

**OPINION OF BORROWER’S COUNSEL ON ORIGATION OF MORTGAGE LOAN  
[WITH ENFORCEABILITY OPINION]  
[ENFORCEABILITY REQUIRED IF ANY CHANGE MADE TO FORM DOCUMENTS]**

[insert loan closing date]

Fannie Mae  
3900 Wisconsin Avenue, NW  
Washington, DC 20016

[Lender]

Re: Lender: \_\_\_\_\_  
Borrower: \_\_\_\_\_  
Property Name: \_\_\_\_\_  
Property Address: \_\_\_\_\_  
Mortgage Loan Amount: \$ \_\_\_\_\_

Ladies and Gentlemen:

We have acted as [special/general] counsel to [name], a [type of entity] (“**Borrower**”), [[name], the [general partner/managing member] of Borrower], [and] [[name] (“**Guarantor**”)] **[INCLUDE GUARANTOR, IF ANY, AND ADD ALL GUARANTOR OPINIONS BELOW]** in connection with a mortgage loan (the “**Mortgage Loan**”) in the original principal amount of \$ \_\_\_\_\_ from [name], a [type of entity] (“**Lender**”) to Borrower. [We have also acted as [special/general] counsel to Borrower in connection with a subordinate mortgage loan (the “**Subordinate Loan**”) in the original principal amount of \$ \_\_\_\_\_ from [name], a [type of entity] (“**Subordinate Lender**”) to Borrower.] We have been advised by Borrower that the proceeds of the Mortgage Loan are to be used to [insert refinance a loan secured by, rehabilitate and/or purchase] a multifamily residential property known generally as [name of project] (the “**Project**”) located at [address] in [state and local jurisdictions].

We have been advised by Lender that it expects to sell the Mortgage Loan to Fannie Mae, pursuant to the terms of Fannie Mae’s Multifamily product line. Borrower [and Guarantor] [has/have] requested that we deliver this opinion to you, [has/have] consented to reliance by Lender and Fannie Mae on this opinion in making and purchasing, respectively, the Mortgage Loan, and [has/have] waived any privity between Borrower [, Guarantor] and us in order to permit you to so rely on this opinion. We understand and, with the consent of Borrower [and Guarantor], consent to your so relying on this opinion.

In our capacity as counsel to Borrower [and Guarantor], we have examined the following documents, each dated as of \_\_\_\_\_ except as otherwise indicated below:

- A. [Loan Commitment between Borrower and Lender, dated as of \_\_\_\_\_;]
- B. Multifamily Loan and Security Agreement (and any schedules, exhibits and/or other addenda) executed by Borrower and Lender (the “**Loan Agreement**”);
- C. Multifamily Note (and any schedules) in the original principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) executed by Borrower payable to the order of Lender (the “**Note**”);
- D. Multifamily [Deed of Trust] [Mortgage] [Deed to Secure Debt], Assignment of Leases and Rents [and] Security Agreement [and Fixture Filing] (and any exhibits) executed by Borrower for the benefit of Lender (the “**Security Instrument**”), granting a security interest in the Project as more specifically described in the Security Instrument (the “**Mortgaged Property**”);
- E. [Indicate number of UCCs to be filed] Uniform Commercial Code Financing Statement[s] naming Borrower as debtor and naming Lender as secured party (the “**Financing Statements**”);
- F. Assignment of Management Agreement, executed by Borrower, Lender and [name], as property manager;
- G. Environmental Indemnity Agreement executed by Borrower for the benefit of Lender;
- H. [Subordination, Non-disturbance and Attornment Agreement] executed by Borrower, Lender and [name of tenant of Project];
- I. [DRAFTING NOTE: INSERT FOR FANNIE MAE SUPPLEMENTAL DEBT] [Multifamily Loan and Security Agreement] executed by Subordinate Lender and Borrower;]
- J. [Subordination Agreement] dated as of \_\_\_\_\_, by and among Borrower, Lender and Subordinate Lender];
- K. [List all] other documents executed in connection with the Mortgage Loan or Subordinate Loan;]
- L. Guaranty of Non-Recourse Obligations executed by Guarantor (the “**Guaranty**”);

M. A Certificate of Borrower attached to this opinion as Exhibit A[-1] (the “**Borrower’s Certificate**”) [and a Certificate of Guarantor attached to this opinion as Exhibit A[-2] (the “**Guarantor’s Certificate**”)];

N. Certified copies of the organizational documents of Borrower [, Guarantor] [and each general partner or managing member of Borrower] as more particularly set forth on Exhibit B attached hereto (collectively, the “**Organizational Documents**”);

O. Certified copies of the borrowing resolutions of Borrower [, Guarantor] [and each general partner or managing member of Borrower, if any,] dated as of \_\_\_\_\_;

P. With respect to Borrower [(i) a certificate of good standing/identify proper name of certificate] issued by the State of \_\_\_\_\_ on \_\_\_\_\_; [and (ii) identify proper name of the certificate(s) of authority to transact business if Borrower’s state of organization is other than the Mortgaged Property jurisdiction] issued by the State of \_\_\_\_\_ on \_\_\_\_\_,] [a copy/copies] of which [is/are] attached to Exhibit C hereto ([together,] the “**Borrower Good Standing Certificate[s]**”);

Q. [With respect to the general partner/managing member] of Borrower [(i) certificates of good standing/identify proper name of certificate] issued by the State of \_\_\_\_\_ on \_\_\_\_\_; [and (ii) identify proper name of the certificate(s) of authority to transact business if Manager’s/GP’s state of organization is other than the Mortgaged Property jurisdiction] issued by the State of \_\_\_\_\_ on \_\_\_\_\_,] [a copy/copies] of which [is/are] attached to Exhibit C hereto ([together,] the “**[Manager/GP] Good Standing Certificate[s]**”);]

R. [With respect to Guarantor, a certificate of good standing/identify proper name of certificate] issued by the State of \_\_\_\_\_ on \_\_\_\_\_, a copy of which is attached to Exhibit C hereto (the “**Guarantor Good Standing Certificate**”);]

S. Such other documents, matters, statutes, ordinances, published rules and regulations, published judicial and governmental decisions interpreting or applying the same, and other official interpretations as we deem applicable in connection with this opinion.

The documents listed in B through [L] above are referred to collectively as the “**Loan Documents**.” The documents listed in [M] through [S] above are referred to collectively as the “**Ancillary Documents**.” The documents listed in A through [S] above are referred to collectively as the “**Documents**.”

In basing the opinions set forth in this opinion on “our knowledge,” the words “our knowledge” signify that, in the course of our representation of Borrower [and Guarantor], no

facts have come to our attention that would give us actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we have undertaken no investigation or verification of such matters. Further, the words “our knowledge” as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our firm who have been directly involved in representing Borrower [and Guarantor] in any capacity, including but not limited to, in connection with the Mortgage Loan.

In reaching the opinions set forth below, we have assumed the following:

(a) The Loan Documents will be duly and validly executed by all parties other than Borrower [and Guarantor], and delivered for value.

(b) Other than with respect to Borrower [and Guarantor], each person executing the Loan Documents, whether individually or on behalf of an entity, will have the requisite power and authority to do so at the time of execution, and the obligations of any party other than Borrower [or Guarantor] will be its legal, valid and binding obligations, enforceable in accordance with the terms thereof.

(c) Each natural person executing the Loan Documents will be legally competent to do so.

(d) The Mortgaged Property will be located in the [insert jurisdiction] and will consist of one (1) or more residential apartment buildings and aggregating more than four (4) units and also may include one (1) or more commercial tenants.

(e) The Security Instrument and the Financing Statements will be duly filed, indexed and recorded among the appropriate official records, as set forth below, with all fees, charges and taxes having been paid.

(f) The parties to the Loan Documents and their successors and assigns will (i) act in good faith and in a commercially reasonable manner in the exercise of any rights or enforcement of any remedies under the Loan Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair dealing; and (iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Loan Documents.

(g) The exercise of any rights or enforcement of any remedies under the Loan Documents will not be unconscionable, result in a breach of the peace or otherwise be contrary to public policy.

(h) Borrower will have title to, or other interest in, each item of real and personal property comprising the Mortgaged Property.

(i) The Loan Documents will reflect accurately the understanding of the parties with respect to the matters contained in, and the rights and obligations of the parties under, such documents.

We have made reasonable inquiry of Borrower [and Guarantor] with respect to the above assumptions and, based on such inquiries, our review of the Loan Commitment and the Ancillary Documents, and our knowledge, nothing has come to our attention that leads us to believe that we are not justified in so assuming.

In rendering this opinion we have, with your approval, relied as to certain matters of fact on the Ancillary Documents, as set forth herein. We have made reasonable inquiry of Borrower [and Guarantor] as to the accuracy and completeness of the Ancillary Documents and, based on such inquiries and our knowledge, nothing has come to our attention that leads us to believe that we are not justified in so relying thereon.

Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our opinion that:

1. Based solely on the Borrower Good Standing Certificate[s], Borrower is a [type of entity], duly organized, validly existing and in good standing under the laws of \_\_\_\_\_ [, and is qualified to transact business as a foreign [name of entity] in [Mortgaged Property jurisdiction]. [**OR IF BORROWER IS A TRUST:** Borrower is [name of the type of trust] validly existing under the laws of [jurisdiction] [, and is qualified to transact business as a foreign entity in [Mortgaged Property jurisdiction]]. [**OR IF BORROWER IS AN INDIVIDUAL:** [insert full name of Borrower as it appears in the Loan Documents] is the full, legal name of Borrower, and [he/she] is a resident of the State of [\_\_\_\_\_].]

2. [Based solely on the Guarantor Good Standing Certificate, Guarantor is a [type of entity], duly organized, validly existing and in good standing under the laws of \_\_\_\_\_.] [**OR, IF GUARANTOR IS A TRUST:** Guarantor is [name of the type of trust] validly existing under the laws of [jurisdiction]]. [**OR, IF GUARANTOR IS AN INDIVIDUAL:** Guarantor is an individual resident in the State of \_\_\_\_\_.]

3. [**IF THE GENERAL PARTNER/MANAGING MEMBER OF ANY TYPE OF BORROWER IS AN ENTITY:** [Based solely on the [Manager/GP] Good Standing Certificate[s], the [general partner/managing member] of Borrower is a [type of entity], duly organized, validly existing and in good standing under the laws of \_\_\_\_\_ [and is qualified to transact business as a foreign \_\_\_\_\_ in [Mortgaged Property jurisdiction].]]

4. Borrower has the [limited liability company/corporate/partnership/trust] authority to execute, deliver and perform its obligations under the Loan Documents. [**OR, IF BORROWER IS AN INDIVIDUAL:** Borrower has the authority and legal capacity to execute, deliver and perform its obligations under the Loan Documents.]

5. [Guarantor has the [limited liability company/corporate/partnership/trust] authority to execute, deliver and perform its obligations under the Guaranty. [**OR, IF GUARANTOR IS AN INDIVIDUAL:** Guarantor has the authority and legal capacity to execute, deliver and perform its obligations under the Guaranty.]]

6. The execution and delivery of the Loan Documents by or on behalf of Borrower, and the consummation by Borrower of the transactions contemplated thereby, and the performance by Borrower of its obligations thereunder, have been duly and validly authorized by all necessary [limited liability company/corporate/partnership/trust] action by or on behalf of Borrower. [**OMIT PARAGRAPH IF BORROWER IS AN INDIVIDUAL**]

7. [The execution and delivery of the Guaranty by or on behalf of Guarantor, and the consummation by Guarantor of the transactions contemplated thereby, and the performance by Guarantor of its obligations thereunder, have been duly and validly authorized by all necessary [limited liability company/corporate/partnership/trust] action by or on behalf of Guarantor. [**OMIT PARAGRAPH IF GUARANTOR IS AN INDIVIDUAL**]]

8. Each of the Loan Documents has been duly executed and delivered by Borrower, and the individual[s] executing the Loan Documents on behalf of Borrower [has/have] the authority and legal capacity to do so. [**OR, IF BORROWER IS AN INDIVIDUAL:** Each of the Loan Documents has been duly executed and delivered by Borrower.]

9. [The Guaranty has been duly executed and delivered by Guarantor and the individual[s] executing the Guaranty on behalf of Guarantor [has/have] the authority and legal capacity to do so. [**OR, IF GUARANTOR IS AN INDIVIDUAL:** The Guaranty has been duly executed and delivered by Guarantor.]]

***IF THE LOAN DOCUMENTS HAVE BEEN MODIFIED OTHER THAN BY A STANDARD SCHEDULE OR EXHIBIT AND AN ENFORCEABILITY OPINION IS REQUIRED (IN ACCORDANCE WITH THE CURRENT LENDER MEMO REGARDING LOAN DOCUMENT MODIFICATIONS), ADD THE FOLLOWING PARAGRAPH:***

10. Each of the Loan Documents constitutes the valid and legally binding obligation of Borrower [and the Guaranty constitutes the valid and legally binding obligation of Guarantor], enforceable against [Borrower/such party] in accordance with its terms, subject to the following qualifications:

(i) the effect of applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws affecting the rights of creditors generally;

(ii) the effect of the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity); and

(iii) certain remedies, waivers, and other provisions of the Loan Documents [and Guaranty] may not be enforceable, but, subject to the qualifications set forth in the foregoing subparagraphs (i) and (ii), such unenforceability will not preclude (a) the enforcement of the obligation of Borrower to pay the principal, interest[, late charges, if any,] and prepayment premium, if any, as provided in the Loan Documents and (b) the foreclosure of the Security Instrument upon the event of a material breach.

11. The execution and delivery of, and the performance of the obligations under, the Loan Documents by Borrower [and of the Guaranty by Guarantor], will not violate the Organizational Documents of Borrower [or Guarantor].

12. Based solely upon (a) our knowledge, and (b) the Borrower's Certificate [and the Guarantor's Certificate], the execution and delivery of the Loan Documents by Borrower [and of the Guaranty by Guarantor] will not (i) cause Borrower [or Guarantor] to be in violation of, or constitute a material default under the provisions of any agreement to which Borrower [or Guarantor] is a party or by which Borrower [or Guarantor] is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which Borrower [or Guarantor] is subject, and (iii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Borrower [or Guarantor] except as specifically contemplated by the Loan Documents [and Guaranty].

13. Based solely upon (a) our knowledge, and (b) the Borrower's Certificate [and the Guarantor's Certificate], there is no litigation or other claim pending before any court or administrative or other governmental body or threatened against Borrower, the Mortgaged Property, or any other properties of Borrower [or Guarantor] [, except as identified on Exhibit D].

14. Based solely on (a) our knowledge, and (b) the Borrower's Certificate [and the Guarantor's Certificate], no authorization, consent, approval, or other action by, or filing with, any [organizational and Mortgaged Property jurisdictions] or federal court or governmental authority is required in connection with the execution and delivery by Borrower of the Loan Documents [and by Guarantor of the Guaranty].

15. [***IF BORROWER IS A TRUST, ADD:*** Borrower can sue and be sued in [Mortgaged Property jurisdiction] without the necessity of joining any of the beneficiaries of Borrower, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Security Instrument. Borrower is an irrevocable trust that has a term longer than the term of the Mortgage Loan and the term of the irrevocable trust is not affected by the terms of any of the beneficiaries' interests.]

We express no opinion as to the laws of any jurisdiction other than the laws of [the Mortgaged Property jurisdiction and the state of Borrower's organization [and Guarantor's state of organization]] if it is not the same as the Mortgaged Property jurisdiction] and the laws of the

United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of [the Mortgaged Property jurisdiction and, the state of Borrower's organization if it is not the same as the Mortgaged Property jurisdiction] and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

We confirm that we do not have any financial interest in the Mortgaged Property or the Mortgage Loan, and that other than as counsel for Borrower [and Guarantor], we have no interest in Borrower [, Guarantor] or Lender and do not serve as [a director, officer or] [an] employee of Borrower [, Guarantor] or Lender. We have no undisclosed interest in the subject matters of this opinion.

The foregoing opinions are for the exclusive reliance by Lender, Fannie Mae and by any subsequent holder of the Note.

Very truly yours,

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[Authorized Signature]

## LIST OF EXHIBITS

EXHIBIT A - Certificate of Borrower

EXHIBIT B - Organizational Documents of Borrower [, Guarantor and Managing Members/General Partners of Borrower]

EXHIBIT C - Certificates of Good Standing of Borrower [, Guarantor and Managing Members/General Partners of Borrower]

EXHIBIT D - List of Litigation

## EXHIBIT A[-1]

### Certificate of Borrower

This Certificate of Borrower is made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ (“**Borrower**”) for reliance upon by \_\_\_\_\_ (“**Borrower’s Counsel**”) in connection with the issuance of an opinion letter dated as of even date herewith (the “**Opinion Letter**”) by Borrower’s Counsel as a condition of settlement of the \$ \_\_\_\_\_ loan (the “**Mortgage Loan**”) from [Lender] to Borrower. In connection with the Opinion Letter, Borrower hereby certifies to Borrower’s Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents (as defined in the Opinion Letter) are the only documents creating or governing the internal affairs of Borrower or authorizing the Mortgage Loan, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.
2. The terms and conditions of the Mortgage Loan as reflected in the Loan Documents (as defined in the Opinion Letter) have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Loan Documents.
3. All tangible personal property of Borrower in which a security interest is granted under the Loan Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Mortgaged Property (as defined in the Opinion Letter) and Borrower’s [Chief Executive Office/only place of business/residence] is located in \_\_\_\_\_.
4. No authorization, consent, approval, or other action by, or filing with, any [organizational and Mortgaged Property jurisdiction(s)] or federal court or governmental authority is required in connection with the execution and delivery by Borrower of the Loan Documents.
5. The execution and delivery of the Loan Documents will not (i) cause Borrower to be in violation of, or constitute a material default under the provisions of any agreement to which Borrower is a party or by which Borrower is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which Borrower is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of Borrower, except as specifically contemplated by the Loan Documents.

6. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against Borrower, the Mortgaged Property, or any other properties of Borrower [, except as identified on Exhibit D, List of Litigation, in the Opinion Letter.]

**[Remainder of Page Intentionally Blank]**

IN WITNESS WHEREOF, Borrower has executed this Certificate of Borrower effective as of the date set forth above.

BORROWER:

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## EXHIBIT A[-2]

### Certificate of Guarantor

This Certificate of Guarantor is made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ (“**Guarantor**”) for reliance upon by \_\_\_\_\_ (“**Borrower’s Counsel**”) in connection with the issuance of an opinion letter dated as of even date herewith (the “**Opinion Letter**”) by Borrower’s Counsel as a condition of settlement of the \$ \_\_\_\_\_ loan (the “**Mortgage Loan**”) from [Lender] to [Borrower]. In connection with the Opinion Letter, Guarantor hereby certifies to Borrower’s Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents (as defined in the Opinion Letter) are the only documents creating or governing the internal affairs of Guarantor or authorizing the Mortgage Loan, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.
2. The terms and conditions of the Guaranty (as defined in the Opinion Letter) have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Guaranty.
3. No authorization, consent, approval, or other action by, or filing with, any [organizational and Mortgaged Property jurisdiction(s)] or federal court or governmental authority is required in connection with the execution and delivery by Guarantor of the Guaranty.
4. The execution and delivery of the Guaranty will not (i) cause Guarantor to be in violation of, or constitute a material default under the provisions of any agreement to which Guarantor is a party or by which Guarantor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which Guarantor is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of Guarantor, except as specifically contemplated by the Guaranty.
5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against Guarantor or any properties of Guarantor [, except as identified on Exhibit D, List of Litigation, in the Opinion Letter.]

**[Remainder of Page Intentionally Blank]**

IN WITNESS WHEREOF, Guarantor has executed this Certificate of Guarantor effective as of the date set forth above.

GUARANTOR:

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**EXHIBIT B**

**Organizational Documents of Borrower [, Guarantor and Managing Members/General Partners of Borrower]**

[LIST ALL ORGANIZATIONAL DOCUMENTS OF PARTIES COVERED BY OPINION]

**EXHIBIT C**

**Certificates of Good Standing of Borrower [, Guarantor and Managing Members/General Partners of Borrower]**

[ATTACH GOOD STANDING CERTIFICATES FOR PARTIES COVERED BY OPINION]

**EXHIBIT D**

**List of Litigation**

[IF “NONE,” SO STATE.]