



To the Best of Our Knowledge: Attorney Opinion Letters

Attorneys' Title Fund Services, LLC

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Attorneys' Title Fund Services, LLC

(800) 432-9594

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To the Best of Our Knowledge Attorney Opinion Letters



John B. "Jay" St. Lawrence
Legal Education Attorney
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Overview

- Definition
- Rules and Limitations
- Use
- Liability
- Process
- Hypothetical Example
- Scope
- Disclosure and Consent



What is an Attorney Opinion Letter?

Definition

In the context of a commercial real estate transaction, an Attorney Opinion Letter or “closing opinion” is a requirement by the lender for a formal letter of opinion from buyer’s counsel as to specified matters.

- Lenders may suggest their own form for the opinion letter they require
- Buyer’s counsel may need to modify, subject to lender approval
- Focus is on
 - **Enforceability of loan obligation and security interest**
 - **Buyer’s ability to enter into the contemplated loan**
 - Suitability of the property for the buyer’s intended purpose
 - Other related matters of concern to the lender

What is an Attorney Opinion Letter?

Also referred to as “closing opinion” or “third-party opinion”

Critical Resources

- American Bar Association
 - [*2002 Guidelines for the Preparation of Closing Opinions*](#)
- Florida Bar Business Law Section
 - [*2011 Report on Third-Party Legal Opinion Customary Practice in Florida*](#)
 - Includes downloadable Word-format form opinion letter
 - [*2018 First Supplement to the Report on Third-Party Legal Opinion Customary Practice in Florida*](#)
 - Addresses Revised Limited Liability Company Act, Sec. 605, F.S.
 - https://www.americanbar.org/content/dam/aba/administrative/business_law/buslaw/tribar/materials/20050120000001.pdf
 - <http://www.flabizlaw.org/committees-task-force/standing-committees/opinion-standards-committee/>

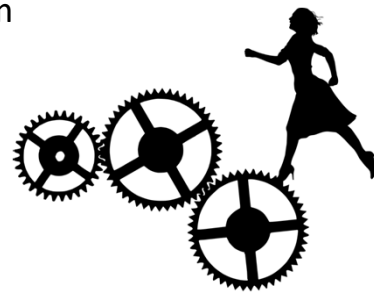
When do you give an Attorney Opinion Letter?

- When a lender requires it
- Typically commercial transactions
- When the buyer is your client
- When in a position to “opine” on the matters at hand



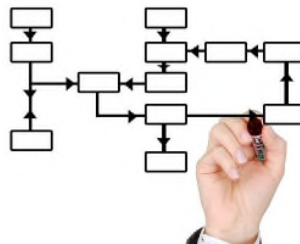
How Does the Process Work?

- Lender or lender’s counsel requests buyer to provide opinion letter on specific matters
- Should occur early in discussion of lender’s required documents
- Lender or buyer’s counsel may propose a form



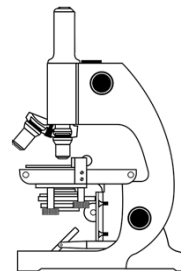
How Does the Process Work? (cont'd)

- Buyer's counsel should notify lender of any problems with proposed form and the opinions requested
- Negotiate solutions
- Attorney rendering opinion may enlist other counsel for their expertise where needed



Scope of Opinion

- Matters reasonably related to transaction
- Matters specific enough to be determined
- Matters that can be determined without assumed facts



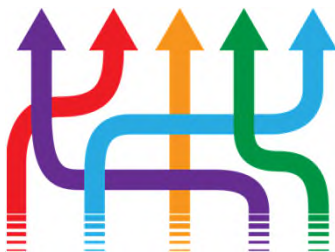
Scope of Opinion (cont'd)

- Opinion must be within competence of attorney's legal research and judgment
- May rely on relevant certifications of fact
 - Financial statement analysis
 - Economic forecast
 - Valuation
- Opinion should not be misleading



Scope of Opinion (cont'd)

- Opinions popular in the “market” insufficient as a basis to render the same
- Fair to assume recipient is familiar with customary practices of closing opinions
- Opinion letter may authorize assignees of recipient or others to rely on it



Disclosure and Consent



- Not customary to investigate and disclose interests of attorneys in opinion-giver's firm in the client
- Even disclosure does not excuse compromising professional judgment
- Client's consent to disclosure may be inferred from closing requirement for opinion letter, but any concerns should be discussed before delivery

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The ABA's "Golden Rule"

- *An opinion giver should not be asked to render an opinion that counsel for the opinion recipient would not render if it were the opinion giver and possessed the requisite expertise. Similarly an opinion giver should not refuse to render an opinion that lawyers experienced in the matters under consideration would commonly render in comparable situations, assuming that the requested opinion is consistent with these Guidelines and the opinion giver has the requisite expertise and in its professional judgment is able to render the opinion. Opinion givers and counsel for opinion recipients should be guided by a sense of professionalism and not treat opinions simply as if they were terms in a business negotiation (emphasis provided)*

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Rules and Limitations

- ABA's Golden Rule: Professionalism
- Rather than omitting information as "immaterial," use concrete facts to show what is significant and what is not
 - ex) "a loss of \$1"
 - Fair to use categories
 - ex) "Losses under \$1,000"
- Can rely on a presumption of regularity of client's conduct



Rules and Limitations (cont'd)

- "To our knowledge"
 - Used when opinion based on personal knowledge without inquiry
 - ex) Existence of court proceedings
 - Appropriate to describe level of factual inquiry conducted
 - Meaning of "knowledge" can be defined within letter
 - "To the best of our knowledge" has no extra significance
- "Would or should"
 - Where legal analysis used
 - Not standard in closing opinions
 - Called "explained" or "reasoned" opinion
 - "Qualified" if includes exceptions

Rules and Limitations (cont'd)

- Recipient should not require opinion that client is not in violation of any and all
 - Laws
 - Contractual obligations
- Opinion with “to our knowledge” limitation not appropriate as to either of the above
- Recipient should not require opinion letter to state a *lack of knowledge* of specific matters
 - ex) Accuracy/inaccuracy of documents

Rules and Limitations

- Recipient should not require opinion as to impact of fraudulent transfer laws on enforceability
- Recipient should not require opinion on the expected outcome of current or possible litigation
- Opinion should not have a general exception for “matters of public policy”
 - May be appropriate for specific contractual provisions

A Few Relevant Statutes

- Sec. 605, F.S. – Florida Revised Limited Liability Company Act (FRLCA)
 - Note: *Report on Third-Party Legal Opinion Customary Practice in Florida* (2011) references prior FLLCA, Sec. 608.
 - See 2018 *First Supplement to the Report on Third-Party Legal Opinion Customary Practice in Florida* for updated LLC information
- Sec. 620, F.S. – Florida Revised Uniform Partnership Act (FRUPA)
- Sec. 607, F.S. – Florida Business Corporation Act (FBCA)



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FL Bar Business Law Section / RPPTL Recommendations

- Recommendations of Legal Opinion Standard Committee of FL Bar Business Law Section and the Legal Opinions Committee of the Real Property, Probate and Trust Law Section of the FL Bar
 - *Report on Third-Party Legal Opinion Customary Practice in Florida* (2011)
 - https://www.americanbar.org/content/dam/aba/administrative/business_law/buslaw/tribar/materials/20111203_florida_third_customary_practice.pdf
- Consider incorporating Report into opinion letter
- Key Benefits:
 - Allows Opining Counsel to expressly incorporate lists of assumptions, limitations, qualifications and exceptions, thus shortening the opinion letter
 - Reduces confusion and/or later disagreements as to application and effect of FL customary practice (as articulated in the Report)
 - Lessens concern an interpreting court will fail to follow FL customary practice



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FL Bar Business Law Section / RPPTL Recommendations

- Incorporating the *Report on Third-Party Legal Opinion Customary Practice in Florida* (2011) into an opinion letter
- Recommended language:

This opinion letter has been prepared and is to be construed in accordance with the “Report on Third-Party Legal Opinion Customary Practice in Florida, dated December 3, 2011” (the “Report”). The Report is incorporated by reference into this opinion letter.

“To our knowledge”

FL Bar Business Law Section / RPPTL recommend that Opining Counsel include the following standard formulation of the knowledge qualification in its opinion letters:

- The phrases “**to our knowledge**,” “**known to us**,” or the like **mean the conscious awareness** of the lawyers in the “primary lawyer group” of factual matters such lawyers recognize as being relevant to the opinion or confirmation so qualified. **Such phrases do not imply that we have undertaken any independent investigation within the firm, with the Client or with any third party to determine the existence or absence of any facts or circumstances**, and no inference should be drawn merely from our past or current representation of the Client. **Where any opinion or confirmation contained herein is qualified by the phrase “to our knowledge,” “known to us,” or the like, it means that the lawyers in the “primary lawyer group” are without any actual knowledge or conscious awareness that the opinion or confirmation is untrue in any respect material to the opinion or confirmation.** For purposes of this opinion letter, “primary lawyer group” means: (i) the lawyer who signs his or her name or the name of the firm to the opinion letter, (ii) the lawyers currently in the firm who are actively involved in preparing or negotiating the opinion letter, and (iii) the lawyers currently in the firm who are actively involved in negotiating or documenting the Transaction or the Transaction Documents.

FL Bar Business Law Section / RPPTL

Form Opinion Letter for Loan Transactions Secured by Real Estate

- Introduction identifies
 - Client
 - Loan commitment
 - Promissory note
 - Related loan documents
 - May include language incorporating Report by reference

Re: [Description of Transaction]

Ladies and Gentlemen:

We have acted as counsel to _____ [Name of Borrower], [a Florida corporation/partnership/limited liability company/as trustee of _____, a Florida trust] (the "Borrower"), in connection with a loan (the "Transaction") in the original principal amount of \$ _____ (the "Loan Amount") made by [Name of Lender] (the "Lender") in favor of the Borrower pursuant to that certain [Loan Agreement/Credit Agreement, dated _____] (the "Loan Agreement"). We have also acted as counsel to _____ (the "Individual Guarantor") and _____, [a Florida corporation/partnership/limited liability company/as trustee of _____, a Florida trust] (the "Entity Guarantor," and collectively with the Individual Guarantor, the "Guarantors") in connection with the Transaction.

This opinion letter⁴ is furnished to you pursuant to Section ____ of the Loan Agreement at the request and with the consent of the Borrower and the Guarantors.⁵ Capitalized terms used but not otherwise defined herein shall have the definitions set forth in the Loan Agreement.⁶

This opinion letter is limited to the matters expressly stated herein. No opinions are to be inferred or implied beyond the opinions expressly so stated.⁷

This opinion letter has been prepared and is to be construed in accordance with the "Report on Third-Party Legal Opinion Customary Practice in Florida, dated December 3, 2011" (the "Report"). The Report is incorporated by reference into this opinion letter.

FL Bar Business Law Section / RPPTL Recommendations (cont'd)

(abbreviated and condensed)

Opining as to business entity status / authority to transact business

- Ex) Domestic corporation
 - Diligence
 - Examine Articles of Incorporation
 - Obtain active status certificate from Secretary of State
 - Confirm no dissolution in progress
- Recommended opinion language:

The Client is a [corporation] organized under Florida law, and its [corporate] status is active.

FL Bar Business Law Section / RPPTL Recommendations (cont'd)

(abbreviated and condensed)

Opining as to business entity status / authority to transact business

- Ex) Foreign Limited Partnership (**hypo**)
 - Diligence – Assess whether FL certificate of authority required
 - Obtain certificate from general partner describing scope of business activities in FL
 - Determine whether activities beyond safe harbor exemptions in Sec. 620.1903(1)
 - General view of FL lawyers: Foreign business entities that own income-producing property in FL ARE required to obtain a certificate of authority
 - Obtain certificate of authority from Secretary of State if needed (form at sunbiz.org)
 - Obtain active status certificate from Secretary of State
- Recommended opinion language:

Based solely on a certificate of status from the Department dated _____, 20____, the Client is authorized to transact business as a [foreign limited partnership] in the State of Florida, and its [limited partnership] status in Florida is active.

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FL Bar Business Law Section / RPPTL Recommendations (cont'd)

(abbreviated and condensed)

Opining as to authority to transact business in Florida

- Ex) Foreign corporation
 - Diligence
 - Obtain active status certificate from Secretary of State
- Recommended opinion language:

Based solely on a certificate of status from the Department dated _____, 20____, the Client is authorized to transact business as a [foreign corporation] in the State of Florida, and its [corporate] status in Florida is active.

- See Report for standards for other types of business organizations

FL Bar Business Law Section / RPPTL Recommendations (cont'd)

(abbreviated and condensed)

Opining as to foreign lender's need to obtain certificate of authority

- Diligence
 - Examine FL Statutes as to “safe harbor” activities not requiring Certificate of Authority from Florida Secretary of State
 - Ex) Sec. 607.1501(2)
 - Activities that do not constitute “transacting business”
 - (g) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property
 - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
- Recommended opinion language:

Neither the making of the [Loan], nor the securing of the [Loan] with collateral, nor the ownership of the [Notes], will, solely as the result of any such action, require the [Lender] to obtain a certificate of authority to transact business as a foreign [corporation/limited partnership/general partnership/limited liability partnership/limited liability company] in the State of Florida.

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FL Bar Business Law Section / RPPTL Recommendations (cont'd)

(abbreviated and condensed)

Opining as to “Entity power” to perform

- Ex) Corporation
 - Diligence – Examine FL Business Corporation Act Sec. 607, F.S.
 - Ex) Sec. 607.0302
 - Corporation’s articles of incorporation define its corporate power
- Recommended opinion language:

The Client has the corporate power to execute and deliver the [Transaction Documents] and to perform its obligations thereunder.

Hypothetical

Buyer's attorney asked to furnish an AOL for a proposed purchase and sale

- Buyer: S.A. LIMITED PARTNERSHIP, a Delaware limited partnership
- Seller COMMERCIAL DEVELOPMENT, LLC a Florida limited liability company
- Proposed sale price – \$11,250,000
- Anticipated use – Self-storage facility



Residential | Commercial | Education

February 9, 2023

Big American Bank
c/o Cynthia Raleigh, Esquire
Raleigh Luger LLP
1 Central Park South
NY, NY 1008-4277

Re: Big Bank loan to S.A. Limited Partnership

Ladies and Gentlemen:

I am counsel for S.A. Limited Partnership in connection with the loan ("Loan") to be granted by Big American Bank ("Lender") pursuant to the terms and conditions of that certain Commitment Letter dated February 5, 2023, accepted by Borrower ("Commitment"), and pursuant to the terms and conditions of that certain Mortgage and Security Agreement, dated the ____ day of March, 2023 and that certain Promissory Note ("Note") of even date therewith in the original principal amount of \$5,000,000.00, the Guaranties of even date therewith ("Guarantee") executed by Jerry Koosman ("Guarantor") and all other related Loan documents (which Mortgage, Note, Construction Loan Agreement, Guarantee and other documents are collectively referred to as "Loan Documents").

As counsel for Borrower and Guarantor, I have examined the Loan documents and such other documents as we consider necessary for the purposes of the opinion hereinafter set forth.

This opinion letter is limited to the matters expressly stated herein. No opinions are to be inferred or implied beyond the opinions expressly so stated.

This opinion letter has been prepared and is to be construed in accordance with the "Report on Third-Party Legal Opinion Customary Practice in Florida dated December 3, 2011" (the "Report"). The Report is incorporated by reference into this opinion letter.

Based upon the foregoing, I am of the opinion that:

1. Based solely on a certificate of status from the Department dated February 1, 2023, the Borrower, a Delaware limited partnership, is authorized to transact business as a foreign limited partnership in the State of Florida, and its limited partnership status in Florida is active.

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Hypothetical

- Recall: lender's form
 - Question/modify
- Introduction identifies
 - Client
 - Loan commitment
 - Promissory note
 - Related loan documents
- May include language incorporating Report by reference

Big American Bank
c/o Cynthia Raleigh, Esquire
Raleigh Luger LLP
1 Central Park South
NY, NY 1008-4277

Re: Big Bank loan to S.A. Limited Partnership

Ladies and Gentlemen:

I am counsel for S.A. Limited Partnership in connection with the loan ("Loan") to be granted by Big American Bank ("Lender") pursuant to the terms and conditions of that certain Commitment Letter dated February 5, 2023 accepted by Borrower ("Commitment"), and pursuant to the terms and conditions of that certain Mortgage and Security Agreement, dated the ____ day of March, 2023 and that certain Promissory Note ("Note") of even date therewith in the original principal amount of \$5,000,000.00, the Guaranties of even date therewith ("Guarantee") executed by Jerry Koosman ("Guarantor") and all other related Loan documents (which Mortgage, Note, Construction Loan Agreement, Guarantee and other documents are collectively referred to as "Loan Documents").

This opinion letter is limited to the matters expressly stated herein. No opinions are to be inferred or implied beyond the opinions expressly so stated.

This opinion letter has been prepared and is to be construed in accordance with the "Report on Third-Party Legal Opinion Customary Practice in Florida dated December 3, 2011" (the "Report"). The Report is incorporated by reference into this opinion letter.

1. Based solely on a certificate of status from the Department dated February 1, 2023, the Borrower, a Delaware limited partnership, is authorized to transact business as a foreign limited partnership in the State of Florida, and its limited partnership status in Florida is active.
2. Neither the making of the Loan, nor the securing of the Loan with collateral, nor the ownership of the Note, will, solely as the result of any such action, require the Lender to obtain a certificate of authority to transact business as a foreign corporation in the State of Florida.
3. The borrowing by Borrower and the execution and performance by Borrower and

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Residential | Commercial | Education

Hypothetical

- Client has authority to
 - Do business and
 - Develop subject property
- Authorized to do business in the *specific location* of the subject property
- Specific transaction authorized by client entity
- Question: “any provision of law”

Big American Bank
c/o Cynthia Raleigh, Esquire
Raleigh Luger LLP
1 Central Park South
NY, NY 1006-4277

Re: Big Bank loan to S.A. Limited Partnership

1. Based solely on a certificate of status from the Department dated Feb. 1, 2023 the Borrower, a Delaware limited partnership, is authorized to transact business as a foreign limited partnership in the State of Florida, and its limited partnership status in Florida is active.
2. Neither the making of the Loan, nor the securing of the Loan with collateral, nor the ownership of the Note, will, solely as the result of any such action, require the Lender to obtain a certificate of authority to transact business as a foreign corporation in the State of Florida.
3. The borrowing by Borrower and the execution and performance by Borrower and Guarantor of the Loan Documents have been duly authorized by all necessary actions on the part of Borrower and Guarantor and will not violate any provision of Borrower's or Guarantor's, as applicable, By-Laws, Partnership Agreement or any amendment thereto, or to the best of my knowledge, any provision of law.

Based upon the foregoing, I am of the opinion that:

1. Based solely on a certificate of status from the Department dated February 1, 2023, the Borrower, a Delaware limited partnership, is authorized to transact business as a foreign limited partnership in the State of Florida, and its limited partnership status in Florida is active.
2. Neither the making of the Loan, nor the securing of the Loan with collateral, nor the ownership of the Note, will, solely as the result of any such action, require the Lender to obtain a certificate of authority to transact business as a foreign corporation in the State of Florida.
3. The borrowing by Borrower and the execution and performance by Borrower and

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Hypothetical

- Documents properly executed
 - Binding and enforceable
 - “Bankruptcy exception” ok
 - Required priority of lien
- Perfection of lien interests
 - “To the best of my knowledge”
 - Defined in the letter?

Big American Bank
c/o Cynthia Raleigh, Esquire
Raleigh Luger LLP
1 Central Park South
NY, NY 1006-4277

4. The Loan Documents and the Guarantee have been duly and validly authorized, executed and delivered and, where necessary, customary and appropriate, properly acknowledged by Borrower and Guarantor, as the cause may be, and constitute the legal, valid and binding obligations of Borrower, and Guarantor, as the case may be, enforceable under Florida law in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, or reorganization laws. To the best of my knowledge, the Mortgage instrument establishes in favor of the Lender and against all of the Mortgaged Property, the first lien or title priority required by Lender.

5. To the best of my knowledge, the Mortgage, when recorded, will continue to create a first security interest in the personal property and fixtures described therein, which security interest is perfected by the proper filing among the Public Records of Osceola County, Florida, and in the office of the Secretary of State of Florida, of appropriate UCC-1, Financing Statements, and which security interest attaches to specific items of personal property and fixtures as such items are purchased by Borrower and used in connection with any improvements made to the Mortgaged Property or any part thereof.

This opinion letter has been prepared and is to be construed in accordance with the “Report on Third-Party Legal Opinion Customary Practice in Florida dated December 3, 2011” (the “Report”). The Report is incorporated by reference into this opinion letter.

Based upon the foregoing, I am of the opinion that:

1. Based solely on a certificate of status from the Department dated February 1, 2023, the Borrower, a Delaware limited partnership, is authorized to transact business as a foreign limited partnership in the State of Florida, and its limited partnership status in Florida is active.
2. Neither the making of the Loan, nor the securing of the Loan with collateral, nor the ownership of the Note, will, solely as the result of any such action, require the Lender to obtain a certificate of authority to transact business as a foreign corporation in the State of Florida.
3. The borrowing by Borrower and the execution and performance by Borrower and

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Hypothetical

- Property in compliance with local requirements regarding
 - Zoning
 - Planning
 - Occupancy
- Question: no violation of “any” federal, state or local laws

Big American Bank
c/o Cynthia Raleigh, Esquire
Raleigh Luger LLP
1 Central Park South
NY, NY 1006-4277

Re: Big Bank loan to S.A. Limited Partnership

Ladies and Gentlemen:

6. The Mortgaged Property's zoning designation is consistent with the development of the Mortgaged Property as a general commercial office building and all governmental approvals will be obtained that are necessary to permit the commencement of construction and, ultimately, the intended use and occupancy of the Improvements. To the best of my knowledge, as of the date hereof, Borrower is not in violation of any federal, state or local laws relating to the Mortgaged Property. The commencement of construction, the completion thereof and the ultimate use and occupancy of the Improvements will not be denied or delayed in any manner by reason of the "concurrency" requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (the "Act") set forth in Chapter 163.3161, et seq., Florida Statutes, or any comprehensive plan or other similar ordinances ("Comprehensive Plan") promulgated by local governmental authorities in accordance with the Act. All roads, highways and other public facilities and services described in any such Comprehensive Plan and related directly or indirectly to levels of services required by the Comprehensive Plan and/or the Act for the Mortgaged Property, and as may be more fully designed and are modified by the regulations thereto, are currently (and will be at final completion) in full use, occupancy and enjoyment of the Mortgaged Property can occur without delay. Upon substantial completion of the Improvements upon the Mortgaged Property in accordance with the approved plans and specifications, Borrower will request that the appropriate governmental authority issue without delay a certificate or certificates of occupancy for the Mortgaged Property.

2. Neither the making of the Loan, nor the securing of the Loan with collateral, nor the ownership of the Note, will, solely as the result of any such action, require the Lender to obtain a certificate of authority to transact business as a foreign corporation in the State of Florida.

3. The borrowing by Borrower and the execution and performance by Borrower and

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Hypothetical

- ADA compliance
- Taxes paid; stamps affixed
- Interest rate non-usurious in Florida
- “In reliance upon the operation” of FL Statute ...”

Big American Bank
c/o Cynthia Raleigh, Esquire
Raleigh Luger LLP
1 Central Park South
NY, NY 1006-4277

Re: Big Bank loan to S.A. Limited Partnership

Ladies and Gentlemen:

I am counsel for S.A. Limited Partnership in connection with the loan ("Loan") to be granted by Big

7. To the best of my knowledge, the proposed and existing improvements comply with the Americans Disabilities Act 42 U.S.C. Sec. 12101, et seq.

8. The required intangible tax and the proper excise tax on the documents have been paid, and the proper stamps have been affixed to the Mortgage, pursuant to Chapter 201, Florida Statutes (1985).

9. In reliance upon the operation of Section 687.12 Florida Statutes (1985), and Florida case law, the amounts to be received by Lender which are or which may be deemed to be interest under the Loan Agreement or any other Loan Documents or any other document executed pursuant to or in connection with the Loan Agreement constitute lawful interest and are not usurious or illegal under Florida law and no aspect of the transaction

Based upon the foregoing, I am of the opinion that:

1. Based solely on a certificate of status from the Department dated February 1, 2023, the Borrower, a Delaware limited partnership, is authorized to transact business as a foreign limited partnership in the State of Florida, and its limited partnership status in Florida is active.

2. Neither the making of the Loan, nor the securing of the Loan with collateral, nor the ownership of the Note, will, solely as the result of any such action, require the Lender to obtain a certificate of authority to transact business as a foreign corporation in the State of Florida.

3. The borrowing by Borrower and the execution and performance by Borrower and

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Hypothetical

- No claims vs lender
- No judgments vs borrower
- Question: No proceedings “pending or threatened”
- No violations or conflicts resulting from loan or guarantee

10. There are no defenses, offsets or counterclaims that Borrower or Guarantors may have against Lender; and there are no judgments outstanding against Borrower or the Guarantors, or any of them, or petitions, suits, claims, causes of action, or moratoria or other proceedings pending or threatened against Borrower or the Guarantors, or any of them, or the Mortgaged Property before any Court or other governmental, administrative, regulatory, adjudicative or arbitrational body of any kind, including, without limitation, condemnation or similar proceedings, which, if decided adversely to Borrower or the Guarantors, or any of them, or the Mortgaged Property, would adversely affect Borrower or the Guarantors, the Mortgaged Property or the ownership of the Mortgaged Property (nor are we presently aware of any factual occurrences that reasonably might afford a basis for any of the above).
11. Neither the execution and delivery of, nor the performance of and compliance with, the Loan Documents by Borrower will result in violation of, or be in conflict with or constitute a default under, any mortgage, indenture, contract, agreement or instrument to which the Borrower is a party, or constitute a violation or any franchise, permit, judgment, decree, order, statute, rule or regulation applicable to the Borrower.
12. Neither the execution and delivery of, nor the performance of and compliance with, the Loan Documents by Guarantor will result in violation of, or be in conflict with or constitute a default under, any mortgage, indenture, contract, agreement or instrument to which Guarantor is a party, or constitute a violation or any franchise, permit, judgment, decree, order, statute, rule or regulation applicable to any of the Guarantors.

Hypothetical

- Consider before opining:
 - No violation of any laws
 - All permits and licenses
- Typical:
 - Location of execution
 - Governing law

13. To the best of my knowledge, the organization, creation, existence or conduct of Borrower's business does not violate (a) any presently existing applicable statute, law, regulation, rule, ordinance, order or moratorium of any kind, (b) any franchise, permit, license, certificate, consent or approval issued by any governmental or private authority having jurisdiction thereover, (c) any condition, easement, right-of-way, covenant or restriction pertaining to or affecting the Mortgaged Property, or (d) any mortgage, instrument, document or agreement to which Borrower is a party or which pertains to any of Borrower's property.
14. The Loan Documents were executed by Borrower and Guarantor in Florida; relate to collateral located in Florida; performance thereunder is to take place in Florida; and the Loan Documents shall be governed by the laws of Florida.

This opinion is rendered as a condition of the Loan with the intent that it be relied upon Lender.

Very truly yours,

Knox & James, P.A.

Charles Norwood, Esq

Liability

- Third-party beneficiary claims
 - Duty of care to non-client
 - Must be intended beneficiary
 - Requires negligence
 - Dingle v. Dellinger 134 So. 3d 484 (Fla. 5th DCA 2014)
- Ethical Rules
 - Cannot knowingly make false statement of material fact or law
 - FL Bar Rule 4-4.1



Liability (cont'd)

Hypothetical drawn from 2015 ABA Seminar *Risky Business: Who Gets Sued Over Opinion Letters and How Can You Reduce Your Chances of Being Next?* (paraphrased & condensed)

- Karen represents buyer in purchase of Caribbean resort
- Relies on seller's counsel's advice that local practice does not require an "as built" survey despite Karen's concerns about the proximity of the neighboring resort.
- Karen relies on a "notary survey" instead.
- After the sale, neighboring resort sues the Karen's client the buyer, providing its own "as built" survey showing half of the buyer's resort sits on the other resort's property.
- Buyer sues Karen and her firm for giving an opinion of clear title without an as-built survey.



Liability (cont'd)

- Opine only on facts known to you
- Beware language in lender's form opinion such as "I am familiar with the business affairs of" where you are not corporate counsel
-
- Specify FL licenses and opinions based on FL law where appropriate
-
- Insert facts relied on and where facts came from
- Attach as exhibits where possible
 - Resolutions
 - Certificates
 - Authorizations where possible

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Liability (cont'd)

- Avoid all-encompassing opinions
 - Qualification to do business in all jurisdictions
 - Holding all necessary permits and licenses
 - Not in breach of any law
 - Not in breach of any contract
- Use legal analysis sparingly
 - Use "would" or "should" and appropriate qualifications



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Liability (cont'd)

- Use “To our knowledge” and explain level of inquiry employed
- Do not opine on the outcome of litigation
- Do not opine on the impact of fraudulent transfer laws
- Identify issues with scope of requested letter and negotiate with lender early on
- Utilize ABA and FL Bar resources



Questions?



To the Best of Our Knowledge Attorney Opinion Letters

Thank You!
for coming



John B. "Jay" St. Lawrence
Legal Education Attorney
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Fund**[®]

[As approved by the Legal Opinions Committee of the Business Law Section of the American Bar Association on September 14, 2018 and the Board of the Working Group on Legal Opinions Foundation on October 29, 2018, and distributed to other bar groups and interested parties for approval]

CORE OPINION PRINCIPLES

The following *Core Opinion Principles* are drawn from the *Statement of Opinion Practices*, ___ BUS. LAW. ___ () (the “*Statement*”), and are intended to have the same meaning as the provisions of the *Statement* from which they are drawn. The *Statement*, which has been approved by the bar associations and other lawyer groups identified in Schedule I to the *Statement*, provides guidance regarding selected aspects of customary practice and other practices generally followed throughout the United States in the giving and receiving of closing opinions. In doing so, it amplifies the *Statement on the Role of Customary Practice in the Preparation and Understanding of Third-Party Legal Opinions*, 63 BUS. LAW. 1277 (Aug. 2008). The *Core Opinion Principles* are designed for use by opinion givers (both law firms and law departments of organizations) who wish to incorporate or attach to their opinion letters a more concise statement of some of the opinion principles included in the *Statement*.

CORE OPINION PRINCIPLES

1. General

1.1 *Customary Practice.* Third-party legal opinion letters given at the closing of a business transaction (“closing opinions,” and the opinions included in them, “opinions”) by counsel for one party (the “opinion giver”) to another party (the “opinion recipient,” which term includes any other person the opinion giver expressly authorizes to rely on the closing opinion) are prepared and understood in accordance with the customary practice of lawyers who regularly give those opinions and lawyers who regularly review them for opinion recipients. The phrase “customary practice” refers principally to the work lawyers are expected to perform to give opinions and the way certain words and phrases commonly used in closing opinions are understood.

1.2 *Varying Application of Customary Practice.* The application of customary practice to a closing opinion or any particular opinion may be varied by a statement in the closing opinion or by an understanding with the opinion recipient or its counsel.

1.3 *Expression of Professional Judgment.* An opinion expresses the professional judgment of the opinion giver regarding the legal issues the opinion addresses. It is not a guarantee that a court will reach any particular result.

1.4 *Reliance by Recipients.* An opinion recipient is entitled to rely on an opinion, without taking any action to verify the opinion, unless it knows that the opinion is incorrect or unless its reliance on the opinion is otherwise unreasonable under the circumstances. An opinion recipient is entitled to expect an opinion giver, in giving an opinion, to exercise the diligence customarily exercised by lawyers who regularly give that opinion (unless varied as provided in §1.2).

1.5 *Good Faith.* An opinion giver and an opinion recipient and its counsel are each entitled to presume that the other is acting in good faith with respect to a closing opinion.

1.6 *Opinion Recipient and Customary Practice.* An opinion giver is entitled to presume that the opinion recipient is familiar with, or has obtained advice about, customary practice as it applies to the opinions it is receiving from the opinion giver.

1.7 *Only Matters Specifically Addressed.* A closing opinion covers only those matters it specifically addresses.

1.8 *Matters Beyond the Expertise of Lawyers.* Opinion givers should not be expected to give opinions on matters that are not within the expertise of lawyers (for example, financial statement analysis, economic forecasting and valuation). When an opinion depends on a matter not within the expertise of lawyers, an opinion giver may rely on information from an appropriate source or an express assumption with regard to the matter.

2. Facts and Assumptions

2.1 *Reliance on Factual Information and Use of Assumptions.* Because the lawyers preparing a closing opinion (the “opinion preparers”) typically will not have personal knowledge of all the facts they need to support the opinions being given, an opinion giver ordinarily is entitled to base those opinions on factual information provided by others, including its client, and on factual assumptions.

2.2 *Reliance on Facts Provided by Others.* An opinion giver is entitled to rely on factual information from an appropriate source unless the opinion preparers know that the information being relied on is incorrect or know of facts that they recognize make reliance under the circumstances otherwise unwarranted.

2.3 *Scope of Inquiry Regarding Factual Matters.* Opinion preparers are not expected to conduct an inquiry of other lawyers in their law firm or a review of the firm’s records to ascertain factual matters, except to the extent they recognize that a particular lawyer is reasonably likely to have or a particular record is reasonably likely to contain information not otherwise known to them that they need to give an opinion.

2.4 *Reliance on Representations That Are Legal Conclusions.* An opinion giver should not base an opinion on a representation that is tantamount to the legal conclusion the opinion expresses. An opinion giver may, however, rely on a legal conclusion in a certificate of an appropriate government official.

2.5 *Factual Assumptions.* Some factual assumptions on which opinions are based need to be stated expressly; others do not. Factual assumptions that ordinarily do not need to be stated expressly include assumptions of general application that apply regardless of the type of transaction or the nature of the parties. Examples are assumptions that (i) the documents reviewed are accurate,

complete and authentic, (ii) copies are identical to the originals, (iii) signatures are genuine, (iv) the parties to the transaction other than the opinion giver's client (or a non-client whose obligations are covered by the opinion) have the power and have taken the necessary action to enter into the transaction, and (v) the agreements those parties have entered into with the opinion giver's client (or the non-client) are enforceable against them. Stating expressly a particular assumption that could have been unstated does not imply the absence of other unstated assumptions.

3. Law

3.1 *Covered Law.* When a closing opinion states that an opinion covers the law of a specific jurisdiction or particular laws, the opinion covers no other law or laws.

3.2 *Applicable Law.* An opinion on the law of a jurisdiction covers only the law of that jurisdiction that lawyers practicing in the jurisdiction, exercising customary diligence, would reasonably recognize as being applicable to the client or the transaction that is the subject of the opinion. Even when recognized as being applicable, some laws (for example, securities, tax and insolvency laws) are not covered by a closing opinion. A closing opinion also does not cover municipal and other local law. An opinion may, however, cover law that would not otherwise be covered if the closing opinion does so expressly.

4. Miscellaneous

4.1 *Date.* A closing opinion speaks as of its date. An opinion giver has no obligation to update a closing opinion for events or legal developments occurring after its date.

4.2 *Reliance.* A closing opinion may be relied on only by its addressee and any other person the opinion giver expressly authorizes to rely.

Form "B"

Illustrative Form of Opinion Letter In a Loan Transaction Secured by Real Estate
(Editable MS Word Version)

This illustrative form of opinion letter is for a loan transaction secured by real estate. It assumes that: (i) the Transaction Documents expressly provide that they are governed by Florida law, (ii) all Client entities are Florida entities, and (iii) the real estate securing the loan is located in Florida. It also assumes that there is an entity borrower, an individual guarantor and an entity guarantor. Finally, this illustrative form of opinion letter assumes that a Florida law firm (rather than an individual lawyer) is rendering the opinion.

This form is an editable version in MS Word of Form "B" of the illustrative forms of the opinion letters that accompany the "Report on Third-Party Legal Opinion Customary Practice in Florida, dated December 3, 2011" ("Report"). In connection with the use of this form, you should refer to the annotated version of this illustrative form of opinion letter that is attached to the Report, and to the Report itself, for guidance with respect to the use of this form.

_____, 20____

[Name of Opinion Recipient]
[Address of Opinion Recipient]

Re: [Description of Transaction]

Ladies and Gentlemen:

We have acted as counsel to _____ [Name of Borrower], [a Florida corporation/partnership/limited liability company/as trustee of _____, a Florida trust] (the "Borrower"), in connection with a loan (the "Transaction") in the original principal amount of \$ _____ (the "Loan Amount") made by [Name of Lender] (the "Lender") in favor of the Borrower pursuant to that certain [Loan Agreement/Credit Agreement, dated _____] (the "Loan Agreement"). We have also acted as counsel to _____ (the "Individual Guarantor") and _____, [a Florida corporation/partnership/limited liability company/as trustee of _____, a Florida trust] (the "Entity Guarantor," and collectively with the Individual Guarantor, the "Guarantors") in connection with the Transaction.

This opinion letter is furnished to you pursuant to Section _____ of the Loan Agreement at the request and with the consent of the Borrower and the Guarantors. Capitalized terms used but not otherwise defined herein shall have the definitions set forth in the Loan Agreement.

This opinion letter is limited to the matters expressly stated herein. No opinions are to be inferred or implied beyond the opinions expressly so stated.

[This opinion letter has been prepared and is to be construed in accordance with the "Report on Third-Party Legal Opinion Customary Practice in Florida, dated December 3, 2011" (the "Report"). The Report is incorporated by reference into this opinion letter.]

In connection with rendering the opinions set forth in this opinion letter, we have reviewed originals or copies of the following documents:

- (i) The Loan Agreement;
- (ii) The Promissory Note, dated _____, 20__, in the Loan Amount executed by the Borrower in favor of the Lender (the "Note");
- (iii) The Guaranty Agreement, dated _____, 20__, executed by the Individual Guarantor in favor of the Lender (the "Individual Guaranty");
- (iv) The Guaranty Agreement, dated _____, 20__, executed by the Entity Guarantor in favor of the Lender (the "Entity Guaranty" and together with the Individual Guaranty, the "Guarantees");
- (v) The Mortgage and Security Agreement, dated _____, 20__ (the "Mortgage"), made by the Borrower in favor of the Lender with respect to the real property (the "Real Property"), including fixtures (the "Fixtures"), described in the Mortgage (the Real Property and the Fixtures are sometimes collectively referred to as the "Real Property Collateral"); and
- (vi) The Assignment of Leases and Rents, dated _____, 20__ (the "Assignment of Leases and Rents"), made by the Borrower in favor of the Lender with respect to the leases and rents constituting real property to be derived from the Real Property Collateral (the "Leases and Rents Collateral").

The Loan Agreement, the Note, the Guarantees, the Mortgage and the Assignment of Leases and Rents are hereinafter collectively referred to as the "Transaction Documents."

In addition, in connection with rendering the opinions set forth in this opinion letter, we have reviewed originals or copies of the following other documents:

- (i) the financing statement to be filed in the public records of _____ County, Florida (the "Local Filing Office") naming the Borrower as debtor and the Lender as secured party and describing the Fixtures, [*the form of which is attached to this opinion letter*] (the "Financing Statement");
- (ii) *if applicable, the documents from a prior related transaction;*

- (iii) *if applicable, a list of "other agreements" of the Borrower or the Guarantors or a list of judgments, decrees or orders applicable to the Borrower or the Guarantors reviewed in rendering the "no violation and no breach or default" opinion; and*
- (iv) *if applicable, other transaction documents as to which Opining Counsel is not rendering any opinions or closing documents with respect to the Transaction, such as closing statements, certificates delivered to the Lender by the Client at the closing and contracts as to which no opinions are being rendered in the opinion letter.*

Further, in connection with rendering the opinions set forth in this opinion letter, we have reviewed originals or copies of the following authorization documents:

- (i) *the Borrower's Organizational Documents (describe with specificity);*
- (ii) *the Entity Guarantor's Organizational Documents (describe with specificity);*
- (iii) *the Borrower's authorizing documents with respect to the Transaction (describe with specificity the minutes and/or written consent actions that authorize the Transaction);*
- (iv) *the Entity Guarantor's authorizing documents with respect to the Transaction (describe with specificity the minutes and/or written consent actions that authorize the Transaction);*
- (v) Certificates of Status of the Borrower and the Entity Guarantor, dated _____, 20____, issued by the Florida Department of State;
- (vi) other certificates of public officials, if any *(describe with specificity)*;
- (vii) a certificate to counsel from the Borrower, dated _____, 20____, *[a copy of which is attached hereto as _____]* (the "Borrower Certificate to Counsel");
- (viii) a certificate to counsel from the Individual Guarantor, dated _____, 20____, *[a copy of which is attached hereto as _____]* (the "Individual Guarantor Certificate to Counsel"); and
- (ix) a certificate to counsel from the Entity Guarantor, dated _____, 20____, *[a copy of which is attached hereto as _____]* (the "Entity Guarantor Certificate to Counsel" and, together with the Borrower Certificate to Counsel and the Individual Guarantor Certificate to Counsel, the "Certificates to Counsel").

[Alternative 1 (Catch-all language) We have also reviewed such other documents, instruments and certificates as we have deemed relevant or necessary to form the basis for the opinions set forth in this opinion letter.]

[Alternative 2 (Limiting Language) For purposes of rendering the opinions contained in this opinion letter, we have not reviewed any documents other than the documents listed above. We have also not reviewed any documents that may be referred to in or incorporated by reference into any of the documents listed above.]

With your consent, we have relied upon, and assumed the accuracy of, the representations and warranties contained in the Transaction Documents [and in the Certificates to Counsel] supplied to us by the Borrower and the Guarantors with respect to the factual matters set forth therein. However, no opinion is rendered hereunder as to the accuracy of the representations and warranties contained in the Transaction Documents [or in the Certificates to Counsel]. *[Further, the factual matters set forth in the Certificates to Counsel have been provided to us solely for our benefit in issuing this opinion, and no party, other than this firm, is entitled to rely upon them.]*

We have, with your consent, assumed that certificates of public officials dated earlier than the date of this opinion letter remain accurate from such earlier dates through and including the date of this opinion letter.

Alternative 1: In rendering the opinions set forth herein, we have relied, without investigation, on each of the assumptions implicitly included in all opinions of Florida counsel that are set forth in the Report in "Common Elements of Opinions – Assumptions" [and the following additional assumptions: _____ *(other assumptions that are based on the particularities of the Transaction, the Transaction Documents, the Clients and/or the scope of the opinions being rendered)*].

Alternative 2. In rendering the opinions set forth herein, we have relied, without investigation, on each of the following assumptions: (a) the legal capacity of each natural person to take all actions required of each such person in connection with the Transaction; (b) the legal existence of each party to the Transaction other than the Borrower and the Entity Guarantor; (c) the power of each party to the Transaction, other than the Borrower and the Guarantors, to execute, deliver and perform all Transaction Documents executed and delivered by such party and to do each other act done or to be done by such party; (d) the authorization, execution and delivery by each party, other than the Borrower and the Guarantors, of each Transaction Document executed and delivered or to be executed and delivered by such party; (e) the validity, binding effect and enforceability as to each party, other than the Borrower and the Guarantors, of each Transaction Document executed and delivered by such party or to be executed and delivered and of each other act done or to be done by such party; (f) there have been no undisclosed modifications of any provision of any document reviewed by us in connection with the rendering of this opinion letter and no undisclosed prior waiver of any right or remedy contained in any of the Transaction Documents; (g) the genuineness of each signature, the completeness of each document submitted to us, the authenticity of each document reviewed by us as an original, the conformity to the original of each document reviewed by us as a copy and the authenticity of the original of each document received by us as a copy; (h) the truthfulness of each statement as to all factual matters otherwise not known to us to be untruthful or unreliable contained in any document encompassed within the diligence review undertaken by us; (i) each certificate or other document issued by a public authority is accurate, complete and authentic as of the date of the opinion letter, and all official public records (including their proper indexing and filing) are accurate and complete; (j) each recipient of the opinion letter has acted in good faith, without notice of any defense against enforcement of rights created by, or adverse claim to any property or security interest transferred or created as part of, the Transaction, and has complied with all laws applicable to it that affect the Transaction; (k) the Transaction and the conduct of the parties to the Transaction comply with any requirement of good faith, fair dealing and conscionability; (l) routine procedural matters such as service of process or qualification to do business in the relevant jurisdiction(s) will be satisfied by the parties seeking to enforce the Transaction Documents; (m) agreements (other than

the Transaction Documents as to which opinions are being given) and judgments, decrees and orders reviewed in connection with rendering the opinions will be enforced as written; (n) no discretionary action (including a decision not to act) that is permitted in the Transaction Documents will be taken by or on behalf of the Borrower or the Guarantors in the future that might result in a violation of law or constitute a breach of or default under any of the Borrower's or the Guarantors' other agreements or under any applicable court order; (o) there are no agreements or understandings among the parties, written or oral, and there is no usage of trade or course of prior dealing among the parties that would, in either case, define, supplement, modify or qualify the terms of the Transaction Documents or the rights of the parties thereunder; (p) the payment of all required documentary stamp taxes, intangible taxes and other taxes and fees imposed upon the execution, filing or recording of documents; (q) with respect to the Transaction and the Transaction Documents, including the inducement of the parties to enter into and perform their respective obligations thereunder, there has been no mutual mistake of fact or undue influence and there exists no fraud or duress; [and] (r) _____ (*other assumptions that are based on the particularities of the Transaction, the Transaction Documents, the Clients and/or the scope of the opinions being rendered*).

When used in this opinion letter, the phrases "to our knowledge," "known to us" or the like means the conscious awareness of the lawyers in the "primary lawyer group" of factual matters such lawyers recognize as being relevant to the opinion or confirmation so qualified. Such phrases do not imply that we have undertaken any independent investigation within our firm, with the Borrower and/or the Guarantors or with any third party to determine the existence or absence of any facts or circumstances, and no inference should be drawn merely from our past or current representation of the Borrower and/or the Guarantors. Where any opinion or confirmation is qualified by the phrase "to our knowledge," "known to us" or the like, it means that the lawyers in the "primary lawyer group" are without any actual knowledge or conscious awareness that the opinion or confirmation is untrue in any respect material to the opinion or confirmation. For purposes of this opinion letter, "primary lawyer group" means: (i) the lawyer who signs his or her name or the name of the firm to this opinion letter, (ii) the lawyers currently in the firm who are actively involved in preparing or negotiating this opinion letter, and (iii) the lawyers currently in the firm who are actively involved in negotiating or documenting the Transaction or the Transaction Documents.

Based upon and subject to the foregoing, and subject to the assumptions, limitations and qualifications contained herein, we are of the opinion that:

1. The Borrower is a [corporation/partnership/limited liability company/trustee of a Florida trust] organized under Florida law, and its [corporate/partnership/limited liability company] status is active.

2. The Entity Guarantor is a [corporation/partnership/limited liability company/trustee of a Florida trust] organized under Florida law, and its [corporate/partnership/limited liability company] status is active.

3. Based solely on the good standing certificates from the Secretary of State of _____ and _____, the Borrower and the Entity Guarantor are each qualified to transact business as a foreign [corporation/partnership/limited liability company] in the States of _____ and _____.

4. The Borrower has the [corporate/partnership/limited liability company/trust] power to execute and deliver the Transaction Documents to which it is a party and to perform its respective obligations thereunder.

5. The Entity Guarantor has the [corporate/partnership/limited liability company/trust] power to execute and deliver the Transaction Documents to which it is a party and to perform its respective obligations thereunder.

6. The Borrower has authorized the execution, delivery and performance of the Transaction Documents to which it is a party by all necessary [corporate/partnership/limited liability company/trust] action.

7. The Entity Guarantor has authorized the execution, delivery and performance of the Transaction Documents to which it is a party by all necessary [corporate/partnership/limited liability company/trust] action.

8. Each of the Transaction Documents to which the Borrower is a party has been executed and delivered by the Borrower.

9. Each of the respective Transaction Documents to which either of the Guarantors is a party has been executed and delivered by the respective Guarantors.

10. Each of the Transaction Documents to which the Borrower is a party is a valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms.

11. Each of the Transaction Documents to which either of the Guarantors is a party is a valid and binding obligation of each such Guarantor, enforceable against each such Guarantor in accordance with its respective terms.

12. The execution and delivery by the Borrower and the Guarantors of the Transaction Documents and the performance by the Borrower and the Guarantors of their respective obligations under the Transaction Documents to which each is a party do not:

- (a) violate the Borrower's or the Entity Guarantor's Organizational Documents;
- (b) constitute a breach of or a default under, or result in the creation of a security interest or a lien on the assets of the Borrower or either of the Guarantors under, any of the Borrower's or either of the Guarantors' [agreements identified in _____ *(reference to a schedule in one of the Transaction Documents, to a public securities filing, to a list of other agreements set forth in the opinion letter, or to a certificate to counsel)* / "material agreements" that are known to us];
- (c) violate any judgment, decree or order of any court or administrative tribunal applicable to the Borrower or either of the Guarantors that is [listed in

_____ (reference to a schedule in one of the Transaction Documents, to a list of judgments, decrees or orders set forth in the opinion letter, or to a certificate to counsel) / known to us]; or

(d) violate any of the Applicable Laws [or, if no definition of Applicable Laws is included in the opinion letter, "violate any federal or Florida laws, rules or regulations that a Florida counsel exercising customary professional diligence would reasonably be expected to recognize as being applicable to the Borrower, the Guarantors, the Transaction Documents or the Transaction, but excluding the laws, rules and regulations enumerated below.]

13. No consent, approval, authorization or other action by, or filing or registration with, any governmental authority of the United States or the State of Florida is required by or on behalf of the Borrower or either of the Guarantors to execute and deliver the Transaction Documents and to close the Transaction contemplated by the Transaction Documents other than [_____ / those consents, approvals, authorizations, actions, filings and registrations as to which the requisite consents, approvals or authorizations have been obtained, the requisite actions have been taken and the requisite filings and registrations have been accomplished].

14. The Transaction Documents do not and will not violate applicable Florida usury laws provided that the Lender has not and does not reserve, charge, take or receive, directly or indirectly, at any time, interest or other sums deemed to be in the nature of interest (however labeled) in an amount exceeding the equivalent of the rate of [18%/25%] per annum, simple interest, calculated on the basis of a year of 365 days (or 366 days as applicable) and the actual number of days elapsed.

15. The Mortgage and the Assignment of Leases and Rents to be recorded or filed are in a form suitable for recordation or filing.

16. The Mortgage is effective to create a valid lien in favor of the Lender in the Real Property Collateral. Upon the proper recording of the Mortgage in the Local Filing Office, the Mortgage will provide constructive notice of the lien against the Real Property Collateral.

17. The Assignment of Leases and Rents is effective to create a valid lien in favor of the Lender in the Leases and Rents Collateral. Upon the proper recording of the Assignment of Leases and Rents in the public records of the Local Filing Office, the Assignment of Leases and Rents will provide constructive notice of the lien against the Leases and Rents Collateral.

18. The Financing Statement is in acceptable form for filing with the Local Filing Office. Upon the proper filing of the Financing Statement with and acceptance by the Local Filing Office, the Lender will have a perfected security interest in the Fixtures described therein.

To our knowledge, there is no action, suit or proceeding, at law or in equity, or by or before any governmental agency, now pending or overtly threatened in writing against the Borrower or either of the Guarantors that challenges the validity or enforceability of, seeks to enjoin the performance of, or seeks damages with respect to, the Transaction Documents or the Transaction [, except: _____]. For avoidance of doubt, please be advised that in rendering this confirmation we have made no independent

investigation, including, without limitation, any search of court records, the files of our firm or the files of the Borrower or either of the Guarantors.

When used in this opinion letter, the term "Applicable Laws" means the federal and Florida laws, rules and regulations that a Florida counsel exercising customary professional diligence would reasonably be expected to recognize as being applicable to the Borrower, the Guarantors, the Transaction Documents or the Transaction, but excluding the laws, rules and regulations set forth below.

Alternative 1. The following federal and Florida laws, rules and regulations are expressly excluded from the scope of this opinion letter: (a) laws, rules and regulations that are defined as the Excluded Laws in the "Common Elements of Opinions-Limitations to Laws of Specific Jurisdictions or to Substantive Areas of Law; Excluded Areas of Law" section of the Report, and (b) the following laws, rules and regulations: _____ (*other laws, rules and regulations that are to be expressly excluded from the scope of the opinion letter under the particular circumstances in which the opinion letter is being rendered*).

Alternative 2. The following federal and Florida laws, rules and regulations are expressly excluded from the scope of this opinion letter: (a) securities laws, rules and regulations; (b) Federal Reserve Board margin regulations; (c) laws, rules and regulations regulating banks and other financial institutions, insurance companies and investment companies; (d) pension and employee benefit laws, rules and regulations, such as the Employee Retirement Income Security Act (ERISA); (e) labor laws, rules and regulations, including laws on occupational safety and health (OSHA); (f) antitrust and unfair competition laws, rules and regulations; (g) laws, rules and regulations concerning compliance with fiduciary requirements; (h) laws, rules and regulations concerning the creation, attachment, perfection or priority of any lien or security interest, except to the extent expressly set forth in this opinion letter; (i) laws, rules and regulations relating to taxation; (j) bankruptcy, fraudulent conveyance, fraudulent transfer and other insolvency laws; (k) environmental laws, rules and regulations; (l) laws, rules and regulations relating to patents, copyrights, trademarks, trade secrets and other intellectual property; (m) local laws, administrative decisions, ordinances, rules or regulations, including any zoning, planning, building, occupancy or other similar approval or permit or any other ordinance or regulation of any county, municipality, township or other political subdivision of the State of Florida; (n) criminal and state forfeiture laws and any racketeering laws, rules and regulations; (o) other statutes of general application to the extent that they provide for criminal prosecution; (p) laws relating to terrorism or money laundering; (q) laws, regulations and policies concerning national and local emergency and possible judicial deference to acts of sovereign states; (r) _____ (*other laws, rules and regulations that are to be expressly excluded from the scope of the opinion letter under the particular circumstances in which the opinion letter is being rendered*); (s) filing or consent requirements under any of the foregoing excluded laws; [and] (t) judicial and administrative decisions to the extent they deal with any of the foregoing excluded laws.

The foregoing opinions are subject to the following exceptions, qualifications and limitations:

We did not physically witness the execution and delivery of the Transaction Documents, and our opinions herein regarding the execution and delivery of the Transaction Documents by the Borrower and the Guarantors are based, in part, on [our review of the Certificates to Counsel in which the Borrower and the Guarantors confirmed certain facts to us with respect to the execution and delivery of the Transaction

Documents / our review of copies of executed signature pages for such Transaction Documents provided to us (electronically or otherwise).]

We express no opinion in paragraph [12(b)] regarding liens arising by operation of law or as to compliance or non-compliance with provisions in other agreements that require financial calculations or determinations to ascertain compliance or relating to any other aspect of the financial condition or results of operations of the Borrower or either of the Guarantors.

We express no opinion as to any consent, approval, authorization or other action or filing necessary for the ongoing operation of the Borrower's or either of the Guarantors' respective businesses.

The opinions regarding enforceability of the Transaction Documents that are contained in paragraphs [10 and 11] above are limited by: (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and transfer, and similar law affecting the rights and remedies of creditors generally (the "Bankruptcy Exception"); and (ii) general principles of equity, regardless of whether such enforceability is considered in a proceeding at law or in equity (the "Equitable Principles Limitation"). In addition, certain remedies, waivers and other provisions of the Transaction Documents might not be enforceable; nevertheless, subject to the Bankruptcy Exception and the Equitable Principles Limitation, such unenforceability will not render the Transaction Documents invalid as a whole or preclude: (i) the judicial enforcement of the obligation of the Borrower to repay the principal, together with the interest thereon (to the extent not deemed a penalty), as provided in the Note, (ii) the acceleration of the obligation of the Borrower to repay such principal, together with such interest, upon a material default by the Borrower of the payment of such principal or interest or upon a material default by the Borrower in any other material provisions of the Transaction Documents, or (iii) the foreclosure in accordance with Applicable Laws of the lien on and security interest in the Real Property Collateral created by the Mortgage upon maturity or upon acceleration pursuant to (ii) above.

We note also that in the absence of an enforceable waiver or consent, a guarantor may be discharged if: (i) action by the lender impairs the value of collateral securing guaranteed debt to the detriment of the guarantor, (ii) the lender elects remedies for default that impair the subrogation rights of the guarantor against the borrower, (iii) the guaranteed debt is materially modified, or (iv) the lender otherwise takes action under loan documents that materially prejudices the guarantor.

No opinion is expressed herein with respect to any provision of the Transaction Documents that: (a) purports to excuse a party from liability for the party's own acts; (b) purports to make void any act done in contravention thereof; (c) purports to authorize a party to act in the party's sole discretion or purports to provide that determination by a party is conclusive; (d) requires waivers or amendments to be made only in writing; (e) purports to effect waivers of: (i) constitutional, statutory or equitable rights, (ii) the effect of applicable laws, (iii) any statute of limitations, (iv) broadly or vaguely stated rights, (v) unknown future defenses, or (vi) rights to damages; (f) imposes or permits: (i) liquidated damages, (ii) the appointment of a receiver, (iii) penalties, (iv) indemnification for gross negligence, willful misconduct or other wrongdoing, (v) confessions of judgment, or (vi) rights of self-help or forfeiture; (g) purports to limit or alter laws requiring mitigation of damages; (h) concerns choice of forum, consent or submission to the personal or subject matter jurisdiction of courts, venue of actions, means of service of process, waivers of rights to jury trials, and agreements regarding arbitration; (i) purports to reconstitute the terms thereof as necessary to avoid a claim or defense of usury; (j) purports to require a party thereto to pay or reimburse attorneys' fees incurred by another party, or to indemnify another party therefor, which provisions may be limited by applicable statutes and decisions relating to the collection and award of

attorneys' fees; (k) relates to the evidentiary standards or other standards by which the Transaction Documents are to be construed, including, but not limited to, provisions that attempt to change or waive rules of evidence or fix the method or quantum of proof to be applied in litigation or similar proceedings; (l) prohibits or unreasonably restricts: (i) competition, (ii) the solicitation or acceptance of customers, business relationships or employees, (iii) the use or disclosure of information, or (iv) activities in restraint of trade; (m) enumerates that 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; (n) constitutes severability provisions; (o) permits the exercise, under certain circumstances, of rights without notice or without providing opportunity to cure failures to perform; (p) purports to create rights to setoff otherwise than in accordance with applicable law; (q) contains a blanket prohibition on assignments or a specific prohibition on assignment of payments due or to come due; or (r) purports to entitle any party to specific performance of any provision thereof.

No opinions are expressed with respect to the status of title to the Real Property Collateral or the Leases and Rents Collateral or with respect to the relative priority of any liens or security interests created by the Transaction Documents. We have assumed as to matters of title and priority that the Borrower has good title to the Real Property Collateral and the Leases and Rents Collateral.

For purposes of this opinion letter, we have assumed that the respective descriptions of the Real Property Collateral and the Leases and Rents Collateral contained in the Mortgage, in the Assignment of Leases and Rents [and in the Financing Statement] sufficiently identify the collateral intended to be covered thereby [and that the information regarding the debtor and the secured party contained in the Financing Statement is correct and complete].

For purposes of this opinion, we assume that the Fixtures constitute "fixtures" as defined in the Uniform Commercial Code ("UCC") in the State of Florida as of the date of this opinion letter (the "Florida UCC"). We caution you that, to the extent that the goods described in the Financing Statement or the Mortgage are not "fixtures" under Florida law, it may be necessary to file a financing statement under the UCC against the Borrower as debtor in the appropriate jurisdiction. No opinion is rendered hereunder as to whether the Fixtures constitute "fixtures" under Florida law.

The scope of our opinions regarding the liens and security interests created by the Mortgage and the Assignment of Leases and Rents is further limited by the Bankruptcy Exception and the Equitable Principles Limitation.

We assume that "value" has been given to the Borrower in connection with the Transaction.

In addition, we call to your attention to the following: (a) the continued effectiveness of certain financing statements filed under the Florida UCC is dependent on the filing of a properly completed continuation statement within six (6) months prior to the fifth anniversary of the date of filing of the financing statement and thereafter within six (6) months prior to each additional fifth anniversary of the filing of the initial financing statement; (b) the continued effectiveness of each of the financing statements in the event of a change of location of the debtor (as defined in the Florida UCC), or the removal from the State of Florida of any of the fixtures covered by financing statements filed in Florida, may be dependent on perfecting the security interest in accordance with the laws of such other jurisdiction and the perfection or non-perfection of the security interest therein may be governed by the law of another jurisdiction; (c) the continued effectiveness of the financing statement as against collateral transferred to a new owner will be dependent upon the nature of the collateral and whether the secured party authorized the disposition of

[Name of Opinion Recipient]

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the collateral and further dependent upon perfecting the security interest in accordance with the laws of the jurisdiction in which the new owner is located (as defined in the Florida UCC); (d) the continued effectiveness of the financing statements to perfect a security interest in collateral acquired by the debtor more than four months after a change of the debtor's name, identity or corporate or other organizational structure, as provided in the Florida UCC, is dependent on the filing of an appropriate amendment to the financing statement prior to the expiration of such four-month period; and (e) the failure of a secured party to respond within two weeks after receipt of a transaction party's request for approval or correction of the transaction party's statement of the aggregate amount of unpaid obligations or the transaction party's list of collateral may result in a loss of that secured party's security interest in collateral as against persons misled by that secured party's failure to respond, and may also result in liability of that secured party for any loss caused to the transaction party thereby.

We do not express any opinion as to the laws of any jurisdiction other than the State of Florida and the United States of America.

This opinion letter is furnished to you solely for your benefit in connection with the Transaction and may not be relied upon by any other party without our prior written consent in each instance. Further, copies of this opinion letter may not be furnished to any other party, nor may any portion of this opinion letter be quoted, circulated or referred to in any other document without our prior written consent in each instance.

This opinion letter speaks only as of the date hereof. We assume no obligation to update or supplement this opinion letter if any applicable laws change after the date of this opinion letter or if we become aware after the date of this opinion letter of any facts or other developments, whether existing before or first arising after the date hereof, that might change the opinions expressed above.

Very truly yours,

LAW FIRM'S SIGNATURE



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