payment obligation, the holder is deemed to have waived its rights to accelerate the debt because of late payments until it notifies the maker that prompt payments are again required;

(v) Provisions in the Loan Documents governing foreclosure of property are enforceable only to the extent permitted by N.C.G.S. Chapter 45, the UCC or other applicable law governing the sale or disposition of collateral;

²⁴ For purposes of this illustrative opinion, we have disclaimed any opinion regarding choice of law in the Loan Documents because, on one hand, such opinions tend to be fact-intensive reasoned opinions that do not lend themselves to a form, and on another hand, such opinions are infrequently given in typical real estate secured lending transactions. It also is possible to address choice of law issues in the assumptions, along the lines of the following: "For purposes of our opinions, with your permission, we have disregarded the choice of law provision in the Loan Documents, and, instead, have assumed that the Loan Documents are governed exclusively by the internal, substantive laws and judicial interpretations of the State."

(vi) The provisions of Section 26-7 through Section 26-9 of the N.C.G.S. may qualify the enforceability of the Guaranty, and we express no opinion as to any waiver of rights under these statutes; and

(vii) Provisions in the Deed of Trust to the effect that the lien of the Deed of Trust continues after completion of a sale under foreclosure of parts of the Property described therein are invalid under Sections 45-21.8 and 45-21.9 of the N.C.G.S., to the extent that such provisions allow a partial foreclosure and a continuation of the lien after satisfaction of the entire obligation secured thereby.

(O) In connection with the opinions set forth in paragraphs 12, 13 and 14 herein, we call to your attention the following:

(i) We express no opinion as to the validity, enforceability or perfection of any security interest in any proceeds of any collateral to the extent Lender may be required to take future actions to continue its security interest therein, and, in addition, we note that with respect to certain types of proceeds other parties such as holders in due course, protected purchasers of securities, persons who obtain control over securities entitlements and buyers in the ordinary course of business may acquire a superior interest or may take their interest free of the security interest of Lender.

(ii) We express no opinion as to the validity, enforceability or perfection of any security interest in any collateral sold, exchanged, leased or otherwise disposed of by any party in the ordinary course of business, specifically permitted by any of the Loan Documents, or with the consent, express or implied, of Lender.

(iii) We express no opinion as to the validity, enforceability or perfection of any security interest in (i) any collateral sold to a buyer who takes free of a security interest pursuant to Chapter 25, Article 9 of the N.C.G.S., (ii) any goods delivered to Borrower under a consignment, (iii) goods sold to Borrower in which the seller has a right to reclaim under N.C.G.S. Section 25-2-702 or any similar statute in other states, or (iv) any collateral consisting of goods which are subsequently commingled with like goods or manufactured, processed or assembled so as to become part of a product or mass.

(iv) Perfection of any security interest perfected by the filing of a financing statement will be terminated as to any property acquired by Borrower more than four months after the date Borrower changes its name or identity so as to make a filed financing statement seriously misleading unless a new appropriate financing statement indicating the new name or identity of Borrower is properly filed before the expiration of such four-month period.

(v) The continued perfection of a security interest which is perfected by the filing of a Financing Statement (i) requires the filing of continuation statements within the period of six (6) months prior to the expiration of five (5) years from the date of filing of the Financing Statement, or the last continuation thereof, and (ii) may also depend on the continuation of Borrower's present corporate name and structure.

(vi) We express no opinion as to the effect of any prohibitions against assignment that may be contained in any account, lease agreement, promissory note, chattel paper, general intangible, health-care receivable or letter-of-credit right.

(vii) We express no opinion as to (i) whether Lender is a “protected purchaser” of any securities within the meaning of N.C.G.S. Section 25-8-303, or (ii) the effect of any prohibitions against assignment that may be contained in any account, lease agreement, promissory note, chattel paper, general intangible, health-care receivable and letter of credit right.

(viii) In the case of any collateral hereafter acquired by Borrower, Section 552 of the Bankruptcy Code (11 U.S.C. § 101 et seq., as amended from time to time) limits the extent to which the property acquired by a debtor after the commencement of a case under the Bankruptcy Code may be subject to a security interest arising from a security agreement entered into by the debtor before the commencement of such case.

(ix) Generally, terms prohibiting, restricting, requiring prior consent for, creating a default as a result of, or otherwise purporting to cause similar adverse effects upon the creation or enforcement of a security interest are ineffective as to accounts, chattel paper, payment intangibles, leases, health-care-insurance receivables, promissory notes, general intangibles, and letters of credit. See Sections 25-9-406, 9-407, 9-408 and 9-409 of the N.C.G.S. for the governing provisions. Except as to specific collateral of the type discussed in these four sections of the UCC, we express no opinion as to the effect, if any, of any agreements that purport to prohibit, restrict, condition or create a default or other adverse effect upon or as a result of any attempt to grant or enforce a security interest in such agreements or rights arising thereunder.

(x) We have assumed that Deposit Accounts, as defined in Section 9-102 of the N.C.G.S., if any, are, and at all relevant times will be, located only in the State.

(xi) We have assumed that Securities Accounts, as defined in Section 8-501 of the N.C.G.S., if any, are, and at all relevant times will be, located only in the State.

(xii) We express no opinion regarding the security interest of Lender in any items of collateral which are subject to a statute, regulation or treaty of the United States of America which provides for a national or international registration or a national or international certificate of title.

(xiii) We express no opinion regarding the security interest of Lender in any of the collateral consisting of claims against any government or governmental agency (including without limitation the United States of America or any state thereof or any agency or department of the United States of America of any state thereof).

(xiv) We express no opinion regarding the security interest of Lender in any collateral that constitutes cash or cash equivalents, except to the extent that they constitute proceeds under Section 25-9-315 of the N.C.G.S., during any period of time when they are not held by Lender.

(xv) Certain provisions of the Loan Documents may purport to define and treat certain items and materials now or hereafter located on the Real Property described therein as fixtures or part of the improvements. Under Section 25-9-102(41) of the N.C.G.S. an item is a “fixture” when it becomes so related to particular real estate that an interest in that item arises under real estate law. We are aware of no law or decision that permits the parties to a secured transaction to agree that an item which is not otherwise a fixture to be treated as a fixture. Therefore, we express no opinion that such provisions would be generally enforceable.

(P) To our knowledge,²⁵ the following types of provisions have not been specifically addressed and resolved by North Carolina statutes or court decisions applying North Carolina law and, therefore, the enforceability of such provisions in the Loan Documents is not free from doubt: (i) prohibitions or restrictions on (a) secondary financing or (b) transfers of equity ownership interests in a borrowing entity, (ii) simultaneous enforcement of a due-on-sale clause and a prepayment prohibition or penalty, and (iii) a prepayment fee, in both the case of a voluntary prepayment and also in the case of a prepayment made after default and acceleration of the Loan, where either (a) the prepayment fee is based on loss of yield from the prepayment date to the stated maturity date of the Loan (absent any acceleration), and calculated solely on some index or interest rates (such as Treasury Note rates) other than current interest rates on first lien commercial real estate mortgage loans, or (b) the fee is based on a fixed percentage of the loan balance. Accordingly, we express no opinion as to the enforceability of any such provisions in the Loan Documents.

(Q) We express no opinion as to whether violations of usury law will be prevented by any provision which provides that, if the payment of amounts required pursuant to any of the Loan Documents results in a violation of applicable usury laws, such payments will be reduced, spread, refunded or otherwise adjusted so that the usury violation would be eliminated.

(R) This opinion letter does not address any opinion not expressly set forth herein. In this connection, this opinion letter does not address any of the following legal issues:²⁶ (i)

²⁵ Before this qualification is included, the opinion giver should verify the current state of the law on the matters listed.

²⁶ The following is an alternative list for when matters of federal law are excluded from the opinion letter: (i) federal laws and regulations, (ii) state (or “blue sky”) securities laws and regulations; (iii) pension and employee benefit laws and regulations e.g., ERISA; (iv) state antitrust and unfair competition laws and regulations; (v) state laws and regulations concerning filing (other than the UCC and applicable laws of the State with respect to the recording of real estate mortgages and assignments of leases and rents for the purpose of placing third parties on notice of the provisions of such documents and the filing of UCC-1 financing statements) and notice requirements; (vi) compliance with fiduciary duty requirements; (vii) the statutes, ordinances, administrative decisions and rules and regulations of counties, towns, municipalities and special political subdivisions (whether created or enabled through legislative action at the state or regional level) and judicial decisions to the extent they deal with any of the foregoing; (viii) fraudulent transfer and fraudulent conveyance laws; (ix) state environmental laws and regulations; (x) state zoning, land use, building, landmark, archeological preservation, mobile home and subdivision laws and regulations; (xi) state tax laws and regulations; (xii) state trademark and other state intellectual property laws and regulations; (xiii) state racketeering laws and regulations; (xiv) state health and safety laws and regulations; (xv) state labor laws and regulations; (xvi) state laws, regulations and policies concerning (1) national and local emergency, (2) possible judicial deference to acts of sovereign states, and (3) criminal and civil forfeiture laws; (xvii) other state statutes of general application to the extent they provide for criminal prosecution (e.g., mail fraud and wire fraud statutes); (xiii) state public utility laws or regulations; (xix) state laws or regulations concerning

federal and state (or “blue sky”) securities laws and regulations; (ii) Federal Reserve Board margin regulations; (iii) pension and employee benefit laws and regulations e.g., ERISA; (iv) federal and state antitrust and unfair competition laws and regulations; (v) federal and state laws and regulations concerning filing (other than the UCC and applicable laws of the State with respect to the recording of real estate mortgages and assignments of leases and rents for the purpose of placing third parties on notice of the provisions of such documents and the filing of UCC-1 financing statements) and notice requirements, e.g., Hart-Scott-Rodino and Exon-Florio; (vi) compliance with fiduciary duty requirements; (vii) the statutes, ordinances, administrative decisions and rules and regulations of counties, towns, municipalities and special political subdivisions (whether created or enabled through legislative action at the federal, state or regional level) and judicial decisions to the extent they deal with any of the foregoing; (viii) fraudulent transfer and fraudulent conveyance laws; (ix) federal and state environmental laws and regulations; (x) federal and state zoning, land use, building, landmark, archeological preservation, mobile home and subdivision laws and regulations; (xi) federal and state tax laws and regulations; (xii) federal patent, copyright and trademark, state trademark and other federal and state intellectual property laws and regulations; (xiii) federal and state racketeering laws and regulations, e.g., RICO; (xiv) federal and state health and safety laws and regulations, e.g., OSHA; (xv) federal and state labor laws and regulations; (xvi) federal and state laws, regulations and policies concerning (1) national and local emergency, (2) possible judicial deference to acts of sovereign states, and (3) criminal and civil forfeiture laws; (xvii) other federal and state statutes of general application to the extent they provide for criminal prosecution (e.g., mail fraud and wire fraud statutes); (xviii) federal and state public utility laws or regulations; (xix) federal and state laws or regulations concerning disability access or building codes; (xx) federal and state laws or regulations relating to terrorism, embargoes and money laundering; (xxi) federal and state anti-discrimination laws and regulations; (xxii) federal and state trust, banking, insurance, unfair competition and bulk sale laws and regulations; and (xxiii) federal and state criminal laws, rules and regulations.

(S) We express no opinion as to the effect on the opinions expressed herein of (i) the compliance or non-compliance of Lender with any [*federal,*] state or local laws applicable to Lender, or (ii) the legal or regulatory status or nature of the business of Lender.

(T) We express no opinion as to a security interest in any commercial tort claims.

(U) [*We have not performed any investigation with respect to the assets of Borrower or Guarantor, and we / Notwithstanding any research we may have undertaken for other parties or opinions rendered in connection therewith to other parties, we / We*] express no opinion to Lender as to: (1) the right, title or interest of any person or entity in any property; (2) the priority of any lien or security interest purported to be created by the Loan Documents or any document or instrument delivered thereunder; (3) the accuracy or sufficiency of the description in the Loan Documents or any document or instrument delivered thereunder of any real or personal property; (4) the existence of, or freedom of any property from, any liens, security interests or other encumbrances except as provided in the opinions in paragraphs 4 and 8 herein; (5) whether any

disability access or building codes; (xx) state laws or regulations relating to terrorism, embargoes and money laundering; (xxi) state anti-discrimination laws and regulations; (xxii) state trust, banking, insurance, unfair competition and bulk sale laws and regulations; and (xxiii) state criminal laws, rules and regulations.

such real property or personal property (or any other property intended to be encumbered by the Loan Documents) is in compliance with any federal, state or local law, rule or regulation, or what effect, if any, noncompliance therewith would have on the enforceability of the Loan Documents; or (6) the characterization of any property as real property, personal property or as a fixture or as to the enforcement of a security interest in personal property collateral separately from the enforcement of a lien or real estate collateral as contemplated by the UCC. As to real property title matters, we understand that you are relying upon a commitment of title insurance previously delivered to you, and we express no opinion with respect to such matters.

(V) We express no opinion regarding whether any novation of any of the obligations of Borrower will be secured by the Deed of Trust.

(W) We express no opinion regarding whether any obligation of Borrower under the Deed of Trust will be enforceable against any purchaser or future owner of the Property. We express no opinion as to whether, upon foreclosure under any of the Loan Documents, any interest of Borrower in any insurance proceeds will inure to the benefit of, or pass to, any purchaser or future owner of the Property.

V. USE OF THIS OPINION LETTER

This opinion letter is delivered solely for the benefit of Lender in connection with the Loan Transaction and may not be used or relied upon by any other person or entity or for any other purpose without our prior written consent in each instance; provided, however, that at your request, we hereby consent to reliance hereon by any future assignee of Lender's interests in the Loan pursuant to an assignment that is made in good faith and for adequate consideration, on the condition and understanding that (i) this letter speaks only as of the date hereof, (ii) we have no responsibility or obligation to update this letter, to consider its applicability or correctness to any person other than its original addressees, or to take into account changes in law, facts or any other developments of which we may later become aware, and (iii) any such reliance by a future assignee must be actual and reasonable under the circumstances existing at the time of assignment, including any changes in law, facts or any other developments known to or reasonably knowable by the assignee at such time. [*This opinion letter may be delivered (i) to a regulatory agency having supervisory authority over Lender for the purpose of confirming the existence of this opinion letter; (ii) to the court or arbitrator and parties to a litigation or arbitration in connection with the assertion of a defense as to which this opinion letter is relevant and necessary; and (iii) to other parties as required by the order of a court of competent jurisdiction in the United States.*]

The opinions set forth herein are limited to matters expressly stated herein, and no opinion may be inferred or implied beyond the matters expressly stated. The opinions set forth herein are rendered as of the date set forth above, and we have no obligation to update or supplement such opinions to reflect any facts which may hereafter come to our attention or any changes in law which may hereafter occur. The opinions set forth herein represent our professional judgment as to the matters stated; they are not binding upon any court or tribunal or

other person or entity; and they do not represent a guarantee of any particular facts, circumstances or results.

Very truly yours,

*Signature*²⁷

²⁷ An opinion letter should be signed in compliance with the applicable law firm's practices and procedures, following all required reviews. Accepted signature practices include, without limitation (i) the opinion letter being signed on behalf of, or for, the firm by one or more of its attorneys signing their names in a representative capacity, and (ii) the name of the firm being written in cursive as the signature. In the latter case, some firms may require that the person signing the firm's name also type or write their initials somewhere on the signature page.