|  |  |
| --- | --- |
|  | **<Insert Lawyer Name>** |
|  | 🕿 Direct: <**Insert>** |
|  | E-Mail Address: <**Insert>** |
|  | |
|  | **<Insert Paralegal Name>** |
|  | Commercial Lending Paralegal |
|  | 🕿 Direct: <**Insert>** |
|  | E-Mail Address: <**Insert>** |
|  | |
| In Reply, Please Refer to File No.: **<Insert File Number>** | |

**<Insert Date>**

**DELIVERED VIA E-MAIL and COURIER**

|  |
| --- |
| **ATB Financial**  **Records Management**  **2nd Flr, 8008 -104 Street NW**  **Edmonton, AB T6E 4E2** |

Dear Sirs/Mesdames:

**Re: ATB Financial, previously Alberta Treasury Branches (the “Lender”)**

**<Insert BORROWER NAME/S> (collectively, the “Borrower”)**

**<INSERT GUARANTOR NAME/S> (collectively, the “Guarantor”)**

**Loan Amount: $<INSERT AMOUNT IN NUMBERS> (the “Loan”)**

**Real Property Secured: <INSERT MUNICIPAL ADDRESS>**

**Plan <insert>, Block <Insert>, Lot <Insert> (the “Property”)**

**<Insert> Quarter of Section <Insert>, Township <Insert>, Range <Insert>, West of the <Insert> Meridian (the “Property”)**

In accordance with your instruction letter dated **<Insert>** (the "**Instruction Letter**"),we are pleased to confirm that the preparation, execution and, where applicable, registration of the requested security documents have now taken place.

We enclose, for your records:

|  |  |  |
| --- | --- | --- |
|  | duly-executed copies of the Security Documents listed at Section 1 of Schedule 1; | |
|  | the Other Enclosures listed at Section 5 of Schedule 1, namely: | |
|  |  | Real Property Report re: the Property; or |
|  |  | Commitment to Title Insure; and |
|  |  | Proof of Insurance |

and the following supporting documents

Certificate of the **<Insert a senior officer>** of the Borrower attaching a certified Directors’ Resolution authorizing the Loan and related security; a copy of the Certificate of Incorporation, Articles of Incorporation and By-Laws of the Borrower; and an incumbency certification as to directors/officers/shareholders of the Borrower;

Certificate of the **<Insert a senior officer>** of **<INSERT GUARANTOR>** attaching a certified Directors’ Resolution authorizing the Corporate **<Limited/Unlimited>** Guarantee and related security; a copy of the Certificate of Incorporation, Articles of Incorporation and By-Laws of **<INSERT GUARANTOR>**; and an incumbency certification as to directors/officers/shareholders of **<INSERT GUARANTOR>**;

Solicitor’s Opinion Letter re: Borrower;

Solicitor’s Opinion Letter re: **<INSERT CORPORATE GUARANTOR>**;

Authority to Complete Documents;

Copy of Title to the mortgaged lands;

Verification Statement evidencing registration of the Lender's security interest in all present and after-acquired personal property against the Borrower at the Personal Property Registry for **<Insert Alberta>** (the "PPR") as Registration No. **<Insert>** - including any applicable serial-numbered goods as requested pursuant to the Instruction Letter;

Verification Statement evidencing registration of a land charge against the Borrower at PPR as Registration No. **<Insert>**;

Business Debtor Search for **<INSERT BORROWER>** evidencing the above registrations;

Verification Statement evidencing registration at PPR of the assignment of indebtedness executed by **<INSERT CORPORATE GUARANTOR | POSTPONING CREDITOR***>* in favour of the Lender as Registration No. **<Insert>**;

Business Debtor Search for **<INSERT CORPORATE GUARANTOR | POSTPONING CREDITOR***>* evidencing the above registrations;

Verification Statement evidencing registration at PPR of the assignment of indebtedness executed by **<INSERT INDIVIDUAL GUARANTOR>** in favour of the Lender as Registration No. **<Insert>**;

Individual Debtor Search for **<INSERT INDIVIDUAL GUARANTOR>** evidencing the above registrations;

Verification Statement evidencing registration at PPR of the Postponement and Assignment of Claims executed by **<INSERT CREDITOR NAME>** in favour of the Lender as Registration No. **<Insert>**;

Business Debtor Search for **<INSERT CREDITOR NAME>** evidencing the above registrations;

Environmental Questionnaire and Disclosure Statement;

**<Insert Tax Certificate / Tax Certificate>** for the Property confirming property taxes are current;

Commitment to Title Insure. With your concurrence, the Borrower has provided this title insurance policy in lieu of registration to facilitate funding of the Loan;

Appointment of Proxy re: Condominium Units;

Notice to the Condominium Corporation;

Estoppel Certificate and Information Statement re: Condominium Units;

Assignment of **<INSERT [LIFE | PROPERTY | COMMERCIAL GENERAL LIABILITY | CONSTRUCTION | ETC.>**

Insurance Interest;

Bankruptcy Search for **<INSERT BORROWER>** establishing no filings;

# Workers Compensation Board Search for **<INSERT BORROWER>** confirming WCB obligations are current;

# Section 427 Canada Bank Act Search for **<INSERT BORROWER>** establishing no filings;

# Work Order Letter from **<INSERT PLANNING & DEVELOPMENT..MUNICIPALITY>**;

# Work Order Letter from **<INSERT FIRE DEPARTMENT..MUNICIPALITY>**

# Authorization and Direction to Pay Loan Proceeds; and

# Other: **<Insert Description>**.

# We also enclose our firm’s solicitor’s opinion as Schedule 1 hereto. For the purposes of this opinion, the Borrower and any Guarantor are collectively referred to as the "Obligors".

**OUTSTANDING MATTERS**

**AS OF THE DATE HEREIN, WE CONFIRM THAT ONLY THE FOLLOWING ITEMS REMAIN OUTSTANDING:**

1. **OUTSTANDING MATTERS WHICH MUST BE SATISFIED BEFORE FUNDING CAN TAKE PLACE:**
   1. **<List applicable outstanding matters>**;
2. **OUTSTANDING MATTERS WHICH CAN BE SATISFIED AFTER FUNDING HAS TAKEN PLACE:**
   1. **<List applicable outstanding matters>**; and,
   2. Our providing you with our Statement of Account for Services Rendered (which will be paid out from the proceeds of the Loan).

We will continue to follow-up on these items. We will provide you with updates on their status as events warrant. We shall provide you with outstanding documentation upon our receipt of the same.

We thank you for allowing us to be of service to you in this regard.

Please advise when you expect to be in a position to forward the first advance of the Loan proceeds to us. When prepared to transfer funds, please ensure that the funds are deposited into our trust account as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Name of Account: | **<Insert>** | |
|  | Transit Number: | **<Insert>** |  |
|  | Account Number: | **<Insert>** |  |

We trust you will find the above to be satisfactory. Should you have any questions or concerns, please do not hesitate to contact the writer.

Yours truly,

**<Law Firm Name>**

per:

**<Insert Lawyer Name>**

/**<INSERT WRITER'S INITIALS>**

cc. **<Insert Name>**, **<Insert Relationship Manager | Manager Entrepreneurship>**

encl.

**SCHEDULE 1**

**SOLICITOR’S OPINION**

**TO:** ATB FINANCIAL, previously Alberta Treasury Branches (“**ATB**”)

**RE:** Loan to **<INSERT NAME(S) OF BORROWERS>** (collectively, the “**Borrower**”)

Credit Agreement dated **<INSERT DATE OF CREDIT AGREEMENT>** (the "**Credit Agreement**")

Guarantors: **<INSERT NAME(S) OF GUARANTORS>** (collectively, the “**Guarantor**”; and together with the Borrower, the "**Obligors**")

Instructions to Solicitor dated **<INSERT DATE OF INSTRUCTION LETTER>**

1. **SECURITY DOCUMENTS *(list all security documents as applicable - those shown are not exhaustive)***

**Joint and Several Continuing Guarantee – Percentage Liability** dated **<Insert>** from **<Insert>** (form number 7022), with a **Certificate of Independent Legal Advice** (form number 7035)

**Collateralized Guarantee** dated **<Insert>** from **<Insert>** (form number 7023), with a **Certificate of Independent Legal Advice** (form number 7035)

**[Unlimited/Limited Liability]** **Guarantee** dated **<Insert>** from **<Insert>** (form number 7020 or 7030), with a **Certificate of Independent Legal Advice** (form number 7035)

**General Security Agreement** dated **<Insert>** from **<Insert>** (form number 7410)

**Assignment of Monies on Deposit** dated **<Insert>** from **<Insert>**, account number **<Insert>** (form number 7015)

**Assignment of Deposit Certificate** dated **<Insert>** from **<Insert>**, certificate number **<Insert>** (form number 7005)

**Postponement and Assignment of Claim** of money owed by the Borrower dated **<Insert>** from **<Insert>** (form number 7025), with a **Certificate of Independent Legal Advice** (form number 7035)

**Deposit of Security Agreement** dated **<Insert>** from **<Insert>** (form number 7360)

**Mortgage of Land/Lease** dated **<Insert>** from **<Insert>** (form number **<Insert>**) (the “**Mortgage**”)

**Assignment of Leases and Rents** dated **<Insert>** from **<Insert>** (form number 7435) (the "**Lease and Rentals Assignment**"), registered by way of caveat at LTO

**Other:** **<Insert Description>**

(collectively, the "**Security Documents**").

1. **REGISTRATIONS *(list all registrations as applicable - those shown are not exhaustive)***

### **Registrations against real property:**

Relying on searches of public records made by us as of **<Insert>**, **<Insert>**, 20**<Insert>**, the current registrations at the **<Insert Alberta>** Land Titles Office are:

|  |  |  |
| --- | --- | --- |
| Property Description: **<INSERT LEGAL DESCRIPTION OF THE LAND>** (the “**Property**”) | | |
| Registration Number | Nature of Charge | Chargeholder |
| **<Insert>** | **<Insert>** | **<Insert>** |

### **Registrations against personal property:**

Relying on searches of public records made by us as of **<Insert>**, **<Insert>**, 20**<Insert>**, the current registrations at the **<Insert Alberta>** Personal Property Registry against the parties granting the Security Documents are the following:

|  |  |  |  |
| --- | --- | --- | --- |
| Borrower: **<Insert>** | | | |
| Registration Number | Secured Party | Registration Date | Collateral |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |

|  |  |  |  |
| --- | --- | --- | --- |
| Guarantor: **<Insert>** | | | |
| Registration Number | Secured Party | Registration Date | Collateral |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |

|  |  |  |  |
| --- | --- | --- | --- |
| Assignor: **<Insert>** | | | |
| Registration Number | Secured Party | Registration Date | Collateral |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |
| **<Insert>** | **<Insert>** | **<Insert>** | **<Insert>** |

1. **RELIANCE AND ASSUMPTIONS**

For the purposes of the opinions expressed below, we have assumed, without any independent verification or inquiry that:

* + 1. all signatures are genuine;
    2. all individuals had requisite legal capacity;
    3. all documents submitted to us as originals are complete and authentic;
    4. all copies of documents received by us as certified, facsimile and other electronically-transmitted copies conform to originals;
    5. all facts set forth in:
       1. certificates of a senior officer of the applicable Obligors provided to us by solicitors of such Obligors; and
       2. the official public records, certificates and documents supplied by public officials or otherwise conveyed to us by public officials,

are complete, true and accurate and have not changed, in each case, between the dates of such certificates or searches and the date of this opinion;

* + 1. each of the Obligors has, and, in the case of after‑acquired property, assets or rights or other items of collateral described in each of the Security Documents (collectively, the "**Collateral**"), will have (when those rights are acquired), sufficient rights in its respective Collateral for the mortgages, charges, pledges, assignments or security interests therein to attach (the "**Security Interests**");
    2. ATB has not done anything to release or discharge any Security Interests in respect of the Collateral or to postpone the time for attachment of the Security Interests; and
    3. none of the Collateral constitutes "**consumer goods**".

1. **OPINION**

With respect to the above-noted transaction, the undersigned has acted on behalf of ATB in the preparation, execution and, where applicable, registration of the Security Documents and, subject to the qualifications set out in Appendix A attached hereto, we are of the opinion that:

**Corporate Power and Authority**

(i) each of the corporate Obligors is a subsisting corporation under the laws of its jurisdiction of **<Insert incorporation/amalgamation>**;

(ii) each of the corporate Obligors has the requisite corporate power and capacity to execute and deliver the Security Documents to which it is a party and to perform its obligations thereunder;

(iii) all necessary corporate action has been taken by each of the corporate Obligors to authorize the execution and delivery of the Security Documents to which it is a party and the performance of its obligations thereunder; and

(iv) each of the corporate Obligors has duly executed and delivered the Security Documents to which it is a party

You have received the opinion[s] of **<Insert>** dated **<Insert>**, 20**<Insert>** **<a copy/copies>** of which **<Insert has/have>** been provided to you). Such **<Insert opinion/opinions>** **<Insert is/are>** in form and scope satisfactory to us, and we believe that you are justified in relying thereon. We have, however, made no independent investigation in respect of such **<Insert opinion/opinions>**, and we have assumed **<Insert its/their>** completeness and accuracy.

**No Conflict**

To the best of our informed knowledge, neither the Loan and issuance of the Security Documents nor the fulfillment of or compliance with their terms will constitute a breach of covenant or default or result in the acceleration of any payment or any obligation under any agreement or instrument of the Obligors.

**Litigation**

To the best of our informed knowledge, there are no outstanding or unsatisfied judgments, orders or decrees and there are no suits or proceedings by or in any court, tribunal or governmental agency against or affecting the Obligors which materially adversely affect or could so affect the business or financial condition of the Obligors.

**Enforceability**

Each Security Document is a legal, valid and binding obligation of the party thereto, enforceable against it in accordance with its terms.

**Registration**

Registration has been made in all public offices provided for under the laws of **<insert Alberta>** where such registration is necessary to perfect the Security Interests created by the Security Documents in the Collateral located in **<insert Alberta>** to which the *Personal Property Security Act* (the "***PPSA***") applies, and the particulars of the registrations are set forth above.

**Mortgage**

In respect of the Mortgage **<Insert and the caveat of ATB in respect of the Lease and Rentals Assignment>**:

* + - 1. the Mortgage creates, in favour of ATB, a fixed and specific mortgage and charge upon the right, title, estate and interest of **<Insert the Borrower)**in the property described therein constituting real property or fixtures (the "**Property**");
      2. [the Lease and Rentals Assignment, registered by way of caveat, creates, in favour of ATB, a fixed and specific charge and assignment of all of the **<Insert applicable Obligor’s>** right, title, estate and interest in and to any and all existing or future (A) rents in relation to the use or occupancy of the Property pursuant to all leases and tenancies thereof; and (B) leases, subleases, agreements to lease or sublease or other occupancy or tenancy agreements, in each case, to the extent that they constitute interests in land in the whole or any part or parts of the Property whereby any person is given the right (other than an easement or a right in the nature of an easement) to use or occupy the whole or any part or parts of the Property.]

The registration of the Mortgage at Alberta’s Land Titles Office (the “**LTO**”) [and the registration of a land charge at the PPR] [and the registration of a caveat at the LTO in respect of the Lease and Rentals Assignment] [is/are] the only [registration/registrations] necessary in the Province of [Alberta] for the protection of the mortgage and charges created by the Mortgage [and the Lease and Rentals Assignment] and preserving the priority thereof.

* + 1. **General Security Agreement**

The General Security Agreement: (i) is effective to create, in favour of ATB, a valid security interest under the *PPSA* in the rights of the applicable Obligors in the Collateral described therein to which the *PPSA* applies and in which such Obligors now have rights; and (ii) is sufficient to create (when those rights are acquired) in favour of ATB a valid security interest under the *PPSA* in the rights of the applicable Obligors in the after-acquired Collateral described therein to which the *PPSA* applies and in which such Obligors acquire rights after the date of this opinion, in each case, to secure payment and performance of the obligations described in the General Security Agreement as being secured by it.

1. **OTHER ENCLOSURES AND INFORMATION**

In addition, we also enclose, as requested:

1. **Survey**

Where a mortgage on land and buildings that are not a condominium has been taken, we confirm satisfaction of ATB’s survey requirements by:

(i) a real property report showing no unauthorized encroachments and evidence of

municipal compliance (collectively, “**Real Property Report**”); or

* + - 1. title insurance policy/certificate number **<Insert>** with the **<Insert Insurance Company>** in the amount of $ **<Insert>**  (“**Commitment to Title Insure**”),

unless ATB has authorized the relaxation thereof, the evidence of which is enclosed.

1. **Insurance**

# Where a mortgage on land and buildings has been taken, **<Insert Certificate of Insurance/Binder Letter>** showing the legal or municipal description of the lands insured, with loss payable to ATB as its interest may appear and evidence that the policy is subject to IBC standard mortgage clause;

# Where a mortgage on land has been taken, **<Insert Certificate of Insurance/Binder Letter>** showing commercial general liability coverage; and

# Where a general security agreement has been taken, **<Insert Certificate of Insurance/Binder Letter>** showing all risks or named perils coverage on the personal property of the Obligor, with loss payable to ATB as its interest may appear

(collectively, “**Proof of Insurance**”).

Taxes and Condominium Fees

Real property taxes on the Property are paid until **<Insert>**.

Condominium fees are up to date to **<Insert>**.

Dated the **<Insert>** day of **<Insert>**, 20**<Insert>**.

**Law Firm Name**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Per: **<INSERT LAWYER NAME>**

**APPENDIX A**

The foregoing opinions are expressly subject to and qualified by the following:

provisions of a Security Document may be expressly or implicitly subject to provisions of the Credit Agreement, and no opinion is expressed as to the enforceability of any provision of the Security Documents to the extent that it is inconsistent with or contrary to any provisions of the Credit Agreement;

we express no opinion as to the enforceability of any provision of any Security Document:

directly or indirectly purporting to exclude unwritten variations, amendments, waivers or consents;

which stipulates that ATB shall not be deemed to be a mortgagee in possession of any property or have obligations under any leases, agreements or instruments subject to the security interests granted to ATB under the Security Documents where ATB has taken steps to enforce such security interests in respect thereof;

which deem ATB to be holding certain assets in trust for the Obligors since third parties dealing with the Obligors might otherwise have a preferential interest in the assets which are the subject of the deemed trust;

* + - 1. granting an irrevocable power of attorney or proxy or otherwise irrevocably appointing an agent;
      2. purporting to exculpate, exempt or relieve a party or any of their agents or any receiver, manager or receiver-manager (a "**Receiver**") from a liability or otherwise from the consequence of its own negligence or responsibility for its own acts, to make any Obligors responsible for any actions or omissions of ATB, any of its agents or any Receiver or to deem a Receiver to be an agent of any Obligors;
      3. which deem a Receiver, for certain purposes, to be treated as agent for ATB and not solely as agent for the Obligors;
      4. which provide or have the effect of providing for a higher rate of interest after than before default;
      5. which provide for the payment of interest, fees, expenses and other amounts if these provisions provide or have the effect of providing for the receipt of "**interest**" by any party thereto at a "**criminal rate**", the terms "interest" and "criminal rate" having the meanings given to them in section 347 of Canada’s *Criminal Code*;
      6. which provide or have the effect of providing for a forfeiture of a deposit or any other property, including the obligation to pay default interest, characterized by the Alberta courts as a penalty and not as a genuine pre-estimate of damages, notwithstanding its characterization by the parties;
      7. by which any of the Obligors purports to waive legal, statutory or equitable defences or rights otherwise available to it or agrees not to challenge the validity or enforceability of remedies under the Security Documents may be limited by law;
      8. which provides for the severance of illegal or unenforceable provisions from the remaining provisions of an agreement; or
      9. that requires a person to pay or to indemnify another person for costs and expenses in connection with judicial proceedings, since any award for those costs and expenses is at the discretion of the court;
    1. we express no opinion as to the creation or perfection of a security interest in, nor have we effected any registrations or given any notices in respect of, any interest in any property (other than the property as noted above) to which the PPSA does not apply;
    2. except as specifically instructed in the Instruction Letter, no registration by serial number has been effected in respect of motor vehicles, trailers, mobile homes, aircraft, boats or outboard motors for boats and used as consumer goods or held as equipment and, accordingly, this opinion is qualified to the extent that such serial number registrations are necessary or advisable;
    3. no opinion is expressed with respect to any registrations that may be necessary regarding any personal property collateral subject to the PPSA (the "**Personal Property Collateral**") that is now or which may hereafter be a fixture;
    4. Notwithstanding any expression to the contrary contained herein, our opinion does not extend to the existence, validity, status or subsistence of any license, document, approvals, permits, registrations, qualifications, filings or agreements not referred to herein, or breach or default of any terms thereof;
    5. no opinion is expressed with respect to the validity, registration or perfection of the General Security Agreement over personal property collateral governed by statutes or laws other than the PPSA, such as, without limitation, ships, copyright, trade marks, patents, industrial designs and other forms of intellectual property, contracts of annuity or policies of insurance except rights to money or other value payable thereunder as indemnity or compensation for loss of or damage to collateral;
    6. with respect to any Personal Property Collateral consisting of any “**instruments**”, “**chattel paper**”, “**documents of title**” or “**money**” (as those terms are defined in the PPSA), ATB's priority position with respect thereto will not be protected to the fullest extent possible unless ATB takes and maintains physical possession of such collateral;
    7. with respect to any Personal Property Collateral consisting of any “**investment property**” (as defined in the PPSA), ATB's priority position with respect thereto will not be protected to the fullest extent possible unless ATB has “**control**” (as such concept is defined in Alberta’s *Securities Transfer* Act) of such collateral;
    8. the enforcement of the Security Documents or any judgment arising out of or in connection therewith may be limited:
       1. by limitations upon the right of a creditor to receive immediate payment of amounts stated to be payable on demand;
       2. by limitations upon the right of a party to the Security Documents to enforce the Security Documents on the basis of a default of a minor or non-substantive nature, such as the failure to produce a document in a timely manner;
       3. by any provisions of the Security Documents that purport to establish evidentiary standards, such as provisions stating that certain calculations or certificates will be conclusive and binding, which provisions may not be enforceable or may be limited in their application;
       4. by the powers of a court to stay proceedings before it and to stay the execution of judgments;
       5. by the discretion which a court may reserve to itself to decline to hear an action if it is contrary to public policy for it to do so or if it is not the proper forum to hear such action; and
       6. by limitations upon the rights of the parties to choose Alberta (and applicable federal) law if, or to the extent it is determined that, such choice of law was made to evade mandatory provisions or public policy considerations of the law of another jurisdiction;
    9. With respect to the General Security Agreement, we express no opinion as to:
       1. the right, title or interest of the parties in and to any personal property; or
       2. the specific enforcement provisions of the General Security Agreement to the extent that the remedy and enforcement provisions of the PPSA may affect the enforcement of certain remedies in Alberta under the General Security Agreement;
    10. A security interest perfected by the filing of a Financing Statement pursuant to the PPSA only remains perfected for the registration period chosen and, unless renewed by the filing of a Financing Change Statement pursuant to the PPSA prior to such date (for which we assume no responsibility), will automatically expire; further, changes in the name of a debtor, assignments such as a transfer by the party of its interest and any of the collateral, or other events may require the filing of additional Financing Change Statements pursuant to the PPSA within a specified time period of acquiring knowledge of such changes to preserve such security interest;
    11. we express no opinion as to any lien with respect to:
        1. any Personal Property Collateral (including proceeds) to the extent that it is not identifiable or traceable;
        2. any property or asset of the Borrower prior to the Borrower acquiring rights therein;
        3. any debt owing by the Crown in right of Canada or any province or agency thereof unless consented to by the applicable governmental authority in accordance with the applicable *Financial Administration Act*;
        4. the transferability or assignability of any permit, license or authorization issued by a governmental authority, the transfer or assignment of which is subject to the consent or approval of any governmental authority pursuant to any requirement of applicable law;
        5. debts, claims, demands and other rights which by their terms are not assignable or the assignment of which is subject to certain conditions under, or is specifically regulated by, any requirement of applicable law; or
        6. personal property collateral to which the PPSA does not apply;
    12. The enforceability of the Mortgage is further subject to:
        1. our searches at the Land Titles Office were confined to the current certificate of title in respect of the Property. The certificate of title under the LTA, assuming no fraud, offers conclusive proof that the current registered owner reflected therein is the registered owner of the Property except with respect to any portion of the Property or property included in a certificate of title by wrong description of boundaries and except as against any person claiming under a prior certificate of title;
        2. the implied conditions, reservations and exceptions under section 61 of Alberta’s Land Titles Act (the "***LTA***"), to which land mentioned in any certificate of title granted under the LTA is subject by implication and without any special mention;
        3. the effects of any prior registered security interests, which take priority over the mortgage and charge created by the Mortgage without the requirement of registration;
        4. no opinion is expressed regarding the priority of advances under the Credit Agreement secured by the Mortgage as against any charge, lien or fixtures filings registered against the title to all or part of the Property after the date of registration of the Mortgage pursuant to the provisions of Alberta’s Builder’s Lien Act, the PPSA or any other applicable law;
        5. the fact that there may exist certain security interests, liens, charges, encumbrances, statutorily-created trusts and statutory provisions which may avoid or have priority over the mortgage and charge created by the Mortgage which, in each case, need not be registered in order to gain or ensure priority over the mortgage and charge of the Mortgage;
        6. the enforceability of the Mortgage is limited by the actual amount of the indebtedness of and the actual interest payable by the Obligors under the Credit Agreement notwithstanding that the aggregate amount or interest rate expressed to be secured or to be payable under the Mortgage may exceed such indebtedness and interest;
        7. the remedy of a mortgagee for foreclosure may be limited by the rights of a mortgagor or subsequent encumbrancer to require judicial sale of the mortgaged property; and
        8. no opinion is expressed as to the enforceability of any provision in the Mortgage regarding the waiver of any provision of Alberta’s Expropriation Act nor as to the enforceability of any assignment of an expropriation award of an expropriation authority;
    13. Registration of the Lease and Rentals Assignment is not deemed to be actual or constructive notice of the Lease and Rentals Assignment or its terms, and may be subordinate in priority to prior and subsequent assignments where prior notice has been given or is given to the debtor by the holder of the prior or subsequent assignments;
    14. The enforceability of the guarantee against the respective Guarantor may be affected or limited by any defenses which at law or in equity are available to the Guarantor which have not been effectively waived under the guarantee;
    15. If any binder letter or policy of insurance is attached to this opinion, we have reviewed the binder letter or policy only to ensure the details such as names, property descriptions and loss payable are in order. ATB should have the binder letter or policy reviewed by an insurance broker in order to satisfy itself that the coverage is appropriate;
    16. the rights and privileges of the Crown and its agents;
    17. any assignment of debts or monies due or accruing due from the Crown in right of any province or in right of Canada or from any provincial or federal Crown corporation or agent may not be enforceable unless the provisions of applicable provincial or federal statutes are complied with;
    18. Unless otherwise provided in this report and opinion, we have assumed that ATB has directly obtained all documents necessary to satisfy all requirements of applicable anti-money laundering legislation and the Financial Transactions and Reports Analysis Centre of Canada (“**FINTRAC**”);
    19. the remedy and enforcement provisions of the *PPSA* Alberta’s Civil Enforcement Act and Alberta’s Law of Property Act may affect the enforcement of certain remedies in Alberta under the Security Documents;
    20. Any provision of any Security Documents requiring the payment of interest after judgment may be limited under Canada’s *Interest Act* and *Alberta’s Judgment Interest Act* to a rate which is less than the rate provided for contractually;
    21. the enforceability of the Security Documents is subject to the limitations contained in Alberta’s Limitations Act;
    22. The enforceability of the parties’ obligations under the Security Documents or any judgment arising out of or in connection therewith are subject to and may be affected or limited by any applicable bankruptcy, reorganization, winding-up, insolvency, liquidation, moratorium, public policy or other laws generally affecting the enforcement of the rights or priorities of creditors or others from time to time in effect;
    23. we express no opinion with respect to compliance with Canada’s *Personal Information Protection and Electronic Documents Act* or any other privacy laws of the Province of Alberta;
    24. Canada’s *Currency Act* precludes a court in Canada from giving judgment in any currency other than lawful money of Canada;
    25. Equitable remedies, such as specific performance and injunction, are only available in the discretion of the court and are subject to the general principles of equity. In applying such principles of equity, the court may, among other things, review conduct prior to execution or in the administration or performance of the applicable Security Documents, including, without limitation: (i) undue influence, unconscionability, duress, misrepresentation and deceit; (ii) estoppels and waiver; and (iii) reasonableness and good faith, in the exercise of discretionary powers;
    26. a Receiver of the Borrower or any of their respective property which proposes to hold, administer, operate or dispose of part or all of such property needs to be appointed by the courts and may need to obtain consents or approvals of, or give notice to, one or more governmental agencies or officials or third parties;
    27. provisions in the Security Documents providing for recovery of fees and expenses may be restricted by a court to a reasonable amount, and counsel fees are subject to taxation;
    28. a court may not enforce, in certain circumstances, provisions of Security Documents that indemnify a party in respect of a party's own acts or omissions, and a court may limit rights of indemnity or reimbursement under any of the Security Documents to the extent such act or omission involves negligence, a wilful or unlawful conduct or such rights constitute a penalty or are contrary to public policy;
    29. determinations or calculations made by ATB in the exercise of a discretion purported to be given to it under or by the Security Documents may be unenforceable if made in an unreasonable or arbitrary fashion and may not be treated as conclusive notwithstanding contrary provisions in the Security Documents;
    30. Our opinion is confined to the laws of the Province of Alberta as existing as at the date of this opinion and does not extend to the laws of any other jurisdiction insofar as such laws may be relevant to this opinion. We express no opinion with respect to the laws of any other jurisdiction to the extent that those laws may govern the validity, perfection, effect of perfection or non-perfection, priority or enforcement of the security interests created by the Security Documents as a result of the application of the conflict of law rules of Alberta, including, without limitation, sections 5 to 8 of the PPSA. In addition, we express no opinion as to whether the laws of Alberta govern the validity, perfection, effect of perfection or non-perfection, priority or enforcement of any such security interest. We do not accept any responsibility to take into account or advise of any changes in law, facts or other developments subsequent to this date that do or may affect the opinions we express;
    31. notwithstanding a provision in a Security Document that such Security Document constitutes the entire agreement between the parties, a court may, in certain circumstances, give effect to other agreements or representations, whether written or oral, between the parties; and
    32. This opinion may only be relied upon by the party to whom it is addressed.