

THE DEAL FROM THE PERSPECTIVE OF
BORROWER'S COUNSEL

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I. Role as Borrower's Counsel

A. Know the Borrower

- Your job – protect the Borrower
- No one specializes in a role as “Borrower’s Counsel.” As compared to what Lender’s Counsel encounters, each deal will be much more unique.
- Considerations may be different for existing clients and new clients.

A. Know the Borrower CONTINUED

- Some degree of due diligence on your part, even if you are not required to provide an Opinion Letter on certain items, still makes sense. Here are some items to consider:
 - Organization (legal)
 - Organization (practical)
 - Sophistication
 - Authorization (action or resolution)
 - Funding Needs (are there options?)
 - Business and ability to make covenants (consider discussing all ratios)
 - Status as Guarantors and relationship to other shareholders (conflicts waiver?)

B. Coordination Of Due Diligence Materials

- Depending on how organized the Borrower is, you may be asked to review, coordinate, assimilate, or even create due diligence materials.
- If the Borrower asks you for an estimate or flat fee on the front end, do not discount the time you may spend at this stage -- it may take longer than you think, especially if the loan is funding the purchase of a business.
- Review Bylaws or Operating Agreement to ensure you have enough time to have a meeting to approve the loan, if necessary.

C. Get Involved Early

- Preparation, preparation, preparation – schedule items that you need to perform
- Obtain or Create a Closing Checklist
- Do you have contacts at other banks that could provide a competitive loan? Ask Client if you can help in this regard. Don't discount the increased ability to negotiate terms when the Lender has competition!
- Has Borrower considered alternative financing for part or all of its borrowing needs, such as HUD financing, SBA loans, Bonds, or Letters of Credit?

C. Get Involved Early CONTINUED

- What will need to be done with regard to existing real property? If unencumbered, performing the Lender's required due diligence usually takes time.
- If the loan proceeds will be used for the Borrower to purchase property, especially real property, Lender's due diligence will take extra time.
- Regarding real property, you should be ordering title work and survey, and you should make sure they are prepared properly.
- Don't let Borrower sign a commitment letter without your review and involvement! These can be negotiated (see below).

D. Review Existing Loan Documents

- The main point is to determine if there is a prepayment penalty, which may kill the deal, or require negotiation. Further, this gives you a good opportunity to discuss the prior covenants and whether the Borrower had any problems meeting them.
- If the relations between the current Lender and the Borrower have become strained, the current Lender may have provided (or be willing to provide) an incentive or mandate that the loan be refinanced by a date certain.

E. Dealing with Lender's Counsel

- Typically, they will have a good command of the documents, even if using “shelf” documents that he or she has not prepared.
- They may be able to informally give you an idea of which items may be negotiable and which are not
- Your personality is going to be what it is. But consider, if you need a favor from Lender's Counsel in the 11th hour, or if you have forgotten to do something, your attitude and how you have treated Lender's Counsel will affect his or her decision on how to handle your requests. How do you want them to think of you then?

II. The Term Sheet/Commitment Letter

A. Compare and Contrast Competing Proposals

- Consider creating a rubric to identify the best parts of competing proposals (see enclosed **Exhibit A**)
- Once Borrower chooses a Bank, consider a rubric to identify any changes in term sheets or commitment letters (see enclosed **Exhibit B**)

Revolver Amount	\$20 MM + discretionary \$ 10 MM add-on	\$ 20 MM	Up to \$ 30 MM
Revolver Term	<u>3 year with annual evergreen</u>	3 years	4 years
Revolver Payment	Interest only	<u>Must be reduced to a mutually agreeable amount for 30 days each year</u>	Interest due monthly for base rates or due at end of LIBOR interest period; will seasonally adjust to levels TBD
Borrowing Base	A/R < 90 at 80%; raw materials and finished goods at 50%; current inventory limit at 50% of total borrowing	Not addressed	<u>A/R < 60 at 85%, cross aged on the basis of 50% or more past due, plus the lesser of inventory at 85% NOLV or 55% at cost, minus reserves minus Letters of Credit, with inventory limit of \$ 18 MM and in transit inventory limit of \$ 4 MM</u>

Term Amount	N/A	\$20 MM	Up to \$ 20 MM, subject to 85% NOLV equipment and 60% FMV real estate
Term Loan Interest		<u>LIBOR + 200 bps or Prime + 0% at borrower's option for year 1; then TBD based upon Debt/EBITDA grid</u>	Bank's Base Rate floating + 175 bps, or 1, 2 or 3 month fully absorbed PNC LIBOR Rate + 275 bps
Additional Loan		<u>\$ 5.195 MM LOC for IDB Bond; \$17 MM Bridge Loan due and payable within 90 days</u>	N/A
Commitment Fee	\$15,000 upfront	<u>50 bps (excluding Bridge) (\$225,975)</u>	\$75,000 Deposit Fee (partially refundable) and \$50,000 Commitment Fee applied to \$250,000 closing fee (less expenses)

Covenants	FCC Ratio > 1.15	Customary, with rates TBD, including but not limited to: Max Debt / EBITDA FCC Ratio Minimum Net Worth	Customary, with rates TBD, including but not limited to: Max Debt / EBITDA FCC Ratio Minimum Net Worth
Conditions		Customary	<u>Lockbox; \$ 8 MM available under revolver at Closing; Default rate = + 2%;</u>
Miscellaneous	Need 100% ownership plan	Contemplates a group of lenders; TBD sublimit for Letters of Credit	<u>\$1,000 per month collateral management fee; \$10,000 at closing and annual administrative agent fee; LOC fronting fee of 2.25% per annum, payable quarterly; 2% prepayment in 1st year; 1% in 2nd year; 0.5% thereafter</u>
Total Max Borrowing	\$ 30 MM	\$ 45.195 MM + \$ 17 MM Bridge	\$ 50 MM

BANK TERM SHEET COMPARISON

<p>Revolver Amount</p>	<p>Option #1: \$45 MM revolver Option #2: \$35 MM revolver with \$10 MM guidance facility</p>	<p>\$ 45MM, which includes a \$1MM sub-limit for standby and commercial letters of credit</p>
<p>Revolver Interest</p>	<p>LIBOR + Pricing Grid: L + 125 at FCC >2.00; L + 180 with FCC at 1.50 to 1.99; L + 217 with FCC at 1.20 to 1.49; 1.97% RATE FLOOR</p>	<p>LIBOR + Pricing Grid: Opening: 2.25% <u>\$45MM-\$25MM Avg. excess avail.: 2.00%</u> <u>\$25MM-\$10MM Avg. excess avail.: 2.25%</u> <u>\$10MM-\$0MM Avg. excess avail.: 2.50%</u></p>
<p>Borrowing Base</p>	<p>A/R < 90 at 85%; inventory at 40%; ineligibles as defined in existing credit agreement. Also, at Bank's discretion, bank is willing to allow certain investment grade receivables in the borrowing base for up to 120 days if necessary.</p>	<p>Up to 85% of AR plus up to the least of (i) 50% of inventory; (ii) \$25MM, and (iii) 85% of net liquidation value; minus any reserves.</p> <p><u>AR is 90 days from invoice date or 60 days from due date with the exception for Target and Lowes which are 120 and 90 days respectively. Many types of accounts are cross aged or limited to a concentration limit.</u></p>

Commitment Fee	\$15,000 (does not indicate when due and payable)	\$50,000 non-refundable and payable on closing date
Collateral	1 st on A/R, inventory; <u>both facilities will be cross-collateralized with all existing indebtedness.</u>	First and only priority, perfected security interest in all tangible and intangible assets and 100% of the equity interest issued by each subsidiary.
Subordinated Debt	<u>Bank is willing to allow Principal to withdraw various amounts of subordinated debt subject to mutually agreed upon covenants and restrictions.</u>	Not addressed.

Covenants	<p>FCC Ratio > 1.2; Cash Flow Leverage < 3.50 for first fiscal year, then 3.00 by end of second fiscal year, then 2.75 by the end of third fiscal year; Balance Sheet Leverage < 1.20 <u>All tested quarterly on a rolling Four Quarters</u></p>	<p>FCC Ratio not less than 1.15 to 1.00, tested monthly on a trailing twelve month basis.</p>
Conditions	<p>Annual Audits, quarterly financials, and monthly borrowing base certificates; must be primary bank; payment of closing costs; collateral field audit prior to renewal satisfactory to Bank</p>	<p>In addition to the previous term sheet: <u>monthly projections (though it doesn't say what type of projections) and annual personal financial statements of the guarantor.</u></p>
Closing Costs	<p><u>Borrower pays with a maximum amount (approx. \$35,000) of closing costs pre-stated.</u></p>	<p>Borrower pays, and no maximum amount is stated.</p>

B. Understanding and Negotiating Interest and Payments

- How is interest calculated and paid? Using one typical method of calculating interest will involve the Borrower paying much more interest than if one of the other two typical methods had been chosen.
- Does Borrower understand interest terms such as LIBOR? Do you?

C. Understanding and Negotiating Ratios and Covenants

- Now is the best time to address these with the Borrower. The Borrower's CFO or Controller should plug in the ratios to past operating figures and pro forma statements to ensure that the Borrower is likely to meet the ratios.
- Borrower may have special circumstances, e.g. large amounts of inventory at certain times of the year, slow pay terms for certain customers, that could cause default of certain ratios if not considered and negotiated.

- Borrower's Counsel needs to understand the Borrower's Principal's plan to make loan payments or distributions to Affiliates, which might be prohibited or curtailed by certain ratios or covenants
- Some Typical Covenants:
 - Fixed Charge Coverage Ratio
 - Cash Flow Leverage Ratio
 - Balance Sheet Leverage Ratio
 - Debt Service Coverage Ratio
 - Debt/ Tangible Net Worth Ratio
 - Current Ratio
 - Senior Debt to EBITDA Ratio
 - Total Debt to EBITDA Ratio
 - Max Debt / EBITDA Ratio
 - Minimum Net Worth

D. Negotiating Points, Fees and Expenses

- Good news: many points, fees and expenses are negotiable!
- Bad news: Paying Lender's Counsel's fee is typically not negotiable. But Lender may agree for attorneys' fees, and possibly other fees, to be capped or shared.

F. Other Typical Terms and Some to Consider

- What is the collateral? If it is non-recourse, watch out in the Loan Agreement for overly-broad “carve outs” that may impose personal liability nonetheless.
- What is the length of the loan and the amortization?
- Is a guarantor required, and if so, is it a full guaranty, a partial guaranty?
- Is there a prepayment penalty?
- Escrow and insurance requirements could be addressed as well, especially if the property is unique.

F. Other Typical Terms CONTINUED

- Cross-Default Provision?
- Cross-Collateralization Provision?
- Confidentiality of Borrower's financial and other information
- Limitation on Lender's Due Diligence

G. Speak Now or Forever Hold Your Peace . . .

- It never hurts to ask!
- This may be the last real chance to modify any deal terms or make any “business decisions.” The role of Borrower’s attorney in this could be very passive or active, depending on the facts and circumstances. But because the material deal terms are likely to remain unchanged after this stage, Borrower’s Counsel needs to punctually address the items above.

G. Speak Now or Forever Hold Your Peace . . .

CONTINUED

- Consider, also, that Borrower may be very excited (or pressured by current Lenders or others) to sign a commitment letter, so time is of the essence for Borrower's Counsel at this stage, even if there are no hard deadlines yet.
- Before paying a big commitment fee and incurring due diligence expenses, Borrower needs to confirm that the deadlines and other items to be performed pre-closing are reasonable.

III. The Loan Agreement

A. Confirm Consistency with the Term Sheet

- If there are any inconsistencies, address them immediately. Get an associate to do it if you must. ***Do not expect the Borrower or Guarantors to read the Loan Agreement!***
- You should, however, review certain provisions in the Loan Agreement with the Borrower carefully, e.g. disbursement procedures, representations, warranties and covenants.

B. Representations and Warranties

- Oftentimes these are fairly voluminous and extend way past organization, authorization, etc. You need to get the Borrower to pay attention to these.
- Certain reps and warranties to look for:
- GAAP vs. historical practice
- Try to limit to Borrower's knowledge
- Materiality and reasonableness matter. Fight for it.

C. Covenants

- It is prudent to review covenant ratios with Borrower's CFO or Controller.
- There can be grey areas in the definitions of certain financial terms. Make sure the definitions comport with Borrower's understanding and practice.
- Consider asking for notice and cure periods, as well as the right to cure with other collateral.
- The Lender will likely restrict other borrowings, probably completely. Discuss with the Borrower its future financing plans and whether you should try to negotiate a reasonable guideline for additional borrowings.

D. Defaults and Remedies

- These should be carefully reviewed. Notice and cure periods should be afforded, and an extended cure period added if the default cannot be cured within the given period (hopefully 30 days).
- Resist a MAC default or a default based on the Lender deeming itself “insecure”
- Watch for cross-default provisions
- Death of a guarantor is a typical default. Try to negotiate extra time to locate a substitute guarantor and/or the ability to provide additional collateral.

D. Defaults and Remedies CONTINUED

- Lender may require casualty funds to be applied to the loan balance. On the other hand, Lender may require that the structure be rebuilt. Obviously, these may not be in the Borrower's best interest. Discuss these provisions with the Borrower to determine if they should be removed.

E. Miscellaneous

- Ensure that all inventory is included in any borrowing base calculation.
- Ensure that all current accounts receivable are included in definitions of “accounts” for borrowing base calculations.
- The Borrower should understand that the amount of the loan may be less than the stated maximum. You should be involved in negotiating loan to value ratios and debt service ratios that may limit the amount loaned.
- Ask for waiver or reduction of loan assumption fees.
- Request that Borrower address delayed items after closing.

IV. The Promissory Note and Collateral Documents

1. Note

A. Interest Rates

- How calculated? Does the Borrower understand?
- The default rate of interest can be negotiated; it doesn't always have to be the maximum amount provided by law.

2. Payment Terms

- Ensure that the loan can be prepaid, and negotiate any prepayment penalties.

3. Default Terms

- Attempt to exclude late charges on the balloon payment.

4. To Swap or not to Swap?

- Swaps are NOT for the faint of heart. Swap Agreements are hard to understand and non-negotiable. What happens after that is even harder to understand. The ramifications of entering into a swap agreement can be staggering. Proceed with caution!

B. Subordination

1. Compensation, Loan Payments and Dividends

- Borrower needs to understand that his ability to pay Affiliates, including the principal (God forbid!), might be compromised
- Subordination provisions and agreements can be negotiated, and payments consistent with past practice should be allowed in the absence of an event of default

2. Dealing with Landlords/Tenants

- Start early on Tenant Estoppels and SNDA's, these can take time to get executed and may need to be negotiated

V. Mortgage and Security Documents

A. Default and Remedy Provisions

- Watch for cross-default provisions

B. Payment of Taxes and Insurance

- Consider negotiating that these are escrowed only upon an event of default.

C. Collateral and Releases

- If multiple properties are included, consider asking for releases as the loan balance decreases.
- Releases should be addressed especially if the Borrower's business is selling the properties!

D. Due on Sale Clause

- Consider negotiating this in the event Borrower needs or envisions additional financing.

E. Environmental Covenants and Indemnifications

- Good luck negotiating these, but try to limit for problems before ownership and after title has passed to the Lender via foreclosure or otherwise.
- Note that if the loan is supposedly non-recourse, but the Lender requires the Borrower's principal to sign an Environmental Indemnity Agreement, the loan has effectively become recourse with regard to environmental matters.

F. Lien Conflicts

- If paying off the debt, get payoff letters and ensure that releases have been drafted.
- If the value of the encumbered property is small, ask that it be removed from collateral.
- An intercreditor agreement may be the answer, but it can be an expensive one.

VI. Legal Opinion

A. Use of Forms

- Like most legal documents, it is helpful to have a form. While you will probably be asked to use Lender's Counsel's form, it doesn't hurt to be able to compare forms.
- **Important** – take the “opinions” in the form legal opinion and insert them into a certificate to be signed by the Borrower. Otherwise, you're on your own.

B. Example of Legal Opinion Revisions

- Attached as **Exhibit C** is a marked-up version of the Legal Opinion Provided by Lender's Counsel. This form was fairly benign.
- Resist opinions on:
 - Enforceability
 - Usury
 - Zoning
 - Priority and perfection of security documents
 - That the lender is not required to register to do business in Tennessee

C. Assumptions and Qualifications

- Please see attached **Exhibit C** for some standard assumptions and qualifications

VII. Guaranty Agreements

A. Cross Default and Definition of Indebtedness

- Pay attention to the definition of “Indebtedness” or “Obligations” that are being guaranteed. Make sure the Guarantor understands the scope of his or her obligations. Some of this may be negotiable, e.g. future judgments against the Borrower.

B. Limitations

- Request that the guaranty be limited to only the instant loan transaction.
- Request that the guaranty be limited to specific assets, such as company stock or a securities account.
- If there are multiple guarantors, ask that each Guarantor's liability be limited to a percentage.

B. Limitations CONTINUED

- Request that the guaranty obligation be limited to a maximum amount. If agreed, watch for inclusion of other fees and expenses that would effectively increase the maximum amount.
- Consider a contribution agreement among Guarantors if each guaranty is unlimited. Watch for conflict situations.

C. Waivers

- Fight a waiver of subrogation, or ask that the provision be modified to be waived only until the indebtedness has been paid in full.
- Lender will typically require the Guarantor to waive presentment, demand, protest, or notice. Further, Lender will typically require Guarantor to waive any requirements that the Lender take certain actions to collect the Indebtedness. It is difficult, but not impossible, to get Lender to remove these offending provisions.

D. Authorization

- Lender may ask Guarantor to authorize Lender to take certain action, e.g. to make additional loans or to release security or other guarantors. Depending on the relationship between the Guarantor and the Borrower, this could be problematic.

E. Guaranty Fee

- If one principal is providing a Guaranty and others are not, consider negotiating a guaranty fee for your client. A few percentage points a year is defensible.

VIII. The Closing

A. What Closing?

- The use of faxes and email has severely curtailed actual, physical closings and (gulp) closing dinners. While the Borrower may still plan a meal with the loan officer, don't expect an invitation. Eat steak, drink wine and smoke cigars on your own time now.

B. Escrow

- This occurs when somebody dropped the ball and everything is not ready with the title commitment. Lender may agree to close pending some documents, but may limit advances.

C. Getting Paid?

- Your fees might be an item on the Closing Statement, especially if bond financing is used. Whether you get paid at Closing or not is up to you. This depends upon your relationship with the Borrower, and your belief in its ability and commitment to pay you.

IX. Default and Forbearance

A. Negotiation

- The loan may have been made based largely on a relationship or an expected relationship. There is some subjectivity and discretion in how Lender's officers handle each situation. Face to face meetings between the Borrower and the Lender can be extremely beneficial. If the lawyers are handling it, the Borrower is in trouble.
- Delay, delay, delay
- “Once you're in defaultland, you can't get any defaultier.”

B. Documentation

- Usually the Lender will have a form Forbearance Agreement. Make sure that it actually agrees to forbear from exercising remedies. Try to extend the time to forbear. There will be a release provision that will repulse you. Get over it, but review the release language carefully.
- If you were successful in preventing or limiting personal guarantees at the loan stage, your success may be short-lived.

C. Fees

- Payment of fees is typical, but negotiable.

Good Luck, and thanks for attending!

Bank	Bank 1	Bank 2	Bank 3	Bank 4	Bank 5	Bank 6
Borrower						
Revolver Amount	\$ 15 MM yr 1; \$ 30 MM yr 2	2 facilities of Up to \$ 10 MM each	\$40 MM	\$20 MM + discretionary \$ 10 MM add-on	\$ 20 MM	Up to \$ 30 MM
Revolver Term	3 years	(2 ½ years) but annually renewable	3 years	3 year with annual evergreen	3 years	4 years
Revolver Payment	Interest only	Interest only	Interest only	Interest only	Must be reduced to a mutually agreeable amount for 30 days each year	Interest due monthly for base rates or due at end of LIBOR interest period; will seasonally adjust to levels TBD
Revolver Interest	Monthly LIBOR + 200 bps median spread; 3% rate floor	Monthly LIBOR + 225 bps median spread; 2.90% rate floor	Daily LIBOR + 260 bps OR LIBOR + 260 bps with no unused line fee; OR Daily LIBOR + 245 bps OR LIBOR + 245 bps with 25 bps unused line fee	Monthly LIBOR + 150 bps; 2.25% rate floor	LIBOR + 200 bps or Prime + 0% at borrower's option for year 1; then TBD based upon Debt/ EBITDA grid	PNC Base Rate floating + 125 bps, or 1, 2 or 3 month fully absorbed PNC LIBOR Rate + 275 bps
Unused Line Fee	0.125% (paid monthly)	0.25% (paid quarterly on Facility 1; only upon institution of Facility 2)	Either 0 or 25 bps (see above)	Not addressed	0.125%	0.25% payable quarterly
Borrowing Base	A/R < 90 at 85%; inventory at 40%	Not addressed	Not addressed	A/R < 90 at 80%; raw materials and finished goods at 50%; current inventory limit at 50% of total borrowing	Not addressed	A/R < 60 at 85%, cross aged on the basis of 50% or more past due, plus the lesser of inventory at 85% NOLV or 55% at cost, minus reserves minus Letters of Credit, with inventory limit of \$ 18 MM and in transit inventory limit of \$ 4 MM

Bank	Bank 1	Bank 2	Bank 3	Bank 4	Bank 5	Bank 6
Term Amount	\$ 5 MM	Up to \$ 7 MM	N/A	N/A	\$20 MM	Up to \$ 20 MM, subject to 85% NOLV equipment and 60% FMV real estate
Term Loan Term	5 years	Assume 5 years so long as revolver in place?			6 years	4 years
Term Payment	60 equal monthly payments	60 equal monthly payments			\$_____ per month beginning 09/30/11; balloon at end of 6 years	10 year ammo with balloon (\$_____ monthly)
Term Loan Interest	Monthly LIBOR + 255 bps median spread; 3% rate floor	Monthly LIBOR + 225 bps or \$4.7% fixed			LIBOR + 200 bps or Prime + 0% at borrower's option for year 1; then TBD based upon Debt/ EBITDA grid	PNC Base Rate floating + 175 bps, or 1, 2 or 3 month fully absorbed PNC LIBOR Rate + 275 bps
Additional Loan	N/A	N/A			\$ 5.195 MM LOC for IDB Bond; \$17 MM Bridge Loan due and payable within 90 days	N/A
Commitment Fee	15 bps (\$30,000, or \$52,500 if applied to entire amount)	\$42,500	\$75,000	\$15,000 upfront	50 bps (excluding Bridge) (\$225,975)	\$75,000 Deposit Fee (partially refundable) and \$50,000 Commitment Fee applied to \$250,000 closing fee (less expenses)
Guarantors	Shareholder	Shareholder	Shareholder	Subsidiaries	Shareholder and Subsidiaries	
Collateral	1 st on A/R, inventory, purchased equipment; 1 st /2 nd on existing	1 st on A/R, inventory, purchased equipment;	All assets	Not addressed	All assets and stock; cash and/or marketable securities in the amount of the bridge loan while outstanding	All assets except real estate, and stock

Bank	Bank 1	Bank 2	Bank 3	Bank 4	Bank 5	Bank 6
	equipment					
Subordinated Debt	TBD	Not addressed	5 year subordinated debt with payments allowed	“All shareholder debt shall be subordinated”	Not addressed	Satisfactory subordination is a condition precedent
Covenants	FCC Ratio > 1.2; Cash Flow Leverage < 2.75; Balance Sheet Leverage < 1.20	FCC Ratio > 1.3; Cash Flow Leverage < 3.00; Balance Sheet Leverage < 2.00	All TBD: Debt Service Coverage; Debt/Tangible Net Worth; Current Ratio; Senior Debt to EBITDA; Total Debt to EBITDA	FCC Ratio > 1.15	Customary, with rates TBD, including but not limited to: Max Debt / EBITDA FCC Ratio Minimum Net Worth	Customary, with rates TBD, including but not limited to: Max Debt / EBITDA FCC Ratio Minimum Net Worth
Conditions	Annual Audits, monthly financials and borrowing base certificates; must be primary bank; payment of closing costs	Annual Audits, quarterly financials, monthly borrowing base certificates; must be primary bank; payment of closing costs	Annual Audits, monthly financials and borrowing base certificates; must be primary bank; payment of closing costs; quarterly A/R agings, A/P agings and inventory reports	Annual Audits, monthly financials and borrowing base certificates; payment of closing costs; monthly A/R and inventory; annual collateral audit	Customary	Lockbox; \$ 8 MM available under revolver at Closing; Default rate = + 2%;
Miscellaneous	Swap available > 1 MM	Need 100% ownership plan	Prepayment allowed on Daily LIBOR rate loans; others subject to prepayment penalties	Need 100% ownership plan	Contemplates a group of lenders; TBD sublimit for Letters of Credit	\$1,000 per month collateral management fee; \$10,000 at closing and annual administrative agent fee; LOC fronting fee of 2.25% per annum, payable quarterly; 2% prepayment in 1 st year; 1% in 2 nd year; 0.5% thereafter
Total Max Borrowing	\$35 MM	\$ 27 MM	\$ 40 MM	\$ 30 MM	\$ 45.195 MM + \$ 17 MM Bridge	\$ 50 MM

EXHIBIT B

BANK TERM SHEET COMPARISON AS OF _____, 201

<u>Date</u>	<u>_____, 201 TERM SHEET</u>	<u>_____, 201 TERM SHEET</u>
Revolver Amount	Option #1: \$45 MM revolver Option #2: \$35 MM revolver with \$10 MM guidance facility	\$ 45MM, which includes a \$1MM sub-limit for standby and commercial letters of credit
Revolver Interest	LIBOR + Pricing Grid: L + 125 at FCC >2.00; L + 180 with FCC at 1.50 to 1.99; L + 217 with FCC at 1.20 to 1.49; 1.97% RATE FLOOR	LIBOR + Pricing Grid: Opening: 2.25% \$45MM-\$25MM Avg. excess avail.: 2.00% \$25MM-\$10MM Avg. excess avail.: 2.25% \$10MM-\$0MM Avg. excess avail.: 2.50%
Unused Line Fee	Option 1: 22 bp, collected monthly Option 2: none	0.375% per annum, collected monthly
Borrowing Base	A/R < 90 at 85%; inventory at 40%; ineligibles as defined in existing credit agreement. Also, at Bank's discretion, bank is willing to allow certain investment grade receivables in the borrowing base for up to 120 days if necessary.	Up to 85% of AR plus up to the least of (i) 50% of inventory; (ii) \$25MM, and (iii) 85% of net liquidation value; minus any reserves. AR is 90 days from invoice date or 60 days from due date with the exception for Target and Lowes which are 120 and 90 days respectively. Many types of accounts are cross aged or limited to a concentration limit.
Additional Loan	\$17 MM Bridge Loan	None.

Bank	, 201 TERM SHEET	, 201 TERM SHEET
Commitment Fee	\$15,000 (does not indicate when due and payable)	\$50,000 non-refundable and payable on closing date
Collateral	1 st on A/R, inventory; both facilities will be cross-collateralized with all existing indebtedness.	First and only priority, perfected security interest in all tangible and intangible assets and 100% of the equity interest issued by each subsidiary.
Subordinated Debt	Bank is willing to allow _____ to withdraw various amounts of subordinated debt subject to mutually agreed upon covenants and restrictions.	Not addressed.
Covenants	FCC Ratio > 1.2; Cash Flow Leverage < 3.50 for first fiscal year, then 3.00 by end of second fiscal year, then 2.75 by the end of third fiscal year; Balance Sheet Leverage < 1.20 All tested quarterly on a rolling Four Quarters	FCC Ratio not less than 1.15 to 1.00, tested monthly on a trailing twelve month basis.
Conditions	Annual Audits, quarterly financials, and monthly borrowing base certificates; must be primary bank; payment of closing costs; collateral field audit prior to renewal satisfactory to Bank	In addition to the previous term sheet: monthly projections (though it doesn't say what type of projections) and annual personal financial statements of the guarantor.
Insurance	Insurance required to be maintained in an amount equal to principal balance of loans, with Bank named as loss payee and first mortgagee.	Not discussed.
Closing Costs	Borrower pays with a maximum amount (approx. \$35,000) of closing costs pre-stated.	Borrower pays, and no maximum amount is stated.
Indemnify	Not discussed.	Borrower to indemnify and hold Lender harmless from everything related to the credit facility. No indemnified party shall have any liability for indirect or consequential damages.

EXHIBIT C

Legal Opinion

[Date]

[Lender's Name]

[Address]

[Address]

Re: \$[] Loan to []

Ladies and Gentlemen:

We have served as legal counsel to [], a Tennessee limited liability company ("Borrower"), and [], [], [], and [] (collectively the "Guarantors"), in connection with a loan made to Borrower by [] ("Lender") in the principal amount of \$[] as evidenced by a Loan Agreement between Lender and Borrower dated of even date herewith (the "Agreement").

In connection with the transactions contemplated by the Agreement, we have reviewed the following documents, all dated effective as of even date herewith:

- i) The Agreement;
 - ii) The Promissory Note in the principal amount of \$[] payable by Borrower to Lender;
 - iii) The Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing ("Deed of Trust") between Borrower, as Grantor, Lender, as Beneficiary, and [], as Trustee, to be filed in the Register's Office of Hamilton County, Tennessee;
 - iv) The Assignment of Leases, Rents and Income from Borrower in favor of Lender;
 - v) The Guaranty and Suretyship Agreement signed by each of the Guarantors in favor of Lender;
 - vi) The Collateral Assignment of Construction Documents from Borrower to Lender;
- and
- vii) The Environmental Indemnity Agreement from Borrower to Lender;

The foregoing documents and agreements may be collectively referred to in this letter as the "Loan Documents."

In addition, we have reviewed the originals, or copies certified to our satisfaction, of certificates of secretaries of state and other public officials and such other documents and agreements as we have deemed necessary and relevant as a basis for our opinions, including without limitation the Articles of Organization and Operating Agreement of Borrower and the resolutions of the _____ of Borrower. We have also assumed that Lender has all requisite power and authority and has taken all necessary action to enter into the Loan Documents and have assumed the validity, binding effect and enforceability of the Loan Documents with respect to Lender. As to various issues of fact, we have relied upon the representations and warranties of Borrower contained in the Mortgagor's Affidavit and upon statements and certificates contained in the Borrower Documents without independent verification or investigation.

We have assumed regarding documents executed by parties other than the Borrower or the Guarantors that such documents are the valid and binding obligations of and enforceable against such parties. We have also assumed the legal capacity of all natural persons.

We have assumed that Lender is qualified to do business in the State of Tennessee, or is not required to so qualify, and has given sufficient consideration for the Loan Documents.

In addition, for purposes of this opinion, we have assumed that:

- (a) All of the Borrower Documents submitted to us as originals are authentic, all instruments submitted to us as copies of the original instruments are true and complete copies of the originals, and all signatures on the Borrower Documents are genuine;
- (b) All of the Loan Documents and the Guaranty to be executed and delivered at the closing of this transaction are identical in all respects to the Loan Documents and the Guaranty submitted for our review;
- (c) Lender has disbursed the proceeds of the Loan to Borrower in accordance with the terms of the Loan Documents.

Based on the foregoing, we are of the opinion that:

- i) Borrower is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Tennessee.
- ii) Borrower has all necessary power and authority to conduct its business as now being conducted, to execute and deliver the Loan Documents, and to carry out the transactions contemplated by the Loan Documents. The execution and delivery of and the performance of the

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obligations under the Loan Documents have been duly authorized by the _____ of Borrower, no other action being required on the part of Borrower in order to execute, deliver and perform the same.

iii) The Loan Documents have been duly and validly executed and delivered by Borrower and the Guarantors (as the case may be) and constitute the valid and legally binding obligations of Borrower and the Guarantors (as the case may be), enforceable against Borrower and the Guarantors in accordance with their terms subject to the following:

a. applicable bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance, fraudulent transfer and other similar laws in effect from time to time relating to or affecting the rights of creditors generally; and

b. general principles of equity and public policy (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief and other equitable remedies), regardless of whether considered in a proceeding at law or in equity.

iv) The execution and delivery of, and the performance of the obligations under, the Loan Documents (i) will not conflict with Borrower's articles of organization or operating agreement, and (ii) to the best of our knowledge after reasonable inquiry, will not violate or result in the breach of the provisions of, or constitute a default under, any instrument, document or agreement to which Borrower or the Guarantors is a party, or by which any of their property is bound.

v) No consent, approval, authorization or other action by, or filing with, any governmental authority or other person is required for the execution, delivery or performance by Borrower or the Guarantors of the Loan Documents.

The opinions expressed herein are subject to certain assumptions, limitations and qualifications, as hereinafter enumerated. Each such assumption has been made without investigation, and no inference as to our knowledge of the existence or absence of any fact may be drawn from our representation of Borrower or the Guarantors; however, nothing has come to our attention which would lead us to believe that any of such assumptions are incorrect. Each reference herein to any knowledge on our part encompasses only current actual knowledge of the attorneys within this firm actively engaged in the representation of Borrower and the Guarantors with respect to this transaction:

A. We have assumed the genuineness of all signatures on all items submitted to us, the authenticity of all items submitted to us as originals, the conformity with originals of all items submitted to us as copies, and the authenticity of the originals of such copies.

B. We have assumed the accuracy of all factual representations, statements and certifications made or delivered to us by public officials, and that all such representations,

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statements and certifications issued no more than sixty (60) days prior to the date hereof remain accurate on the date hereof.

C. We have assumed the accuracy and completeness of all internal governance records made available to us by Borrower and Guarantors.

D. As to various questions of fact material to this opinion, we have assumed the accuracy of and have relied solely upon the Borrower Documents, and that all such statements and certifications issued no more than sixty (60) days prior to the date hereof remain accurate on the date hereof.

E. We have assumed the existence and capacity of each Other Party, that each Other Party has all required federal and state governmental certifications of authority, licenses, permits, consents, qualifications and documentations and the right, power and authority to execute, deliver and perform under each of the Loan Documents and any other documents to which it is a party, that each of the Loan Documents, and any other documents to which each Other Party is a party, have been authorized, executed and delivered by such Other Party, and that the Loan Documents and Guaranty Documents, and any other documents to which the Other Party is a party, constitute valid, legal and binding obligations of each Other Party which is a party thereto, enforceable against each such Other Party in accordance with their terms, subject to the qualifications regarding enforceability set forth herein.

F. We have assumed that all required taxes, and all recording and filing charges with respect to the subject transaction, will be properly paid when due.

G. We express no opinion with respect to title to any real or personal property or to the priority of the liens and security interests intended to be created or perfected by any of the Loan Documents or otherwise.

H. We express no opinion with respect to the legality, validity, binding effect, enforceability or other consequences of any portion of the Loan Documents which (i) purports to waive rights which cannot be waived by consent; (ii) provides that enumerated remedies are not exclusive or that a party has the right to pursue multiple remedies without regard to other remedies elected or that all remedies are cumulative; (iii) provides for rights of set off; (iv) relieves any person from liability for its own negligence or misconduct or from its responsibilities as a mortgagee in possession; (v) obligates any person (the "obligor") to bear the litigation expenses of another person (the "obligee") if a court of competent jurisdiction rules otherwise; (vi) purports to restrict the alienation of any property; (vii) provides for the survival of rights and remedies after the termination or foreclosure of the Deed of Trust; (viii) provides for the periodic foreclosure of all or portions of any property without acceleration of all amounts due under the Documents; (ix) purports to grant rights and remedies under the Uniform Commercial Code (the "UCC") with respect to collateral to which the UCC does not apply; (x) may be construed to permit the sale of collateral in a manner that is not commercially reasonable or upon notice that is manifestly unreasonable; (xi) provides for the granting of a security interest in collateral that is not adequately described; or (xii) provides for the coming into existence of binding oral agreements which under the law must be effected or evidenced by writings.

I. The enforceability of the Loan Documents and the Guaranty Documents may be limited or affected by (i) bankruptcy, insolvency, reorganization, arrangements, fraudulent conveyance, moratorium, liquidation, conservatorship or other similar laws affecting the rights of creditors generally; (ii) customary principles, judicial decisions and laws governing, limiting or affecting the availability of equitable relief generally and the exercise by a court of competent jurisdiction of its equity powers; (iii) judicial refusals to enforce any provision deemed by the court to be against public policy; (iv) applicability of procedural requirements for exercise of remedies; (v) laws requiring mitigation of damages; (vi) qualifications and limitations on remedies provided for in the Loan Documents and the Guaranty Documents which, in our opinion, will not materially interfere with the practical realization of the rights and benefits intended to be afforded to the parties by the Loan Documents and the Guaranty Documents; (vii) judicial refusals to sanction the exercise of non-judicial remedies; (viii) judicial refusals to enforce provisions to the effect that rights and documents may only be waived or amended in writing; and (ix) judicial rulings and laws which may require that remedies be exercised against certain collateral or portions thereof prior to exercising such remedies against other collateral or portions thereof.

J. Our opinion in numbered paragraph 1 is further subject to the qualification that certain waivers, procedures, remedies and other provisions of the Loan Documents and Guaranty Documents may be unenforceable under, or limited by, applicable law; however, the inclusion of such waivers, procedures, remedies and other provisions does not render the Loan Documents or Guaranty Documents invalid as a whole, and, subject to the other qualifications and limitations set forth herein, there exist, in the Loan Documents and Guaranty Documents or pursuant to applicable law, legally adequate remedies for the practical realization of the principal benefits reasonably intended to be provided by the Loan Documents, subject to the consequences of any delay that may result from limitations imposed by applicable law.

K. As used herein, "known to us," "to our knowledge" and any similar phrase refers solely to the current, actual knowledge, acquired during the course of the representation described in the introductory paragraph of this letter, of those attorneys in this firm who have rendered legal services in connection with such representation (excluding any lawyers whose involvement has been limited to reviewing this opinion as part of our firm's opinion review procedure).

L. This letter is being provided solely for the benefit of its addressees, their successors and assigns and no other person or entity shall be entitled to rely hereon without the express written consent of this firm. This letter may not be quoted from or referred to in any financial statement or other document, nor, except by an order of a court of competent jurisdiction, may it be filed with or furnished to any person or entity other than its addressees, including, but not limited to, any governmental agency, without the prior written consent of this firm. Notwithstanding the foregoing, a copy of this opinion may be included in the transcript of proceedings prepared in connection with the Loan Documents.

M. The foregoing opinions are limited to the laws of the State of Tennessee and the federal laws of the United States, and we express no opinion with respect to the laws of any other state or jurisdiction.

The opinions expressed herein are addressed exclusively to the particular matters and the particular transaction described herein, to the state of our knowledge with respect thereto, and to the state of the law applicable thereto, all as of the date hereof. We assume no responsibility for commenting on any other matters or transactions. Our opinion is rendered as of the date hereof, and we assume no obligation to advise you of changes in law or fact (or the effect thereof on the opinions expressed herein) that hereafter may come to our attention.

Sincerely yours,

By: _____

THE DEAL FROM THE PERSPECTIVE OF BORROWER'S COUNSEL

David M. Elliott

Grant, Konvalinka & Harrison, P.C.

December 8, 2014

I. Role as Borrower's Counsel

A. Know the Borrower

- Your job – protect the Borrower
- No one specializes in a role as “Borrower’s Counsel.” As compared to what Lender’s Counsel encounters, each deal will be much more unique.
- Considerations may be different for existing clients and new clients.
- Some degree of due diligence on your part, even if you are not required to provide an Opinion Letter on certain items, still makes sense. Here are some items to consider:
 - Organization (legal)
 - Organization (practical)
 - Sophistication
 - Authorization (action or resolution)
 - Funding Needs (are there options?)
 - Business and ability to make covenants (consider discussing all ratios)
 - Status as Guarantors and relationship to other shareholders

B. Coordination Of Due Diligence Materials

- Depending on how organized the Borrower is, you may be asked to review, coordinate, assimilate, or even create due diligence materials.

- If the Borrower asks you for an estimate or flat fee on the front end, do not discount the time you may spend at this stage -- it may take longer than you think, especially if the loan is funding the purchase of a business.
- Review Bylaws or Operating Agreement to ensure you have enough time to have a meeting to approve the loan, if necessary.

C. Get Involved Early

- Preparation, preparation, preparation – schedule items that you need to perform
- Obtain or Create a Closing Checklist
- Do you have contacts at other banks that could provide a competitive loan? Don't discount the increased ability to negotiate terms when the Lender has competition!
- Has Borrower considered alternative financing for part or all of its borrowing needs, such as HUD financing, SBA loans, Bonds, or Letters of Credit?
- What will need to be done with regard to existing real property? If unencumbered, performing the Lender's required due diligence usually takes time.
- If the loan proceeds will be used for the Borrower to purchase property, especially real property, Lender's due diligence will take extra time.
- Regarding real property, you should be ordering title work and survey, and you should make sure they are prepared properly.
- Don't let Borrower sign a commitment letter without your review and involvement! These can be negotiated (see below).

D. Review Existing Loan Documents

- The main point is to determine if there is a prepayment penalty, which may kill the deal, or require negotiation. Further, this gives you a good opportunity to discuss the prior covenants and whether the Borrower had any problems meeting them.
- If the relations between the current Lender and the Borrower have become strained, the current Lender may have provided (or be willing to provide) an incentive or mandate that the loan be refinanced by a date certain.

E. Dealing with Lender's Counsel

- Typically, they will have a good command of the documents, even if using "shelf" documents that he or she has not prepared.
- They may be able to informally give you an idea of which items may be negotiable and which are not
- Your personality is going to be what it is. But consider, if you need a favor from Lender's Counsel in the 11th hour, or if you have forgotten to do something, your attitude and how you have treated Lender's Counsel will affect his or her decision on how to handle your requests. How do you want them to think of you then?

II. The Term Sheet/Commitment Letter

A. Compare and Contrast Competing Proposals

- Consider creating a rubric to identify the best parts of competing proposals (see enclosed **Exhibit A**)
- Once Borrower chooses a Bank, consider a rubric to identify any changes in term sheets or commitment letters (see enclosed **Exhibit B**)

B. Understanding and Negotiating Interest and Payments

- How is interest calculated and paid? Using one typical method of calculating interest will involve the Borrower paying much more interest than if one of the other two typical methods had been chosen.
- Does Borrower understand interest terms such as LIBOR?

C. Understanding and Negotiating Ratios and Covenants

- Now is the best time to address these with the Borrower. The Borrower's CFO or Controller should plug in the ratios to past operating figures and pro forma statements to ensure that the Borrower is likely to meet the ratios.

- Borrower may have special circumstances, e.g. large amounts of inventory at certain times of the year, slow pay terms for certain customers, that could cause default of certain ratios if not considered and negotiated
- Borrower's Counsel needs to understand the Borrower's Principal's plan to make loan payments or distributions to Affiliates, which might be prohibited or curtailed by certain ratios or covenants
- Some Typical Covenants:

Fixed Charge Coverage Ratio

Cash Flow Leverage Ratio

Balance Sheet Leverage Ratio

Debt Service Coverage Ratio

Debt/ Tangible Net Worth Ratio

Current Ratio

Senior Debt to EBITDA Ratio

Total Debt to EBITDA Ratio

Max Debt / EBITDA Ratio

Minimum Net Worth

D. Negotiating Points, Fees and Expenses

- Good news: many points, fees and expenses are negotiable!
- Bad news: Paying Lender's Counsel's fee is typically not negotiable. But Lender may agree for attorneys' fees, and possibly others, to be capped or shared.

F. Other Typical Terms and Some to Consider

- What is the collateral? If it is non-recourse, watch out in the Loan Agreement for overly-broad "carve outs" that may impose personal liability nonetheless.
- What is the length of the loan and the amortization?
- Is a guarantor required, and if so, is it a full guaranty, a partial guaranty?
- Is there a prepayment penalty?

- Escrow and insurance requirements could be addressed as well, especially if the property is unique.
- Cross-Default Provision?
- Cross-Collateralization Provision?
- Confidentiality of Borrower's financial and other information
- Limitation on Lender's Due Diligence

G. Speak Now or Forever Hold Your Peace . . .

- It never hurts to ask!
- This may be the last real chance to modify any deal terms or make any "business decisions." The role of Borrower's attorney in this could be very passive or active, depending on the facts and circumstances. But because the material deal terms are likely to remain unchanged after this stage, Borrower's Counsel needs to punctually address the items above.
- Consider, also, that Borrower may be very excited (or pressured by current Lenders or others) to sign a commitment letter, so time is of the essence for Borrower's Counsel at this stage, even if there are no hard deadlines yet.
- Before paying a big commitment fee and incurring due diligence expenses, Borrower needs to confirm that the deadlines and other items to be performed pre-closing are reasonable.

III. The Loan Agreement

A. Confirm Consistency with the Term Sheet

- If there are any inconsistencies, address them immediately. Oftentimes there are special terms that do not make it into the loan agreement. Get an associate to do a comparison if you must. ***Do not expect the Borrower or Guarantors to read the Loan Agreement!***
- You should, however, review certain provisions in the Loan Agreement with the Borrower carefully, e.g. disbursement procedures, representations, warranties and covenants.

B. Representations and Warranties

- Oftentimes these are fairly voluminous and extend way past organization, authorization, etc. You need the Borrower to pay attention to these.
- Certain reps and warranties to look for:
 - GAAP vs. historical practice
 - Try to limit “to Borrower’s knowledge”
 - Materiality and reasonableness matter. Fight for it.

C. Covenants

- It is prudent to review covenant ratios with Borrower’s CFO or Controller.
- There can be grey areas in the definitions of certain financial terms. Make sure the definitions comport with Borrower’s understanding and practice.
- Ask for notice and cure periods, as well as the right to cure with other collateral.
- The Lender will likely restrict other borrowings, probably completely. Discuss with the Borrower its future financing plans and whether you should try to negotiate a reasonable guideline for additional borrowings.

D. Defaults and Remedies

- These should be carefully reviewed. Notice and cure periods should be afforded, and an extended cure period added if the default cannot be cured within the given period (hopefully 30 days).
- Resist a Material Adverse Condition (“MAC”) default or a default based on the Lender deeming itself “insecure”
- Watch for cross-default provisions
- Death of a guarantor is a typical default. Try to negotiate extra time to locate a substitute guarantor and/or the ability to provide additional collateral.
- Lender may require casualty funds to be applied to the loan balance. On the other hand, Lender may require that the structure be rebuilt. Obviously, these may not be in the Borrower’s best interest. Discuss these provisions with the Borrower to determine if they should be removed.

E. Miscellaneous

- Ensure that all inventory is included in any borrowing base calculation.
- Ensure that all current accounts receivable are included in definitions of “accounts” for borrowing base calculations.
- *The Borrower should understand that the amount of the loan may be less than the stated maximum.* You should be involved in negotiating loan to value ratios and debt service ratios that may limit the amount loaned.
- Ask for waiver or reduction of loan assumption fees on real estate loans.
- Request that Borrower address delayed items after closing.

IV. The Promissory Note and Collateral Documents

A. Note

1. Interest Rates

- How calculated? Does the Borrower understand?
- The default rate of interest can be negotiated; it doesn't always have to be the maximum amount provided by law.

2. Payment Terms

- Ensure that the loan can be prepaid, and negotiate any prepayment penalties.

3. Default Terms

- Attempt to exclude late charges on the balloon payment.

4. To Swap or not to Swap?

- Swaps are NOT for the faint of heart. Swap Agreements are hard to understand and non-negotiable. What happens after that is even harder to understand. The ramifications of entering into a swap agreement can be staggering. Proceed with caution!

B. Subordination

1. Compensation, Loan Payments and Dividends

- Borrower needs to understand that his ability to pay Affiliates, including the principal (God forbid!), might be compromised
- Subordination provisions and agreements can be negotiated, and payments consistent with past practice should be allowed in the absence of an event of default

2. Dealing with Landlords/Tenants

- Start early on Tenant Estoppels and SNDA's, these can take time to get executed and may need to be negotiated

V. Mortgage and Security Documents

A. Default and Remedy Provisions

- Watch for cross-default provisions

B. Payment of Taxes and Insurance

- Consider negotiating that these are escrowed only upon an event of default.

C. Collateral and Releases

- If multiple properties are included, consider asking for releases as the loan balance decreases.
- Releases should be addressed especially if the Borrower's business is selling the properties!

D. Due on Sale Clause

- Consider negotiating this in the event Borrower needs or envisions additional financing.

E. Environmental Covenants and Indemnifications

- Good luck negotiating these, but try to limit for problems before ownership and after title has passed to the Lender via foreclosure or otherwise.
- Note that if the loan is supposedly non-recourse, but the Lender requires the Borrower's principal to sign an Environmental Indemnity Agreement, the loan has effectively become recourse with regard to environmental matters.

F. Lien Conflicts

- If paying off the debt, get payoff letters and ensure that releases have been drafted.
- If the value of the encumbered property is small, ask that it be removed from collateral.
- An intercreditor agreement may be the answer, but it can be an expensive one.

VI. Legal Opinion

A. Use of Forms

- Like most legal documents, it is helpful to have a form. While you will probably be asked to use Lender's Counsel's form, it doesn't hurt to be able to compare forms.
- **Important** – take the “opinions” in the form legal opinion and insert them into a certificate to be signed by the Borrower. Otherwise, you're on your own.

B. Example of Legal Opinion Revisions

- Attached as **Exhibit C** is a marked-up version of the Legal Opinion Provided by Lender's Counsel. This form was fairly benign.
- Resist opinions on:
 - Enforceability

- Usury
- Zoning
- Priority and perfection of security documents
- That the lender is not required to register to do business in Tennessee

C. Assumptions and Qualifications

- Please see attached **Exhibit C** for some standard assumptions and qualifications

VII. Guaranty Agreements

A. Cross Default and Definition of Indebtedness

- Pay attention to the definition of “Indebtedness” or “Obligations” that are being guaranteed. Make sure the Guarantor understands the scope of his or her obligations. Some of this may be negotiable, e.g. future judgments against the Borrower.

B. Limitations

- Request that the guaranty be limited to only the instant loan transaction.
- Request that the guaranty be limited to specific assets, such as company stock or a securities account.
- If there are multiple guarantors, ask that each Guarantor’s liability be limited to a percentage.
- Request that the guaranty obligation be limited to a maximum amount. If agreed, watch for inclusion of other fees and expenses that would effectively increase the maximum amount.
- Consider a contribution agreement among Guarantors if each guaranty is unlimited. Watch for conflict situations.

C. Waivers

- Fight a waiver of subrogation, or ask that the provision be modified to be waived only until the indebtedness has been paid in full.
- Lender will typically require the Guarantor to waive presentment, demand, protest, or notice. Further, Lender will typically require Guarantor to waive any requirements that the Lender take certain actions to collect the Indebtedness. It is difficult, but not impossible, to get Lender to remove these offending provisions.

D. Authorization

- Lender may ask Guarantor to authorize Lender to take certain action, e.g. to make additional loans or to release security or other guarantors. Depending on the relationship between the Guarantor and the Borrower, this could be problematic.

E. Guaranty Fee

- If one principal is providing a Guaranty and others are not, consider negotiating a guaranty fee for your client. A few percentage points a year is defensible.

VIII. The Closing

A. What Closing?

- The use of faxes and email has severely curtailed actual, physical closings and (gulp) closing dinners. While the Borrower may still plan a meal with the loan officer, don't expect an invitation. Eat steak, drink wine and smoke cigars on your own time now.

B. Escrow

- This occurs when somebody dropped the ball and everything is not ready, oftentimes with the title commitment. Lender may agree to close pending some documents, but may limit advances.

C. Getting Paid?

- Your fees might be an item on the Closing Statement, especially if bond financing is used. Whether you get paid at Closing or not is up to you. This

depends upon your relationship with the Borrower, and your belief in its ability and commitment to pay you.

IX. Default and Forbearance

A. Negotiation

- The loan may have been made based largely on a relationship or an expected relationship. There is some subjectivity and discretion in how Lender's officers handle each situation. Face to face meetings between the Borrower and the Lender can be extremely beneficial. If the lawyers are handling it, the Borrower is in trouble.
- Delay, delay, delay
- "Once you're in defaultland, you can't get any defaultier."

B. Documentation

- Usually the Lender will have a form Forbearance Agreement. Make sure that it actually agrees to forbear from exercising remedies. Try to extend the time to forbear. There will be a release provision that will repulse you. Get over it, but review the release language carefully.
- If you were successful in preventing or limiting personal guarantees at the loan stage, your success may be short-lived.

C. Fees

- Payment of fees is typical, but negotiable.

Good Luck!