

**Note – This form of opinion letter should only be used in transactions where the documents are not standard form of documents. If the opinion is in respect of standard form documents, the recommended form of opinion is found wsociety.bc.ca/support-and-resources-for-lawyers/your-practice/solicitors-legal-opinions/” under 2. Model Form of Opinion for Standard Form Documents (Search the Web. “Legal Opinions British Columbia”)**

**Solicitors using this opinion should refer to the comments under “Notes Re: Sample Opinions for guidance on the use of this opinion and summary explanations of some of the terms used**

**Sample Commercial Opinion  
To be given by counsel to the Corporation (as defined below)**

[DATE]

[ADDRESSEE]

Dear •

Re:

We have acted as counsel to • (the “**Corporation**”) in connection with [describe transaction, e.g. purchase, credit facility, etc.] pursuant to a • dated • [describe principal agreement, e.g. purchase and sale agreement, credit agreement, etc.] (the “**Principal Agreement**”) between the Corporation and • [name of counterparty].

Capitalized terms used in this opinion letter and defined in the Principal Agreement but not in this opinion letter have the meanings given to them in the Principal Agreement.

**1. DOCUMENTS, SCOPE OF REVIEW AND RELIANCES**

In our capacity as counsel to the Corporation, we have reviewed an original or copy of a signed copy of:

- 1.1 the Principal Agreement;
- 1.2 [Identify transaction documents e.g. bill of sale, assignment, transfer, purchase agreement guarantee, etc.]  
(collectively the “**Documents**”);

[copies of which are enclosed or have been previously delivered to •]:

We have also made such investigations and searches, examined such other documents and certificates of public officials and have considered such questions of law as we have considered necessary to provide the opinions set out below. In particular, we have, without independent

investigation or verification, reviewed and relied upon the following, copies of which are enclosed or have been previously provided to you:

- 1.3 as to certain matters of fact, a certificate of ●, as ●, of the Corporation (the “**Certificate of Officer**”), dated as of the date of this opinion letter, to which are attached, among other things:
  - 1.3.1 copies of the notice of articles and articles of the Corporation (the “**Constituting Documents**”),<sup>1</sup>
  - 1.3.2 [if applicable, a copy of the shareholders’ agreement made among the Corporation and its shareholder, ●, ● and ● dated as of ●;]
  - 1.3.3 a copy of a resolution of the directors of the Corporation with respect to, among other things, the execution, delivery and performance by the Corporation of its obligations under the Documents (the “**Directors’ Resolution**”); and
  - 1.3.4 an incumbency schedule identifying [certain of] the directors and officers of the Corporation and providing specimen signatures for [certain of] them (the “**Incumbency Schedule**”), and
- 1.4 a certificate of good standing issued by the Office of the Registrar of Companies for British Columbia (the “**Companies Office**”) with respect to the Corporation on ● (the “**Certificate of Good Standing**” and together with the Certificate of Officer, the “**Certificates**” and either one, a “**Certificate**”). [alternatively, if Corporation is a CBCA corporation... a certificate of status issued by the Director, *Canada Business Corporations Act* with respect to the Corporation on ●].

We have not reviewed the minute books or any of the other corporate records of the Corporation, except for the extracts therefrom attached to the Certificate of Officer.

## 2. **APPLICABLE LAW**

Our opinions given below are limited to the laws of the Province of British Columbia and the federal laws of Canada applicable therein (collectively, “**Applicable Law**”) and we express no opinion herein as to the laws of any other jurisdiction.

## 3. **ASSUMPTIONS**

For the purposes of the opinions expressed below, we have, without independent investigation or verification and with your concurrence, assumed:

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<sup>1</sup> Use equivalent terms from the CBCA where Debtor is a federal corporation.

- 3.1 the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified, conformed, photostatic, facsimile, scanned or other copies;
- 3.2 the identity and capacity of all individuals acting or purporting to act as public officials and of all individuals executing the Documents or any Certificate, whether in an individual capacity or on behalf of any party thereto;
- 3.3 all facts set forth in the official public records, indices, filing and registration systems and all certificates, documents and printed results supplied or otherwise conveyed to us by public officials on which we have relied for the purposes of this opinion are complete, true, accurate and current at the time this opinion is delivered;
- 3.4 the accuracy and completeness of all statements of fact made in the Certificates and that all such statements remain true, accurate and current at the time this opinion is delivered; and
- 3.5 to the extent such matters are governed by laws other than Applicable Law, that each Document has been duly executed and delivered by the Corporation under and in accordance with such laws.

#### 4. **OPINIONS**

Based and relying upon the foregoing and subject to the limitations and qualifications set out below, we are of the opinion that:

- 4.1 The Corporation was incorporated as a company under the laws of the Province of British Columbia, is a valid and existing company and is, with respect to the filing of annual reports with the Companies Office, in good standing.

*[or, if Corporation is a CBCA corporation... the Corporation exists as a corporation under the Canada Business Corporations Act, has sent to the Director under that Act all required annual returns, is registered as an extra-provincial company under the Business Corporations Act (British Columbia), and is, with respect to the filing of annual reports, in good standing with the Companies Office]*

- 4.2 The Corporation has the corporate power and capacity to enter into and perform its obligations under the Documents to which it is a party.
- 4.3 The Corporation has taken all necessary corporate action to authorize the execution, delivery and performance by it of the Documents to which it is a party.
- 4.4 The Corporation has duly executed and delivered the Documents to which it is a party.
- 4.5 Each Document to which the Corporation is a party constitutes a legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms.

4.6 The execution and delivery by the Corporation of the Documents to which it is a party and the performance by the Corporation of its obligations thereunder, do not:

- 4.6.1 conflict with or result in a breach of any of the provisions of the Constituting Documents of the Corporation *[and, if appropriate...or the unanimous shareholders agreement in respect of the Corporation]*; or
- 4.6.2 violate, conflict with, or result in a breach of Applicable Law.

4.7 No consent, approval, authorization, exemption, filing, order or qualification of or with any governmental authority is required under Applicable Law for the execution and delivery by the Corporation of any Document to which it is a party or the performance by the Corporation of its obligations thereunder.

## 5. LIMITATIONS AND QUALIFICATIONS

The foregoing opinions are subject to the limitations and qualifications set out below:

5.1 **Bankruptcy/Insolvency.** The enforceability of the Documents is subject to bankruptcy, insolvency, winding-up, reorganization, moratorium, arrangement, fraudulent preference and conveyance and other similar laws of general application affecting the enforcement of a creditors' rights and remedies.

5.2 **Remedies Limitation.** No opinion is given as to the availability of any specific remedy and, in particular, no opinion is expressed as to the availability of any equitable remedy, including that of specific performance or injunctive relief, for the enforcement of any provision of the Documents. In particular, a court has equitable and statutory powers to stay proceedings and the execution of judgments and nothing in this opinion is to be taken as indicating that the remedy of, or any order for, specific performance or the issuance of any injunction will be available other than through the exercise of the discretion of a court.

5.3 **General Principles of Law and Equity.** The enforceability of the Documents, any rights or remedies thereunder of a party thereto or in connection therewith and any judgment arising out of or in connection therewith is subject to and may be limited by general principles of law and equity including, without limitation:

- 5.3.1 fraud, mistake, undue influence, unconscionability, duress, misrepresentation and deceit;
- 5.3.2 estoppel, waiver and laches;
- 5.3.3 the requirement that a party to a Document act honestly in the performance of its obligations and reasonably and in good faith in the exercise of discretionary rights or powers;
- 5.3.4 consideration of the impracticability or impossibility of performance at the time of attempted enforcement;

- 5.3.5 the requirement to give reasonable notice prior to enforcement of rights under a Document;
- 5.3.6 rules of court procedure which affect rights, powers, privileges and remedies of creditors generally; and
- 5.3.7 the powers of a court to grant relief from forfeiture, to stay proceedings before it and to stay executions on judgment and to grant relief from the consequences of default.

5.4 **Effectiveness of Non-Waiver Provisions.** A British Columbia court may apply such doctrines as waiver, election, acquiescence or estoppel to deny the enforceability of any provision of the Documents that attempts to limit or prohibit the rights of the Corporation. In particular, but without limiting the foregoing, we express no opinion as to the enforceability of any provision contained in the Documents which:

- 5.4.1 states that consents, amendments or waivers that are not in writing will not be effective;
- 5.4.2 purports to waive, or have the effect of waiving, any statutory rights or defences;
- 5.4.3 purports to restrict access to a court, or waive the benefit of, equitable remedies or defences;
- 5.4.4 constitute a general waiver of legal or equitable defences or which constitute a general agreement not to challenge the validity or enforceability any right or remedy; or
- 5.4.5 absolve or exculpate a party to a Document or any agent of such party from any liability or duty otherwise owed by it.

5.5 **Exculpatory Provisions.** We express no opinion as to the validity or enforceability of any provision in the Documents which purports to:

- 5.5.1 indemnify any party thereto in respect of any breach of law by such party;
- 5.5.2 establish evidentiary standards; or
- 5.5.3 state that matters or determinations of fact are conclusive.

5.6 **Severability.** No opinion is given as to the effectiveness or enforceability of any provision inserted in any agreement or instrument which purports to sever from the agreement or instrument any provision which is prohibited or unenforceable under Applicable Law without affecting the enforceability or validity of the remainder of the agreement or instrument.

5.7 **Penalties and Forfeitures.** Courts in British Columbia have the power to grant relief from penalties and forfeitures generally and we express no opinion herein as to the

enforceability of any provision of the Documents which provides for the payment of any amount which may be characterized by a court as a penalty.

5.8 **Conclusiveness of Determinations.** We express no opinion as to the enforceability of any provision of the Documents which asserts that any certificate or determination shall be conclusive or which purports to confer a unilateral or unfettered discretion. Without limiting the foregoing, any determination made or provided under the Documents may be subject to challenge on the grounds of a failure to exercise discretion reasonably and in good faith or of fraud, collusion or mistake.

5.9 **Reasonable Time to Pay or Perform Obligation.** Notwithstanding any provision to the contrary contained in the Documents, including those which provide that a given payment or other amount is payable on demand, the other party to the Documents may be required to give the Corporation a reasonable time to pay or perform any obligation prior to a party taking any action to enforce any of its rights or remedies in respect thereof.

5.10 **Interest Act (Canada).** Under Section 4 of the *Interest Act* (Canada), except as to mortgages on real property, whenever any interest is made payable at a rate or percentage per day, week, month, or at any rate or percentage for any period less than a year, no interest exceeding five percent per annum shall be payable unless the contract contains an express statement of the yearly rate or percentage of interest to which the other rate or percentage is equivalent.

5.11 **Post Judgment Interest.** Under the *Court Order Interest Act* (British Columbia) post judgment interest on any judgment awarded or enforced in British Columbia may be limited to a prescribed rate.

5.12 **Criminal Interest** No opinion is expressed herein as to the enforceability of any Document if the “interest” (as that term is understood for the purposes of Section 347 of the *Criminal Code* (Canada)) which is payable to or to be received by the other party, would constitute interest at a “criminal rate” within the meaning of Section 347 of the *Criminal Code* (Canada).

5.13 **Inherent Power of Courts.** Courts in British Columbia may decline to hear an action if it is contrary to public policy (as such phrase is understood in British Columbia) for it to do so, or if it is not the proper forum to hear such action or concurrent proceedings are brought elsewhere.

5.14 **Judgment Currency.** Judgments of the courts of British Columbia may be awarded only in Canadian dollars and, accordingly, to the extent that any obligation evidenced or secured by the Documents is payable in a currency other than Canadian dollars, any judgment in respect thereof will be stated in Canadian dollars and will require conversion of the amount constituting the obligation secured into Canadian dollars at a rate of exchange which may be other than the rate in effect on the date of payment.

5.15 **Entire Agreement Clauses.** Notwithstanding any provision in the Documents which states that such agreement constitutes the entire agreement between the parties thereto, a

court may in certain circumstances give effect to other agreements or obligations, whether written or oral, between the parties.

- 5.16 **Exclusive Jurisdiction of Courts.** We express no opinion as to the enforceability of any provision of the Documents which purports to confer exclusive jurisdiction over any action or proceeding arising out of or relating to the Documents on the courts of a specified jurisdiction or waiving any objection that a party might otherwise be entitled to assert to the jurisdiction of such courts.
- 5.17 **Costs and Expenses.** Courts in British Columbia have discretionary powers with respect to the awarding of costs, notwithstanding any provision regarding the recovery of costs in the Documents. Without limiting the foregoing, provisions in the Documents which provide for the recovery of fees and expenses from the Corporation may be restricted by a court to a reasonable amount, and legal fees and disbursements may be subject to taxation.
- 5.18 **Limitation Periods.** The enforceability of the Documents is subject to applicable limitation periods.
- 5.19 **Licences, Approvals, Permits Etc.** We express no opinion as to any licences, franchises, permits, consents, approvals, registrations, filings or other authorizations or exemptions that may be required in connection with the carrying on of the business of the Corporation
- 5.20 **Powers of Attorney.** Any provision of the Documents granting a power of attorney or appointing an agent may be revocable or may terminate by operation of law in certain circumstances, notwithstanding any purported agreement to the contrary, if such grant or appointment is not coupled with an interest.
- 5.21 **Arbitration,** A court may set aside or remit for reconsideration an arbitral award if:
  - 5.21.1 it was improperly procured; or
  - 5.21.2 the arbitrator engaged in corrupt or fraudulent conduct, was biased, exceeded his or her powers or failed to observe the rules of natural justice.In addition, a court has the discretion to hear an appeal of an arbitral award on any question of law if the court determines that:
  - 5.21.3 the importance of the result justifies intervention and the determination of the question may prevent a miscarriage of justice;
  - 5.21.4 the question is of importance to some class or body of person of which the appellant is a member; or
  - 5.21.5 the question is of general or public importance.
- 5.22 **Guarantees.** Guarantees or similar instruments may be unenforceable where the actions or failures to act by the recipient of the guaranteed obligations or waivers or amendments

of the obligations guaranteed: (i) so radically and fundamentally change the essential nature of the terms and conditions of the obligations guaranteed and the related transactions so that a new relationship or new obligation is created which is substantially different from that contemplated by the Documents; or (ii) impair the guarantor's recourse against the primary obligor.

## 6. **RELIANCE**

The opinions and advice expressed herein are provided solely for the benefit of the addressees in connection with the transactions contemplated by the Documents and may not be used nor relied upon by the addressees for any other purpose or by any other person for any purpose whatsoever, in each case without our prior written consent.

Yours truly,