

I have not prepared an outline discussing the purpose and structure of legal opinions in secured transactions. The reason is simple. This task has been done well by various authors, task forces and committees—with the resources collected by the American Bar Association in one place, on the web, for free and capable of printing.

Specifically, you should read: Special Report of The TriBar Opinion Committee: U.C.C. Security Interest Opinions—Revised Article 9, available at <http://apps.americanbar.org/buslaw/tribar/materials/20050303000011.pdf>

The ABA general opinion materials collection site appears here: <http://apps.americanbar.org/buslaw/tribar/>

## FORM OF SECURITY INTEREST OPINION

[Letterhead of Counsel to Borrower]

[insert Closing Date]

To each lender party to the  
Loan and Security Agreement referred to below

Ladies and Gentlemen:

We have acted as [special local] counsel to **BORROWER LEGAL NAME●**, a **BORROWER ENTITY TYPE●** (the “Debtor”), in connection with the negotiation, execution and delivery of that certain Loan and Security Agreement, dated as of **MONTH● DAY●, YEAR●** (the “Loan Agreement”), between the Debtor and **LENDER LEGAL NAME●**, a **LENDER ENTITY TYPE●** (the “Secured Party”).

In giving this opinion, we have reviewed the Loan Agreement and the other “Loan Documents” as defined therein [**specify other documents**] (collectively, the “Transaction Documents”). Capitalized terms used in this opinion without definition have the meanings assigned to such terms in the Transaction Documents. Unless otherwise indicated, references in this opinion to the “UCC” refer to the Uniform Commercial Code of the State of **[STATE]●** and references to “Section” refer to sections of the UCC.

We have reviewed such documents and made such examination of law as we have deemed necessary or appropriate to give the opinions set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to our opinions, on representations and warranties made in the Transaction Documents and certificates and other inquiries of officers of Debtor and the its Subsidiaries **[and specify others]**.

We express no opinion regarding the attachment, perfection or priority of any lien or security interest except as specifically set forth in this letter.

1. The Transaction Documents are effective to create in favor of the Secured Party, as security for the Secured Obligations, a security interest (the “Article 9 Security Interest”) in the collateral described in the Security Agreement in which a security interest may be created under Article 9 of the UCC (the “Article 9 Collateral”).

2. Upon the filing of the financing statement in the form attached hereto (the “Financing Statement”) with the **[specify any applicable filing office(s)]** (the “UCC Filing Office”), the Article 9 Security Interest in that portion of the Article 9 Collateral in which a security interest may be perfected by the filing of a financing statement under the UCC will be perfected.

3. The security interest in any Article 9 Collateral consisting of negotiable documents, goods, instruments, money or tangible chattel paper will be perfected upon the Secured Party’s taking possession of such collateral. The security interest in any Article 9 Collateral consisting of certificated securities will be perfected upon the Secured Party’s taking delivery of such collateral. We express no opinion as to the perfection by possession or delivery of the security interest of the Secured Party in any portion of such Article 9 Collateral, the continuous possession of which is not maintained by the Secured Party in the State of **[STATE]●**. In addition, we call to your attention that perfection (and the effect of perfection and non-perfection) of the security interest of the Secured Party in certificated securities may be governed by laws other than those of the UCC to the extent the certificated securities become located in a jurisdiction other than the State of **[STATE]●**, and have assumed that the Secured Party has taken, and will continue to maintain, legal possession of such certificated securities in the State of **[STATE]●**.

4. Upon the delivery, in the State of **[STATE]●**, to the Secured Party of the stock certificates listed on Exhibit \_\_\_ hereto (the “Pledged Stock”) and the related stock powers pursuant to the Pledge Agreement and assuming that the Secured Party had no

notice of an adverse claim (within the meaning of Section 8-105) with respect to the Pledged Stock at the time the Pledged Stock is delivered to the Secured Party, the security interest in the Pledged Stock created in favor of the Secured Party under the Pledge Agreement will constitute a perfected security interest in the Pledged Stock, free of any “adverse claim” (as defined in Section 8-102). We call to your attention that in the case of the issuance of additional shares or other distributions in respect of the Pledged Securities, the security interests of the Secured Party therein will be perfected only if possession thereof is obtained or other action appropriate to the nature of the distribution is taken, in either case, in accordance with the provisions of the UCC and other applicable law.

5. The security interest in the [deposit account/securities account] will be perfected upon the execution and delivery of the [specify applicable Control Agreements] by the Debtor, the Secured Party and the [Depository Bank/Commodities Intermediary/Securities Intermediary]. We assume the following: (A) [Name of Depository Institution] is a “bank,” within the meaning of Section 9-102(a)(8), with which the deposit accounts described in [specify applicable Control Agreement] are maintained; (B) the account described in the [specify applicable Control Agreement] is a “deposit account” within the meaning of Section 9-102(a)(29); (C) [Name of Securities Intermediary] is a “securities intermediary” as defined in Section 8-102; (D) the [Investment Account] described in the [specify applicable Control Agreement] is a “securities account” as defined in Section 8-501(a) and all property from time to time credited to the [Investment Account] is a “financial asset” as defined in Section 8-102(a)(9); and, (E) all such collateral is located, within the meaning of Sections 9-304 and 9-305, only in the State of [STATE]●. No opinion is expressed with respect to the perfection or priority of security interests in “letter of credit rights” as defined in the UCC.

6. For purposes of this opinion, we have reviewed the Search Report dated \_\_\_\_\_, based on a search conducted by \_\_\_\_\_ (the “Search Report”), of UCC financing statements filed in the Filing Office naming as debtor the Debtor identified in the Search Report and on file in the Filing Office through \_\_\_\_\_ (the “Effective Date”). The Search Report sets forth the proper filing office and the proper name of the Debtor necessary to identify those [secured parties] who under the [ ] UCC have, as of the Effective Date, financing statements on file against the Debtor indicating any of the Article 9 Collateral, as of the Effective Date. [Except for \_\_\_\_\_,] [T][t]he Search Report identifies no still-effective financing statement naming the Debtor as debtor and indicating any of the Article 9 Collateral filed in the Filing Office, prior to the

[Effective Date] [filing in the Filing Office of the Financing Statement]. This opinion covers only the Article 9 Collateral and does not address the priority of any other collateral or property referenced in any financing statement listed in the Search Report.

7. Other than as stated below, the choice of [New York] law as the governing law in the Loan and Security Agreement will be given effect under [STATE] law. We note that Section \_\_\_ of the Loan and Agreement provides that the Loan and Security Agreement and all issues arising thereunder shall be governed by the laws of the State of \_\_\_\_\_, without regard to principles of conflicts of laws. We express no opinion as to whether the provisions of such Section \_\_\_ are enforceable or as to the law that is applicable to the Loan and Security Agreement or the transactions contemplated thereby, including any security interest created pursuant to the Loan and Security Agreement or any other Loan Document, and we express no opinion regarding the laws of the State of \_\_\_\_\_; rather, with your permission, we have assumed, solely for purposes of our opinions herein, that [STATE] law is applicable to the Loan and Security Agreement and the transactions contemplated thereby, including the creation of any security interest thereunder.

8. The Deed of Trust [Mortgage] is in a form sufficient to permit due recordation in the real estate records of [specify county/jurisdiction] in which the real property described in the Deed of Trust [Mortgage] is located (the “Recording Office”) and, upon proper recording and indexing, to create the lien that it purports to create on all right, title and interest of the grantor named therein in the real property described therein. [\_\_\_\_\_ County/[other jurisdiction]], [STATE], is the [county/jurisdiction] in which the Deed of Trust [Mortgage] must be properly recorded and indexed in order to cause the lien that the Deed of Trust [Mortgage] purports to create to be effective as against creditors of and purchasers from the grantor of the Deed of Trust [Mortgage]. No instrument other than the Deed of Trust [Mortgage] is required to be filed in the Recording Office in order to create the aforesaid lien. The Deed of Trust [Mortgage] creates a security interest in favor of the Secured Party, as security for the obligations described therein, in all of the collateral described in the Deed of Trust [Mortgage] that is composed of “fixtures” (as that term is defined in the UCC) and goods that are to become fixtures. Upon recordation of the Deed of Trust [Mortgage] in the Recording Office and proper indexing there, the security interest created by the Deed of Trust [Mortgage] in that portion of the collateral described in the Deed of Trust [Mortgage] that is composed of fixtures and goods that are to become fixtures will be perfected.

9. The Financing Statement is in appropriate form for filing in the real estate records of the [county/jurisdiction], [STATE] in which the real property described in the Deed of Trust [Mortgage] is located (the “Recording Office”). The Deed of Trust [Mortgage] creates a security interest in favor of the secured party, as security for the obligations described therein, in all of the collateral described in the Deed of Trust [Mortgage] that is composed of “fixtures” and “goods” that are to become fixtures (as such terms are defined in the UCC). Upon the acceptance and filing of the Financing Statement in the Recording Office, the security interest created by the Deed of Trust [Mortgage] in that portion of the collateral described in the Financing Statement that is composed of fixtures and goods that are to become fixtures will be perfected.

10. Other than the filing and recordation fees and taxes imposed pursuant to [specify applicable state laws] and nominal per page or per document filing fees due on filing of the Financing Statement and recordation of the Deed of Trust [Mortgage], no fees, taxes or other charges are due or payable in the State of [STATE] in connection with the execution, delivery, and recording of the Deed of Trust [Mortgage] or the filing of the Financing Statement in the Recording Office. [No stamp tax or similar charge, duty, fee or tax is due or payable in the State of [STATE] as a result of the execution or delivery of any Loan Document constituting a note or loan agreement or upon the funding of any loan or other extension of credit as contemplated by the Loan Documents.

11. The execution and delivery by the Debtor of the Loan Documents and the performance by the Debtor of its payment obligations under the Loan Documents do not violate any Applicable Laws. As used herein, “Applicable Laws” means those laws, rules and regulations codified by governmental authorities of the State of [STATE] (excluding those of counties, cities and other municipalities, and any local governmental agencies) that we, in the exercise of customary professional diligence, would reasonably recognize as being applicable to [the Debtor and] the transactions contemplated by the Loan Documents.

Our opinion is subject to the following assumptions, limitations and qualifications:

(i) We express no opinion with respect to (a) the title to or the rights or interests of the Debtor in the Collateral or ability of the Debtor to transfer rights therein, (b) the adequacy of the description of the Collateral, or (c) except as explicitly set forth herein, the creation, attachment, perfection or priority of any liens thereon and/or security interests therein. Such opinions are given only to the extent set forth in opinion paragraphs [ \_ - \_ ] and are subject to the additional assumptions,

qualifications and limitations applicable to such opinions set forth in this opinion;

(ii) As to due recordation of the Deed of Trust [Mortgage] [and as to the due recording and/or filing of the Financing Statement in the Recording Office], you are relying upon the title insurance company that has issued a commitment for title insurance (the “Title Company”), and as to the priority of the Deed of Trust [Mortgage], you are relying upon title insurance to be provided by the Title Company, and we assume that such document has been [will be] properly recorded and indexed;

(iii) The real property described in the Deed of Trust [Mortgage] is located in [\_\_\_\_\_ County/[other jurisdiction], [STATE].

(iv) Debtor owns and holds a [fee simple/leasehold] interest, of record and in fact, in the real property described in the Deed of Trust [Mortgage] and [owns/leases] that portion of the collateral described in the Deed of Trust [Mortgage] that is composed of “fixtures” (as that term is defined in the UCC).

(v) The descriptions of the real and personal property constituting the collateral described in the Deed of Trust [Mortgage] and the description of the personal property constituting the collateral contained in, or attached as exhibits or schedules to the loan documents, reasonably identify the property described or intended to be described.

(vi) We express no opinion as to the creation, attachment, perfection or priority of any lien or security interest where the Financing Statement and Deed of Trust [Mortgage] has not been properly recorded and indexed.

(vii) We express no opinion as to the enforceability of any provision of the Deed of Trust [Mortgage] that purports to make an absolute assignment of the interest of the debtor in the leases, rents and profits arising from the real property described in the Deed of Trust [Mortgage], rather than an assignment for security. We note that the Secured Party may be required to take additional steps following a default to acquire or perfect any interest in such leases, rents or profits (A) regardless of whether, by its terms or otherwise, the grant, assignment or transfer is operative immediately, or upon the occurrence of a specific event, or under any other circumstances, and (B) the the Secured Party may have to make an affirmative demand or take further affirmative action to create or perfect a security interest or lien therein.

(viii) We call to your attention the following: security interests in chattel paper, goods,

instruments, documents, securities, financial assets, and security entitlements are subject to the rights and claims of holders, purchasers, buyers and other parties as provided in Sections 9-320, 9-330 and 9-331. Rights to money or funds contained in a deposit account are subject to the rights of transferees under Section 9-327. Security interests are subject to rights of holders of possessory liens under Section 9-333. Security interests in deposit accounts are subject to the rights of the depository bank under Section 9-340. Security interests in Collateral consisting of proceeds will be limited as provided in Sections 9-203(f), 9-315 and 9-322(c). Security interests in goods that are installed in, or attached or affixed to, any other goods may be subject to the provisions of Section 9-335 and may be subject to the provisions of Section 9-336 to the extent that such goods form part of a larger product or mass. Security interests may be subject to other rights of persons in control of investment property, deposit accounts, letter-of-credit rights and electronic chattel paper.

(ix) We express no opinion as to the Secured Party's rights in the Collateral to the extent that the Secured Party has knowledge that its security interest in the Collateral violates the rights of another secured party.

(x) Certain rights of debtors and of other obligors and certain duties of secured parties referred to in Sections 1-102(3), 9-602 and 9-624 of the UCC may not be waived, released, varied or disclaimed by agreement except, in certain instances, following a default.

(xi) Obligors, in addition to debtors, have rights and remedies established by the UCC.

(xii) This opinion is rendered as of the date hereof and we undertake no duty or obligation to update our opinion. Without implying any limitation on the foregoing, we point out that the continued perfection of any security interest in any collateral (1) may be affected by the removal of such collateral to another jurisdiction, upon the change of the name or the state of organization of any debtor or by a business combination involving a debtor, or (2) that is perfected by the filing of a financing statement, may be affected by the failure to file a timely continuation statement. .

(xiii) We express no opinion as to any provisions of the Loan Documents that purport to create or perfect a security interest in and to either (a) any policy of insurance or the proceeds thereof or (b) any governmental permits or licenses.

(xiv) We express no opinion as to the enforceability of the security interests under the

Loan Documents as against the competing interests of those third parties who would, in accordance with the provisions of the UCC or other applicable law, take free of any such security interest notwithstanding perfection thereof.

(xv) We express no opinion regarding any security or other interests of the Debtor in property of another that secures the other's obligations to the Debtor.

(xvi) The assignment of any contract, lease, license, or permit may require the approval of the issuer thereof or the other parties thereto.

(xvii) Except to the limited extent an Article 9 Security Interest may be created therein, we express no opinion with respect to any security interest in any accounts, chattel paper, documents, instruments or general intangibles with respect to which the account debtor or obligor is the United States, any state, county, city, municipality or other governmental body, or any department, agency or instrumentality thereof.

(xviii) Our opinions above are subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general application affecting the rights and remedies of creditors and to general principles of equity.

[(xix) We have reviewed Article 9 of the Uniform Commercial Code appearing in the official statutory compilation of the State of \_\_\_\_\_ Uniform Commercial Code as reported in [cite source] and have relied solely upon this review in forming the opinions set forth above with respect to the laws of the State of \_\_\_\_\_.]

This opinion letter is being furnished only to you for your use solely in connection with the transaction described above and may not be relied on without our prior written consent for any other purpose or by anyone else other than your participants and assignees permitted by the Loan and Security Agreement.

Very truly yours,