

**ANNOTATED LEGAL OPINION FOR SECURED FINANCING
TRANSACTIONS**

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LAW RELATED PUBLICATIONS AND SPEECHES

Co-Author of Supplement Nos. 1 (Usury) and 2 (Investment Property Collateral) to the Legal Opinions Report of the Legal Opinions Committee, Business Law Section, State Bar of Texas, 1994 and 2001
Author/Speaker, UCC Revised Article 9, Houston Bar Association, 2001
Co-Author/Speaker, Revised Articles 8 and 9 of the UCC, Texas Association of Bank Counsel, 1995
Author/Speaker, Security Interests & Setoffs in Deposit Accounts, Banking Law Institute, 1995
Author/Speaker, A Look at UCC Article 8 Secured Transactions, Banking Law Institute, 1991
Author/Speaker, Document Assembly: Using the Computer To Draft Forms, Houston Bar Association, 1990
Author/Speaker, Workouts: Creditor Liability for Control of Debtors, Texas Association of Bank Counsel, 1984
Author, Holes in the Dike – What Can a Bank Do Now?, Bank Acquisitions and Takeovers Program, Practising Law Institute, 1982
Author/Speaker, Participation Agreements, Banking Law Institute, 1979

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ANNOTATED LEGAL OPINION FOR SECURED FINANCING TRANSACTIONS

I. INTRODUCTION

Appendix A is a sample legal opinion letter with annotated commentary, including instructions, suggested due diligence, and legal references. The opinion letter is written as if it were a form used by a law firm as a starting point to adopt a basic opinion letter format to a particular transaction. Appendix B is a bibliography of published materials discussing legal opinions. These publications, collectively, are a good source for suggested forms of opinions, and commentary on customary legal opinion practice and related ethical principles.

II. PUBLICATIONS

This section refers the reader to some of the useful resource materials regarding legal opinion practice and standards. These and other materials are also cited in Appendix B.

A. Texas Legal Opinion Reports and the Accord

In Texas, the Legal Opinions Committee of the Business Law Section published its report on legal opinions in 1992. State Bar of Texas Business Law Section, *Report of the Legal Opinions Committee regarding Legal Opinions in Business Transactions*, June 1, 1992, BULLETIN OF THE BUSINESS LAW SECTION OF THE STATE BAR OF TEXAS, Vol. 29, Nos. 2 and 3 (June - September 1992) (the "Texas Legal Opinion Report"). The *Texas Legal Opinion Report* is a comprehensive discussion of legal opinion practices and responsibilities. It is educational and advisory in nature and does not contain black-letter rules. In 1991, the Committee on Legal Opinions of the American Bar Association's Section of Business Law published its Third-Party Legal Opinion Report ("ABA Third Party Legal Opinion Report"), including the Legal Opinion Accord (the "Accord"). American Bar Association, Section of Business Law, Committee on Legal Opinions, *Third-Party Legal Opinion Report, Including the Legal Opinion Accord*, 47 BUS. LAW 167 (1991). The *Texas Legal Opinion Report* commented extensively on the *Accord* and included illustrative forms of both *Accord* and non-*Accord* opinion letters.

Unlike the *Accord*, which was designed to be adopted by declaration in a legal opinion, the *Texas Legal Opinion Report's* non-*Accord* illustrative form of opinion contained relatively few provisions that were available to be incorporated by reference into a legal opinion or attached as an exhibit. These were the "Other Common Texas Qualifications" and the "Assumptions and Qualifications Concerning Security Interests in Personal Property". In the author's

experience, neither the adoption of the *Accord* into legal opinions nor the incorporation by reference of provisions from the *Texas Legal Opinion Report* (or the attachment of exhibits containing such provisions) is common. Nevertheless, the *Texas Legal Opinion Report*, the *ABA Third Party Legal Opinion Report* and the *Accord* continue to be excellent resources for guidance in preparing and interpreting legal opinions.

The *Texas Legal Opinion Report* also discusses legal opinions regarding UCC security interests. Supplement No. 2 to the *Texas Legal Opinion Report* discusses security interests in investment property collateral, and both the original *Texas Legal Opinion Report* and Supplement No. 2 contain illustrative opinions regarding security interests. *Supplement No. 2 to the Texas Legal Opinion Report*, prepared by David R. Keyes and Gail Merel as Co-Chairmen of the Subcommittee on Legal Opinions Regarding Investment Property Collateral, approved by the Legal Opinions Committee on January 10, 2001, TEX. J. BUS. LAW, Vol. 37, No. 2 (Spring 2001). Although Texas and all other states have since adopted the revised Article 9, effective in Texas and most other states on July 1, 2001, nevertheless, the discussions of legal opinions and the illustrative opinion letters regarding security interests contained in the *Texas Legal Opinion Report* and Supplement No. 2 remain valuable resources.

Although the *Texas Legal Opinion Report* has been supplemented twice, the first time in 1994 to deal with usury opinions, and the second time in 2001 to deal with investment property collateral, the *Texas Legal Opinion Report* is now more than ten years old and may be updated as a future project of the Legal Opinions Committee, in light of subsequent legal developments (such as additional forms of business entities and the Texas Business Organizations Code effective January 1, 2006, and changes to the UCC), and in light of other publications after the date of the *Texas Legal Opinion Report*.

Approximately half of the *Texas Legal Opinion Report* is devoted to the role and purposes of legal opinions and to professional responsibilities and ethical considerations. The *Texas Legal Opinion Report* discusses at length the Texas Rules of Professional Conduct as they relate to legal opinions. The Texas Rule most directly related to legal opinions for the benefit of non-clients is discussed in part III.C. below.

In 1996, another Texas report was issued, dealing with opinions in mortgage loan transactions. State Bar of Texas Section of Real Estate, Probate and Trust Law, OPINION LETTERS IN MORTGAGE LOAN TRANSACTIONS, 1996 Texas Supplement. This report recommended adoption of the *Accord* and was prepared to adapt the *Accord* to real estate practice in Texas. It contains sample opinion letters relating to the *Accord*.

B. ABA Legal Opinion Principles and Guidelines

In 1998, the Committee on Legal Opinions of the American Bar Association's Section of Business Law published its *Legal Opinion Principles*. American Bar Association, Section of Business Law, Committee on Legal Opinions, *Legal Opinion Principles*, 53 BUS. LAW 831 (1998) (the "ABA Legal Opinion Principles"). The Committee stated that, while the *Accord* had not gained the national acceptance that the Committee had hoped, the Guidelines in the Report have been frequently looked to for guidance regarding customary legal opinion practice. The *ABA Legal Opinion Principles* are intended to provide further guidance for legal opinions that do not adopt the *Accord*.

In 2002, the Committee on Legal Opinions issued revised Guidelines to replace the Guidelines included in the 1991 *ABA Third-Party Legal Opinion Report*, referred to in part II.A. above. American Bar Association, Section of Business Law, Committee on Legal Opinions, *Guidelines for the Preparation of Closing Opinions*, 57 BUS. LAW 875 (2002) (the "2002 ABA Guidelines"). Like the *ABA Legal Opinion Principles*, the *2002 ABA Guidelines* provide guidance regarding closing opinions, whether or not referred to in an opinion letter. Topics include "Purpose, Scope and Reliance", "Process", "Content" and "Specific Opinions".

C. The TriBar on Third-Party Legal Opinions

In 1998, the TriBar Opinion Committee published its report on third-party "closing" opinions (the "TriBar Report"). TriBar Committee, *Third-Party "Closing" Opinions*, 53 BUS. LAW 591 (1998). The *TriBar Report* is sometimes referred to as "TriBar II" because it supersedes the first report in 1979 and some other reports. It is a comprehensive discussion of legal opinions, including their content, the procedures that opinion givers follow when conducting factual and legal investigations required to support their opinions, and the meaning of language often used in opinion letters. The *TriBar Report* contains illustrative opinion letters.

The TriBar Opinion Committee has recently approved a virtually final draft of its report on legal opinions under Revised Article 9 of the UCC. The report is scheduled for publication in *The Business Lawyer* in its August 2003 issue. *Special Report of The TriBar Opinion Committee: U.C.C. Security Interest Opinions—Revised Article 9*, 58 BUS. LAW ___ (2003) (the "TriBar UCC Report"). This report will replace the earlier report of the TriBar Opinion Committee, *U.C.C. Security Interest Opinions*, 49 BUS. LAW. 359 (1993). The *TriBar UCC Report* is a thorough and useful guide to preparing legal opinions regarding the attachment, perfection and priority of security interests, and opinions regarding which state's

law is applicable thereto. An illustrative security interest opinion, with alternatives, is part of the *TriBar UCC Report*.

III. PROFESSIONAL STANDARDS

Space does not permit discussion in this paper of all, or even all major, considerations regarding professional and ethical standards in regard to legal opinions. A list of selected principles follows.

A. Principles Based on 2002 ABA Guidelines

The following paragraphs of this part III.A. are based upon certain of the *2002 ABA Guidelines*.

1. Purpose

The purpose of a legal opinion is to meet part of the recipient's diligence in closing a business transaction. The opinion constitutes the opinion giver's professional judgment about the opinion giver's client and the transaction. The opinions given should be limited to reasonably specific and relevant matters that warrant the time and expense required to prepare the opinion letter. The opinion should not include assumptions and qualifications that do not relate to the client or the transaction and the opinions given.

Opinion givers should not be asked to give opinions beyond their professional competence. To the extent that factual matters are relevant to an opinion, the opinion giver may rely on factual certificates, representations or assumptions.

The opinion giver should not render an opinion that will mislead the recipient with respect to matters addressed by the opinion. The "recipient" includes persons who are permitted to rely on the opinion. An opinion giver is entitled to assume that the opinion recipient or its counsel is familiar with customary opinion practice.

2. Process

Early in the transaction process, counsel for the opinion recipient should specify the opinions that the recipient wishes to receive. The opinion giver should respond promptly with any concerns or proposed exceptions and, to the extent practicable, should provide a proposed form of opinion letter. Should a problem be identified that may prevent delivery of the proposed opinion, the opinion giver's counsel should promptly alert counsel for the recipient.

When the opinion giver lacks the legal expertise to render a requested opinion, consideration should be given to whether the opinion should be obtained from other counsel (based on whether the opinion's benefits justify its costs). The primary opinion giver should not be asked to express its concurrence in the requested opinion of other counsel.

Lawyers preparing a closing opinion do not normally attempt to determine whether others in their

firm have a financial interest in, or other relationship with, the client, nor do they ordinarily disclose any such interest or relationship in the opinion letter, although they may do so. Disclosure does not excuse those preparing the opinion from considering whether any such interest or relationship will compromise their professional judgment in delivering the opinion letter.

Where the client's consent to delivery of the opinion letter to the recipient is required by applicable rules of professional conduct, that consent normally may be inferred from a provision in the transaction documents that makes delivery of the opinion letter a condition to closing. Normally, closing opinions do not contain confidential information, but if the opinion giver is aware that an opinion letter would disclose information that the client would wish to keep confidential, the implications should be discussed with the client in advance.

3. Content

The Golden Rule applies. Counsel for opinion recipient should never ask for an opinion that such counsel would not be able to give if it had the requisite expertise. Similarly, the opinion giver should not refuse to give customary and appropriate opinions. Opinion content should not be negotiated as in a business negotiation.

Legal opinions should preferably use specific standards rather than a general materiality standard. The opinion letter may refer to a dollar amount, a specific category, or inclusion on a list.

An opinion giver is entitled to presume regularity for matters relating to the client, such as actions taken at meetings during periods covered by a missing minute book, without disclosing reliance on such presumptions.

Some opinions are limited by the opinion giver "to our knowledge". To avoid misunderstanding, opinion givers should consider describing the scope of any inquiry or state that the opinion is based on personal knowledge of the principal attorneys working on the transaction, without any inquiry.

Some legal opinions deal with uncertain matters requiring professional judgment by including legal analysis in the opinion letter. These are often referred to as "reasoned" opinions and may be subject to qualifications that are not customary. The *2002 ABA Guidelines* state that both a "would" and a "should" opinion mean the same thing, and both express the opinion giver's professional judgment. (Nevertheless, many law firms believe that an opinion that a court "would" hold a certain way expresses a stronger opinion than that a court "should" hold in a certain way.)

4. Specific Provisions

An opinion giver should not be asked for an opinion that the client is qualified in all jurisdictions in which the failure to qualify would have a material adverse effect. Such opinions are highly factual, and the required analysis would rarely be cost justified. Similarly, an opinion giver should not be requested for an opinion that the client has all necessary licenses and permits and made all filings for the conduct of its business.

An opinion that all outstanding equity securities of the client are duly authorized, validly issued, fully paid, and non-assessable can require extensive legal and factual inquiry. Consideration should be given as to whether the benefits of such opinion justifies the costs.

An opinion giver should not be asked to state that it has no knowledge of particular factual matters, such as knowledge of any prior security interests or of any defaults. These types of negative assurance do not require the exercise of professional judgment and are inappropriate for opinion letters.

Sometimes, however, an opinion giver is asked to state negative assurance as to the adequacy of a disclosure statement. This is not a legal opinion. These statements are unique to securities offerings and are used by an opinion recipient to establish due diligence or a similar defense.

An opinion giver should not be asked to express an opinion on the outcome of litigation.

"Public policy" should not be used as a general qualification to a legal opinion on the enforceability of a contract, as public policy is a principal basis for invalidating contracts. Where appropriate, public policy may be a qualification as to specific provisions (such as certain indemnity clauses).

If the law addressed by the opinion giver is not the same as the governing law expressed in the contracts, and if an opinion from local counsel is not cost-justified, the opinion giver may limit the opinion to the governing law clause under the law covered by the opinion. Additionally, or alternatively, the opinion giver may be asked to opine on the contracts if the law covered by the opinion were to apply, notwithstanding the governing law clause. (The latter approach can be problematic in a Texas loan transaction if the documents do not contain an adequate usury savings clause, or if the opinion giver does not believe that an out-of-state lender would comply with it.)

B. Principles Based on ABA Legal Opinion Principles

The following paragraphs of this part III.B. are based upon certain of the *ABA Legal Opinion Principles*.

1. General

The matters addressed in legal opinions, the meaning of the language used, and the work required is based on the customary practice of lawyers who regularly give, or advise clients that receive, opinions of the kind involved. An opinion giver may vary any of these customs by including an express statement in the opinion letter or by reaching an express understanding with the opinion recipient or its counsel. (Caution: An “opinion recipient” includes those entitled to rely on the opinion, and not all recipients may be aware of, or have authorized, any “express understanding” that is not written into the opinion letter.)

2. Law

Opinion letters customarily specify the jurisdictions whose law they cover and sometimes limit their coverage to specified statutes or regulations. When that is done, an opinion letter should not be read to cover other jurisdictions or other statutes or regulations.

An opinion letter covers only laws that a lawyer in the specified jurisdiction exercising customary professional diligence would reasonably be expected to recognize as being applicable to the entity, transaction or agreement to which the opinion letter relates. Unless otherwise stated, an opinion letter should not be read to cover municipal or other local laws.

Even when they are recognized as being applicable, some laws (such as securities, tax and insolvency) are not covered as a matter of customary practice unless an opinion letter does so expressly.

3. Facts

Lawyers rely on factual information obtained from others, particularly company officials. Customary practice permits such reliance unless the factual information appears irregular on its face or is provided by an inappropriate source.

As a matter of customary practice, lawyers are not expected to make a factual inquiry of other lawyers in their firm or to review the firm’s files, except to the extent that the lawyers preparing the opinion letter have identified a particular lawyer or file as being reasonably likely to have or contain information not otherwise known to them that they need to support an opinion.

An opinion should not be based on a factual representation that is tantamount to the legal conclusion being expressed, except for certificates of public officials.

Some factual assumptions need to be expressly stated in an opinion letter. Others do not, such as assumptions of general application that apply regardless of the type of transaction or the nature of the parties. These include assumptions that copies

conform to originals, signatures are genuine, and the parties other than the opinion giver’s client have the power to enter into the transaction.

4. Date

An opinion letter speaks as of its date. The opinion giver has no obligation to update an opinion letter for subsequent events or legal developments.

C. **Texas Professional Responsibility**

1. Texas Rules

Texas Rule 2.02 is specifically applicable to the delivery of legal opinions to third parties. The Texas Rules of Professional Conduct are found in Volume 3A of Vernon’s Texas Government Code. TEX. GOV’T CODE ANN. (Vernon 1998).

Texas Rule 2.02 prohibits a Texas lawyer from undertaking to evaluate a matter affecting a client for a non-client unless the lawyer reasonably believes that the evaluation is consistent with the lawyer’s relationship with the client and the client consents after consultation. This “compatibility” requirement includes considerations such as the lawyer’s duty to protect the confidentiality of client information while meeting the non-client’s expectation of candor. In the business transactions context, the client’s consent should ordinarily be inferred from the conditions precedent in the transaction documents requiring delivery of the opinion. The lawyer should expressly state the scope and limitations of an opinion letter and ensure that the client is aware of its implications before delivery of the opinion letter.

2. Liability of Lawyers to Non-Clients

Traditionally, in Texas, lawyers have not had malpractice liability to non-client addressees of legal opinions. Texas courts have been reluctant to extend the duties that exist in favor of a lawyer’s own clients to non-clients. This could result in conflicting fiduciary obligations. In the malpractice context, courts have applied a privity requirement and declined to find that the third-party addressee of a legal opinion, or another non-client expressly permitted to rely on the opinion, is in privity with the opinion giver so as to permit a malpractice cause of action. *See, e.g., First Municipal Leasing Corp. v. Blankenship, Potts, Aikman, Hagin & Stewart*, 648 S.W.2d 410, 413 (Tex. App.—Dallas 1983, writ ref’d n.r.e.).

However, the Texas Supreme Court in 1999 held that a non-client may bring a cause of action against a lawyer for the tort of negligent misrepresentation, as defined by the RESTATEMENT (SECOND) OF TORTS § 552 (1977). *McCamish, Martin, Brown & Loeffler v. F. E. Appling Interests*, 991 Tex. Sup. 787 (1999). In this case, the plaintiff had received a written representation from counsel to a federally insured savings association. The representation was to the

effect that the association's board had properly approved a settlement agreement (so that, under a federal statute, the agreement would be enforceable against the Federal Savings and Loan Insurance Corporation in the event of the insolvency and receivership of the savings association).

The Texas Supreme Court, Quoting from Section 552(1) of the Restatement, wrote, "One who, in the course of his business, profession or employment, or in any transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." The court observed that Section 552 is the most widely adopted standard for applying the tort of negligent misrepresentation to professionals, and that several other states have applied that standard to attorney liability based on the issuance of opinion letters to non-clients.

In the *McCamish, Martin* case, the court acknowledged the continuing rule that lack of privity is a defense to legal malpractice cases. The court saw no adverse affect on the attorney-client relationship in imposing a duty to non-clients. Relying on Texas Rule 2.02, discussed in part III.C.1 above, the court stated that a lawyer cannot give an evaluation to a third party unless the lawyer reasonably believes that making the evaluation is compatible with other aspects of the attorney-client relationship and the client consents after consultation, including the lawyer's advising the client about the potential impact such an evaluation may have on the scope of the attorney-client privilege.

Significantly, the court in *McCamish, Martin* stated, "A lawyer may also avoid or minimize the risk of liability to a nonclient by setting forth (1) limitations as to whom the representation is directed and who should rely on it, or (2) disclaimers as to the scope and accuracy of the factual investigation or assumptions forming the basis of the representation or the representation itself." These precautions go to the "justifiable reliance" element of the ability to assert a cause of action for negligent misrepresentation.

Due observance of the professional standards referred to in parts I and II above should serve to minimize any exposure that an opinion giver might have to a successful claim against the opinion giver by an opinion recipient or other third parties.

APPENDIX A

ILLUSTRATIVE FORM OF OPINION LETTER IN A SECURED LOAN TRANSACTION¹

[The following is an illustrative model form of Texas legal opinion letter as might be found in a “forms library” of a hypothetical law firm for use when representing the borrower in a secured loan transaction. The form includes opinions regarding the perfection of security interests under Article 9 of the UCC, but, following common practice, does not address priority of security interests.]

MODEL TEXAS OPINION FOR SECURED LENDING TRANSACTIONS—SUBJECT TO REVIEW AND REVISION²

[LETTERHEAD OF BORROWER’S COUNSEL]

Each of the Addressees Listed in
the Attached Schedule I

Re: [INSERT BRIEF DESCRIPTION OF TRANSACTION]

Ladies and Gentlemen:

We have acted as [special Texas] counsel for [INSERT NAME OF CLIENT], a [INSERT FORM OF ORGANIZATION OF CLIENT] organized under the laws of the State of [INSERT STATE] (the “Company”),³ in connection with [certain aspects of] the transactions contemplated by [INSERT NAME OF BASIC AGREEMENT], dated as of [INSERT DATE] (the “Agreement”), among [INSERT PARTIES]. This opinion letter is furnished to you pursuant to Section ___ of the Agreement. Unless otherwise defined herein, capitalized terms used herein have the meanings assigned to such terms in the Agreement. Other terms that are defined in the Uniform Commercial Code as in effect on the date hereof in the State of Texas (the “Texas UCC”)⁴ have the same meaning when used herein unless otherwise indicated by the context in which such terms are so used. [USE THE FOLLOWING SENTENCE ONLY IF OUR OPINION LETTER WILL BE MODIFIED TO USE THE GENERIC TERM “UCC” TO REFER TO THE UCC OF WHICHEVER JURISDICTION IS APPLICABLE.]⁵ [Unless otherwise indicated,

¹ This Illustrative Form of Opinion Letter was prepared by David R. Keyes, a partner in the Houston office of Vinson & Elkins L.L.P. He currently serves as Chairman of the Legal Opinions Committee (the “Committee”) of the State Bar of Texas Business Law Section. While this work represents collaborative input from the author and other attorneys, it is not a Committee project, report or form. For reports of the Committee regarding legal opinions, including illustrative forms, Appendix B that follows this Appendix.

² Forms of opinion letters are subject to change in light of additional input from attorneys, legal developments, transactional experience, and publications regarding legal opinions and customary opinion practice.

³ The opinions set forth in this opinion letter relate only to the Company (i.e. do not address the due authorization etc. of any other entity, nor do they contemplate any other entity, other than the Company, as grantor of any security interest). If opinions about other parties need to be included, the opinion letter will need to be appropriately modified.

⁴ This opinion letter covers the Texas UCC. If the Uniform Commercial Code of other jurisdictions is addressed, such as the New York UCC, the appropriate references should be added.

⁵ Use of the generic term “UCC” throughout the opinion letter can simplify drafting and minimize the difficulty of determining which jurisdiction’s UCC should be specified for each opinion, assumption or qualification. However, for the illustrative purposes of this model opinion letter, an attempt has been made to direct the user to the relevant UCC in each instance. Use caution in referring to specific sections of a generic “UCC”, since numbering differs among jurisdictions. In addition to Texas’ use of a dot rather than a hyphen, the definitions in Section 9.102(a) of the Texas UCC are one number higher after Section 9.102(a)(59) due to a non-conforming insertion of the definition of “Nonnegotiable Certificate of Deposit” at that point. If using the generic “UCC” convention, you should insert a sentence such as (to the extent such terms are actually used): “For convenience, all references to specific chapters, articles, parts, sections or subsections of the UCC are made by using the corresponding citations to the Texas UCC.” The reference to a state variation applicable only in a specific jurisdiction should be made by correct citation to the UCC of that jurisdiction.

references to the “UCC” shall mean (i) with respect to the validity, creation or attachment of a security interest, the Texas UCC, and (ii) with respect to the perfection[, the effect of perfection or non-perfection, and the priority]⁶ of a security interest, the Uniform Commercial Code as in effect on the date hereof in _____.]

In rendering the opinions set forth below, we have reviewed an execution copy of the following documents and instruments:⁷

(i) [Credit Agreement, dated as of _____ (the “Credit Agreement”), among the Company, the Agent and the Lenders party thereto;]

(ii) [the Promissory Note, dated _____ (the “Promissory Note”), executed by the Company;]

(iii) [the Security Agreement, dated as of _____ (the “Security Agreement”), between the Company and the Agent;⁸]

(iv) [the Pledge Agreement, dated as of _____ (the “Pledge Agreement”), between the Company and the Agent;]

(v) [the Securities Account Control Agreement, dated as of _____ (the “Securities Account Control Agreement”), among the Company, the Agent and [BANK], acting in its capacity as securities intermediary;]

(vi) [the Deposit Account Control Agreement, dated as of _____ (the “Deposit Account Control Agreement”), among, the Company, the Agent and [BANK], acting in its capacity as depository (the “Depository”);] [and]

(vii) [unfiled copies of the UCC-1 Financing Statements referred to on Schedule II hereto (the “Financing Statements”)]⁹[.] [;] [; and]

[(viii) each of the Applicable Contracts (as defined below)]¹⁰[.] [;and]

[(ix) IF ORGANIZATION, POWER AND AUTHORITY OPINIONS ARE PROVIDED, LIST ORGANIZATIONAL DOCUMENTS OR REFER TO SCHEDULE CONTAINING LIST.]

The documents listed in clauses (i) through (vi) above are referred to herein as the “Transaction Documents”. Additionally, in rendering the opinions set forth below, we have reviewed such other records, certificates and documents as we have deemed appropriate for the purposes of such opinions.¹¹ As to any facts material to our

⁶ Use this bracketed clause only if this opinion letter is modified to discuss the priority of any security interests.

⁷ Insert specific list of documents which are being opined on in this opinion letter – the list set forth is solely for illustrative purposes.

⁸ This opinion letter contemplates that the security interests are granted to the Agent on behalf of the Secured Parties.

⁹ If there is only one financing statement, the definition would be in the singular and conforming editorial changes should be made to references to the Financing Statements in the remainder of the opinion letter. The term “Financing Statements” should be defined clearly in the list of documents which we have reviewed for purposes of this opinion letter, with special attention given if there are multiple filing jurisdictions - e.g., if Financing Statements are filed in Texas and Delaware, they should be defined separately and separate opinions for each jurisdiction may be appropriate. Sometimes we are asked to review other financing statements, which are also listed on the schedule, than the ones that are effective for purposes of perfection, such as when lender’s counsel wishes to make precautionary filings in additional jurisdictions. In such cases, we would define “Financing Statements” with reference to the specific portions of the relevant schedule, so that our opinions address the financing statements that we determine to be the effective ones.

¹⁰ This bracketed clause would be inserted if we give an opinion below regarding the non-contravention of listed contracts.

¹¹ If our Firm’s engagement is limited (i.e. if our Firm is engaged solely to render the Texas law opinion), the opinion should not include the reference “such other documents as we have deemed appropriate.” Additionally, the following paragraph should be added after the list of Transaction Documents:

opinions, we have made no independent investigation of such facts and have relied, to the extent that we deem such reliance proper, upon statements of public officials and officers or other representatives of the Company and on the representations and warranties set forth in the Transaction Documents.¹²

In rendering the opinions expressed below, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to authentic original documents of all documents submitted to us as copies, which assumptions we have not independently verified. [CHOOSE ONE OF THE FOLLOWING ALTERNATIVES] [In addition we have assumed that the Transaction Documents have been duly executed and delivered by each party thereto (other than the Company) and constitute valid, binding and enforceable obligations of such parties and that the laws of any jurisdiction other than the jurisdictions that are the subject of this opinion letter do not affect the terms of the Transaction Documents.]¹³ [In addition, we have assumed that (i) each party to the Transaction Documents (each, a “Transaction Party”) is a corporation, partnership, limited liability company or other entity duly organized and validly existing under the laws of the jurisdiction of its organization; (ii) each Transaction Party has full power and authority ([corporate, partnership, limited liability company or otherwise]) to execute, deliver and perform its obligations under the Transaction Documents to which it is a party; (iii) each Transaction Document has been duly executed and delivered by each Transaction Party that is a party thereto; (iv) the execution, delivery and performance by each Transaction Party of the Transaction Documents to which it is a party have been duly authorized by all necessary action ([corporate, partnership, limited liability company or otherwise]) and do not contravene the bylaws or other constituent documents of such Transaction Party; (v) the execution, delivery and performance by each Transaction Party of the Transaction Documents to which it is a party do not conflict with or result in the breach of any document or instrument binding on it (except that we have not made such assumption with respect to Applicable Contracts (as defined below) to which the Company is a party, as to which we express our opinion in paragraph 5(c)); (vi) the execution, delivery and performance by each Transaction Party of the Transaction Documents to which it is a party do not contravene any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award applicable to any of them (except that we have not made such assumption with respect to Applicable Laws (as defined below) and Applicable Orders (as defined below), in each case applicable to the Company, as to which we express our opinions in paragraphs 5(b) and 5(d)); (vii) no authorization, approval, consent, order, license, franchise, permit or other action by, and no notice to or filing with, any Governmental Authority or any other third party is required for the due execution, delivery and performance by each Transaction Party of the Transaction Documents to which it is a party that has not been duly obtained or made and that is not in full force and effect (except that we have not made such assumption with respect to Governmental Approvals (as defined below) required to be obtained or taken by the Company as to which we express our opinion in paragraph 6); (viii) the Transaction Documents constitute valid, binding and enforceable obligations of each party thereto (other than the Company); and (ix) the laws of any jurisdiction other than the laws that are the subject of this opinion letter do not affect the terms of the Transaction Documents.]¹⁴ [With respect to certain of the foregoing matters as they relate to the Company, please refer to the opinion letter, dated as of the date hereof, delivered to you by [INSERT NAME], General Counsel of the Company.]¹⁵

“In rendering the opinions set forth herein, we have, with your consent, relied only upon examination of the documents described above and have made no independent verification or investigation of the factual matters set forth therein. We did not participate in the negotiation or preparation of the Transaction Documents and except as set forth herein have not advised the Company with respect to such documents or the transactions contemplated therein.”

¹² An officer’s certificate of the Company executed by the appropriate officer, dated the date of the opinion, should be obtained from the Company for our diligence files (articles of incorporation, by-laws, resolutions and certificates of good standing may be attached to such officer’s certificate). Statements on which our Firm has relied regarding material factual matters should be set forth in such officer’s certificate, except that it should not be necessary to obtain an officer’s certificate as to factual matters represented in the Transaction Documents.

¹³ Include the language in these brackets if the opinion letter covers due authorization, execution, no breach, etc. of the Company.

¹⁴ Include the language in these brackets if the opinion letter does NOT cover due authorization, execution, no breach etc. of the Company.

¹⁵ Insert if we wish to make it clear that these opinions, although not covered in our opinion letter, are covered in other opinion letters being provided by others in connection with the closing of the transaction.

Based upon the foregoing, and subject to the assumptions, qualifications, exceptions and limitations set forth herein, it is our opinion that:

1. The Company [INSERT ONE OF THE FOLLOWING TWO BRACKETED CLAUSES] [is validly existing] [has been duly incorporated/organized]¹⁶ and is in good standing under the laws of the State of [Texas] [Delaware].¹⁷ [The Company is duly qualified to do business in, and is in good standing as a foreign corporation under the laws of, the State of [Texas] [Delaware].]¹⁸
2. The Company has the corporate power and authority to execute and deliver each Transaction Document to which it is a party and to perform its obligations thereunder.¹⁹ The execution and delivery by the Company of each Transaction Document to which it is a party and the performance by the Company of its obligations thereunder have been duly authorized by all requisite corporate action²⁰ on the part of the Company.
3. Each Transaction Document to which the Company is a party has been duly executed²¹ and delivered by the Company.
4. Each Transaction Document to which the Company is a party constitutes the [legal,]²² valid and binding obligation of the Company enforceable against the Company in accordance with its terms.
5. The execution and delivery by the Company of each Transaction Document to which it is a party do not, and the performance by the Company of its obligations thereunder will not,²³ (a) violate the Company's [articles

¹⁶ "Validly existing" is the preferred alternative since the level of diligence required is less. An opinion that the Company has been "duly organized" includes matters covered by "due incorporation" and covers any matters that under the laws of the state of incorporation are necessary to complete the organizational process after the Company has been incorporated (i.e. adoption of by-laws, election of directors, capital requirements). Therefore, a due organization opinion requires more diligence such as review of minutes regarding adoption of by-laws, election of directors and issuance of stock. The "due organization" opinion requires other steps if the Company is not a corporation, such as the due execution and delivery of a limited liability company agreement or limited partnership agreement, the making of requisite organizational filings, and obtaining the certificate of the Secretary of State or other public official.

¹⁷ Diligence required to give this opinion: (i) obtain recent certificate from the applicable Secretary of State that confirms existence of Company and lists and attaches copies of the charter documents on file; (ii) obtain a good standing certificate from the Secretary of State and, if applicable, a bring down certificate from the Secretary of State or if not available, an officer's bring down certificate stating that since the date of such good standing certificates, all required reports have been filed and all taxes paid; and (iii) the officer's certificate described in footnote 12 above should attach a copy of the Company's charter and bylaws as in effect on the date the opinion is delivered or that such charter has not been amended since the date which the Secretary of State furnished the charter. In Texas, the Comptroller of Public Accounts will issue Certificates of Account Status evidencing the good standing of corporations and limited liability companies. Since partnerships do not pay Texas franchise tax, such certificates evidencing good standing are not available for partnerships, and we should not in that case give a good-standing opinion.

¹⁸ If the jurisdiction is other than Texas, this opinion should be based solely upon receipt of good standing certificates of the Secretary of State or other appropriate governmental officials of such jurisdictions. If the Company is not a corporation, this opinion paragraph will need to be appropriately modified. See also the last sentences of each of footnotes 16 and 17 above regarding entities other than corporations.

¹⁹ If the Company is a limited liability company or limited partnership, our opinion is usually phrased as the limited liability company or limited partnership having the power and authority under the [Delaware] [Texas] Revised Limited Partnership Act or the [Delaware] [Texas] Limited Liability Company [Law] [Act] and its partnership agreement or limited liability company agreement to perform such actions.

²⁰ If applicable, "corporate" action can be changed to "partnership" or "limited liability company" action.

²¹ Diligence required to give this opinion: obtain an incumbency certificate evidencing that the person signing the Transaction Documents holds an office that corresponds to the officers authorized by the by-laws and the resolutions to sign the Transaction Documents. If the Company is not a corporation, then in lieu of bylaws and resolutions, diligence would proceed from looking at the limited liability company agreement, partnership agreement, or other constituent documents.

²² It should be noted that we should avoid giving the "legal" opinion; in particular, it should not be given if we are not giving the opinion set forth in paragraph 5(b).

²³ Please note that these are not required opinions; in particular, the opinions in (c), (d) and (e) should be resisted given the amount of due diligence they may require.

of incorporation or by-laws],²⁴ [or] (b) result in any violation by the Company of any Applicable Law (as defined below), [(c) breach or result in a default under any agreement or instrument listed in Part A of Schedule III hereto (“Applicable Contracts”), which agreements and instruments have been identified to us by the Company as material to its business or financial condition,²⁵ (d) result in any violation of any order, writ, judgment or decree listed in Part B of Schedule III hereto, (“Applicable Orders”), which order, writ, judgment or decree has been identified to us by the Company as material to its business or financial condition,²⁶ or (e) result in the creation or imposition of any lien on any properties of the Company pursuant to any Applicable Contract, other than as may be contemplated by the Transaction Documents].

“Applicable Laws” means those laws, rules and regulations of the State of Texas and the United States of America and the rules and regulations adopted thereunder, that, in our experience, are normally applicable to transactions of the type contemplated by the Transaction Documents. However, the term “Applicable Laws” does not include, and we express no opinion with regard to (i) any state or federal laws, rules or regulations relating to: (A) pollution or protection of the environment; (B) zoning, land use, building or construction; (C) occupational safety and health or other similar matters; (D) labor, employee rights and benefits, including the Employment Retirement Income Security Act of 1974, as amended; (E) the regulation of utilities, the Public Utility Holding Company Act of 1935, as amended, and the Public Utility Regulatory Policy Act of 1978, as amended; (F) antitrust and trade regulation; (G) tax; (H) securities, including, without limitation, federal and state securities laws, rules or regulations [and the Investment Company Act of 1940, as amended]; [(I) corrupt practices, including, without limitation, the Foreign Corrupt Practices Act of 1977;] and [(J) copyrights, patents and trademarks, and (ii) any laws, rules or regulations of any county, municipality or similar political subdivision or any agency or instrumentality thereof.²⁷

6. No Governmental Approval (as defined below) which has not been obtained or taken and is not in full force and effect, is required to be obtained or taken by the Company to authorize, or is required in connection with, the execution and delivery by the Company of each Transaction Document to which it is a party or the performance by the Company of its obligations thereunder²⁸[, except (a) the filing of the Financing Statements in the filing offices set forth in paragraph 8 hereof and (b) those Governmental Approvals set forth in Schedule __ hereto].

²⁴ If the Company is a partnership or limited liability company, the references to “articles of incorporation” and “by-laws” will change to the applicable reference to the Company’s partnership agreement or limited liability company agreement.

²⁵ The officer’s certificate required for our diligence file should have a schedule attached which represents, identifies and lists all agreements and instruments which are material to the business or financial condition of the Company. Alternatively, if the scope of the agreements or instruments to be reviewed is narrowed, the description of the Applicable Contracts can be narrowed in clause (c) and in the officer’s certificate. For example, the listed documents may consist only of agreements or instruments that evidence or guaranty debt above a specified amount.

²⁶ The officer’s certificate required for our diligence file should have a schedule attached which represents, identifies and lists all such orders, writs, judgments or decrees which are material to the business of the Company.

²⁷ The definition of “Applicable Laws” may be modified as appropriate for the type of transaction. For example, in relation to a securities underwriting agreement, a carve-out for federal securities laws as not being included in “Applicable Laws” would seem to be inappropriate. The list of excluded laws can be shortened to the extent that a specified law could not reasonably be expected to be applicable to the Company or its affiliates, the Transaction Documents or the transactions contemplated thereby. Moreover, in a simple credit transaction with no opinion on non-violation of law, it is not necessary to use the “Applicable Laws” concept in the opinion letter. It is customary legal opinion practice that opinions are based on laws, rules and regulations of the jurisdictions specified in the opinion letter, that, in the experience of lawyers who customarily give opinions of the kind given in the opinion letter, are normally applicable to transactions of the type contemplated by the Transaction Documents. Nevertheless, it is preferable for our first draft to include the “Applicable Laws” language because it specifically carves out numerous laws that could possibly be subject to differing views on whether we are including them in our legal analysis.

²⁸ In providing this opinion as to the Company’s performance of its obligations under the Transaction Documents, thought should be given concerning possible Governmental Approvals that will be required to be obtained by the Company in the future.

“Governmental Approvals” means any consent, approval, license, authorization or validation of, or filing, recording or registration with, any Governmental Authority²⁹ pursuant to any Applicable Laws (as defined in paragraph 5 above).

[7.] [NOTE THAT THE LITIGATION OPINION, ALTHOUGH FREQUENTLY REQUESTED, IS INTENTIONALLY OMITTED HERE. IT SHOULD BE GIVEN, IF AT ALL, BY IN-HOUSE COUNSEL. SUBSEQUENT OPINION PARAGRAPHS HAVE BEEN NUMBERED ASSUMING THAT THE LITIGATION PARAGRAPH IS OMITTED.]

7. The provisions of the [Security Agreement] [Pledge Agreement] are effective to create in favor of the Agent to secure the Obligations,³⁰ a valid security interest in all of the Company’s right, title and interest in and to that portion of the Collateral³¹ (as defined therein) in which a security interest may be created under Chapter 9 of the Texas UCC without giving effect to the laws referred to in Section 9.201 thereof (the “Article 9 Collateral”).³²
8. To the extent that the filing of a financing statement can be effective to perfect a security interest in the Article 9 Collateral under the [Texas UCC] [or]³³ [the Uniform Commercial Code as in effect in the [State]³⁴ of _____ (the “[_____] UCC”)³⁵], the security interest in favor of the Agent in that portion of the Article 9 Collateral described in the Financing Statement³⁶ will be perfected upon the proper filing of the

²⁹ Confirm that the definition of “Governmental Authority” is in the Agreement, or add a definition here.

³⁰ This model opinion letter assumes that “Obligations” is defined in the Agreement identified in the opening paragraph of this opinion letter. If not, then after the term “Obligations” (or other defined term), we would insert a phrase such as “(as defined in the [Security Agreement] [Pledge Agreement]).”

³¹ This model opinion letter assumes that “Collateral” is defined in the [Security Agreement] or [Pledge Agreement]. Another definition may be needed. Alternatively, we may wish to define the term “Collateral” for purposes of our opinion letter in order to confine our opinions regarding the Collateral to specified items or types. This may be convenient where, for example, the collateral is specified equipment but also includes a broad “catch-all” reference to “all other property, wherever located, that may at any time be used or useful in connection with such equipment.” In such instances, we may prefer to define “Collateral” as being the described equipment and the proceeds thereof. As to creation or attachment of a security interest, see the requirements in Section 9.203 of the Texas UCC.

³² Section 9.108 of the Texas UCC requires a security agreement to reasonably identify the collateral. Section 9.108(c) states that the use of a super-generic term such as “all the debtor’s assets” or “all the debtor’s personal property” does not reasonably identify the collateral (for purposes of a security agreement).

³³ If the debtor is, for example, a Delaware corporation, we could delete both bracketed phrases “[Texas UCC]” and “[or]”. This formulation then speaks to perfection under the Delaware UCC, but does not speak to whether or not under the choice-of-law rules of Section 9.301 of the Texas UCC, Delaware is the correct place to perfect. If such bracketed clauses are inserted, and if filing is made in Delaware, we are in effect opining that the Texas UCC would refer to the Delaware UCC for perfection. Alternatively, we may give a choice-of-law opinion regarding which state’s UCC governs perfection by filing. We may need to assume that the debtor is a “registered organization” under the law of the state where filing is made or regarding the non-UCC law of such state as part of the determination of where the debtor is “located” for purposes of Section 9.307 of the Texas UCC, which is part of the choice-of-law analysis that begins with Section 9.301 of the Texas UCC. See footnote 38 below for a more extended discussion of this issue.

³⁴ The UCC is also in effect in the District of Columbia and the U.S. Virgin Islands, each of which has adopted Revised Article 9. If the debtor is foreign and is located in a jurisdiction whose law does not maintain filing offices meeting the test of Section 9.307(c), then that section deems such debtor to be located in Washington, D.C. for the purposes of Chapter 9. The proper place to file a financing statement in Washington, D.C. is the Recorder of Deeds of the District of Columbia.

³⁵ This is the UCC for the state in which the filing is to be made. For example, if the filing will be made in the State of Delaware, this will refer to the Delaware UCC. This opinion is appropriate for “perfection by filing” opinions when the Financing Statements are, pursuant to Section 9.301 of the Texas UCC, filed in the UCC jurisdiction identified above. This opinion does not address local fixture filings; however, if fixtures and other real property interests are included in the collateral, filings in the local/real property records may need to be addressed. It should be noted that if the Financing Statements are “pre-filed”, you will need current authorization by the debtor for such “pre-filing”. See Section 9.509 of the Texas UCC.

³⁶ See footnote 32 above.

Financing Statements in the office of the [Secretary of State/other] of the State of [_____].³⁷ [For purposes of our opinion set forth in this paragraph 8, we have based such opinion solely on our review of the generally available compilations of Article 9 of the [_____] UCC as in effect on the date hereof [and we have not reviewed any other laws of the State of _____ or retained or relied on any opinion or advice of _____ counsel].]³⁸

9. With respect to that portion of the Article 9 Collateral consisting of the Securities Accounts (as defined in the Securities Account Control Agreement),³⁹ the provisions of the Securities Account Control Agreement⁴⁰ are effective to perfect the security interest of the Agent therein by “control” (within the meaning of Section 8.106 of the Texas UCC).⁴¹

³⁷ In order to give the perfection opinion set forth in paragraph 8, the debtor must authorize the filing of the Financing Statement. It should be noted under Section 9.509 of the Texas UCC, by executing and delivering the Security Agreement, the debtor automatically is deemed to have authorized the filing of a financing statement covering the collateral described in the Security Agreement. If, however, the financing statement has a “super-generic” description of the collateral, such as “all personal property of the debtor”, it will be necessary to confirm that the Security Agreement (or other Transaction Document) contains a provision whereby the debtor authorizes the secured party to file financing statements with such description. Section 9.108(c) states that the use of a super-generic term such as “all the debtor’s assets” or “all the debtor’s personal property” does not reasonably identify the collateral (for purposes of a security agreement). Therefore, the granting clause in the Security Agreement, describing the collateral, is unlikely to contain a super-generic description. The secured party would not be authorized to file a financing statement containing a super-generic description of the Article 9 Collateral unless there is elsewhere a specific authorization by the debtor for the secured party to file a financing statement containing a super-generic description. As to perfection of a security interest by the mandatory or permissive filing of a financing statement, see Sections 9.310 and 9.312 of the Texas UCC. For the place of filing, see Section 9.501. For the required contents of a financing statement, see Sections 9.502 through 9.505.

³⁸ This bracketed sentence is appropriate for “perfection by filing” opinions when the Financing Statements are, pursuant to the choice-of-law rules in Section 9.301 of the Texas UCC, filed in a jurisdiction where we are not admitted to the practice of law (e.g. Delaware). Note that opinion paragraph 8 above does not directly express the opinion that another jurisdiction’s UCC is the correct place for filing a financing statement, but may, depending on the use of the bracketed phrases, be tantamount to such opinion. See footnote 33 above. The determination under Section 9.301 of the Texas UCC that the UCC of another jurisdiction governs perfection can require an additional determination under, or an assumption regarding, the non-UCC law of such other jurisdiction. Section 9.301 provides that while the debtor is located in a jurisdiction, the local law (i.e., law excluding choice-of-law rules) of that jurisdiction governs perfection. A debtor that is a “registered organization” is located where it is organized. Looking at the definition of “registered organization” in Section 9.102(a)(71) of the Texas UCC leads one to the non-UCC question of whether a jurisdiction must maintain a public record showing the organization to have been organized. Typically in the case of a corporation, for example, this involves looking at the corporation laws of the jurisdiction where the debtor is organized. In the case of debtors that are Delaware corporations, Section 103(c)(7) of the Delaware General Corporation Law requires the Delaware Secretary of State to maintain the requisite public record. Comparable provisions are in Section 206(a)(4) of the Delaware Limited Liability Company Act and in Section 206(a)(4) of the Delaware Revised Uniform Limited Partnership Act. If our opinion letter covers the General Corporation Law of Delaware or, in the case of a Delaware limited liability company or Delaware limited partnership, the other statutes referred to in the preceding sentence and in footnote 79 below, we can make the determination of whether or not the Delaware UCC governs perfection by filing.

³⁹ Note that “Securities Accounts” is a term used for illustrative purposes to describe the collateral addressed by this model opinion letter. The legally controlling definition of a “securities account” is found in Section 8.501(a) of the Texas UCC. See assumption paragraph E below.

⁴⁰ In order to give this opinion, in addition to the inclusion of the assumptions set forth in paragraph E below, the Securities Account Control Agreement must contain, among other provisions, provisions providing that the Company is the entitlement holder with respect to security entitlements in such Securities Accounts, and [BANK], as securities intermediary, has agreed with the Company and the Agent that such securities intermediary shall take entitlement orders from the Agent with respect to such security entitlements without further consent of the Company. While perfection of a security interest in a securities account or other investment property may be accomplished by filing (Section 9.312(a) of the Texas UCC), perfection by control gives better priority rights (Section 9.328).

⁴¹ We refer to the Texas UCC because the choice-of-law rules in Section 9.305 of the Texas UCC make the local law of Texas govern perfection of investment property, based on the facts assumed in assumption paragraph E below.

10. With respect to that portion of the Article 9 Collateral consisting of the Deposit Accounts (as defined in the Deposit Account Control Agreement),⁴² the provisions of the Deposit Account Control Agreement⁴³ are effective to perfect the security interest of the Agent therein by “control” (within the meaning of Section 9.104 of the Texas UCC).⁴⁴
11. With respect to that portion of the Article 9 Collateral consisting of [Certificated Securities⁴⁵ (as defined in the Security Agreement)], upon the Agent taking possession in the State of Texas of such certificates which are [in bearer form] [in registered form, issued or indorsed in the name of the Agent or in blank by an effective indorsement or accompanied by undated stock powers with respect thereto duly indorsed in blank by an effective endorsement] [indorsed to the Agent or in blank], the security interest of the Agent therein is perfected by “control” (within the meaning of Section 8.106 of the Texas UCC).⁴⁶

⁴²Note that “Deposit Accounts” is a term used for illustrative purposes to describe the collateral addressed by this model opinion letter. The legally controlling definition of a “deposit account” is found in Section 9.102(a)(29) of the Texas UCC. See assumption paragraph F below.

⁴³ The requirements for control of a deposit account are stated in Section 9.104 of the Texas UCC. A deposit account may be perfected only by “control” and not by the filing of a financing statement. See Section 9.312(b)(1). This opinion assumes that the deposit accounts are not maintained with the Agent but are maintained with another depository bank and a Deposit Account Control Agreement has been entered into among the parties. In order to give this opinion, in addition to the possible inclusion of the assumptions set forth in paragraph F below, the Deposit Account Control Agreement must contain, among other provisions, a provision whereby the Depository has agreed that it shall take instructions from the Agent with respect to disposition of funds in the Deposit Accounts without further consent of the Company. (Note: if the deposit accounts were maintained with the Agent, the Agent would automatically have “control” for purposes of Section 9.104 of the Texas UCC).

⁴⁴ We refer to the Texas UCC because the choice-of-law rules in Section 9.304 of the Texas UCC make the local law of Texas govern perfection of deposit accounts, based on the facts assumed in assumption paragraph F below.

⁴⁵ If collateral consists of certificated partnership or limited liability company interests and by their terms expressly provide that it is a security governed by Chapter 8, this opinion is appropriate and the description of such interests should be inserted; however, a security interest in a partnership interest or limited liability company interest would in most cases be a “general intangible” which is subject to perfection by filing under Chapter 9 of the Texas UCC and the opinion set forth in paragraph 8 would be appropriate. Additionally, if collateral consists of uncertificated securities which are not held in a securities account, a perfection opinion based upon Sections 9.314, 9.106 and 8.106(c) of the Texas UCC would be appropriate and governing law under Section 9.305 of the Texas UCC would need to be reviewed.

Additionally, it should be noted that under Section 9.312 of the Texas UCC, a security interest in investment property (including certificated and uncertificated securities, securities accounts and securities entitlements) may be perfected by filing; however, a security interest in investment property perfected by filing is subordinate to a security interest perfected by control.

⁴⁶ While perfection of a security interest in certificated securities or other investment property may be accomplished by filing (Section 9.312(a) of the Texas UCC), perfection by control gives better priority rights (Section 9.328). We should give such an opinion only as to specified securities, such as those identified in a schedule to the Pledge Agreement, rather than as to any Certificated Securities that the Company may come to possess.

12. [IF APPLICABLE, SELECT ONE OF THE FOLLOWING TWO PARAGRAPHS REGARDING PROMISSORY NOTES:]⁴⁷

[With respect to that portion of the Article 9 Collateral consisting of the [Promissory Notes],⁴⁸ upon the Agent's taking possession in the State of Texas of the Promissory Notes, the security interest of the Agent therein is a perfected security interest under the Texas UCC.]⁴⁹

[With respect to that portion of the Article 9 Collateral consisting of the [Promissory Notes], upon [THIRD PARTY] taking possession in the State of Texas of the Promissory Notes and [THIRD PARTY] executing and delivering the [Acknowledgment Agreement], the security interest of the Agent therein is a perfected security interest under the Texas UCC.]⁵⁰

13. [The Company is not an "investment company" within the meaning of, nor subject to regulation as an "investment company" under, the Investment Company Act of 1940, as amended.]⁵¹
14. [The Company is not a "holding company" within the meaning of the Public Utility Holding Company Act of 1935, as amended.]⁵²
15. [Assuming that the Company will comply with the provisions of the Credit Agreement relating to the use of proceeds, the execution and delivery of the Credit Agreement by the Company and the making of the Loans under the Credit Agreement and the application of the proceeds thereof does not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System.]
16. [We call to your attention the fact that the Transaction Documents select the internal laws of the State of Texas as the governing law, [except, with respect to the [Security Agreement] and [Pledge Agreement], where the laws of another jurisdiction govern perfection and the effect of perfection or non-perfection].⁵³ It is our opinion that a federal or state court sitting in Texas [would/should] honor the parties' choice of the internal laws of the State of Texas as the law applicable to the Transaction Documents (to the extent set forth in such Transaction Documents) [and to the determination of whether the obligations created by the Transaction Documents are usurious]⁵⁴.]⁵⁵

⁴⁷ A promissory note is an "instrument". See Sections 9.102(a)(47) and (66) of the Texas UCC. As such, perfection of a security interest in promissory notes or other instruments may be accomplished by filing (Section 9.312(a) of the Texas UCC), perfection by control gives better priority rights (Section 9.330).

⁴⁸ If collateral consists of promissory notes (or other instruments), negotiable documents, goods, money or tangible chattel paper, this opinion is appropriate and such type of collateral should be clearly defined. See Section 9.313 of the Texas UCC.

Additionally, it should be noted that under Section 9.312 of the Texas UCC, a security interest in instruments, negotiable documents and tangible chattel paper may be perfected by filing; however, a security interest in such collateral perfected by filing may be subordinate to a security interest perfected by possession.

⁴⁹ It should be noted that if such collateral is in the possession of an agent of the secured party for the purposes of possessing on behalf of the secured party and such agent is not also an agent of the debtor (nor closely related to or connected to or controlled by the debtor), the secured party has taken actual possession and there is no need to rely on a third-party acknowledgement.

⁵⁰ This opinion would be appropriate if such collateral is delivered to or in the possession of a person other than the secured party (such as a bailee) and such person executes (or authenticates) an acknowledgement that it holds possession of the collateral for the benefit of the secured party. See Section 9.313(c) of the Texas UCC.

⁵¹ It is advisable not to include this opinion in the first draft, and if such opinion is ultimately included, such opinion should be subject to review by a Firm attorney having expertise in the Investment Company Act.

⁵² It is advisable not to include this opinion in the first draft, and if such opinion is ultimately included, such opinion should be subject to review by a Firm attorney having expertise in the Public Utility Holding Company Act.

⁵³ This bracketed sentence must be conformed to the actual governing-law language used in the applicable Transaction Documents.

⁵⁴ If the transaction involves a loan which is potentially related to the usury laws of any jurisdiction, the opinion recipient may request a clause similar to the bracketed clause, giving comfort that the choice-of-law opinion is also applicable to the usury

17. [REGULATORY OPINIONS – IF REQUIRED, CONSULT WITH REGULATORY COUNSEL]

In rendering the foregoing opinions, we have also assumed, with your permission, and without independent investigation on our part, the following:

A. With respect to our opinions set forth in paragraphs 7 through 12 above, we have assumed that the Company has, or has the power to transfer, rights in the properties in which it is purporting to grant a security interest sufficient for attachment of such security interest within the meaning of Section 9.203 of the Texas UCC.

B. With respect to our opinions set forth in paragraphs 7 through 12 above, we have assumed that the Agent has acquired its interests in the Article 9 Collateral for value within the meaning of Section 9.203 of the Texas UCC.

C. With respect to our opinions set forth in paragraphs 7 through 12 above, we have assumed the descriptions of collateral contained in or attached as schedules to, the [Security Agreement] [Pledge Agreement] [(other than the Financing Statements)]⁵⁶ sufficiently describe (for the purposes of the attachment and perfection of security interests) the collateral intended to be covered thereby.⁵⁷

D. With respect to our opinion set forth in paragraph 8 above, we have [assumed] [relied on the Company's articles of incorporation and the certificate described in paragraph (a) of the qualifications and exceptions below as the basis for determining that] (i) [INSERT COMPANY NAME] is the correct legal name of the Company, (ii) the correct organizational identification number⁵⁸ of the Company is as set forth on the Financing Statements and (iii) the Company is solely organized under the laws of the State of _____.⁵⁹

issue. However, note that an opinion that the Transaction Documents are valid, binding and enforceable under the laws of a given jurisdiction, given in opinion paragraph 4 above, would ordinarily subsume the usury determination under such laws.

⁵⁵ This bracketed opinion paragraph may be used if we are asked to give a choice-of-law opinion other than as subsumed in the the enforceability opinion set forth in opinion paragraph 4 above. If we are not permitted to rely on Section Section 35.51 of the Texas Business and Commerce Code cited in qualification (e) below, this bracketed opinion paragraph should not be included unless there are sufficient Texas contacts to support the choice of Texas governing law under general choice-of-law principles. In such cases, if we decide to give a “should” level opinion, inclusion of the bracketed paragraph in the first draft is advisable since it is a more qualified opinion than the enforceability of Texas choice of law provisions that would otherwise be covered by the enforceability opinion set forth in opinion paragraph 4 above.

⁵⁶ The parenthetical exclusion of the Financing Statements from this qualification, *i.e.*, our *not* making the assumption regarding the adequacy of descriptions of the collateral therein, is appropriate if the collateral is described as “all assets” or “all personal property” or as a type of collateral defined in the Texas UCC other than commercial tort claims or certain collateral in consumer transactions. Note that “all assets” or “all personal property” is *not* sufficient for purposes of the Security Agreement or Pledge Agreement. See Sections 9.108 and 9.504 of the Texas UCC.

⁵⁷ See Section 9.108 of the Texas UCC as to the sufficiency of descriptions of collateral in security agreements. Section 9.504 of the Texas UCC states the sufficiency of description of collateral required in financing statements where Texas is the state in which perfection occurs. It should be noted that if the collateral includes a commercial tort claim, it must be specifically described in the Security Agreement. If required by the opinion recipient, we can assume correct factual descriptions and, based on that assumption, opine to the legal sufficiency of the descriptions. In some cases the collateral will be of a nature that we need not make the factual assumption, such as collateral consisting of a contract or security known to us.

⁵⁸ Pursuant to Section 9.516(b)(5)(C) of the Texas UCC, filing of a financing statement does not occur if the filing office refuses to accept it because the debtor is an organization and the financing statement does not provide (i) the type of organization, (ii) the debtor's jurisdiction of organization, and (iii) the organizational identification number or indicate that the debtor has none.

⁵⁹ It should be noted that, for purposes of determining, pursuant to Section 9.301(a) and 9.307(b) of the relevant UCC, if the debtor is a “registered organization” (such as a corporation, limited liability company or limited partnership) organized under state law, diligence should be conducted to establish that such entity has no legal existence outside of the state of organization; a search of such state's public filings (such as a long-form good standing and copies of all documents on file with the relevant Secretary of State) would provide such information. However, if such diligence is not possible or appropriate, it may be appropriate to base such opinion on reliance on an officer's certificate of the debtor certifying that “such entity is solely organized under the laws of the State of _____.” Alternatively, it may be appropriate to delete the bracketed reference to reliance on articles or incorporation (or a comparable constituent document) and an officer's certificate and simply keep the assumption set forth in clause (ii) of paragraph D above. Additionally, the assumptions in clause (i) and (iii) of paragraph D may

E. With respect to our opinion set forth in paragraph 9 above, we have assumed that [BANK] as securities intermediary will comply with its obligations under the Securities Account Control Agreement and shall at all times (i) act as a “securities intermediary” (within the meaning of Section 8.102(a)(14) of the Texas UCC) in maintaining the Securities Accounts, (ii) hold and maintain each Securities Account as a “securities account” (within the meaning of Section 8.501(a) of the Texas UCC), (iii) identify the Company in its records as the “entitlement holder” (within the meaning of Section 8.102(a)(7) of the Texas UCC) of the security entitlements carried in the Securities Accounts, (iv) identify as being credited to the Securities Accounts each financial asset of the Company maintained in the Securities Accounts, (v) hold and treat all property credited by [BANK] to the Securities Accounts as financial assets under Chapter 8 of the Texas UCC to the extent that a security intermediary’s express agreement to such treatment is required under Section 8.102(a)(9)(C) of the Texas UCC in order for such property to constitute “financial assets” (within the meaning of Section 8.102(a)(9) of the Texas UCC) and obtain indorsement, to [BANK] or in blank, of any asset credited to the Securities Accounts that is registered in the name of, payable to the order of, or specially indorsed to any Person other than [BANK], (vi) comply with all entitlement orders of the Agent in connection with all security entitlements in the Securities Accounts (without further consent of the entitlement holder), (vii) not identify in its records any person as entitlement holder with respect to any Securities Account (or any security entitlement therein) other than the person specified as entitlement holder with respect thereto in the Securities Account Control Agreement, and (viii) agree not to comply with entitlement orders of any person or entity with respect to any Securities Account (or any security entitlement therein), except the person or entity authorized in the Securities Account Control Agreement to give entitlement orders with respect thereto. [Additionally, we have assumed that the Securities Accounts will at all times be maintained at an office of [BANK] located in the State of Texas and the agreement between the Company and [BANK] pertaining to the Securities Accounts specifies that it is governed by the law of the State of Texas.]⁶⁰

F. With respect to our opinion set forth in paragraph 10 above, we have assumed that (i) [the Depository is a “bank” within the meaning of Section 9.102(a)(8) of the Texas UCC;]⁶¹ (ii) the Depository shall hold and maintain each Deposit Account as a “deposit account” (within the meaning of Section 9.102(a)(29) of the Texas UCC); (iii) [the Deposit Accounts will at all times be maintained at an office of the Depository located in the State of Texas] [the agreement between the Company and the Depository pertaining to the Deposit Accounts specifies that it is governed by the law of the State of Texas];⁶² and (iv) the Depository will comply with its obligations under the Deposit Account Control Agreement.

G. With respect to our opinions set forth in paragraphs 11 and 12 above, we have assumed that such [Certificated Securities] [Promissory Notes] will at all times be held by the Agent in the State of Texas.

The opinions set forth above are subject to the following qualifications and exceptions:

be appropriate if the diligence has not been conducted, and the inclusion of such assumptions may be dependent on the factual circumstances surrounding our representation. It should be noted that if a Transaction Document contains representations of the Company as to the matters set forth in clauses (i) through (iii) of paragraph D, the assumption set forth in the text surrounding footnote 11 should be sufficient.

⁶⁰ This assumption may be necessary if there is no provision in the Securities Account Control Agreement stating that the “securities intermediary’s jurisdiction” for purposes of Chapter 9 of the Texas UCC is Texas. See Section 8.110(e)(1) of the Texas UCC (where the selection is to be made “for the purposes of this subchapter, this chapter, or this title”).

⁶¹ This bracketed clause may not be necessary depending upon whom the institution is that is holding the accounts. If we have due diligence or knowledge establishing that the institution meets the definitional tests for a “bank” in Section 9.102(a)(8) of the Texas UCC, then this bracketed clause is not necessary. Conversely, if the institution is not a “bank”, then opinion paragraph 10 is not appropriate and the related assumption paragraph F is not applicable. A “deposit account” is defined in Section 9.102(a)(29) of the Texas UCC to be an account maintained with a “bank”. The rules for perfection of a security interest in a deposit account by control in Section 9.104 of the Texas UCC likewise refer to an account with a “bank”.

⁶² Depending upon the particular fact pattern, either of these assumptions may be necessary if there is no provision in the Deposit Account Control Agreement stating that the “bank’s jurisdiction” for purposes of Chapter 9 of the Texas UCC is Texas. See Section 9.304(b)(1) of the Texas UCC (where the selection is to be made “for the purposes of this subchapter, this chapter, or this title”).

(a) With respect to our opinion set forth in paragraph 1 above, we have relied solely on the certificate, dated _____, of the Secretary of State of the State of _____ and, with respect to the period from that date to the date of this opinion letter, [a certificate of an officer of the Company] [the related bring-down letter dated _____].

(b) The enforceability of each Transaction Document and the provisions thereof may be limited by bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium or other laws now or hereafter in effect relating to or affecting enforcement of creditors' rights generally and by general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether such enforcement is considered in a proceeding in equity or at law.⁶³

(c) With respect to our opinion set forth in paragraph 4 above, we express no opinion with respect to the validity or enforceability of the following provisions to the extent that they are contained in the Transaction Documents:⁶⁴ (i) provisions releasing, exculpating or exempting a party from, or requiring indemnification or contribution of a party for, liability for its own negligence or to the extent that the same are inconsistent with public policy; (ii) provisions purporting to waive, subordinate or not give effect to rights to notice, demands, legal defenses or other rights or benefits that cannot be waived, subordinated or rendered ineffective under applicable law; (iii) provisions purporting to provide remedies inconsistent with applicable law; [(iv) provisions purporting to render void and of no effect any transfers of the Company's rights in any collateral in violation of the terms of the Transaction Documents;] [(v) [other than with respect to our opinions set forth in paragraphs 7 through 12 above,] provisions relating to the creation, attachment, perfection or enforceability of any security interest;]⁶⁵ (vi) provisions relating to [powers of attorney,]⁶⁶ severability or set-offs; [(vii) provisions stating that a guarantee will not be affected by a modification of the obligation guaranteed in cases in which that modification materially changes the nature or amount of such obligation;] (viii) provisions restricting access to courts or purporting to affect the jurisdiction or venue of courts; [(ix) provisions relating to waiver of jury trial;] (x) provisions purporting to exclude all conflicts-of-law rules; [(xi) provisions pursuant to which a party agrees that a judgment rendered by a court or other tribunal in one jurisdiction may be enforced in any other jurisdiction;] and (xii) provisions providing that decisions by a party are conclusive or may be made in its sole discretion. [Additionally, with respect to our opinion set forth in paragraph 4 above, such opinion is subject to possible judicial action giving effect to governmental actions or foreign laws affecting creditors' rights.]⁶⁷

⁶³ Note that this paragraph's qualifications are not specifically made with reference to our enforceability opinion in paragraph 4. If, for example, the transactions include a security interest which is a fraudulent transfer, this may also affect the opinion in paragraph 7 that the security interest has been validly created and consequently also affect our opinion in paragraph 8 and other opinion paragraphs that the security interest is or will be perfected.

⁶⁴ This lists opinion exceptions commonly needed in connection with the types of documents we generally opine on. It is not meant either as a mandatory list of exceptions that must be included in every opinion or an exhaustive list of all possible exceptions. If the Transaction Documents do not contain one or more of the provisions addressed in the exceptions, those exceptions should be deleted from the opinion.

⁶⁵ To the extent that the documents that we are opining to in this opinion do not contain any provisions granting a security interest, this qualification is not necessary. To the extent that the documents that we are opining to in this opinion contain provisions granting a security interest and we are not giving any opinion as to the creation, attachment or perfection of any security interest, then this qualification should be included without the bracketed language in the first portion of such qualification. If we are opining in this opinion as to the creation, attachment or perfection of any security interest contained in the documents which are the subject of this opinion, this qualification should be included with the bracketed language in the first portion of such qualification.

⁶⁶ A reasonably specific power of attorney may not require an exception, such as the power of a collateral agent to indorse the name of the Company on checks made payable to the Company (that are received, for example, in a lockbox in payment of pledged accounts receivable). We should take exception to broad powers of attorney, such as the power to do all acts in the name of the Company that are required by the Transaction Documents.

⁶⁷ Qualification is appropriate if the Company or an affiliate controlling the Company is a non-U.S. entity or the transaction has substantial contacts with foreign jurisdictions or collateral is located in a foreign jurisdiction or collateral consists of securities issued by a foreign entity.

[NOTE: FOR QUALIFICATIONS RELATING TO THE ENFORCEABILITY OF CERTAIN SPECIFIED PROVISIONS THAT MAY BE INCLUDED IN THE TRANSACTION DOCUMENTS, SUCH AS ARBITRATION PROVISIONS OR THE PREVENTION OF VOLUNTARY BANKRUPTCY FILING, PLEASE SEE THE ATTACHED LIST OF ADDITIONAL QUALIFICATIONS.]

(d) [In rendering our opinion set forth in paragraph 4 above: (i) [We express no opinion as to the enforceability of any provision of any Transaction Document to the extent it requires the Company to indemnify any other party to such Transaction Document against loss in obtaining the currency due under such Transaction Document from a court judgment in another currency] [(ii) We express no opinion with respect to the validity or enforceability of (A) any provisions providing for liquidated damages to the extent that they may be deemed a penalty or (B) any provisions providing for voting of claims in bankruptcy.]]⁶⁸

(e) Insofar as our opinion set forth in paragraph 4 above⁶⁹ relates to the enforceability under Texas law of the provisions of the Transaction Documents choosing Texas law as the governing law thereof, such opinion is rendered [solely]⁷⁰ in reliance upon Section 35.51 of the Texas Business and Commerce Code, which applies to transactions in which a party pays or receives, or is obligated to pay or entitled to receive, consideration in excess of \$1,000,000, and is subject to the qualifications that such enforceability (i) as specified in Section 35.51, does not apply to an issue that another Texas statute (such as Section 1.105(b) of the Texas UCC), or a federal statute, provides is governed by the law of a particular jurisdiction, (ii) may be limited by public policy considerations of any jurisdiction in which enforcement of such provisions is sought, and (iii) is subject to any U.S. Constitutional requirement under the Full Faith and Credit Clause or the Due Process Clause thereof or the exercise of any applicable judicial discretion in favor of another jurisdiction.

(f) Certain of the remedial provisions with respect to the Article 9 Collateral (including waivers with respect to the exercise of remedies against the collateral) contained in the [Security Agreement] [Pledge Agreement] may be unenforceable in whole or in part, but the inclusion of such provisions does not affect the validity of the [Security Agreement] [Pledge Agreement], taken as a whole, and the [Security Agreement] [Pledge Agreement], taken as a whole, together with applicable law, contains adequate provisions for the practical realization of the benefits intended to be provided thereby (it being understood that we express no opinion as to the adequacy of such provisions to the extent it is necessary to seek execution or enforcement of rights or remedies under the laws of any jurisdiction outside the State of Texas). [Additionally, we note that the remedies under the [Pledge Agreement] to sell or offer for sale the Article 9 Collateral are subject to compliance with applicable state and federal securities laws.]

(g) In rendering the opinion expressed in paragraph 5(c) above: (i) we have not reviewed, and express no opinion with respect to, documents other than the Applicable Contracts, irrespective of whether they secure, support or otherwise relate to or are referred to in the Applicable Contracts or might under certain circumstances result in an event of default or require early payment under any of the Applicable Contracts; (ii) we have made no examination of, and express no opinion with respect to, any financial, accounting or similar covenant or provision contained in the Applicable Contracts to the extent that any such covenant or provision would require a determination as to any financial or accounting matters; (iii) we express no opinion as to any breach of any

⁶⁸ This qualification paragraph is unnecessary to the extent that the Transaction Documents and the structure of the transactions contemplated thereby do not raise the issues suggested by the bracketed provisions. However, the Transaction Documents or the transactions contemplated may raise other issues that should result in qualifications being inserted into the opinion letter. Note that some qualifications, such as the fraudulent transfer qualification in paragraph (b) above, may relate not only to the enforceability opinion but also to the attachment and perfection of security interests.

⁶⁹ As noted in footnote 55 above, bracketed opinion paragraph 16 above would not ordinarily be included if we are permitted to rely on Section 35.51 of the Texas Business and Commerce Code, cited in qualification (e), in a transaction to which Section 35.51 applies. If opinion paragraph 16 is included, then the reference in the first line of qualification (e) should be changed so that it refers to our opinions in paragraphs 4 and 16 above, rather than just to our opinion in paragraph 4 above. If we are not permitted to rely Section 35.51, we should nevertheless try to preserve clauses (ii) and (iii) in qualification (e), unless we are fully comfortable with the sufficiency of the Texas contacts.

⁷⁰ Depending on the extent to which traditional choice-of-law contacts are sufficient to support a choice of Texas governing law in the Transaction Documents, we may decide to delete the word “solely” or to delete paragraph (e) entirely.

confidentiality provision contained in any Applicable Contract caused by any Transaction Document or the Company's actions pursuant thereto or in contemplation thereof; and (iv) our opinion in paragraph 5(c) is limited to the laws of the State of Texas. [Most of the Applicable Contracts provide that they are governed by _____ law; however, some provide that they are governed by _____ law, and others specify other governing law.] In every case, we have assumed that a court would enforce the Applicable Contracts as written and we have limited our opinion to matters readily ascertainable from the face of the Applicable Contracts.

(h) In the case of property which becomes Article 9 Collateral after the date hereof, our opinion in paragraph 7 above, as to the creation and validity of the security interests therein described, is subject to the effect of Section 552 of the Federal Bankruptcy Code, which limits the extent to which property acquired by a debtor after the commencement of a case under the Federal Bankruptcy Code may be subject to such security interest arising from a security agreement entered into by the debtor before the commencement of such case.

[(i) We express no opinion as to Article 9 Collateral that is subject to a state statute or a statute, regulation or treaty of the United States referred to in [Section 9.311(a) of the Texas UCC] [or][Section 9-311(a) of the _____ UCC]⁷¹.]⁷²

[(j) With respect to our opinion in paragraph 8 above, we express no opinion as to the perfection of a security interest in any items of collateral that are or are to become [fixtures]⁷³ [as-extracted collateral] [timber to be cut.].]⁷⁴

(k) With respect to our opinions set forth in paragraphs 7 through 12 above, we express no opinion as to the priority of any security interest.⁷⁵

(l) We express no opinion herein regarding the enforceability of any provision in a Transaction Document that purports to prohibit, restrict or condition the assignment of such Transaction Document to the extent that such restriction on assignability is governed by Sections 9.406 through 9.409 of the Texas UCC.

(m) With respect to our opinions set forth in paragraphs 7 through 12 above, the attachment and perfection of the Agent's security interest in proceeds is limited to the extent set forth in Section 9.315 of the Texas UCC [or Section 9-315 of the _____ UCC]⁷⁶.

⁷¹ The UCC of the state or states, referred to in our opinion letter, whose laws govern perfection by filing should be referred to here. Section 9.311 describes when the filing of a financing statement is not necessary or effective and compliance with other laws is the equivalent of filing a financing statement.

⁷² Note that this qualification paragraph is not necessary if our opinion remains worded as stated in opinion paragraph 8 above. Such opinion covers perfection by filing a financing statement only to the extent that such filing can be effective under Article 9.

⁷³ "Fixtures" are defined in Section 9.102(a)(41) of the Texas UCC. Section 9.501(a) provides that fixture filings are filed in the office where a mortgage on the related real property is filed. Note that for pipeline companies or other "transmitting utilities" as defined in Section 9.102(a)(81) of the Texas UCC, a financing statement covering fixtures may be filed with the office of the Secretary of State. See Section 9.501(b) of the Texas UCC.

⁷⁴ We ordinarily do not give perfection opinions regarding filings required by Section 9.501(a) of the Texas UCC to be made locally, although such an opinions may be given with the proper due diligence. Qualification paragraph (j) should not be used if the Article 9 Collateral does not include the types of property referred to in such paragraph.

⁷⁵ While priority opinions are to be avoided in most circumstances, if a priority opinion is given, in addition to various other assumptions and qualifications, the following qualification is appropriate:

"We express no opinion as to the priority of any security interest in [insert type of collateral for which a priority opinion is being given] against (i) any liens, claims or other interests or rights that arise by operation of law and take priority over perfected security interests, (ii) any lien or claim in favor of the United States or any agency or instrumentality thereof or (iii) any lien or claim in favor of any state or agency or instrumentality thereof under applicable state law."

⁷⁶ The proceeds rules of Section 9.315 deal with both attachment and perfection. This model opinion letter assumes that Texas law is applicable to the creation or attachment of security interests. In addition, if another jurisdiction's UCC is applicable as to perfection, then that jurisdiction's UCC should also be referred to here.

(n) We express no opinion as to any actions that may be required to be taken periodically under the Texas UCC, [the ____ UCC]⁷⁷ or under any other applicable law in order for the effectiveness of the Financing Statements or perfection of any security interest to be maintained.

(o) In rendering the opinion set forth in paragraph 9 above, we call to your attention that security entitlements and rights of entitlement holders are governed by Part 5 of Chapter 8 of the Texas UCC⁷⁸ and our opinion in paragraph 9 above is subject to such Part 5. In rendering such opinion, we express no opinion as to any specific financial asset in any Securities Account. In addition, with respect to security entitlements in Permitted Investments (as defined in the ____ Agreement), our opinion does not apply to the extent that Chapter 8 or Chapter 9 of the Texas UCC is preempted by applicable federal law or regulation, and we express no opinion with respect to the requirements or effect of federal book entry securities regulations as to U.S. treasury securities or other investments which may from time to time be included in the Article 9 Collateral.

We express no opinion as to the laws of any jurisdiction other than: (i) [Applicable Laws] [the laws of the State of Texas]; [and] (ii) [with respect to our opinions set forth in paragraphs 2 and 3 above, the General Corporation Law of the State of Delaware;⁷⁹ [and] (iii)] the federal laws of the United States of America[; and [(iv)] based solely on the certificates of public officials previously identified, the laws of the State of [_____] regarding our opinion with respect to the Company's qualification to do business and good standing as a corporation in the State of _____]⁸⁰. [We call to your attention that certain of the Transaction Documents are governed by laws of jurisdictions other than those described above and we express no opinion as to the effect of any such other laws on the opinions expressed herein.]

This opinion letter is rendered as of the date set forth above. We expressly disclaim any obligation to update this letter after such date.

This opinion letter is given solely for your benefit [and the benefit of the Lenders] in connection with the transactions contemplated by the Transaction Documents and may not be furnished to, or relied upon by, any other person or for any other purpose without our prior written consent[, except that this opinion letter may be disclosed to any person to the extent necessary to avoid treatment of such transactions as "confidential transactions" under Treasury Regulation section 1.6011-4]⁸¹.

Very truly yours,

[LAW FIRM]

⁷⁷ Include if the UCC of another state was referred to in paragraph 8.

⁷⁸ The reference to Chapter 8 of the Texas UCC should be changed to Article 8 of a different jurisdiction's UCC if, under the choice-of-law rules of Section 8.110(b) of the Texas UCC, the local law of a different jurisdiction governs the matters referred to in this qualification paragraph.

⁷⁹ If the Company is a Delaware limited partnership or limited liability company, the Revised Uniform Limited Partnership Act or the Limited Liability Company Act, as in effect in the State of Delaware should be listed, as applicable.

⁸⁰ If we give a good standing opinion relating to a jurisdiction other than Texas, such opinion is given in reliance upon a good standing certificate issued by such jurisdiction.

⁸¹ The bracketed clause need be included only if the opinion addresses the purported or claimed Federal income tax treatment of the transactions contemplated by the Transaction Documents or contains any fact that may be relevant to understanding the purported or claimed Federal income tax treatment of the transactions. If the opinion letter drafter has any question regarding whether or not to include the bracketed clause, please consult a Firm tax attorney.

[IN THE ACTUAL OPINION LETTER, USE A NEW PAGE FOR EACH SCHEDULE.]

SCHEDULE I TO OPINION LETTER

Addressees

SCHEDULE II TO OPINION LETTER

Financing Statements

The following financing statements on form UCC-1, naming the Person listed below as debtor and the Agent as secured party for the benefit of the Lenders, to be filed in the office listed opposite the name of such debtor:

Name of Debtor	Filing Office

SCHEDULE III TO OPINION LETTER

Part A. Applicable Contracts.

Part B. Applicable Orders.

[ADDITIONAL QUALIFICATIONS FOR MODEL TEXAS OPINION LETTER]
[INSERT THESE OR OTHERS AS NEEDED]

ADDITIONAL QUALIFICATIONS⁸²

1. Qualification re: enforceability of arbitration provisions:

“We note that under Applicable Law, for various reasons, including the public policy of the State of Texas and the United States of America, certain claims may not be found to be legally arbitrable. Accordingly, for purposes of our opinion, we have assumed (i) that any claim sought to be arbitrated does not involve either (x) a matter of statutory interpretation or (y) a matter of public policy or illegality, which, in either case, would preclude the arbitrability of such claim and (ii) that the public policy of the State of Texas and the United States of America is to favor compelling the parties to arbitrate. We further wish to note that we have based our opinion upon an assessment of legal authorities that would be applicable to judicial proceedings, and we call to your attention the existence of differences between arbitral and judicial processes.”

2. Qualification re: enforceability of provision purporting to prevent a voluntary bankruptcy filing:

“With respect to our opinion set forth in paragraph 4 above, we express no opinion as to provisions purporting to limit or restrict the rights of any Person to file a petition seeking the voluntary bankruptcy of such Person or any other Person.”

3. Qualification re: provisions relating to compliance with “other laws”:

“With respect to our opinion set forth in paragraph 4 above, we express no opinion as to the enforceability of any provision of any Transaction Document to the extent that such Transaction Document refers to, or requires compliance with, with the provisions of, any law, rule or regulation (other than Applicable Laws).”

4. Qualification re: waiver of immunity.

“Our opinion regarding the enforceability of any waivers of immunity set forth in any Transaction Document is subject to the limitations imposed by the United States Foreign Sovereign Immunities Act of 1976.”

5. Qualification re: enforceability of a document, as amended:

“Our opinions are based solely on our reading of the _____ Agreement. We note that the enforceability of the _____ Agreement may be affected by the parties’ course of dealing, or by waivers, modifications or amendments (whether made in writing, orally, or by course of conduct), and we express no opinion on the effect of the foregoing on the enforceability of the _____ Agreement.”

6. Qualification relating to provision requiring the Company to perform under Project Agreements (where our opinion relates to loan documents or other limited transactional documents other than the Project Agreements):

“With respect to any provision of the Transaction Documents pursuant to which the Company agrees to perform or guarantees that it will perform its obligations under the Project Agreements, we note that our opinions herein are limited to the Transaction Documents and the provisions thereof and we express no opinion as to (i) any Project Agreement or any provision thereof, or (ii) the effect of any Project Agreement and the provisions thereof on the opinions contained herein regarding the Transaction Documents.”

⁸² Some of these additional qualifications, or others, may be appropriate, depending on the provisions of the Transaction Documents and the transactions contemplated thereby.

APPENDIX B

Bibliography

1. Texas Publications

State Bar of Texas Business Law Section, *Report of the Legal Opinions Committee regarding Legal Opinions in Business Transactions*, June 1, 1992, BULLETIN OF THE BUSINESS LAW SECTION OF THE STATE BAR OF TEXAS, Vol. 29, Nos. 2 and 3 (June - September 1992) [the “*Texas Legal Opinion Report*”], as supplemented by *Supplement No. 1 to the Texas Legal Opinion Report* prepared by the Subcommittee on Legal Opinions Regarding Usury, BULLETIN OF THE BUSINESS LAW SECTION OF THE STATE BAR OF TEXAS, Vol. 31, No. 4 (December 1994), and *Supplement No. 2 to the Texas Legal Opinion Report* prepared by David R. Keyes and Gail Merel as Co-Chairmen of the Subcommittee on Legal Opinions Regarding Investment Property Collateral, approved by the Legal Opinions Committee on January 10, 2001, TEX. J. BUS. LAW, Vol. 37, No. 2 (Spring 2001). The *Texas Legal Opinion Report* and its Supplements should be available at the website of the Business Law Section of the State Bar of Texas at www.texasbusinesslaw.org.

State Bar of Texas Section of Real Estate, Probate and Trust Law, OPINION LETTERS IN MORTGAGE LOAN TRANSACTIONS, 1996 Texas Supplement.

2. Significant Other Publications Regarding Legal Opinions Likely To Be of Interest to Texas Attorneys

American Bar Association, Section of Business Law, Committee on Legal Opinions, *Third-Party Legal Opinion Report, Including the Legal Opinion Accord*, 47 BUS. LAW 167 (1991).

American Bar Association, Section of Business Law, Committee on Legal Opinions, *Legal Opinion Principles*, 53 BUS. LAW 831 (1998).

American Bar Association, Section of Business Law, Committee on Legal Opinions, *Guidelines for the Preparation of Closing Opinions*, 57 BUS. LAW 875 (2002).

Association of the Bar of the City of New York, Committee on Real Property Law, Subcommittee on Mortgage Loan Opinions, and the New York State Bar Association, Real Property Section, Attorney Opinion Letters Committee, *Mortgage Loan Opinion Report*, 54 BUS. LAW 119 (1998).

Field, LEGAL OPINIONS IN BUSINESS TRANSACTIONS (Practising Law Institute, 2003)

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RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 51,52 & 95 (2000).

TriBar Opinion Committee, *Third-Party “Closing” Opinions*, 53 BUS. LAW 591 (1998).

TriBar Opinion Committee, *Special Report of The TriBar Opinion Committee: U.C.C. Security Interest Opinions—Revised Article 9*, 58 BUS. LAW __ (2003), which replaces the earlier TriBar Opinion Committee, *U.C.C. Security Interest Opinions*, 49 BUS. LAW. 359 (1993).