

MORTGAGE LOAN OPINION (1998)

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[Letterhead of Law Firm]

[Date]

[Name and address of Lender]

Re: \$ _____ Mortgage Loan to _____

Ladies and Gentlemen:

We have acted as counsel to _____, a _____ [corporation] [general partnership] [limited partnership] [limited liability company] ("**Borrower**"), in connection with that certain \$ _____ mortgage loan (the "**Loan**") from _____ ("**Lender**") to Borrower pursuant to a Loan Agreement [use exact title] (the "**Loan Agreement**") [of even date herewith] [dated as of _____] between Borrower and Lender. This opinion is delivered to you pursuant to Section __ of the Loan Agreement. [Except as otherwise indicated, all capitalized terms used herein and defined in the Loan Agreement shall have the meanings given such terms in the Loan Agreement.] In such capacity, we have reviewed the following documents, all dated as of _____ (the "**Closing Date**") unless otherwise noted, as executed and delivered in connection with the Loan:

- (a) The Loan Agreement;
- (b) The Mortgage Note [use exact title] (the "**Note**") made by Borrower to the order of Lender in the principal amount of \$ _____;
- (c) The Mortgage [use exact title] (the "**Mortgage**") made by Borrower in favor of Lender as security for the Note and describing therein certain real property located at _____, New York (the "**Real Property**") and certain personal property (including fixtures and other rights) located thereon or used in connection therewith (the "**Personal Property**");
- (d) The Assignment of Leases and Rents [use exact title] (the "**Assignment of Leases**") made by Borrower in favor of Lender as further security for the Note;

(e) [Unfiled] copies of UCC-1 Financing Statements (the "**Financing Statements**") executed by Borrower as Debtor and naming Lender as Secured Party;

(f) Guaranty of [Payment] [Completion] [use exact title] (the "**Guaranty**") made by _____ (the "**Guarantor**") in favor of Lender.

The Loan Agreement, the Note, the Mortgage, the Assignment of Leases, and the Financing Statements [if applicable: add any other pertinent documents] are hereinafter collectively referred to as the "**Loan Documents**". The Real Property and the Personal Property are collectively referred to herein as the "**Collateral**".

In rendering our opinion we have also examined the [describe Borrower's organizational documents: e.g., its articles, bylaws, partnership agreements, articles of organization, operating agreements, and all amendments thereto] of Borrower (the "**Organizational Documents**"), certificates of public officials, and such other records, certificates, documents and instruments as we have deemed necessary for the purposes of the opinions herein expressed. As to various questions of fact material to our opinion, we have relied upon certificates and written statements of [officers] [partners] [members] of Borrower. We have assumed that the Mortgage and the Assignment of Leases will be duly recorded in the Office of the [Clerk] [Register] of the county in which the Real Property is located and that all applicable mortgage recording tax imposed thereon will be paid. We understand that the UCC-1 Financing Statements [have been/will be] filed by _____ in the appropriate filing offices.

We express no opinion with respect to (i) the title to or the rights or interests of the Borrower in the Collateral, (ii) the adequacy of the description of the Collateral, or (iii) the creation, attachment, perfection or priority of any liens thereon and/or security interests therein. We understand that, with respect to the title to the Real Property and the creation and priority of the lien of the Mortgage, you will be relying upon the title insurance policy issued to you by [title company] and dated as of the Closing Date.

The law covered by this opinion is limited to the federal law of the United States and the law of the State of New York. We express no opinion with respect to the law of any other jurisdiction and [, unless otherwise specified,] no opinion with respect to the statutes, administrative decisions, rules, regulations or requirements of any county, municipality, subdivision or local authority of any jurisdiction. We have assumed that you have complied with all state and/or federal laws and regulations applicable to you arising out of the Loan or your status as Lender therein.

[Add any appropriate additional assumptions]

Based on the foregoing, and upon such investigation as we have deemed necessary, and subject to the qualifications and exceptions herein contained, we are of the opinion that:

1. Borrower is a [corporation] [general partnership] [limited partnership] [limited liability company] validly existing under the law of the State of New York.

[If applicable, add similar provisions regarding the Guarantor]

2. Borrower has the power under its Organizational Documents and applicable [corporate] [partnership] [limited liability company] law to [own][lease][and operate] the Collateral and to execute, deliver, and perform its obligations under, the Loan Documents.

[If applicable, add similar provisions regarding the Guarantor]

3. Borrower has taken all action necessary under its Organizational Documents and applicable [corporate] [partnership] [limited liability company] law to authorize the execution and delivery of the Loan Documents and the performance of its obligations thereunder and has duly executed and delivered the Loan Documents.

[If applicable, add similar provisions regarding the Guarantor]

4. The Loan Documents are the valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as may be limited by (i) bankruptcy, insolvency or other similar laws affecting the rights and remedies of creditors generally and (ii) general principles of equity. [If Alternative 1 below is selected, also include the following: Our opinion with respect to the enforcement of the Assignment of Leases (and any similar provisions in the Mortgage) is limited to the enforcement of such assignment upon acceleration of the debt following a material default for purposes of collecting rents accruing after the appointment of a receiver by a court of competent jurisdiction in an action to foreclose the Mortgage.] In addition, we advise you that certain provisions of the Loan Documents may be further limited or rendered unenforceable by applicable law, but in our opinion, such law does not render the Loan Documents invalid as a whole or [Insert Alternative 1 or Alternative 2]

[Alternative 1:

substantially interfere with realization of the principal benefits and/or security provided thereby.]

[Alternative 2:

preclude (i) the judicial enforcement of the obligation of the Borrower to repay the principal, together with interest thereon as provided in the Note, (ii) the acceleration of the obligation to repay such principal and interest upon a material default under the Loan Documents, (iii) the judicial foreclosure in accordance with applicable law of the lien created by the Mortgage upon failure to pay such principal and interest at maturity or upon acceleration pursuant to clause (ii) above and (iv) the judicial enforcement of the Assignment of Leases (and any similar provisions in the

Mortgage) upon acceleration pursuant to clause (ii) for purposes of collecting rents accruing after the appointment of a receiver in an action to foreclose the Mortgage.]

5. The Guaranty is the valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as limited by (i) bankruptcy, insolvency or other similar laws affecting the rights and remedies of creditors generally and (ii) general principles of equity. With respect to our opinion regarding the enforceability of the Guaranty, we note that the Guaranty contains provisions which purport to waive certain rights and defenses which the Guarantor might otherwise have with respect to, among other things, amendments and modifications of the Loan Documents, notice of default or the election of remedies by Lender following a default by Borrower under the Loan Documents. Although we believe that such provisions are generally enforceable (subject to the limitations and qualifications set forth in this paragraph 5), we advise you that certain waivers and other provisions may be further limited or rendered unenforceable by applicable law, but in our opinion, such law does not render the Guaranty invalid as a whole or [Alternative 1: substantially interfere with realization of the principal benefits provided thereby] [Alternative 2: preclude judicial enforcement of the Guaranty upon a material default by the Guarantor thereunder.]

6. The execution and delivery by Borrower of the Loan Documents do not, and the payment of the indebtedness evidenced by the Note will not, result in (a) a violation of its Organizational Documents, (b) a breach or a default under any agreement or instrument listed on Schedule ___ hereto or result in the acceleration of (or entitle any party to accelerate) any obligation of Borrower thereunder, or (c) a violation of any court order listed on Schedule ___ hereto.

[If applicable, add similar provisions regarding the Guaranty]

7. The execution and delivery by Borrower of the Loan Documents do not, and the payment of the indebtedness evidenced by the Note will not, result in any violation of any law of the United States of America or the State of New York, or any rule or regulation thereunder.

[If applicable, add similar provisions regarding the Guaranty]

8. To our actual knowledge, Borrower is not a party to any pending [or overtly threatened in writing] actions or proceedings that may adversely affect the transactions contemplated by the Loan Documents [or that would have a material adverse effect on Borrower] and that is not listed on Schedule ___ hereto.

[If applicable, add similar provisions regarding the Guarantor]

[If appropriate, add any additional opinions or exceptions.]

This opinion is furnished by us as counsel for Borrower solely for the purposes contemplated by the Loan Documents. The opinions expressed herein may be relied upon only by you [and by permitted transferees of the Note, including a person or

entity acting as agent or trustee and rating agencies in connection with a securitization of the Loan] and only in connection with the Loan. Our opinion may not be used, quoted from, referred to or relied upon by you or by any other person for any other purpose, nor may copies be delivered to any other person, without in each instance our prior written consent; except that you may deliver copies of this opinion to (a) your independent accountants, attorneys and other professional advisors acting on your behalf in connection with the Loan or the transactions contemplated thereby, (b) governmental regulatory agencies having jurisdiction over you to the extent disclosure of the opinion is required by applicable law or regulation, (c) designated persons pursuant to order or legal process of any court or governmental agency or authority of competent jurisdiction [and (d) prospective purchasers of the Note and permitted participants in the Loan.] We shall have no obligation to revise or reissue this opinion with respect to any change in law or any event, fact, circumstance or transaction which occurs after the date hereof. In addition, we express no opinion with respect to any issue arising out of or related to (i) the identity or status of any transferee of the Note or participant in the Loan, (ii) a securitization of the Loan, or (iii) any subsequent transaction.

Very truly yours,

[name of opinion giver]