Opinion Letter – TEL

Borrower and SPE Equity Owner

(Revised 6-27-2023)

**[LETTERHEAD OF COUNSEL]**

**[OPINION MUST BE DATED AS OF THE CLOSING DATE]**

|  |  |
| --- | --- |
| [GOVERNMENTAL LENDER]  [ADDRESS] | Federal Home Loan Mortgage Corporation  8200 Jones Branch Drive  McLean, Virginia 22102 |
| [FISCAL AGENT]  [ADDRESS] | [SELLER/SERVICER]  [ADDRESS] |

**Re: $[AMOUNT] Loan relating to [PROPERTY NAME]**

Ladies and Gentlemen:

We have acted as counsel to [BORROWER] (“**Borrower**”), a [limited liability company] [limited partnership] organized in the [State/Commonwealth] of [\_\_\_\_\_\_\_\_\_] (“**State of Borrower’s Organization**”), [SPE EQUITY OWNER, IF APPLICABLE] (“**SPE Equity Owner**”), a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] organized in the [State/Commonwealth] of [\_\_\_\_\_\_\_\_\_] (“**State of SPE Equity Owner’s Organization**”),] and [GENERAL PARTNER/MANAGING MEMBER OF BORROWER] (“**[General Partner/Managing Member]**”), a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] organized in the [State/Commonwealth] of [\_\_\_\_\_\_\_\_\_] (“**State of [General Partner/Managing Member]’s Organization**”), the [general partner/managing member] of the Borrower, in connection with a mortgage loan in the original principal amount of $[AMOUNT] (the “**Project Loan**”) made by [GOVERNMENTAL LENDER] (the “**Governmental Lender**”) to Borrower with the proceeds received from a loan in the original principal amount of $[AMOUNT] (the “**Funding Loan**” and together with the Project Loan, the “**Loan**”) made to the Governmental Lender by [SELLER/SERVICER] (the “**Initial Funding Lender**”) on the date hereof (the “**Closing Date**”), contemporaneously with the execution and delivery by the Borrower of the Continuing Covenant Agreement (defined below) to the Initial Funding Lender, to provide for the [financing][refinancing] of a multifamily rental housing development located at [ADDRESS] in [CITY, STATE] known as [PROPERTY NAME] (the “**Property**”). We understand that following the Closing Date and upon the satisfaction of the conditions set forth in a commitment letter with respect to the Loan between the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”) and the Initial Funding Lender, Freddie Mac intends to purchase the Funding Loan from the Initial Funding Lender, at which time the Initial Funding Lender will assign to Freddie Mac all of its rights and interest in the Funding Loan and the Financing Documents (defined below).

**BACKGROUND**

Documents Reviewed.

In our capacity as counsel to Borrower[, SPE Equity Owner] and [General Partner/Managing Member], we have examined the following documents, all dated as of [\_\_\_\_\_\_\_\_\_ 1, 20\_\_], except as otherwise noted:

1. Project Loan Agreement, among Governmental Lender, [FISCAL AGENT] (“**Fiscal Agent**”) and Borrower;
2. Project Note in the amount of the Project Loan (the “**Project Note**”), dated the Closing Date, executed by Borrower and payable to the order of Governmental Lender, as endorsed by Governmental Lender to Fiscal Agent;
3. [MORTGAGE] (the “**Security Instrument**”), dated as of the Closing Date, executed by Borrower for the benefit of Governmental Lender;
4. [Assignment of Security Instrument, dated as of the Closing Date, executed by Governmental Lender in favor of Fiscal Agent;]
5. [TEL REGULATORY AGREEMENT], [dated as of the Closing Date] among Governmental Lender[, Fiscal Agent] and Borrower;
6. [TAX CERTIFICATE], [dated as of the Closing Date] [between Governmental Lender and Borrower][made by Borrower for the benefit of Governmental Lender];
7. Funding Loan Agreement, among Initial Funding Lender, Governmental Lender and Fiscal Agent;
8. [ISSUE DESIGNATION] in the amount of the Funding Loan (the “**Governmental Note**”), dated the Closing Date, executed by Governmental Lender and payable to the order of Initial Funding Lender;
9. Continuing Covenant Agreement (the “**Continuing Covenant Agreement**”), dated as of the Closing Date, between Initial Funding Lender and Borrower;
10. UCC-1 Financing Statement naming Borrower as Debtor and Fiscal Agent, as assignee of Governmental Lender, as Secured Party, relating to the Security Instrument, to be filed with the [STATE FILING OFFICE] (the “**Security Instrument Financing Statement**”);
11. UCC-1 Financing Statement naming Borrower as Debtor and Freddie Mac, as assignee of Initial Funding Lender, as Secured Party, relating to the Continuing Covenant Agreement, to be filed with the [STATE FILING OFFICE] (the “**CCA Financing Statement**” and together with the Security Instrument Financing Statement, the “**Financing Statements**”);
12. Assignment of Management Agreement and Subordination of Management Fees, [dated as of the Closing Date,] among Borrower, Initial Funding Lender and [PROPERTY MANAGER];
13. [TAX CREDIT REGULATORY AGREEMENT];
14. [Rate Cap Agreement dated [as of] [\_\_\_\_\_\_\_\_\_\_\_] between the Owner and [CAP PROVIDER];]
15. [Housing Assistance Payment Contract, dated \_\_\_\_\_\_\_\_\_\_, between the Borrower and HUD;]
16. [Consent to Assignment of Housing Assistance Payment Contract, dated \_\_\_\_\_\_\_\_\_\_\_, executed by HUD;]
17. [Subordination Agreement, dated as of the Closing Date, among Borrower, [SUBORDINATE LENDER] and Initial Funding Lender;]
18. [Cross-Collateralization Agreement;]
19. [LIST SUBORDINATE LOAN DOCUMENTS;]

(\_) All other documents executed by Borrower and Lender, or executed by Borrower and delivered to Lender, in connection with the closing of the Loan.

The documents listed above are referred to herein collectively as the “**Financing Documents**”.

**[ADD IF APPLICABLE]**

We have also examined the following documents:

(\_) [**IF BORROWER OR SPE EQUITY OWNER IS A SINGLE MEMBER DELAWARE LIMITED LIABILITY COMPANY, ADD:** Certificate of Formation of Borrower]

(\_) [**IF BORROWER OR SPE EQUITY OWNER IS A SINGLE MEMBER DELAWARE LIMITED LIABILITY COMPANY, ADD:** The Operating Agreement]

Scope of Review.

In rendering this opinion letter we have also examined all certificates of public officials, **[CHOOSE ONE:** partnership **OR** limited liability company**]** documents and records and other certificates and instruments that we deem necessary for the purposes of the opinions expressed in this opinion letter. As to various questions of fact material to our opinions, we have relied upon certificates and written statements of the **[CHOOSE ONE:** officers **OR** partners **OR** members] of Borrower.

Reliance Without Investigation.

We understand that with respect to title matters, you will be relying on the title insurance policy issued to you by the title insurance company. We have not made any investigation of and do not express an opinion as to, any matters of title to any property (whether real, personal or mixed). We also do not express any opinion as to the adequacy of the description of the property contained in the Financing Statements.

Assumptions.

In preparing this opinion letter:

1. We have assumed the legal competency of all individual signers of documents.
2. We have assumed that all signatures of parties other than Borrower[, SPE Equity Owner] and [General Partner/Managing Member] are genuine.
3. We have assumed the due authorization, execution and delivery of all documents by all parties to the Loan other than Borrower[, SPE Equity Owner] and [General Partner/Managing Member].
4. In those cases where we have examined copies of documents, we have assumed that those copies are complete and accurate. We have also assumed that all public records are accurate and complete.
5. With respect to Borrower’s[, SPE Equity Owner’s] and [General Partner/Managing Member]’s good standing, we have relied on **[COMPLETE WITH CORRECT NAME OF CERTIFICATE IN PROPERTY JURSIDICTION:** Certificate of Good Standing**]** from the Secretary of State of State of Borrower’s Organization **[**and State of SPE Equity Owner’s Organization**]** and State of [General Partner/Managing Member]’s Organization. **[CHOOSE ONE:** A copy of that certificate is attached to this opinion letter. **OR** Copies of those certificates are attached to this opinion letter.**] [EACH GOOD STANDING CERTIFICATE MUST BE DATED NOT MORE THAN 30 DAYS PRIOR TO CLOSING DATE]**

**[ADD THE FOLLOWING PARAGRAPH IF BORROWER, SPE EQUITY OWNER, OR GENERAL PARTNER/MANAGING MEMBER IS ORGANIZED IN A STATE OTHER THAN THE PROPERTY JURISDICTION]**

(vi) With respect to Borrower’s [and SPE Equity Owner’s] and [General Partner/Managing Member]’s qualification to conduct business, we have relied on a[n] **[COMPLETE WITH CORRECT NAME OF CERTIFICATE IN PROPERTY JURSIDICTION:** Authorization to do Business**]** from the Secretary of State of State of Property Jurisdiction. **[CHOOSE ONE:** A copy of that certificate is attached to this opinion letter. **OR** Copies of those certificates are attached to this opinion letter.**]**

1. We have assumed that Borrower holds the requisite title and rights to the Property.
2. We have assumed that there has not been any mutual mistake of fact or misunderstanding, fraud, duress or undue influence.
3. We have assumed that the conduct of the parties to the Loan complies with any requirement of good faith, fair dealing and conscionability.
4. We have assumed that the Financing Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated by and the rights and obligations of the parties under the Financing Documents and 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, or qualify the terms of the Financing Documents.
5. We have assumed that the Security Instrument and Financing Statements have been or will be duly recorded and/or filed and indexed in all places necessary (if and to the extent necessary) to create the encumbrance and lien as provided in those documents, and that all applicable recording/filing fees have been or will be paid.

Opining Jurisdiction.

We express no opinion with respect to the effect of any law other than the law of the State or Commonwealth of [STATE](“**Property Jurisdiction**”) **[ADD AS APPLICABLE FOR ENTITIES ORGANIZED IN A STATE OTHER THAN THE PROPERTY JURISDICTION:** , the State of Borrower’s Organization, the State of SPE Equity Owner’s Organization, the State of [General Partner/Managing Member]’s Organization**]** **[IF A DELAWARE SINGLE MEMBER LLC OPINION IS REQUIRED, ADD:** , applicable Delaware law,**]** and the federal law of the United States.

**OPINIONS**

**[DO NOT RENUMBER OPINIONS; IF ANY OPINION IS INAPPLICABLE TO THIS LOAN, OMIT THE TEXT AND REPLACE WITH “Reserved.”**]

Based on the foregoing and upon such investigation as we have deemed necessary, and subject to the qualifications and exceptions contained in this opinion letter, we are of the opinion that:

**[from counsel for State of Organization]**

1. Borrower is a **[CHOOSE ONE:** limited partnership (a) duly formed, (b) validly existing, and (c) in good standing **OR** limited liability company (a) duly organized, (b) validly existing, and (c) in good standing**]** under the laws of the State of Borrower’s Organization.

**[INCLUDE OPINION #2 IF BORROWER’S STATE OF ORGANIZATION IS NOT THE SAME AS THE PROPERTY JURISDICTION; IF N/A, OPINION #2 SHOULD BE REPLACED WITH “Reserved.”]**

**[from counsel for Property Jurisdiction]**

2. Borrower is duly qualified to do business as a foreign **[CHOOSE ONE:** limited partnership **OR** limited liability company**]** under the laws of the Property Jurisdiction.

**[from counsel for State of Organization]**

3. Borrower has the **[CHOOSE ONE:** partnership **OR** limited liability company**]** power and authority (a) to own, lease, and operate the Property and (b) to execute, deliver, and perform Borrower’s obligations under the Financing Documents to which it is a party (the “**Borrower Documents**”).

**[INCLUDE OPINIONS #4 AND #5 IF SPE EQUITY OWNER APPLIES; IF N/A, OPINIONS #4 AND #5 SHOULD BE REPLACED WITH “Reserved.”]**

**[from counsel for State of Organization]**

4. SPE Equity Owner is a **[CHOOSE ONE:** corporation (a) duly organized, (b) validly existing, and (c) in good standing **OR** limited liability company (a) duly organized, (b) validly existing, and (c) in good standing**]** under the laws of the State of SPE Equity Owner’s Organization and has all requisite **[CHOOSE ONE:** corporate **OR** limited liability company**]** power to own and operate its property and conduct its business.

**[from counsel for Property Jurisdiction]**

5. **[INCLUDE IF QUALIFICATION TO DO BUSINESS IS REQUIRED BY THE PROPERTY JURSIDICTION:** SPE Equity Owner is qualified to do business in the Property Jurisdiction.**]**

**[from counsel for State of Organization]**

6. [General Partner/Managing Member] is a **[CHOOSE ONE:** corporation (a) duly organized, (b) validly existing, and (c) in good standing **OR** limited liability company (a) duly organized, (b) validly existing, and (c) in good standing **OR** limited partnership (a) duly organized, (b) validly existing, and (c) in good standing**]** under the laws of the State of [General Partner/Managing Member]’s Organization and has all requisite **[CHOOSE ONE:** corporate **OR** limited liability company **OR** partnership**]** power to own and operate its property and conduct its business.

**[from counsel for Property Jurisdiction]**

7. [General Partner/Managing Member] is qualified to do business in the Property Jurisdiction.

**[from counsel for State of Organization]**

8. (a) The execution and delivery of the Borrower Documents by Borrower and the performance of Borrower’s obligations under the Borrower Documents have been duly authorized by all requisite action of Borrower.

**[from counsel for State of Organization or Property Jurisdiction]**

(b) The Borrower Documents have been duly executed and delivered by Borrower.

**[INCLUDE OPINION #9 IF BORROWER IS NOT A SINGLE MEMBER LLC; IF BORROWER IS A SINGLE MEMBER LLC, OPINION #9 SHOULD BE REPLACED WITH “Reserved.”]**

**[from counsel for State of Organization]**

9. The [General Partner/Managing Member] has the full power and authority to bind Borrower in any and all matters relating to its business activities, including the power to enter into the Loan on behalf of Borrower and to execute and deliver all documents and instruments required in connection therewith.

**[INCLUDE OPINION #10 IF BORROWER IS NOT A SINGLE MEMBER LLC; IF BORROWER IS A SINGLE MEMBER LLC, OPINION #10 SHOULD BE REPLACED WITH “Reserved.”]**

**[from counsel for State of Organization]**

10. All required consents and approvals, if any, of the **[CHOOSE ONE:** limited partners **OR** non-managing members**]** of Borrower have been obtained to permit the [General Partner/Managing Member], on behalf of Borrower, to execute and deliver the Borrower Documents and any other document or instrument required to close the Loan and to mortgage the Property and accept the Loan.

11.Reserved.

**[from counsel for Property Jurisdiction]**

12. The Borrower Documents are the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally, and (ii) general principles of equity (regardless of whether considered in a proceeding in equity or at law). Our opinion as to enforceability of the Borrower Documents is also subject to the qualification that certain provisions contained in the Borrower Documents may not be enforceable, but (subject to the limitations set forth in (i) and (ii)) such unenforceability will not render the Borrower Documents invalid as a whole or substantially interfere with the lenders’ practical realization of the principal benefits and/or security provided by the Borrower Documents, except for the economic consequences resulting from any delay imposed by, or any procedure required by, the applicable laws.

13. The execution and delivery by Borrower of the Borrower Documents do not, and the payment by Borrower of all payment obligations (including fees, escrows and reserve deposits) owed under the Project Note, the Continuing Covenant Agreement and all other Borrower Documents (the “**Payment Obligations**”) will not:

**[from counsel for State of Organization]**

(a) Conflict with or violate any provision of the **[CHOOSE ONE:** Partnership Agreement **OR** Operating Agreement**]** of Borrower.

**[from counsel for State of Organization and Property Jurisdiction]**

(b) Conflict with or violate any law, rule, regulation or ordinance applicable to Borrower.

**[from counsel for State of Organization or Property Jurisdiction]**

14. To our Actual Knowledge (as defined below), the execution and delivery by Borrower of the Borrower Documents do not, and the payment by Borrower of all Payment Obligations will not:

(a) conflict with or violate or result in a breach of any of the provisions of, or constitute a default under, or, except with respect to the Property, result in the creation or imposition of a lien, charge or encumbrance upon any of the properties or assets of Borrower pursuant to, any agreement or instrument to which Borrower is a party or by which any of its properties is bound, or

(b) conflict with or violate any judgment, order, writ, injunction or decree binding on Borrower.

**[from counsel for State of Organization and Property Jurisdiction]**

15. We have no Actual Knowledge of any material pending or threatened lawsuits, claims or criminal proceedings against Borrower **[**or SPE Equity Owner**]** or [General Partner/Managing Member] or specifically applicable to the Property.

**[from counsel for Property Jurisdiction]**

16. The Loan, as made, will not violate any applicable usury laws of the Property Jurisdiction, or other applicable laws of the Property Jurisdiction regulating the interest rate and the interest, fees and other charges that may be charged and/or collected with respect to the Loan.

**[from counsel for Property Jurisdiction]**

17. (a) The Security Instrument is in proper form for recording and, without the need for the filing of a financing statement with the [County were Property is Located] County Clerk, will perfect Lender’s security interest in all real property and fixtures described in the Security Instrument.

(b) The assignment of leases and rents in the Security Instrument creates a valid collateral assignment of, or a valid lien or security interest in, certain rights under and to such leases and rents.

**[from counsel for Property Jurisdiction]**

18. The Uniform Commercial Code as adopted in the Property Jurisdiction states that the Uniform Commercial Code as adopted in the State of Borrower’s Organization governs the method of perfection of the secured party’s security interest in personal property that can be perfected pursuant to the Uniform Commercial Code as in effect in the State of Borrower’s Organization, except as to possessory security interests, negotiable documents, instruments, money, chattel, paper, fixtures, goods covered by certificates of title, deposit accounts, investment property and letters of credit.

19. **[from counsel for Property Jurisdiction]**

(a) The Borrower Documents create a valid security interest in the personal property described in the Financing Statements.

**[from counsel for State of Organization]**

(b) The Financing Statements are in appropriate form for filing with the Secretary of State of the State of Borrower’s Organization.

**[from counsel for State of Organization]**

(c) Upon the filing of the Financing Statements with the State of Borrower’s Organization Secretary of State and the payment of all applicable filing fees, the security interest of the secured party in the rights of Borrower in the personal property described in the Financing Statements will be perfected under the State of Borrower’s Organization Uniform Commercial Code to the extent such a security interest can be perfected by the filing of financing statements under the State of Borrower’s Organization Uniform Commercial Code.

20. Reserved.

**[INCLUDE OPINIONS #21-24 IF BORROWER OR SPE EQUITY OWNER IS A SINGLE MEMBER DELAWARE LIMITED LIABILITY COMPANY (MODIFY AS NECESSARY TO REFLECT THE PROPER ORGANIZATIONAL STRUCTURE). IF (1) NEITHER BORROWER NOR SPE EQUITY OWNER IS A SINGLE MEMBER DELAWARE LIMITED LIABILITY COMPANY OR (2) THE COMMITMENT PERMITS BORROWER TO BE A SINGLE ASSET ENTITY, OPINIONS #21-24 SHOULD BE REPLACED WITH “Reserved.” NOTE: NOTWITHSTANDING THE PRECEDING SENTENCE, OPINIONS #21-24 WILL NOT BE REQUIRED FOR ANY LOAN THAT IS $20,000,000 OR LESS]**

**[from counsel for State of Organization]**

21. The **[COMPLETE WITH CORRECT DESCRIPTION:** Operating Agreement**]** of Borrower dated as of \_\_\_\_\_\_\_\_\_\_\_ (“**Operating Agreement**”) constitutes a legal, valid and binding agreement of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Member**”), and is enforceable against the Member in accordance with its terms.

**[from counsel for State of Organization]**

22. While under the Delaware Limited Liability Company Act (“**LLC Act**”), on application to a court of competent jurisdiction, a judgment creditor of the Member may be able to charge the Member’s share of any profits and losses of Borrower and the Member’s right to receive distributions of Borrower’s assets (“**Member’s Interest**”), to the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the Member would otherwise have been entitled in respect of such Member’s Interest. Under the LLC Act, no creditor of the Member has any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, Borrower’s property. Thus, under the LLC Act, a judgment creditor of the Member may not satisfy its claims against the Member by asserting a claim against the assets of Borrower.

**[from counsel for State of Organization]**

23. Under the LLC Act, Borrower is a separate legal entity and the existence of Borrower as a separate legal entity will continue until the cancellation of the Certificate of Formation of Borrower.

**[from counsel for State of Organization]**

24. Under the LLC Act and the Operating Agreement, the death, dissolution, bankruptcy, insolvency or incapacity of the Member will not cause Borrower to be dissolved or its affairs to be wound up.

**[INCLUDE OPINIONS #25 AND #26 IF BORROWER OR SPE EQUITY OWNER IS A SINGLE MEMBER DELAWARE LIMITED LIABILITY COMPANY (MODIFY AS NECESSARY TO REFLECT THE PROPER ORGANIZATIONAL STRUCTURE) AND THE COMMITMENT INCLUDES A REQUIREMENT FOR AN INDEPENDENT DIRECTOR. IF THE COMMITMENT DOES NOT REQUIRE AN INDEPENDENT DIRECTOR, OPINIONS #25 AND #26 SHOULD BE REPLACED WITH “Reserved.”]**

**[from counsel for State of Organization]**

25. A Delaware Court applying Delaware law would conclude that (i) in order for a person to file a voluntary bankruptcy petition on behalf of Borrower, the prior unanimous consent of the Member and the Board of Directors (including the Independent Director), as provided in Section \_\_\_ of the Operating Agreement, is required and (ii) such provision contained in Section \_\_\_\_ of the Operating Agreement that requires the prior unanimous consent of the Member and the Board of Directors (including the Independent Director) in order for a person to file a voluntary bankruptcy petition of behalf of Borrower constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member in accordance with its terms.

**[from counsel for State of Organization]**

26. A federal bankruptcy court would hold that Delaware law, and not federal law, governs the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of Borrower.

**QUALIFICATIONS**

Notwithstanding any provision in this opinion letter to the contrary, each of the opinions and confirmations set forth in this opinion letter is subject to the following additional qualifications:

Exclusions.

No opinions should be implied beyond those expressly stated in this opinion letter. Without limiting the generality of the preceding sentence, unless explicitly addressed in this opinion letter, the opinions and confirmations set forth in this opinion letter do not address and we specifically express no opinion with respect to any of the following legal issues:

1. securities laws and regulations administered by the Securities and Exchange Commission, state “Blue Sky” laws and regulations, and laws and regulations relating to commodity (and other) futures and indices and other similar instruments;
2. Federal Reserve Board margin regulations;
3. pension and employee benefit laws and regulations (*e.g.*, ERISA);
4. antitrust and unfair competition laws and regulations;
5. laws and regulations concerning filing and notice requirements (*e.g.*, Hart-Scott-Rodino and Exon-Florio), other than requirements applicable to charter-related documents such as a certificate of merger;
6. compliance with fiduciary duty requirements;
7. environmental laws and regulations;
8. zoning, housing codes, land use, condominium, cooperative, subdivision and other development laws and regulations;
9. tax laws and regulations;
10. patent, copyright and trademark, state trademark, and other Federal and state intellectual property laws and regulations;
11. racketeering laws and regulations (*e.g.*, RICO);
12. health and safety laws and regulations (*e.g.*, OSHA);
13. labor laws and regulations;
14. laws, regulations and policies concerning (A) national and local emergency, (B) possible judicial deference to acts of sovereign states, and (C) criminal and civil forfeiture laws;
15. bulk transfer law;
16. law concerning access by the disabled and building codes;
17. title to any property, the characterization of any property as real property, personal property or fixtures, or the accuracy or sufficiency of any description of collateral or other property;
18. rank or priority of any lien or security interest;
19. parking regulations; and
20. dog licensing requirements.

Limitations.

## Each of the opinions and confirmations set forth in this opinion letter is subject to the effect of generally applicable rules of law that:

1. limit or affect the enforcement of provisions of a contract that purport to require waiver of the obligations of good faith, fair dealing, diligence, and reasonableness;
2. provide that forum selection clauses in contracts are not necessarily binding on the court(s) in the forum selected;
3. limit the availability of a remedy under certain circumstances where another remedy has been elected;
4. limit the right of a creditor to use force or cause a breach of the peace in enforcing rights;
5. relate to the sale or disposition of collateral or the requirements of a commercially reasonable sale, including statutory cure provisions and rights of reinstatement and limitations on deficiency judgments;
6. limit the enforceability of provisions releasing, exculpating, or exempting a party from, or requiring indemnification of a party for, liability for its own action or inaction, to the extent the action or inaction involves gross negligence, recklessness, willful misconduct, or unlawful conduct;
7. may, where less than all of a contract may be unenforceable, limit the enforceability of the balance of the contract to circumstances in which the unenforceable portion is not an essential part of the agreed exchange;
8. govern and afford judicial discretion regarding the determination of damages and entitlement to attorneys’ fees and other costs;
9. may, in the absence of a waiver or consent, discharge a guarantor to the extent that (A) action by a creditor impairs the value of collateral securing guaranteed debt to the detriment of the guarantor, or (B) guaranteed debt is materially modified;
10. may permit a party who has materially failed to render or offer performance required by the contract to cure that failure unless (A) permitting a cure would unreasonably hinder the aggrieved party from making substitute arrangements for performance, or (B) it was important in the circumstances to the aggrieved party that performance occur by the date stated in the contract;
11. limit or affect the enforceability of a waiver of a right of redemption;
12. impose limitations on attorneys’ or trustees’ fees;
13. limit or affect the enforceability of provisions that purport to establish evidentiary standards;
14. limit or affect the enforceability of provisions that provide for payment of increased interest rates upon delinquency in payment or upon any other default; or payment of liquidated damages or prepayment premiums to the extent such payments are deemed to be penalties or forfeitures; and
15. limit or affect the enforceability of provisions that purport to select any state’s law (other than that of the Property Jurisdiction) as the governing law for the Financing Documents.

Knowledge.

As used in this opinion letter, “**Actual Knowledge**” means, without investigation, analysis, or review of court or other public records or our files or inquiry of persons, with respect to the undersigned law firm (“**Opinion Giver**”), the conscious awareness of facts or other information by the Primary Lawyer or Primary Lawyer Group. “**Primary Lawyer**” means the lawyer in the Opinion Giver’s organization who signs this opinion letter; any lawyer in the Opinion Giver’s organization who has active involvement in negotiating the Loan, preparing the Financing Documents or preparing this opinion letter; and solely as to information relevant to a particular opinion issue or confirmation regarding a particular factual matter (*e.g.*, pending or threatened legal proceedings), any lawyer in the Opinion Giver’s organization who is primarily responsible for providing the response concerning that particular opinion issue or confirmation. “**Primary Lawyer Group**” means all of the Primary Lawyers when there is more than one.

Effective Date; No Obligation to Update.

This opinion letter is rendered as of its date, and we express no opinion as to circumstances or events which may occur subsequent to such date. Further, we undertake no, and hereby disclaim any, obligation to advise you of any changes in, or any new developments which might affect, any matters or opinions set forth in this opinion letter.

**USE**

This opinion letter is furnished to you solely for your benefit, the benefit of your successors and assigns, including subsequent holders of the Governmental Note, and any statistical rating agency that provides a rating on securities backed in part by the Funding Loan, all of which we understand may receive copies of this opinion letter. This opinion letter may not be used, quoted from or relied upon by any other person without our prior written consent; however, you or your successors or assigns, including a subsequent holder of the Governmental Note, may deliver copies of this opinion letter to (a) independent auditors, accountants, attorneys and other professionals acting on behalf of you or your successors or assigns, including a subsequent holder of the Governmental Note, (b) governmental agencies having regulatory authority over you or your successors or assigns, including a subsequent holder of the Governmental Note, (c) designated persons pursuant to an order or legal process of any court or governmental agency, and (d) prospective purchasers of the Governmental Note.

Sincerely,

**[NAME OF LAW FIRM]**