Opinion Letter – TEL  
Guarantor  
(Revised 6-27-2023)

**[LETTERHEAD OF COUNSEL]**

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

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

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

Ladies and Gentlemen:

We have acted as counsel to [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“**Guarantor**”)[, a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] organized in the [State/Commonwealth] of [\_\_\_\_\_\_\_\_\_] (“**State of Guarantor’s Organization**”)][an individual, having an address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], 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 Continuing Covenant Agreement, the Guaranties (defined below) and certain other documents relating to the Loan.

**BACKGROUND**

Documents Reviewed.

In our capacity as counsel to Guarantor, we have examined the following documents, all dated as of [\_\_\_\_\_\_\_\_\_ 1, 20\_\_], except as otherwise noted:

1. 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;
2. [MORTGAGE] (the “**Security Instrument**”), dated as of the Closing Date, executed by Borrower for the benefit of Governmental Lender;
3. Continuing Covenant Agreement, dated as of the Closing Date, between Initial Funding Lender and Borrower;
4. [Cross-Collateralization Agreement;]
5. Guaranty, executed by Guarantor in favor of Initial Funding Lender (“**Payment Guaranty**”);
6. Guaranty of Completion, executed by Guarantor in favor of Initial Funding Lender (“**Completion Guaranty**”);[ and]
7. Operating Deficit Guaranty, executed by Guarantor in favor of Initial Funding Lender (“**Operating Deficit Guaranty**” and together with the Payment Guaranty and Completion Guaranty, the “**Guaranties**”)[.][;]

**[IF ENTITY GUARANTOR:**

1. **[LIST ALL ORGANIZATIONAL DOCUMENTS OF GUARANTOR]** (the “**Guarantor Organizational Documents**”);
2. [GOOD STANDING CERTIFICATE] issued by the State of Guarantor’s Organization on [DATE NOT MORE THAN 30 DAYS PRIOR TO CLOSING DATE] (the “**Good Standing Certificate**”); and
3. **[LIST REQUISITE CONSENTS/RESOLUTIONS/ACTIONS AUTHORIZING GUARANTIES].]**

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 Guarantor[ and its [officers/partners/members/beneficiaries/trustees]].

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 Guarantor are genuine.
3. We have assumed the due authorization, execution and delivery of all documents by all parties to the Loan other than Guarantor.
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 Guarantor’s good standing, we have relied on the Good Standing Certificate.]
6. We have assumed that Borrower holds the requisite title and rights to the Property.
7. We have assumed that there has not been any mutual mistake of fact or misunderstanding, fraud, duress or undue influence.
8. We have assumed that the conduct of the parties to the Loan complies with any requirement of good faith, fair dealing and conscionability.
9. We have assumed that the Guaranties 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 Guaranties 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 Guaranties.

Opining Jurisdiction.

We express no opinion with respect to the effect of any law other than the law of the [State/Commonwealth] of [\_\_\_\_\_\_\_\_\_] (“**Property Jurisdiction**”)[, the State of Guarantor’s Organization,] 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:

1. [Guarantor is a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (a) duly organized, (b) validly existing, and (c) in good standing under the laws of the State of Guarantor’s Organization.]
2. [Guarantor has the [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] power and authority to execute, deliver and perform Guarantor’s obligations under the Guaranties.]
3. [The execution and delivery of the Guaranties by Guarantor and the performance of Guarantor’s obligations under the Guaranties have been duly authorized by all requisite action of Guarantor.]
4. [The Guaranties have been (i) duly executed and (ii) delivered by Guarantor.]
5. **[IF GUARANTOR IS A TRUST:** Guarantor can sue and be sued in the Property Jurisdiction without the necessity of joining any of the beneficiaries of Guarantor, including a suit on any of the Guaranties.]
6. **[IF GUARANTOR IS A TRUST:** [Guarantor is an irrevocable trust which has a term longer than the term of the Loan and the term of the irrevocable trust is not affected by the terms of any of the beneficiaries’ interests.]**OR**[Guarantor is a revocable trust; however, Guarantor’s obligations under the Guaranty will survive the death of the grantor of the trust.]
7. The Guaranties are the legal, valid and binding obligations of Guarantor, enforceable against Guarantor in accordance with their 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 Guaranties is also subject to the qualification that certain provisions contained in the Guaranties may not be enforceable, but (subject to the limitations set forth in clauses (i) and (ii)) such unenforceability will not render the Guaranties invalid as a whole or substantially interfere with lender’s practical realization of the principal benefits and/or security provided by the Guaranties, except for the economic consequences resulting from any delay imposed by, or any procedure required by, the applicable laws.
8. The execution and delivery by Guarantor of the Guaranty does not, and the performance by Guarantor of its obligations under the Guaranty will not conflict with or violate any provision of the Guarantor Organizational Documents or any law, rule, regulation, or ordinance applicable to Guarantor.
9. To our Actual Knowledge (as defined below), the execution and delivery by Guarantor of the Guaranties does not, and the performance by Guarantor of its obligations under the Guaranties will not (a) conflict with or violate or result in a breach of any of the provisions of, or constitute a default under, or result in the creation or imposition of a lien, charge or encumbrance upon any of the properties or assets of Guarantor pursuant to, any agreement or instrument to which Guarantor 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 Guarantor.
10. We have no Actual Knowledge of any material pending or threatened lawsuits, claims or criminal proceedings against Guarantor.
11. **[IF GUARANTOR IS AN INDIVIDUAL:** Guarantor is not a foreign national. For purposes of this opinion, a “foreign national” means a person who is not a citizen or a national of the United States.]

**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 Guaranties.

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 Loan 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 [ISSUE DESIGNATION], dated the Closing Date, executed by Governmental Lender and payable to the order of Initial Funding Lender (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 subsequent holders 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, (b) governmental agencies having regulatory authority over you or your successors or assigns, (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]**