

OPINION OF CDC COUNSEL

[Date]

District Counsel
U.S. Small Business Administration (SBA)
[District Office Name]
[Address]
[City], [State] [Zip]

Re: SBA Loan Name: [Loan Name]
SBA Loan Number: [Loan Number]
Borrower: [Borrower Name]
Loan/Debenture Amount: [Loan Amount]
Project Property: [Project Property]

Dear Sir or Madam:

We have acted as CDC Counsel to [CDC Name] (the "CDC") in connection with the closing of the referenced 504 Loan.

This paragraph must be added if the CDC Counsel or any member of his or her firm also represents the Third Party Lender in connection with the Project financing.

I, my law firm and/or one or more of the firm's attorneys represent both the Third Party Lender and the CDC in connection with the financing of the Project. I certify that I reasonably believe that my dual representation will not adversely affect my attorney-client relationship and, after consultation and consideration, the Third Party Lender and the CDC have expressly waived, in writing, any conflict of interest arising as a result of such dual representation and any attorney-client privilege that might otherwise attach among the Third Party Lender and the CDC/SBA. I further certify that I have taken all actions necessary to comply with ethical requirements applicable to attorneys in the relevant jurisdiction regarding dual representation and conflicts of interest. After the disbursement of the 504 loan, neither I nor any member of my firm shall represent the Third Party Lender or the CDC/SBA with respect to any issue arising out of the Project, including but not limited to any related litigation, in the event that the Third Party Lender or the CDC/SBA objects.

Paragraph A. is mandatory for Designated 504 Closing Attorneys submitting a loan using the expedited closing procedures. See SOP 50 10. For all other 504 loan closings, paragraph A. is optional.

- A. We certify that we currently have in effect the insurance coverage required by SOP 50-10(.
- B. In rendering the opinions and representations expressed in this letter, we have examined and relied upon the accuracy of the following documents:
 1. A copy of the executed Authorization for Debenture Guarantee, with [redacted] accompanying amendments (the "Authorization"); (insert #)
 2. The original executed Debenture (SBA Form 1504), which is incomplete as to the interest rate and payment amount;

3. The original executed Note (SBA Form 1505), which is incomplete as to the interest rate, P & I amount, and amount of monthly payment, and which evidences a 504 Loan to Borrower from CDC in the above-referenced amount, together with an Assignment of the Note made by CDC to SBA (the "Note Assignment");
4. Copies of the executed note(s) to and deed of trust or mortgage in favor of **[Third Party Lender]** (the "Third Party Lender") in the **[SELECT - aggregate amount - OR - amount]** of \$**[Third Party Lender Loan Amount]**, (the "Third Party Lender Loan");

Counsel must include from the following paragraphs (B.5. to B.30.) all the items appropriate to this transaction.

5. Copies of the executed note(s) to and deed of trust or mortgage in favor of **[Interim Lender]** (the "Interim Lender") in the **[SELECT - aggregate amount - OR - amount]** of \$**[Interim Loan Amount]**, (the "Interim Loan");
6. All original executed Guarantees (SBA Form 148), executed by **[Guarantor1]** and **[Guarantor2]**, together with an Assignment of each Guarantee made by CDC to SBA (the "Guarantee Assignments"); **[Specify each Guarantee]**
7. The original executed deed of trust, from Borrower, as grantor, to **[Trustee]**, as trustee, for the benefit of CDC (the "Deed of Trust"), conveying certain property located in **[County]** County, **[State]**, as more particularly described in the deed of trust, as collateral, together with an original executed Assignment of the Deed of Trust made by CDC to SBA (the "Deed of Trust Assignment");
8. The original executed Mortgage, from Borrower, as mortgagor, to CDC, as mortgagee, (the "Mortgage"), designed to create a valid lien on certain property located in **[County]** County, **[State]**, as more particularly described in the Mortgage, as collateral, together with an original executed Assignment of the Mortgage made by CDC to SBA (the "Mortgage Assignment");
9. The original executed Assignment of Leases and Rents from Borrower to CDC (the "Assignment of Leases"), together with an original executed Reassignment of the Assignment of Leases made by CDC to SBA (the "Reassignment");
10. The original executed Assignment of Rents, from Borrower to CDC (the "Assignment of Rents"), together with an original executed Reassignment of the Assignment of Rents made by CDC to SBA (the "Reassignment");
11. The original executed Security Agreement, from Borrower **[OPTION - and Operating Company, if not a Co-borrower]**, to CDC (the "Security Agreement"), together with an original executed Assignment of the Security Agreement made by CDC to SBA (the "Security Agreement Assignment");
12. The original Financing Statements for all personal property required by the Authorization as collateral, **naming Borrower [OPTION - and Operating Company, if not a Co-borrower,]** as debtor and CDC as secured party (the "Financing Statements"), together with the original Assignments of the Financing Statements made by CDC to SBA (the "Financing Statements Assignments"); **FOLLOW AUTHORIZATION REQUIREMENTS**
13. **[Specify any other lien instruments required by the Authorization FOR EXAMPLE: SECONDARY COLLATERAL]**

14. The original executed Resolution of the Board of Directors of CDC (SBA Form 1528);
15. The original executed Corporate Resolution (SBA Form 160) of Borrower [OPTION - and of any corporate guarantors];
16. The original executed Certificate as to Partners (SBA Form 160A) [OPTION - BORROWER and any partnership guarantors];
17. The original executed Resolution of Limited Liability Company Borrower [OPTION - and of any limited liability company guarantors];
18. CDC Certificate and Articles of Incorporation

Option A [Project in CDC's State of Incorporation where CDC Closing Counsel is licensed]

[Select - Copies - OR - Certified copies] of the Certificate and Articles of Incorporation (as amended) of CDC as filed with [Appropriate Authority of State of Incorporation], a copy of the current Bylaws (as amended) of CDC, and an original current good standing certificate from [Appropriate Authority of State of Incorporation] for CDC;

Option B [Project in State where CDC has Foreign Registration and CDC Designated Closing Counsel is licensed in both Project State and CDC's State of Incorporation.]

[Select - Copies - OR - Certified copies] of the Certificate and Articles of Incorporation (as amended) of CDC as filed with [Appropriate Authority of State of Incorporation], a copy of the current Bylaws (as amended) of CDC, a certified copy of the Certificate of Registration as filed with [Appropriate Authority of State of Foreign Registration], and original current good standing certificates from [Appropriate Authority of State of Incorporation] and [Appropriate Authority of State of Foreign Registration] for CDC;

Option C [Project in State where CDC has Foreign Registration and CDC Designated Closing Counsel is only licensed in CDC State of Incorporation and is relying on an Attorney licensed in the Project State for an opinion on state law issues.]

Option 18.C. may only be used after CDC has obtained a waiver of policy from SBA to proceed without using a CDC Designated Closing Counsel in the project state to close the loan. CDC Designated Closing Counsel should send the waiver request to the District Counsel in the state where the loan is being closed for recommendation and forwarding to OGC for approval.

[Select - Copies - OR - Certified copies] of the Certificate and Articles of Incorporation (as amended) of CDC as filed with [Appropriate Authority of State of Incorporation], a copy of the current Bylaws (as amended) of CDC, a certified copy of the Certificate of Registration as filed with [Appropriate Authority of State of Foreign Registration], and original current good standing certificates from [Appropriate Authority of State of Incorporation] and [Appropriate Authority of State of Foreign Registration] for CDC, and an opinion letter addressed to the undersigned from [Attorney licensed in the Project State].

Option D [Project in State where CDC has Foreign Registration and CDC Designated Closing Counsel is only licensed in Project State and is relying on opinion of CDC Counsel licensed in CDC State of Incorporation for issues related to the CDC authority and documents.]

[**Select - Copies - OR - Certified copies**] of the Certificate and Articles of Incorporation (as amended) of CDC as filed with [**Appropriate Authority of State of Incorporation**], a copy of the current Bylaws (as amended) of CDC, a certified copy of the Certificate of Registration as filed with [**Appropriate Authority of State of Foreign Registration**], original current good standing certificates from [**Appropriate Authority of State of Incorporation**] and [**Appropriate Authority of State of Foreign Registration**] for CDC, and an opinion letter addressed to the undersigned from CDC's [**General or State of Incorporation Designated Closing Counsel**].

19. The original executed CDC Certification (SBA Form 2101);
20. The original executed Interim Lender Certification between CDC and _____ (Interim Lender) dated _____ wherein Interim Lender certifies that it has provided financing to the Borrower in the amount of \$ _____ (SBA Form 2288);
21. The original executed Third Party Lender Agreement between CDC and _____ (Third Party Lender) dated _____ wherein the Third Party Lender agrees to provide term financing in the amount of \$ _____ with a term of _____ years secured by a lien on real estate located at _____ and personal property (if any) located at _____. (SBA Form 2287);
22. The original executed Borrower and Operating Company Certification (SBA Form 2289);

Insert item 23 if there is an Opinion of Borrower and/or Guarantor Counsel; otherwise list as item 23 Borrower and/or Guarantor organizational documents reviewed and relied upon.

For example Trust language:

The original executed Declaration of Trust, Trustee Certification required by Authorization, (Authorization of Beneficiaries: if required by trust documents), Schedule of Beneficiaries, and (list any other documents) of Borrower and/or Guarantor trust(s).

23. The original executed Opinion of Borrower and/or Guarantor Counsel;
24. The commitment for an ALTA loan policy of title insurance issued by [**Title Company**] (the "Title Company") in the amount of \$ [**Amount**] effective as of [**Date**]; and the following title and lien searches, with copies of attachments, including all recorded easements, covenants, restrictions, and other exceptions (including conditions shown by a survey):
 - a) [**Specify any State and county lien searches, and any UCC lien searches by title company/searcher and date, and any other title insurance policy reviewed**]
25. [**SELECT - Copy of a survey - OR - An original survey**] certified to CDC and SBA, or a prior survey acceptable to CDC, SBA, and the title insurer, and a survey affidavit of no change [**OPTION - in those jurisdictions where a survey customarily is provided for title insurance coverage**];

26. An original certification or affidavit of ownership and/or other pertinent documentation (such as bills of sale, invoices, and/or purchase orders) from Borrower relating to ownership of the [Describe any specific equipment or other personal property collateral].

Item 27 can be omitted if it is already part of item 22

27. Original Federal and state tax lien reports or certificates issued by [describe issuer of report];

28. The original executed Servicing Agent Agreement (SBA Form 1506);

Insert item 29 if CDC uses a Loan Agreement

29. Original executed Loan Agreement;

30. [Specify any other documents unique to the specific 504 Loan, such as a deed of trust on other real estate.]

- a) Evidence of hazard, general liability, workers' compensation insurance (add any other required insurance).
- b) \$xxx,xxx life insurance policy as required by the Authorization on the life of _____, with assignment of the Policy as Collateral to SBA
- c) Permanent Certificate of Occupancy issued by the City/Town of _____
- d) Standby Agreement(s) of _____ in the amount of _____ as required by the Authorization.

- C. We also have examined such other documents and information, including the provisions of the Small Business Act, as amended, and the Small Business Investment Act of 1958, as amended, and the regulations issued under them, the corporation law (including non-profit corporation law, if applicable) of the State of

Option A [Project in CDC's State of Incorporation where CDC Closing Counsel is licensed]

- [State of Incorporation]

Option B [Project in State where CDC has Foreign Registration and CDC Designated Closing Counsel is licensed in both Project State and CDC's State of Incorporation]

- [State of Incorporation and State of Foreign Registration]

Option C [Project in State where CDC has Foreign Registration and CDC Designated Closing Counsel is licensed only in CDC's State of Incorporation]

- [State of Incorporation]

Option D [Project in State where CDC has Foreign Registration and CDC Designated Closing Counsel is only licensed in Project State]

- [State of Foreign Registration]

and other applicable Federal and state laws and regulations as are necessary or appropriate, in accordance with prudent legal practice, to enable us to form the opinions and make the representations expressed in this letter.

D. Based upon the foregoing, we are of the opinion, as of the date of this letter, that:

1.

Option A [Project in CDC's State of Incorporation]

CDC is a [OPTION - non-profit] corporation duly organized, in good standing, and validly existing under the laws of [State of Incorporation].

Option B [Project in State where CDC has Foreign Registration]

CDC is a [OPTION - non-profit] corporation duly organized, in good standing, and validly existing under the laws of [State of Incorporation] and is registered as a foreign corporation in good standing under the laws of [State of Foreign Registration].

2. The Debenture has been duly authorized, executed and delivered by an authorized officer of CDC and, when the principal amount stated in the Debenture, less fees and expenses, has been disbursed on behalf of CDC or its assigns and Borrower, and when the Debenture is appropriately completed in accordance with the Servicing Agent Agreement, the Debenture will be a valid and binding obligation of CDC, enforceable in accordance with its terms.
3. The Note Assignment, the Guarantee Assignments, [SELECT - the Deed of Trust Assignment - OR - the Mortgage Assignment], the Reassignment, the Security Agreement Assignment, the Financing Statements Assignments and any other CDC assignments required by the Authorization (collectively, the "Assignments") have been duly authorized, executed and delivered by an authorized officer of CDC and are valid and binding obligations of CDC, enforceable in accordance with their respective terms.
4. Any other instruments and supporting documents required by the Authorization to be executed by CDC have been duly authorized, executed and delivered by an authorized officer of CDC and are valid and binding obligations of CDC, enforceable in accordance with their respective terms.
5. The 504 loan has been closed in accordance with requirements of the Authorization.
6. Based on my review of the organizational documents of the Borrower and Guarantors, and/or the Opinion of Borrower's Counsel dated _____
 - a) Borrower and Guarantors (other than natural persons) are (a) duly organized, (b) in good standing, and (c) validly existing.
 - b) Borrower has the authority to borrow the amount of the 504 loan from the CDC and each Guarantor has the authority to guarantee the amount guaranteed. Borrower and Guarantors have the authority to pledge the collateral securing the Note or Guarantee.
 - c) Each document executed by the Borrower or a Guarantor in connection with the 504 loan has been executed and delivered by the appropriate authorized person and is valid, binding, and enforceable according to its terms.

E. Our opinion as to the enforceability of the obligations of CDC under the Debenture and the Assignments is subject to the following qualifications:

1. The effect of any applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other laws affecting creditor's rights generally; and
2. The exercise of judicial discretion in accordance with general principles of equity.

F. We express no opinion as to the laws of any state other than

Option A [Project in CDC's State of Incorporation where CDC Closing Counsel is licensed]

- [State of Incorporation].

Option B [Project in State where CDC has Foreign Registration and CDC Designated Closing Counsel is licensed in both Project State and CDC's State of Incorporation]; **Option C** [Project in State where CDC has Foreign Registration and CDC Designated Closing Counsel is only licensed in CDC's State of Incorporation]; and **Option D** [Project in State where CDC has foreign registration and CDC Designated Closing Counsel is only licensed in the Project State]

- [State of Incorporation and State of Foreign Registration]

G. We express no opinion with respect to title to any property.

H. Based upon the foregoing and on our knowledge, we also make factual representations, but do not opine, to the following:

1. We have made arrangements for the prompt recording or filing of all relevant documents.
[Attorneys may specify the arrangements at their option]

Insert the following two paragraphs if the Interim Lender and the Third Party Lender are **different**

2. Upon receipt and application by the Interim Lender of the net Debenture proceeds in the amount of \$[Amount], [OPTION - and the payment of any accrued, outstanding interest by Borrower,] the Interim Lender has stated that the Interim Loan will be paid in full.
3. The Third Party Lender has stated that the principal balance of the Third Party Lender Loan will not exceed \$[Amount].

Insert the following if the Interim Lender and the Third Party Lender are the **same**

4. Upon receipt and application by the Interim/Third Party Lender of the net Debenture proceeds in the amount of \$[Amount], [OPTION - and the payment of any accrued, outstanding interest by Borrower,] the Third Party Lender has stated that the principal balance of the Third Party Lender Loan will not exceed \$[Amount].

Insert the following if the Project Property includes real estate.

5. The Title Company [SELECT - has issued - OR - will issue] an ALTA loan title insurance policy in the amount required by the Authorization insuring that CDC and SBA hold a valid [Lien position] lien on the Property subject only to the liens expressly permitted by the Authorization. There either (a) are no contractor's, mechanic's or materialman's liens on the Property currently filed and no exception for same in the title insurance commitment/policy, or (b) the Title Company is providing affirmative coverage to CDC and SBA over any such liens, affording reasonably adequate protection against material loss arising from any such liens. In addition, the Title Company is providing such endorsements as are necessary or appropriate reasonably to protect CDC and SBA against material loss arising from other exceptions in the title insurance commitment/policy not expressly permitted by the Authorization. In the case of subsequent issuance, [state how appropriate title

insurance protection is afforded at the time of submission according to local practice; for example: "the title company issued a title insurance commitment evidencing its willingness to insure, has provided us with a satisfactory marked-up copy after the closing and has collected its full premium for the policy"] .

Insert the following paragraph if the Project Property includes personal property.

6. With respect to the personal property (in which a security interest subject to Article 9 of the Uniform Commercial Code is granted which may be perfected by the filing of financing statements), upon the filing of the Financing Statements, the security interests of CDC and SBA in such property will have been perfected, and CDC and SBA will be in the lien position required by the Authorization.
- I. For purposes of the opinions and representations made in this letter, the words "our knowledge" refer to the knowledge of the lawyers and other legal professionals within our firm working on this 504 loan, and mean that, in the course of our representation of the CDC in matters with respect to which we have been engaged by the CDC as counsel, no information has come to our attention that has given us actual knowledge or actual notice or reasonably would lead us to conclude that anything in this letter or in any of the documents referred to in this letter on which we have relied (including SBA Form 2101, CDC Certification) is misleading or inaccurate, or that further inquiry is appropriate.
 - J. In forming the opinions and making the representations set forth above, we have assumed, and nothing has come to our attention which would lead us to conclude to the contrary, the following:
 1. all documents submitted to us as copies are authentic, all copies conform to the original documents, all signatures are genuine, and all public records reviewed are accurate and complete;
 2. each person, party or entity ("Person") other than CDC has taken all actions necessary to authorize the actions contemplated to be performed by such Person in connection with the 504 Loan, and has duly and validly executed and delivered each instrument, document, and agreement executed in connection with the 504 Loan to which such Person is a signatory, and such Person's obligations set forth therein are its legal, valid, and binding obligations, enforceable in accordance with their respective terms;
 3. each individual executing any instrument, document, or agreement on behalf of any Person (other than CDC, Borrower, and Guarantors) has been duly authorized to do so; and
 4. each Person other than CDC has performed or will perform the actions contemplated to be performed by such Person in connection with the 504 Loan.
 5. no fraud exists with respect to J.1. through J.4.

This letter is solely for the benefit of SBA, including its counsel, and may not be relied upon by any other person or entity without our prior written approval. We are aware that SBA will rely upon this letter in guaranteeing the Debenture. The opinions and representations in this letter are limited to the matters set forth in this letter. We do not undertake to advise you of any changes in the opinions expressed in this letter that may result from occurrences after the date of this letter.

We are submitting the 504 Loan closing package to you with this letter.

Signature Option A [Project in CDC's State of Incorporation where CDC Closing Counsel is licensed]

As the individual attorney signing this letter, I further certify that I am authorized to do so and that I am a licensed, active member, in good standing, of the Bar of **[State of CDC Incorporation]**.

Signature Option B [Project in State where CDC has Foreign Registration and CDC Designated Closing Counsel is licensed in both Project State and CDC's State of Incorporation]

As the individual attorney signing this letter, I further certify that I am authorized to do so and that I am a licensed, active member, in good standing, of the Bars of **[State of Foreign Registration Where Project is Located]** and of **[State of CDC Incorporation]**.

Signature Option C [Project in State where CDC has Foreign Registration and CDC Designated Closing Counsel is only licensed in CDC State of Incorporation]

As the individual attorney signing this letter, I further certify that I am authorized to do so and that I am a licensed, active member, in good standing, of the Bar of **[State of CDC Incorporation]**.

Signature Option D [Project in State where CDC has Foreign Registration and CDC Designated Closing Counsel is only licensed in Project State]

As the individual attorney signing this letter, I further certify that I am authorized to do so and that I am a licensed, active member, in good standing, of the Bar of **[State of Foreign Registration Where Project is Located]**.

Very truly yours,

[Name of Law Firm] Law Firm

By: **[Name]**, **[Title]**, for the Firm

Appendix D

Opinion of CDC Counsel

Read this first! This appendix contains the standardized text for the Opinion of CDC Counsel required by the Authorization. All paragraphs are mandatory except when noted otherwise. Paragraphs must be renumbered depending on which options are selected. All other comments should be self-explanatory (see also "Format Conventions" on page ii).

How to obtain this Appendix in MS-Word format:

A MS-Word document containing the text of this appendix is available. The document is called D504v2013.doc. That document is not a wizard and is not connected to the 504 Wizard. It is a standard MS-Word document that can be edited in the same manner as any MS-Word document.

If using the **504 Wizard**, D504v2013.doc should be located in your MS-Word document directory if the Wizard was installed locally. Use File - Open in MS-Word to access your document directory. If you are accessing the Wizard via a local area network, contact your network administrator to know where the document is located.

The document is also available on the **National 504 Authorization Page** on both SBA's intranet (YES!) and banking web site (located at <http://www.sba.gov/content/504-authorization-file-library>).

To accommodate cases where a CDC Counsel is closing a loan in a state outside the CDC's State of Incorporation, the Opinion of CDC Counsel provides four options to cover various situations as defined below:

Option A – This option should be used if the Project is in the CDC's State of Incorporation and the CDC Counsel closing the loan is licensed in that State.

Option B – This option should be used if the Project is located outside the CDC's State of Incorporation and the CDC Designated Closing Counsel closing the loan is licensed in both States.

Option C – This option should be used when the Project is located outside the CDC's State of Incorporation, the CDC Designated Closing Counsel closing the loan is licensed only in the CDC's State of Incorporation and will be relying on an opinion of Counsel licensed in the Project State on state law issues. *Option C cannot be used without a waiver of policy from SBA allowing this option. CDC Designated Closing Counsel closing the loan should send waiver requests to the District Counsel in the state where the loan is being closed for recommendation and forwarding for approval to OGC.*

Option D – This option should be used when the Project is located outside the CDC's State of Incorporation, the CDC Designated Closing Counsel closing the loan is licensed only in the Project State and will be relying on an opinion of CDC Designated Closing Counsel licensed in the CDC's State of Incorporation for CDC authority and enforcement issues.