

Supplement to
Report on Legal Opinions to Third Parties
in Georgia Real Estate Secured Transactions

This Supplement to Report on Legal Opinions to Third Parties in Georgia Real Estate Secured Transactions has been approved and endorsed by the Executive Committee of the Real Property Law Section of the State Bar of Georgia. Special thanks to Virginia M. McGuffey and Hector E. Llorens, Jr., of King & Spalding LLP and to Hazen H. Dempster of Troutman Sanders LLP for their assistance in the preparation of this Supplement.

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1. The existing definitions of the following terms are hereby deleted and the following definitions are substituted therefor in Section 1.02 of the Report:

Article 9 Personal Property Collateral means that portion of the Personal Property described in the Security Deed in which a security interest may be created under Article 9 of the UCC as in effect in the State of Georgia on the date of the Opinion Letter.

Article 9 Collateral means the Fixtures and the Article 9 Personal Property Collateral.¹

Fixture Filing means a UCC financing statement that is filed for the purpose of perfecting the Opinion Recipient's security interest in that portion of the Property consisting of goods that are Fixtures and that are located on the Real Property².

Security Deed means the deed to secure debt and security agreement (i) conveying security title to and a security interest in the Real Property, (ii) granting a security interest in the Fixtures located on the Real Property, and (iii) granting a security interest in the Personal Property, in each case for the purpose of securing the obligations of Borrower evidenced by the Note and certain of the other Loan Documents.

UCC means the Uniform Commercial Code in effect in the State of Georgia.³

UCC Filing Office means the office for filing a UCC financing statement against personal property as determined by the Uniform Commercial Code in effect in the jurisdiction where the grantor of the security interest is located or deemed located. For a grantor located⁴ in Georgia, the UCC Filing Office means the clerk of superior court of any county in the State of Georgia.

2. The following definition is hereby added to Section 1.02 of the Report:

Fixtures means goods that have become so related to particular real property that an interest in them arises under real property law.⁵

3. Section XX (THE MODEL UCC OPINION) is hereby deleted in its entirety and the following Section XX is hereby substituted in lieu thereof:

¹ Note that the Model UCC Opinion is limited to security interests covered by Article 9 and does not include security interests that may arise under other articles of the UCC.

² See O.C.G.A. § 11-9-502(b).

³ See O.C.G.A. §§ 11-1-101 to -12-102 (2002 & Supp. 2013).

⁴ See O.C.G.A. § 11-9-307 and footnote 13 for rules regarding the determination of a debtor's "location". Note that Georgia law governs the perfection by filing as to fixtures that are physically located in Georgia, even if a debtor is not "located" in Georgia for purposes of Article 9.

⁵ See O.C.G.A. § 11-9-102(42).

ARTICLE I. XX. THE MODEL UCC OPINIONS (CREATION AND PERFECTION)

1. *The Security Deed creates a valid and enforceable security interest in favor of Lender in that portion of the Property constituting Fixtures.*
2. *The Security Deed creates a valid security interest in favor of Lender in that portion of the Personal Property in which a security interest can be created under Article 9 of the UCC (the “Article 9 Personal Property Collateral”).*
3. *With respect to that portion of the Article 9 Personal Property Collateral as to which a security interest can be perfected under Article 9 of the UCC by the filing of a financing statement in the State of Georgia, upon the proper filing of the Financing Statement in the UCC Filing Office, such security interest of Lender in such Article 9 Personal Property Collateral will be perfected.⁶*
4. *Upon the recordation of the Security Deed in the Recording Office, the security interest of the Lender in the Fixtures located on the Property will be perfected.⁷*
5. *Upon the recordation of the Fixture Filing in the Recording Office, the security interest of the Lender in the Fixtures located on the Property will be perfected.*

COMMENT

20.01 Purpose and Background of the Model UCC Opinion. The purpose of the Model UCC Opinion is to provide assurance to the Opinion Recipient that the Security Deed contains the necessary provisions to create a security interest under Article 9 of the UCC⁸ in effect on the date of the Opinion and that the necessary steps are being taken to perfect such security interest.

As discussed in more detail below, the Model UCC Opinion covers only security interests created under Article 9 of the UCC and not those created under common law, under non-UCC statutory law or under other articles of the UCC. This limitation is appropriate given that in most real estate secured transactions the principal collateral is of a type to which the Opinion Recipient may obtain valid security title under a security deed, which is covered by the Model Remedies Opinion or in which the Opinion Recipient may obtain a valid security interest under Article 9 of the UCC. The most notable exception is rents.⁹

⁶ Note that Interpretative Standard 21 assumes payment of all applicable fees required in connection with filing.

⁷ Opinions 4 and 5 can both be given if applicable.

⁸ See Uniform Commercial Code, O.C.G.A. §§ 11-1-101 to -12-102.

⁹ By virtue of the generic qualification, the Model Remedies Opinion does not contain an opinion as to the validity and enforceability of an assignment of rents as discussed in Section 18.02D of this Report. See also *Report on Adaptation of Accord*, *supra* note 4, at 597.

Moreover, as to perfection, the Model UCC Opinion covers only those security interests that may be perfected by the filing of a financing statement (including the recordation of a Fixture Filing or a Security Deed). Again, because furniture, Fixtures and equipment are the collateral types that generally are most important to real estate lenders and because the filing of a financing statement is the proper method of perfection for these classes of collateral, it is appropriate for the Model UCC Opinion to be limited to perfection by filing.

20.02 Elements of the Model UCC Opinion. The Model UCC Opinion has two elements, creation and perfection, as well as certain express limitations.

A. Creation. Under Section 9-203(b) of the UCC, three elements must be present for a valid security interest to be created: (i) value must be given; (ii) the debtor must have rights in the collateral or the power to transfer rights in the collateral to a third party; and (iii) either (a) the debtor must authenticate a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned, (b) the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement, (c) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement, or (d) the collateral is deposit accounts, electronic chattel paper, investment property or letter-of-credit rights, and the secured party has control under Section 9-104, 9-105, 9-106 or 9-107 pursuant to the debtor's security agreement.¹⁰

Although the secured party's possession or control, or delivery to the secured party, of the collateral pursuant to an oral security agreement in certain circumstances will satisfy the requirement of clause (iii) above, a secured party rarely maintains possession or control (or takes delivery) of the collateral in real estate transactions. Moreover, given the difficulties of establishing the existence of an oral agreement between the debtor and the secured party, it is recommended that the security interest creation opinion be based solely on the debtor's executing a written security agreement. The Model UCC Opinion is drafted for transactions in which the Security Deed is intended to serve as the security agreement. The Opinion Giver should make appropriate modifications to the Model UCC Opinion if the Loan Transaction includes a separate security agreement.

To qualify as a valid security agreement, the Security Deed must contain a present grant of a security interest. The most common language is "Borrower hereby grants a security interest in...." Although any conveying language that is intended by the parties to presently grant a security interest will suffice, because the Opinion Giver cannot ascertain the intention of the parties other than from the four corners of the Security Deed, it is recommended that clear language granting a security interest be present in the Security Deed as a prerequisite to the rendering of the Model UCC Opinion. For example, "Borrower hereby agrees to grant" may not be sufficient. As noted below, the Model UCC Opinion does not cover the adequacy of any collateral description, and therefore the Opinion Giver need not reach any legal conclusion with respect to this requirement.

¹⁰ O.C.G.A. § 11-9-203(b)(1)-(3).

Under the provisions of the UCC, in a loan transaction a person gives value for rights if he acquires them in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon.¹¹ Because the Model UCC Opinion assumes that contemporaneously with the delivery of the Opinion Letter to the Opinion Recipient, the Opinion Recipient will have either advanced to Borrower the proceeds of the Loan to be secured by the security interest or entered into a commitment to make the Loan, as discussed below in Section 20.03, the value requirement is assumed to be satisfied. Because the Model UCC Opinion assumes that Borrower has rights in the collateral, as discussed below in Section 20.03, the Opinion Giver also need not reach any legal conclusion with respect to this requirement.

B. Perfection. The perfection opinion is limited to those security interests which can be perfected by (i) the filing of a UCC financing statement in the State of Georgia, or (ii) the recording of the Security Deed as a fixture filing. Therefore, the Opinion Giver's role is to review the Financing Statement, the Fixture Filing (if a Fixture Filing is used) and the Security Deed to determine that the Secured Party is authorized to file them¹² and that they contain the necessary information to satisfy the requirements of Section 9-502 of the UCC with respect to the required contents of financing statements and fixture filings as discussed in Section 20.05. The Model UCC Opinion does not address other means of perfection (e.g. control or possession).¹³

With respect to the Financing Statement, the Opinion Giver must also determine whether the debtor listed on the Financing Statement is deemed "located" in the State of Georgia under the UCC.¹⁴ The "location" of the debtor determines the correct place to file.¹⁵ If the debtor would not be deemed located in the State of Georgia, the UCC Filing Office will not be located in the State of Georgia and the Opinion Giver should not opine on perfection by filing of the Financing Statement but should limit the opinion to the perfection of the security interest in Fixtures based on the filing of either the Fixture Filing or the Security Deed.¹⁶

¹¹ O.C.G.A. § 11-1-201(44)(a).

¹² By executing a security agreement, a debtor authorizes the filing of an initial financing statement covering the collateral described in the security agreement. *See* O.C.G.A. § 11-9-509(b) (2002). Alternatively, a debtor may authorize such a filing in a signed writing or other authenticated record. *See* O.C.G.A. § 11-9-509(a) (2002).

¹³ *See* O.C.G.A. §§ 11-9-310-312 for general rules governing the means of perfecting security interests in certain non-real estate types of collateral.

¹⁴ O.C.G.A. § 11-9-307.

¹⁵ For registered organizations such as corporations, limited liability companies and limited partnerships, the "location" of the debtor is the jurisdiction in which the debtor was organized. If the debtor, for example, is a Delaware corporation or limited liability company, the UCC Filing Office would not be located in the State of Georgia.

¹⁶ If a debtor is "located" in a jurisdiction other than Georgia (such as Delaware), the UCC states that the governing law for determining perfection is the law of such other jurisdiction. *See* O.C.G.A. § 11-9-301.

Prior to January 1, 1995, a deed to secure debt, mortgage or other real estate security instrument could qualify as a Fixture Filing. Amendments to the UCC that became effective January 1, 1995, provided that a deed to secure debt, mortgage or other real estate security instrument no longer qualified as a Fixture Filing. However, under subsequent amendments to the UCC which became effective July 1, 2013, a deed to secure debt, mortgage or other real estate security instrument recorded on or after such date is effective as a financing statement filed as a Fixture Filing. The result of these amendments to the UCC is that a record of a mortgage or security deed filed prior to January 1, 1995 or on or after July 1, 2013, is effective as a financing statement filed as a Fixture Filing. This change is important because in a number of real estate secured transactions, the only Article 9 Collateral in which a lender obtains a security interest is Fixtures. Under pre-1995 law and under the current law, the recordation of the Security Deed fulfills the dual function of conveying security title to the real estate and creating a perfected security interest in Fixtures (assuming it contains the necessary Fixture Filing information). In addition, under current law, the recorded Security Deed which is effective as a Fixture Filing remains effective as a Fixture Filing until the Security Deed is released or satisfied of record or its effectiveness otherwise terminates as to the real property¹⁷, which eliminates the requirement to file continuation statements every five (5) years¹⁸.

Although the UCC provides that a security interest in Fixtures can be perfected by the filing of a Financing Statement, it will not provide the Secured Party the same priority which would result from the recording of a Fixture Filing in the real property records of the county in which the Real Property is located.¹⁹ For this reason, secured lenders in most real estate transactions will elect to file a Fixture Filing in the real property records of the subject county in order to obtain the higher priority. If the Lender's only collateral will be Fixtures, no filing in the UCC Filing Office is necessary, because the filing of a Fixture Filing in the real property records of the appropriate county is sufficient to perfect the Lender's security interest. To ensure proper perfection, the prevailing custom is that if there is any concern that any collateral described in the Security Deed does not constitute Fixtures, a Financing Statement covering such collateral should be filed in the UCC Filing Office as well.

The perfection opinion by its terms also excludes perfection of security interests in as-extracted collateral, crops or timber to be cut, because the filing of a Financing Statement in the UCC Filing Office will not perfect security interests in such collateral. The Opinion Giver should make appropriate modifications to the Model UCC Opinion if the Opinion Recipient requires an opinion as to the perfection of security interests in such classes of collateral.

C. Express Limitations. The Model UCC Opinion is limited by its terms only to that collateral in which a security interest may be created under the UCC and, as to perfection,

¹⁷ O.C.G.A. § 11-9-502(c).

¹⁸ O.C.G.A. § 11-9-515(e).

¹⁹ See O.C.G.A. § 11-9-334 (priority of a security interest in Fixtures over the conflicting interest of the encumbrancer or owner of the related real property is determined by the recording of a Fixture Filing). See also O.C.G.A. § 11-9-301(3)(A) (the local law of the jurisdiction governs the perfection of a security interest in the goods by the filing a Fixture Filing).

only to that collateral in which a security interest is perfected by the filing of a financing statement (including the recordation of a Security Deed as a Fixture Filing) in the State of Georgia. It therefore is subject to the following express limitations:

1. Jurisdiction Covered. The only law covered by the Model UCC Opinion is the UCC. Therefore, to the extent that the creation or perfection of a security interest in any particular collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than Georgia, such creation and perfection is excluded from the Model UCC Opinion. For example, if Borrower is a corporation or other registered organization organized in a U.S. state other than Georgia, then perfection of a security interest in Borrower's equipment (other than Fixtures located in Georgia as to which a fixture filing is made), inventory, accounts, and general intangibles (among others) would not be governed by the UCC.

2. Type or Class of Collateral Covered. The Model UCC Opinion also does not cover the creation or perfection of a security interest in any collateral that is of a class or type that is excluded from the coverage of Article 9 of the UCC, such as real property, rents, leases, and deposit accounts in consumer transactions.

3. Limitation on Perfection. With respect to perfection, the Model UCC Opinion covers only that collateral in which a security interest may be perfected by the filing of a financing statement (including the recordation of a Security Deed as a Fixture Filing) in the State of Georgia. Security interests in certain types of Article 9 Collateral (such as deposit accounts) may not be perfected by filing. To the extent perfection is effected by another method (such as by control or by possession of the collateral), no perfection opinion is given.

4. Collateral Covered. The Model UCC Opinion covers only the collateral that is described in the Security Deed. It is the responsibility of the Opinion Recipient to satisfy itself that the Financing Statement and the Fixture Filing do not omit collateral that the Security Deed covers. With the authorization of the Borrower²⁰, the Financing Statement may be broader than the description of the collateral in the Security Deed and may be described as "all assets of the debtor" or words of similar import. Note that the description of the collateral in the granting clause of the Security Deed must "reasonably identify" the collateral (which may be by specific listing, category, type, or other methods) and that "all assets of the debtor" and "all personal property of the debtor" are not sufficient descriptions for purposes of the creation of the security interest, although they are sufficient descriptions in the Financing Statement for perfection of a security interest in Article 9 of the UCC. In the case of the Fixture Filing, the Fixture Filing must indicate that fixtures are covered.

20.03 Implied Assumptions and Exceptions to the Model UCC Opinion. The Model UCC Opinion is subject to the implied assumptions and exceptions described below in this Section 20.03. These assumptions and exceptions are set forth primarily in Interpretive Standard 27, and a Model UCC Opinion that incorporates the conventions of this Report, as supplemented

²⁰ Such authorization should be in an "authenticated record" such as the Security Deed. O.C.G.A. §11-9-509(a)(1).

by this Supplement and as reflected in the Interpretive Standards, will be deemed to include and be subject to such assumptions and exceptions.

A. Rights in Collateral. The Model UCC Opinion assumes that Borrower has sufficient rights in the Article 9 Collateral for the Opinion Recipient's security interest to attach to such Article 9 Collateral. The Model UCC Opinion therefore does not provide assurances that Borrower has title to the Article 9 Collateral or otherwise has any rights in the Article 9 Collateral and does not provide assurances with respect to the priority of any security interest. However, with respect to Article 9 Collateral consisting of after-acquired property, the Model UCC Opinion does assure that under present law and subject to the other express and implied limitations and qualifications set forth in this Report, once Borrower has sufficient rights in the property for a security interest to attach, the Security Deed is in a form sufficient to create a security interest in such after-acquired property and the Financing Statement, the Fixture Filing and the Security Deed, as applicable, are in forms sufficient to perfect the security interest in such after-acquired property.

B. Consideration. The Model UCC Opinion assumes that contemporaneously with the delivery of the opinion to the Opinion Recipient, the Opinion Recipient will have either advanced to Borrower the proceeds of the Loan to be secured by the security interest or entered into a commitment to make the Loan or that "value" will have otherwise been given sufficient for purposes of Section 9-203 of the UCC. This assumption is necessary for satisfaction of the legal requirement that value be given as a prerequisite for the creation of a valid security interest.

C. Name and Address of Secured Party and Name of Record Owner. The Model UCC Opinion assumes that the name and mailing address of the secured party and the name of the record owner or lessee, if any, set forth in the Financing Statement and the Fixture Filing are accurate.

D. Description of Real Property. The Model UCC Opinion assumes that the description of the Real Property is accurate. Interpretive Standard 22 contains an assumption as to the accuracy and sufficiency of the description of the Property, which is comprised of the Real Property and the Personal Property. Also the Model UCC Opinion is subject to the implied qualification that it does not assure that the form of the real estate description is adequate. The UCC requires that the Fixture Filing contain a description of the real estate sufficient to give constructive notice of a mortgage under Georgia law.²¹ It is inappropriate for an Opinion Recipient to request an opinion that a particular description of real estate would be sufficient to give constructive notice of a mortgage under Georgia law.²²

²¹ O.C.G.A. § 11-9-502(b)(3) (2002).

²² A description of real property in a mortgage, in order to be valid, must identify the land or must contain a key by the use of which the description may be applied by extrinsic evidence. *See* Brasher v. Tanner, 353 S.E.2d 478 (Ga. 1987). The question of the sufficiency of description of property in a mortgage is one of law, for the court; that of the identity of the property mortgaged is one of fact, to be decided by the jury. *See* Chapman v. Bank of Cumming, 270 S.E.2d 4 (Ga. 1980).

E. Effective Filing. The Model UCC Opinion assumes that the Financing Statement, Fixture Filing and/or Security Deed (as applicable) is or will be filed and that such filing is or will be effective. The UCC defines filing as “communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office”²³. To be effective, such filing must not be refused by the filing office for a reason set forth in Section 9-516(b) of the UCC.²⁴ Because in most real estate transactions, UCC filings occur subsequent to the delivery of the opinion by Opinion Giver, the Model Opinion only provides that perfection will be achieved “upon filing” or “upon recordation” of the Security Deed, Financing Statement or Fixture Filing, as the case may be.

F. The Bankruptcy Exception. The Model UCC Opinion is subject to the effect of bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights and remedies of creditors. The exception includes the effect of the Federal Bankruptcy Code in its entirety, including matters of contract rejection, fraudulent conveyance and obligation, turn-over, preference, equitable subordination, automatic stay, conversion of a non-recourse obligation into a recourse obligation, and substantive consolidation. It also includes state laws regarding fraudulent transfers, obligations and conveyances, including Sections 18-2-20 through 18-2-80 of the Georgia Code,²⁵ and state receivership laws.

G. The Equitable Principles Exception. The Model UCC Opinion is subject to the effect of general principles of equity, whether applied by a court of law or equity. The equitable principles exception includes the following concepts: (i) principles governing the availability of specific performance, injunctive relief or other traditional equitable remedies; (ii) principles affording traditional equitable defenses (e.g., waiver, laches and estoppel); (iii) good faith and fair dealing; (iv) reasonableness; (v) materiality of the breach; (vi) impracticability or impossibility of performance; (vii) the effect of obstruction or failure to perform or otherwise act in accordance with an agreement by a person other than Borrower; (viii) the effect of Section 1-102(3) of the UCC; and (ix) unconscionability.

H. Adequacy of Collateral Description. The Model UCC Opinion assumes that the descriptions of the collateral contained in the Security Deed, the Financing Statement and the Fixture Filing reasonably identify such collateral. A description of collateral reasonably identifies the collateral if it identifies the collateral by specific listing, category, types of collateral defined in the UCC (other than commercial tort claims and, in consumer transactions, consumer goods, a security entitlement, a securities account, or a commodity account). Where collateral other than that falling within the above-listed exceptions is described by reference to the types of collateral defined in the UCC,²⁶ such descriptions are deemed automatically to be

²³ O.C.G.A. § 11-9-516(a) (2002).

²⁴ O.C.G.A. § 11-9-516(d). Note that a filing which the filing office has wrongly refused to accept is effective except as against certain parties who give value and reasonably rely upon the absence of the filing.

²⁵ See O.C.G.A. §§ 18-2-20 to -80 (2004).

²⁶ Such defined UCC collateral types include accounts (including healthcare receivables), chattel paper (whether tangible or electronic), deposit accounts, documents, Fixtures, general intangibles (including payment intangibles and software), goods (including inventory, equipment and Fixtures), instruments (including

reasonable for purposes of the UCC.²⁷ A description of collateral in a Security Deed as “all of debtor’s assets” or “all of debtor’s personal property” or similar words does not reasonably identify the collateral²⁸ for purposes of the creation of a security interest, although it is a sufficient description in a Financing Statement for purposes of perfecting a security interest in Article 9 Personal Property Collateral by filing a Financing Statement or in Fixtures by filing a Fixture Filing. As discussed below, the determination of the adequacy of a collateral description other than by reference to UCC collateral types is largely a question of fact, and therefore it is inappropriate for the Opinion Giver to provide opinion assurance on this issue.²⁹ Interpretive Standard 22 includes an assumption as to the adequacy and sufficiency of the description of the Property, which is comprised of the Real Property and the Personal Property.

I. Conversion into Proceeds. The Model UCC Opinion is subject to the implied qualification that perfection of a security interest may be lost under the circumstances set forth in Section 9-315 of the UCC with respect to Article 9 Collateral that is converted into proceeds.³⁰

J. Filing of Continuation Statements. The Model UCC Opinion is subject to the implied qualification that perfection of the security interest terminates unless appropriate continuation statements are filed within six months prior to the end of each successive five year period from the date of the original filing of the Financing Statement.³¹ However, with respect to a Security Deed that is filed as a fixture filing, no continuation statements are required to be filed and the security interest in the Fixtures perfected by such Security Deed remains perfected until the Security Deed is released or satisfied of record or its effectiveness otherwise terminates.³²

K. Future Events. The Model UCC Opinion does not cover future events that might affect perfection, such as changes in a debtor’s name that make the Financing Statement or the

promissory notes), investment property, letter-of-credit rights, letters of credit, proceeds (including cash proceeds and non-cash proceeds), and supporting obligations. *See* O.C.G.A. § 11-9-102.

²⁷ *See* O.C.G.A. §§ 11-9-108 and -504 (2002).

²⁸ O.C.G.A. § 11-9-108(c)

²⁹ Under Georgia law, a collateral description in a financing statement is sufficient if “the description provides such a key to the identity of the property as would enable a person of ordinary business prudence, upon inquiry, to discover the actual identity of the property described.” *In re Envtl. Elec. Payment Sys., Inc.*, 11 B.R. 965, 966 (Bankr. N.D. Ga. 1981) (citations omitted). *See also* *Trust Co. Bank v. Walker*, 35 B.R. 237, 240 (Bankr. N.D. Ga. 1983) (description in security agreement must reasonably describe the collateral). The Financing Statement and the Fixture Filing need not restate verbatim the collateral description contained in the Security Deed, so long as the description provides constructive notice of the collateral.

³⁰ O.C.G.A. § 11-9-315.

³¹ O.C.G.A. § 11-9-515 (2002).

³² O.C.G.A. § 11-9-515(e) (2013).

Fixture Filing seriously misleading,³³ or the change of the debtor's location to a new jurisdiction outside the State of Georgia.³⁴

L. Fixtures. With respect to Fixtures, the Model UCC Opinion covers only those Fixtures that are attached to the Real Property covered by the Security Deed.

M. Building Materials. The Model UCC Opinion does not cover any security interest in ordinary building materials that are incorporated into an improvement on the Real Property.³⁵

20.04 Matters Not Covered by the Model UCC Opinion.

A. Priority. The Model UCC Opinion does not address the priority of any security interest. It is customary for the Opinion Recipient to obtain a title examination and lien search reports³⁶ as well as representations from Borrower, to provide the Opinion Recipient with the necessary assurances that its liens and security interests have the requisite priority.

B. Form of Financing Statement. The Model UCC Opinion does not include an opinion as to the form of the Financing Statement. An Opinion Recipient may request an opinion to the effect that the Financing Statement is in proper form for filing in the appropriate records. Although the Model Opinion does not include such an opinion, an Opinion Giver may give such an opinion after review of the Financing Statement and determination that the filing office does not have a valid basis to refuse to accept the Financing Statement under Section 9-516(b) of the UCC. The Committee neither endorses nor opposes the inclusion in the Opinion Letter of an opinion as to the compliance with such requirements for sufficiency of the Financing Statement.

20.05 Practice Procedure for the Model UCC Opinion. Described below are the steps to be taken by the Opinion Giver in reviewing the Financing Statement, the Fixture Filing and the Security Deed in connection with the Model UCC Opinion. Until such time, if any, that the Georgia Superior Court Clerks' Cooperative Authority prescribes additional official forms, both the Financing Statement and the Fixture Filing (other than a Security Deed which is filed as a Fixture Filing) should be only on the national Uniform Commercial Code financing statement form (Form UCC), as set forth in the final official text of the 2010 amendments to Article 9 of

³³ O.C.G.A. § 11-9-506.

³⁴ See O.C.G.A. § 11-9-307.

³⁵ Once building materials become so incorporated, they lose their character as personal property. O.C.G.A. § 11-9-334(a) (2002) ("A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.").

³⁶ Most lenders obtain lien search reports from commercial lien search companies. Certified UCC index searches may be obtained from the Georgia Superior Court Clerks' Cooperative Authority's website (www.gsccca.org). It should be noted that such lien and UCC searches will not necessarily uncover all competing interests in the personal property collateral that might prime the lender's security interest. For an excellent, though somewhat dated, discussion of the limits of lien searches, see Gerald T. McLaughlin, "Seek But You May Not Find": *Non-UCC Recorded, Unrecorded and Hidden Security Interests Under Article 9 of the Uniform Commercial Code*, 53 FORDHAM L. REV. 953 (1985).

the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.³⁷ The Fixture Filing must include the UCC Financing Statement Addendum.³⁸

A. Choice of Law and Location of Debtor. The “location” of the Borrower must be determined first. Under Section 9-307 of the UCC, the “location” of the Borrower for a Borrower that is a registered organization (such as a corporation or limited liability company) is the state in which such Borrower is organized. To confirm the “location” of the Borrower, the Borrower’s public organic records should be reviewed. If the “location” of the Borrower is a jurisdiction other than Georgia, the Model UCC Opinion does not cover the filing of the Financing Statement in such other jurisdiction. However, the Model UCC Opinion does cover the filing of a Fixture Filing and the Security Deed if the fixtures are in Georgia.

B. Security Deed. The Security Deed must contain (i) the present grant of a security interest, (ii) authorization for Secured Party to record a Financing Statement or Fixture Filing to the extent the description of the collateral is broader than the description of the collateral in the granting clause, and (iii) a specific description of the collateral in which the security interest is granted. The amendment to Article 9 of the UCC providing that a Security Deed can be effective to perfect a security interest in Fixtures does not provide a form or suggested language to include in the Security Deed. However, Section 9-502 of the UCC provides that to be effective as a Fixture Filing, the Security Deed must satisfy the requirements for a financing statement. It is recommended that the required information be included either in an attachment or in a separate section of the Security Deed, so that it can be readily identified. The required information includes the name of the debtor, address of the debtor, name of the secured party, description of the collateral as fixtures, description of the real estate to which the fixtures are attached and a confirmation that the debtor is the record owner of such real estate. A sample form is set forth below³⁹:

This Security Deed shall also constitute a “fixture filing” for the purposes of the Uniform Commercial Code upon all of the Mortgaged Property which is or is to become “fixtures” (as that term is defined in the Uniform Commercial Code), upon being filed for record in the real estate records of the county wherein such fixtures are located, and for such purpose the following information is given:

Name of Debtor: _____

Address of Debtor: _____

³⁷ See O.C.G.A. § 11-9-521 (2013). This section states that a filing office that accepts written records may not refuse to accept a financing statement in the form of the national form; although that form is not required it is prudent to submit a form that the filing office is required to accept.

³⁸ Required UCC filing forms may be obtained from the Georgia Superior Court Clerks’ Cooperative Authority website (www.gsccca.org).

³⁹ Note that this is a sample form only and that other forms are also sufficient so long as the required information is included.

Name of Secured Party: _____

Description of the collateral:

Fixtures and other personal property as described in Granting Clause __ hereof.

Description of real estate to which the collateral is attached or upon which it is or will be located and record owner of such real estate:

See Schedule I attached hereto.

Record owner of the real estate (including the name in which such real estate is held for a trust if different from the name of the debtor for purposes of a financing statement): _____

C. Financing Statement. Under Section 9-502 of the UCC, a Financing Statement must contain:

- (i) the legal name of Borrower (debtor),⁴⁰ which, if Borrower is a registered organization, must be the name of Borrower shown on the public organic record of Borrower’s jurisdiction of organization,⁴¹ and, if Borrower is an individual, should include Borrower’s surname;⁴²

Note: The name on the Financing Statement must be the exact legal name of Borrower.⁴³ A trade name or assumed name is not sufficient unless the trade name or assumed name is so similar to the legal name of Borrower

⁴⁰ O.C.G.A. § 11-9-502(a)(1) (2002).

⁴¹ O.C.G.A. § 11-9-503(a). In 2013 the UCC was amended to provide that trusts (as opposed to trustees) are to be named as debtors on financing statements and to provide rules for properly naming trusts that are registered organizations and trusts that are not registered organizations. The 2013 amendments do not change Georgia law concerning whether a trust may hold title to real property (see, Georgia Trust Act, O.C.G.A. § 52-12-1, et. seq., and Georgia Title Standards (2010), Standards 8.1(1), 29.1 and 29.2). As a result, with respect to some trusts, the trust name to appear on a financing statement as debtor may be different than the name used under Georgia law for the trust (or trustee) to hold title to real property. If the name of the record owner of the real property differs from that of the debtor, the name of the record owner of the real property should be included on the Fixture Filing and/or the Security Deed, as applicable.

⁴² O.C.G.A. § 11-9-516(b)(3)(C) (2002).

⁴³ Filing in the name “Net work Solutions, Inc.” rather than correct name “Network Solutions, Inc.” held to be “seriously misleading”. See *Receivables Purchasing Co. v. R & R Directional Drilling, LLC*, 588 S.E.2d 831 (Ga. 2003); Filing in name “Gu, Sang Woo” instead of correct name “Sang Woo Gu” held to be “seriously misleading.” See *All Business Corp. v. Choi*, 634 S.E.2d 400 (Ga. 2006).

that a search of the records office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement using such trade name or assumed name, so as to make the use of such trade name or assumed not seriously misleading.⁴⁴ The Opinion Giver should determine the legal name of an entity Borrower from a certified copy of Borrower's public organic records as defined in the UCC.⁴⁵ In the case of an individual Borrower, the Opinion Giver should verify the legal name of such Borrower from a state-issued driver's license or other document specified in the UCC.⁴⁶

- (ii) the secured party's name;⁴⁷

Note: Because the Model UCC Opinion assumes that the name of the secured party in the financing statement is accurate, the Opinion Giver need not verify the accuracy of the secured party's name.

- (iii) an indication of the collateral covered by the financing statement;⁴⁸ and

Note: Because the Model UCC Opinion is subject to the implied qualification that, except for collateral (other than commercial tort claims and, in consumer transactions, consumer goods, a security entitlement, a securities account, or a commodity account) which is described by reference to types of collateral defined in the UCC, it does not assure that the Financing Statement adequately describes the collateral that it purports to cover, the Opinion Giver need not determine whether the collateral description is adequate

- (iv) where the collateral described consists only of consumer goods and the secured obligation is originally \$5000.00 or less, the maturity date of the secured obligation or a statement that such obligation is not subject to a maturity date.⁴⁹

In addition, in order for the Financing Statement to be in a form which the filing office is not entitled to refuse to accept, it must contain:

⁴⁴ O.C.G.A. § 11-9-506(c) (2002).

⁴⁵ O.C.G.A. § 11-9-102(a)(67) (2013).

⁴⁶ O.C.G.A. § 11-9-503(d)(4).

⁴⁷ O.C.G.A. § 11-9-502(a)(2).

⁴⁸ O.C.G.A. § 11-9-502(a)(3) (2002).

⁴⁹ O.C.G.A. § 11-9-502(a)(4).

- (v) a mailing address of Borrower (debtor);⁵⁰

Note: The address need not be the address of Borrower’s chief executive office; any valid mailing address of Borrower is permissible.

- (vi) a mailing address of the secured party;⁵¹ and

Note: Because the Model UCC Opinion assumes that the address in the financing statement is accurate, the Opinion Giver need not verify the accuracy of the secured party’s address.

- (vii) an indication of whether Borrower (debtor) is an individual or an organization, and if Borrower is an organization, Borrower’s type of organization and jurisdiction in which it was organized.⁵²

Note: The Opinion Giver should determine the type of organization and jurisdiction of organization of Borrower from a certified copy of Borrower’s public organic records.

D. Fixture Filing. Under Section 9-502 of the UCC, a Fixture Filing must contain:

- (i) the legal name of Borrower (debtor), which, if Borrower is a registered organization, must be the name of Borrower shown on the public record of Borrower’s jurisdiction of organization, and, if Borrower is an individual, must include Borrower’s last name;
- (ii) the secured party’s name;
- (iii) an indication that the Fixture Filing covers goods that are Fixtures;⁵³
- (iv) an indication that the Fixture Filing is to be filed for record in the real property records;⁵⁴
- (v) a description of the Real Property to which Fixtures are attached sufficient to give constructive notice of a mortgage under Georgia law if the

⁵⁰ O.C.G.A. § 11-9-516(b)(5)(A) (2002) .

⁵¹ O.C.G.A. § 11-9-516(b)(4).

⁵² O.C.G.A. §§ 11-9-516(b)(5)(B)-(C) (2002).

⁵³ O.C.G.A. 11-9-502(b)(1). The requirement is satisfied by checking the box on the UCC financing statement form which indicates that the financing statement is to be recorded in the real estate records. Many practitioners also include the word “Fixtures” in the collateral property description.

⁵⁴ O.C.G.A. 11-9-502(b)(2) (2002).

description were contained in a record of the mortgage of the real property,⁵⁵ and

Note: Because the Model UCC Opinion assumes that the description of the Real Property is accurate, the Opinion Giver need not independently verify the accuracy of the real estate description. The Model UCC Opinion also is subject to the implied qualification that it does not assure that the form of the description of the Real Property is adequate.

- (vi) if Borrower (debtor) does not have an interest of record in the real estate, the identity of the record owner or record lessee of the Real Property.⁵⁶

Note: For the Opinion Recipient to obtain valid security title under the Security Deed to Borrower's (debtor's) interest in the Real Property that is enforceable against third parties, Borrower must have an interest of record in the Real Property, and therefore it should not be necessary to identify in the Fixture Filing the record owner or record lessee of the Real Property. Nonetheless, to the extent that the financing statement identifies the record owner or record lessee, the Model UCC Opinion assumes that the identification is accurate, and therefore the Opinion Giver need not independently verify the accuracy of the identity of the record owner or record lessee.

In addition, in order for the Fixture Filing to be in a form which the filing office is not entitled to refuse to accept, it must contain:

- (vii) a mailing address of Borrower (debtor);
- (viii) a mailing address of the secured party; and
- (ix) an indication of whether Borrower (debtor) is an individual or an organization, and if Borrower is an organization, Borrower's type of organization and jurisdiction in which it was organized.

The due diligence, if any, required of the Opinion Giver with respect to Items (i) through (iii) and (vii) through (ix) above is the same as for the corresponding items in the Financing Statement.

* * * * *

⁵⁵ O.C.G.A. 11-9-502(b)(3).

⁵⁶ O.C.G.A. 11-9-502(b)(4).

4. Interpretive Standard 27 (Model UCC Opinion) contained in Appendix I is hereby deleted in its entirety and the following provision is hereby inserted in lieu thereof:

27. Model UCC Opinion.

A. General Meaning. The Model UCC Opinion, subject to the limitations contained in these Interpretive Standards, means that:

(1) The Security Deed creates in favor of the Opinion Recipient a security interest in such of the Personal Property and Fixtures described in the Security Deed as collateral in which a security interest may be created under Article 9 of the UCC (the “Article 9 Collateral”).

(2) To the extent that a security interest may be perfected by the filing of a financing statement in the State of Georgia, (i) the effective filing of the Financing Statement in the UCC Filing Office will result in the perfection of such security interest in the Article 9 Collateral (other than fixtures⁵⁷, as-extracted collateral, crops or timber to be cut) described in the Financing Statement, (ii) the further recordation of the Fixture Filing in the real property records of the Office of the Clerk of the Superior Court of the county in which the Real Property is located will result in the perfection of such security interest in the Article 9 Collateral described in the Fixture Filing that consists of Fixtures, and (iii) the further recordation of the Security Deed as a financing statement filed as a Fixture Filing in the real property records of the Office of the Clerk of the Superior Court of the county in which the Real Property is located will result in the perfection of such security interest in the Article 9 Collateral described in the Security Deed that consists of Fixtures.

B. Implied Assumptions and Exceptions. The Model UCC Opinion is subject to the following implied assumptions and exceptions:

(1) The Model UCC Opinion assumes that Borrower has rights in, or the power to transfer rights in, the Article 9 Collateral. The Model UCC Opinion does not provide assurances that Borrower has title to the Article 9 Collateral and does not address the priority of any security interest.

(2) The Model UCC Opinion assumes that contemporaneously with the delivery of the opinion to the Opinion Recipient, the Opinion Recipient will have either advanced to Borrower the proceeds of the Loan to be secured by the security interest or entered into a commitment to make the Loan or that “value” will have otherwise been given sufficient for purposes of Section 9-203 of the UCC.

⁵⁷ While the UCC provides that a UCC financing statement can be filed to perfect a security interest in fixtures it is commonly excluded because this is generally considered to be an inferior method of perfection. O.C.G.A. 11-9-501(a)(2).

(3) The Model UCC Opinion assumes that the name and address of the secured party set forth in the Financing Statement are accurate.

(4) The Model UCC Opinion assumes that the name and address of the secured party and the name of the record owner or lessee set forth in the Fixture Filing and the Security Deed are accurate.

(5) The Model UCC Opinion assumes that the description of the Real Property is accurate (as provided in Interpretive Standard 22).

(6) The Model UCC Opinion assumes that the security interest is subject to the effects of bankruptcy and insolvency law (as provided in Interpretive Standard 25(1)).

(7) The Model UCC Opinion assumes that the security interest is subject to equitable principles (as provided in Interpretive Standard 25(2)).

(8) The Model UCC Opinion assumes that the Security Deed, the Financing Statement or the Fixture Filing adequately describe the collateral they purport to cover, except to the extent that the Article 9 Personal Property Collateral is described by reference to the types of collateral defined in the UCC, other than commercial tort claims, consumer goods (in consumer transactions), a security entitlement, a securities account, or a commodity account.

(9) The Model UCC Opinion is subject to the implied qualification that the perfection of a security interest may be lost under circumstances set forth in Section 9-315 of the UCC with respect to Article 9 Collateral that is converted into proceeds.

(10) The Model UCC Opinion is subject to the implied qualification that perfection terminates unless appropriate continuation statements are filed within six months prior to the end of each successive five year period from the date of filing (other than with respect to a Security Deed which is filed as a fixture filing, which does not require the filing of a continuation statement to remain effective).

(11) The Model UCC Opinion does not cover future events that might affect perfection.

(12) With respect to Fixtures, the Model UCC Opinion covers only those Fixtures that are attached to the Real Property covered by the Security Deed.

(13) The Model UCC Opinion does not cover any security interest in ordinary building materials that are incorporated into an improvement on the Real Property.

(14) The Model UCC Opinion does not cover any security interest in commercial tort claims, letters of credit and letter-of-credit rights, deposit accounts, money, manufactured homes, consumer goods, goods subject to certificates of title, as-extracted collateral, and timber to be cut, in each case as defined in the UCC.

(15) The Model UCC Opinion does not cover the creation or perfection of a security interest in or claim in or under any policy of insurance, except for claims to proceeds payable by reason of loss or damage under insurance policies insuring the collateral.

* * * * *

5. The Model Opinion contained in Appendix II is hereby deleted in its entirety and the attached Appendix II is hereby inserted in lieu thereof.

APPENDIX II
MODEL OPINION

DATE

The Opinion Recipient
Street Address
City, State Zip

Ladies and Gentlemen:

We have acted as counsel to _____ (“Borrower”), a Georgia corporation/general partnership/limited partnership/limited liability partnership/limited liability limited partnership/limited liability company, and _____ (“Guarantor”)⁵⁸, a resident of the State of Georgia in connection with the closing of a \$_____ loan (the “Loan”) from _____ (“Lender”), secured by certain real property (the “Real Property”) and goods that are fixtures, as defined in the UCC (the “Fixtures”) located in _____ County, Georgia (the “County”), and related personal property (the “Personal Property”) (the “Real Property” and the “Personal Property” hereinafter collectively referred to as the “Property”).

This Opinion Letter is limited by, and is in accordance with, the March 17, 2009 edition of the Interpretive Standards applicable to Legal Opinions to Third Parties in Georgia Real Estate Secured Transactions adopted by the Legal Opinion Committee of the Real Property Law Section of the State Bar of Georgia and approved by the Executive Committee of the Real Property Law Section of the State Bar of Georgia, as supplemented on March 11, 2014, and such Interpretive Standards are incorporated in this Opinion Letter by this reference. Capitalized terms used in this opinion letter (and any attachments hereto) and not otherwise defined herein shall have the meanings assigned to such terms in the Interpretive Standards.

In the capacity described above; we have considered such matters of law and of fact, including the examination of originals or copies, certified or otherwise identified to our satisfaction, of such records and documents of Borrower, certificates of officers/partners/members/managers and representatives of Borrower, certificates of public officials and such other documents as we have deemed appropriate as a basis for the opinions hereinafter set forth.

⁵⁸ For purposes of the Model Opinion it is assumed that Guarantor is an individual; if Guarantor were an entity, the Model Opinion should be modified to include as to Guarantor parallel opinions to the opinions as to Borrower set forth in Paragraphs 1-4 of the Model Opinion and the opinions set forth in Paragraphs 5 and 6 of the Model Opinion should be omitted. Similarly, it is assumed that Borrower is not a natural person; if Borrower were an individual, the Model Opinion should be modified to include as to Borrower parallel opinions to the opinions as to Guarantor set forth in Paragraphs 5 and 6 and the opinions as to Borrower set forth in Paragraphs 1-4 of the Model Opinion should be omitted.

The opinions set forth herein are limited to the laws of the State of Georgia and applicable federal laws.⁵⁹

In connection with the Loan, we have examined the following documents (items (a) through (c), the “Loan Documents”), executed by Borrower:

- (a) Promissory Note in the original principal amount of \$_____ (the “Note”);
- (b) Deed to Secure Debt and Security Agreement (the “Security Deed”);
- (c) Assignment of Rents and Leases;
- (d) UCC Financing Statement naming the Borrower as debtor and the Lender as secured party to be filed with the clerk of superior court for any county in the State of Georgia (the “UCC Filing Office”), a copy of which is attached hereto as Exhibit A (the “Financing Statement”)⁶⁰; and
- (e) UCC Financing Statement naming the Borrower as debtor and the Lender as secured party to be recorded in the real estate records of the County (the “Recording Office”), a copy of which is attached hereto as Exhibit B (the “Fixture Filing”).

Each of the Loan Documents is dated as of [the date of this Opinion Letter].

We have also examined the Guaranty (the “Guaranty”), executed by Guarantor and dated as of _____.

Based upon and limited by the foregoing, it is our opinion that:

1. Borrower was incorporated and duly organized as a corporation under the laws of the State of Georgia. Borrower is existing and in good standing under the laws of the State of Georgia.

[or]

Borrower was formed as a limited partnership/ limited liability limited partnership under the laws of the State of Georgia. Borrower is existing and in good standing under the laws of the State of Georgia.

[or]

⁵⁹ The Model Opinion does not include alternative provisions referenced in the Amended and Restated Report on Legal Opinions to Third Parties in Georgia Real Estate Secured Transactions that may, with the consent of the Opinion Giver and the Opinion Recipient, be included in the Opinion Letter.

⁶⁰ This language deviates from the prior opinion form and the Opinion Giver and Opinion Recipient can agree on a different approach; however, the attachment of the form of Financing Statement ensures that all parties know which financing statement is the subject of the Opinion.

Borrower is a general partnership/ limited liability partnership existing under the laws of the State of Georgia.

[or]

Borrower was formed and duly organized as a limited liability company under the laws of the State of Georgia. Borrower is existing and in good standing under the laws of the State of Georgia.

2. Borrower has the power to execute and deliver the Loan Documents, to perform its obligations under the Loan Documents, to own and use the Property and to conduct its business.
3. Borrower has duly authorized the execution and delivery of the Loan Documents and the performance by Borrower thereunder. Borrower has duly executed and delivered the Loan Documents.
4. The execution and delivery by Borrower of the Loan Documents do not violate Borrower's Organizational Documents, do not violate any applicable constitution, statute, regulation, rule, or law to which Borrower or the Property is subject, and do not, to our knowledge, (i) constitute a breach or default under any other material written agreements known to us to which Borrower is a party or by which Borrower or the Property is bound, or (ii) violate any judicial or administrative decree, writ, judgment or order known to us to which Borrower or the Property is subject.
5. Guarantor has executed and delivered the Guaranty.
6. The execution and delivery by Guarantor of the Guaranty do not violate any applicable constitution, statute, regulation, rule, or law to which Guarantor is subject, and do not, to our knowledge, (i) constitute a breach or default under any other material written agreements known to us to which Guarantor is a party, or (ii) violate any judicial or administrative decree, writ, judgment or order known to us to which Guarantor is subject.
7. The Loan Documents are valid and enforceable against Borrower in accordance with their respective terms.

The enforceability opinion set forth above is subject to the qualification that certain provisions of the Loan Documents may not be enforceable; nevertheless, such unenforceability will not render the Loan Documents invalid as a whole or preclude (i) the judicial enforcement of the obligation of Borrower to repay the principal, together with interest thereon, both as provided in the Note, as limited by the usury opinion set forth below and subject to the obligation to confirm an exercise of power of sale pursuant to O.C.G.A. Section 44-14-161 as a prerequisite to an action to obtain a deficiency judgment, (ii) the acceleration of the obligation of Borrower to repay such principal, together with such interest, upon a material default by Borrower in the payment of such principal or interest, and (iii) the non-judicial foreclosure of the security title to

the Real Property by exercise of power of sale pursuant to the Security Deed in accordance with Georgia law upon maturity of the Note or upon acceleration pursuant to (ii) above.

The Guaranty is valid and enforceable against Guarantor in accordance with its terms.

The enforceability opinion set forth above with respect to the Guaranty is subject to the qualification that certain provisions of the Guaranty may not be enforceable; nevertheless, such unenforceability will not render the Guaranty invalid as a whole or preclude the judicial enforcement of Guarantor's obligation to pay the principal together with interest thereon, both as provided in the Note, to the extent guaranteed pursuant to the Guaranty, as limited by the usury opinion set forth below.

8. The Loan Documents and the Interest Charges contracted for therein are in compliance with the Usury Laws of the State of Georgia; provided, however, that (i) no opinion is expressed with respect to the compliance with the Usury Laws of any provisions in the Loan Documents that purport to permit Interest Charges, however denominated and regardless of whether or not denominated as interest, to be charged, paid, collected or contracted for at a rate in excess of five percent (5%) per month if and to the extent a violation of O.C.G.A. Section 7-4-18 results (whether due to prepayment, acceleration, redemption, cancellation, termination or otherwise), and (ii) no opinion is expressed with respect to the compliance with the Usury Laws of any provisions in the Loan Documents that purport to permit interest to be charged or paid on interest if and to the extent such provisions result in a violation of O.C.G.A. Section 7-4-17.⁶¹
9. The Security Deed creates a valid security interest in favor of Lender in that portion of the Property constituting Fixtures.
10. The Security Deed creates a valid security interest in favor of Lender in that portion of the Personal Property in which a security interest can be created under Article 9 of the UCC (the "Article 9 Personal Property Collateral").
11. With respect to that portion of the Article 9 Personal Property Collateral as to which a security interest can be perfected under Article 9 of the UCC by the filing of a financing statement in the State of Georgia, upon the proper filing of the Financing Statement in the UCC Filing Office, such security interest of Lender in such Article 9 Personal Property Collateral will be perfected.

⁶¹ The Model Usury Opinion is to be given only as to loans in the amount of \$250,000 or more. For a discussion of opinions relating to loans of more than \$3,000 but less than \$250,000, see Section 19.02C.1(a). This Report does not address loans of \$3,000 or less as discussed in Section 19.02C.1(c).

12. Upon the recordation of the Security Deed as a fixture filing in the Recording Office, the security interest of the Lender in the Fixtures located on the Property will be perfected.⁶²

13. Upon the recordation of the Fixture Filing in the Recording Office, the security interest of the Lender in the Fixtures located on the Property will be perfected.

This Opinion Letter is provided to you for your exclusive use solely in connection with the Loan and may not be relied upon by any other person or for any other purpose without our prior written consent.

Very truly yours,

[Signature of the Lawyer/
Law Firm Representing Borrower]

⁶² Either or both of Opinions 12 and 13 may be used, depending on the method of perfection used in a given transaction. In some cases, lenders may choose to perfect by both methods.