

Opinion by Counsel to the
Mortgagor (FHA)

U.S. Department of Housing and
Urban Development
Federal Housing Administration
Office of General Counsel

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For use in FHA-Insured Transactions

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This information is required by 24 CFR 200.45, 200.46, and 200.60 through 200.78. The information will be used to assure that the mortgagor or owner entity has been validly formed, lawfully exists, and that the security property and the construction thereupon comply with appropriate local laws. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

APRIL 2003

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

INSTRUCTIONS TO GUIDE FOR OPINION OF MORTGAGOR'S COUNSEL

EXPLANATORY COMMENTS

The Guide for this opinion was originally prepared in 1994 in view of changes in opinion practice as reflected by the ABA Accord and various State law bar reports on opinion letters and has been revised to reflect approximately three years experience in using the Guide. The principal purpose of this Guide remains to achieve a uniform format which can be utilized throughout the Nation and which will be familiar to HUD counsel in all jurisdictions. Such a standardized format is crucial in an era when less resources are available to the Department; however, it should be emphasized that certain limited changes can be authorized by HUD field counsel as required by local law or by the unique nature of the transaction. An effort has been made in these revised instructions to specify examples in more (but not all) of those areas where such changes can be authorized. Otherwise, the format of the Guide must be followed and is not open to negotiation. In this regard, revisions cannot be justified because of a particular Opinion having been approved by another HUD field office. The exercise of discretion by one HUD field counsel in unique circumstances cannot become the basis for any modification to the Opinion. Any requested modification must be analyzed on its own merit and in a particular context. In these explanatory comments, the document may be referred to as the "Guide" or the "Opinion," depending upon the context.

The Department regards the counsel to the Mortgagor as the crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing where the mortgage note is endorsed for mortgage insurance by the Department. Pursuant to 24 CFR Part 24, §24.105(p), attorneys or others in a business relationship with the Mortgagor are defined as "principals." Even though the Guide is quite different in form from its predecessor (FHA Form No. 1725), the substance is not intended to be substantially different and the revision does not in any fashion relieve the counsel to the Mortgagor of its obligations to its client, the Mortgagee and the Department. In part, these responsibilities entail the exercise of due diligence to assure the accurate and timely preparation, completion and submission of the forms required by the Department in connection with the transaction. Further, the counsel to the Mortgagor and any other attorneys involved in the transaction should be thoroughly familiar with the regulations, procedures and directives of the Department pertaining to each mortgage insurance transaction in which counsel participates. The Department takes seriously the preparation and completion of the various documents involved in the mortgage insurance process (most of which are HUD form documents) and cannot overemphasize the importance of the following:

"Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)"

With limited State law related exceptions, we expect that Mortgagor's counsel will be able to follow the Guide in rendering an Opinion and HUD field counsel should not accept Opinions that otherwise substantially or materially deviate from the Guide. Although we understand that attorneys and law firms may have evolved particular styles and forms of opinion, HUD field counsel do not have time to negotiate each and every Opinion for stylistic changes and it is essential that the Guide be followed in both style and substance in order to ensure a timely closing. The counsel to the Mortgagor is expected to complete a draft Opinion for submission to HUD field counsel at least ten days prior to the closing along with the other closing documents. Any deviations should be specifically identified (redlined or highlighted) and discussed with field counsel at that time. Any material deviation not required by State or local law or otherwise authorized by these instructions must be brought to the attention of the Assistant General Counsel, Multifamily Mortgage Division, by field counsel along with an explanation as to the necessity for the deviation.

It was anticipated that the Guide could be utilized in connection with all types of closings: insured advances or

insurance upon completion (for new construction or substantial rehabilitation); final closings (for refinancings, etc.). This has proved to be the case and, furthermore, the Guide format has been adapted and used in Transfers of Physical Assets (TPAs). However, numerous questions have been raised--particularly in cases involving Section 241 supplemental and equity loans and the various refinancing transactions under Section 223. Therefore, it is important that the correct options be selected in instances where choices are provided and that appropriate deletions or modifications be made to accommodate unique circumstances or programs. On the other hand, it should be emphasized that this does not authorize field counsel to approve changes to the Guide in cases other than where the Guide is being adapted for a special use, e.g. refinancing or equity loan transaction, TPA, etc. Furthermore, HUD has made an administrative policy decision to not require an opinion by counsel to the mortgagor for projects within the "Small Projects Mortgage Insurance Pilot Program (SMPP)." A Notice will be issued defining small project and clarifying the parameters of the SMPP. The mortgagee will have the option of requiring an opinion by counsel to the mortgagor if the mortgagee so elects. It is anticipated that the Certification of the Owner will be expanded slightly for use in the SMPP to provide assurances and comfort to HUD in such cases. Otherwise, the Guide or a variation thereof should be utilized in all FHA-insured multifamily rental project and health care facility closings.

The Guide **is not intended to serve as a closing checklist**; therefore, HUD field counsel may update or modify existing closing checklists as necessary to meet constantly changing program needs and handbook instructions and directives. For example, many deletions from the list of Guide documents are appropriate for various types of refinancings, operating loans, equity loans, etc. whereas several additions are necessary in the case of loans for health care facilities (e.g. certificate of need), supplemental loans, and certain complex refinancings.

Brackets continue to be used in the Guide to indicate alternate language, insertions, documents, or instructions depending on the applicable facts and underlining is used to indicate blanks that must be completed.

The Guide contains some instructions and definitions and is largely self-explanatory; however, the following expanded instructions and clarifications should provide additional assistance to both private counsel and HUD counsel. The numbers and letters used below relate to the paragraph numbers and letters in the Guide unless page numbers are specifically designated.

Page 1 and Introductory Paragraph:

•Letterhead and date: The Opinion must be typed on the firm letterhead and dated the date of endorsement of the mortgage note by HUD.

•Reference: Data regarding the project (name, HUD project number, and location and the name or title of the Mortgagor must be accurate and inserted in the appropriate blanks.

•Addressees: The Opinion must be delivered to HUD as well as the Mortgagee making the loan to establish the explicit right of each to rely on the Opinion. The Mortgagee's counsel may be relying on the Opinion for certain aspects of its opinion. If so, the Opinion must also be addressed to counsel to the Mortgagee. HUD is aware that recent case law has raised issues about the extent to which a mortgagee can rely upon such an opinion; therefore, this matter of reliance by the mortgagee could be clarified by the parties at the outset in jurisdictions where the issue has been raised. Regardless of case law, HUD continues to believe that this is a unique transaction where the federal interest as insurer of the mortgagee is clear from the outset and that it is as a result of the unique federal requirements that counsel to the mortgagor is retained to represent the mortgagor in such a fashion that the Opinion rendered by counsel to the mortgagor necessarily must be addressed to, and relied upon by, HUD as the insurer of the mortgagee and the mortgagee in order for the loan transaction to go forward. In cases where counsel to the mortgagee **elects not** rely upon the Opinion or counsel to the Mortgagor does not wish to permit reliance by counsel to the mortgagee, the Opinion should not be addressed to and/or delivered to the mortgagee's counsel.

•Description of the Loan: The loan amount is the original principal amount of the loan being insured unless a modification is necessitated in connection with the closing.

•Source of funds for the Loan: In the second full sentence on page 2 the source of funds must be accurately identified.

List of Documents:

•In General: If there are no brackets around a particular document, the document is one which is commonly used for initial endorsements for insured advances completion cases; however, it should be emphasized that it is impossible to list every document for every insured loan. Further, no attempt has been made to list all documents utilized in all types of refinancings and certain specialized programs, e.g. certificates of need and licenses for health care programs. Conversely, some documents may not be utilized in a

particular transaction and should be deleted from the list in the actual Opinion. Brackets around the name of the document indicate that the document may or may not be used for every loan. If bracketed documents are not used in a particular loan transaction, then delete such documents from the list in the actual Opinion. Each document executed in connection with the loan must be listed by its correct title, showing each party executing it and its date. If documents are dated "as of" a particular date, then such phrase should be included in the description in the text. **It is imperative that care must be taken to compile a list that accurately and completely reflects the transaction in the submission to HUD of the initial draft. After HUD review of the initial draft, the Opinion may have to be modified, as necessary, to satisfy HUD.**

All documents executed in connection with the loan transaction must be listed regardless of whether the document is required by HUD or whether the Mortgagor is a party to the document. It should be emphasized that counsel to the Mortgagor is not assuming resuming responsibility for the content of documents that counsel does not prepare and that the Mortgagor does not execute. The review is necessary to provide assurance of consistency from document to document. The appropriate HUD or FHA form number, if applicable, must be indicated in parenthesis after each document. Please note that the Guide lists a four digit number after virtually all of the standard HUD documents. In many instances as these forms have been updated, the four digit numbers have been changed so that they are now preceded by a "9." The ultimate plan is to standardize a four digit number for each form; therefore, the four digit number has been used to avoid any need for future change.

A. Organizational Documents: All of the Organizational Documents must be reviewed and care should be taken to ensure adherence to the HUD guidelines and directives pertaining to such documents as set forth in:

1. The Instructions to HUD Form 92466 which pertains to corporate, partnership and trust mortgagors;
2. HUD Form 1732 which pertains to nonprofit corporations; and
3. HUD Notice H-95-66 which pertains to partnerships and limited liability companies (LLCs) to the extent Housing determines that the policy of the Notice remains applicable to a particular transaction.

G. In the original version of the Guide, the requirement that HUD be named in the Financing Statements as a secured party or as its interests may appear was standardized through requiring the insertion of

appropriate language in the Security Agreement. The purpose was to clarify that, under certain circumstances, HUD may assert some rights in the personalty arising under the Regulatory Agreement which would precede an assignment of the mortgage. Based upon experience to date, a decision has been made that HUD need not be so named in the Financing Statements and Security Agreement. This decision makes it more imperative that there be specificity in the UCC documentation with respect to the securitization of items such as receivables (particularly in the case of hospitals and nursing homes for example) in order to protect the interest of HUD in the securitization of personalty. Furthermore, it is imperative that Counsel to the Mortgagor be aware of the recent changes to Article IX of the UCC. Field Counsel may require appropriate modifications in the Opinion to cover this major change in State law.

J. Building Loan Agreement: This document is a "bracketed document" which should only be used in cases involving new construction or substantial rehabilitation. Hence, the document is not required in equity loan transactions and most refinancing transactions and many supplemental loan transactions.

K. Construction Contract. See J. above.

L. Mortgagee's Certificate: It has been argued that this document is unnecessary in the context of certain insured secondary loan transactions because the form is used to document the first mortgagee's consent to the second loan. The first mortgagee would not be involved in such situations. In cases where the consent of the first lender is obtained for a second mortgage insured by HUD, a separate document (for which there is no specified format) is utilized.

The Mortgagee's Certificate is executed by the lender making the loan being insured, which in the cases at issue would be the lender making the second loan, and is one of the most significant closing documents. HUD places great reliance upon the mortgagee's certificate and considers it necessary to reveal all fees, side transactions, etc. Counsel to the Mortgagor is not responsible for the execution of the document and only needs to review the document in the capacity as counsel to the mortgagor.

M. Mortgagor's Certificate: This document may overlap somewhat with other documents as several private attorneys have indicated; nonetheless, the mortgagor's certificate is a significant document upon which HUD

relies. This document and the Opinion should be dated the date of the closing.

P. Certification of Owner: Several persons have questioned whether the references in Paragraph 6 to the Public Entity Agreement and the Regulatory Agreement should be changed so that both refer instead to the Public Entity Agreement. The references should not be changed because HUD wants assurance that there will be no violations of the Regulatory Agreement as a result of events that have occurred with the passage of time.

Q. UCC searches: The UCC Search must be conducted within thirty days of closing and can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Mortgagor or any other attorney licensed in the jurisdiction.

R. Flood insurance receipt: Arguments have been made that this document is not necessary in equity loan, supplemental loan and refinancing transactions. Flood plain maps change. In insuring a first or a second mortgage, it is just as significant that HUD know whether the property is located in an area where flood insurance is required and, if so, whether the insurance is in effect regardless of whether a prior HUD-insured first mortgage is in effect. HUD would not necessarily have the data on file, and it was determined that this is a matter which counsel to the mortgagor could confirm under item (e) near the end of the Guide. Note that no opinion is required, and the factual determinations necessitated by the Guide are considered within the usual duties of counsel to the mortgagor.

S. Title Insurance Policy: Currently the 1992 ALTA Format (with appropriate endorsements) is required by HUD in most jurisdictions.

T. Evidence of zoning compliance: The evidence of zoning compliance will vary depending on the circumstances. The evidence should establish that the building, if constructed according to plans and circumstances, will comply with all zoning requirements. The evidence may be in the form of a letter or certificate from the appropriate local official stating that, if the building is constructed according to the plans and specifications submitted for review, the building will comply with all zoning requirements. In refinancing cases where no construction is involved, the evidence may be in the form of a letter certifying that the existing building(s) is (are) in compliance with outstanding zoning requirements or, if not, the nonconforming variance, etc., is acceptable. If the locality has no zoning ordinance, a letter should be

submitted from the chief executive stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, that the proposed development is compatible with the county's comprehensive plan. If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run. In extremely complex cases, an opinion may need to be obtained from legal counsel specializing in local zoning matters. Such letter must be attached as an exhibit and referenced in the appropriate paragraphs of the Opinion.

In cases involving refinancings, it has been suggested by some attorneys that HUD should have zoning information on hand either as a result of the closing of the first HUD-insured loan or due to periodic site reviews. HUD would not normally maintain data pertaining to local zoning law and the data with respect to the first loan would only be valid with respect to the closing date of that loan. Paragraphs 7, 8 and 9 of the Opinion contain several options with respect to local zoning law. It has also been suggested that evidence of zoning compliance should not be required in Section 241(f) equity loans. The only language applicable to Section 241(f) equity loans is the wording at the end of 9 which pertains to refinancings, **viz.** "Based solely on the Certificate, the Project complies with all applicable land use and zoning requirements." After considering the issue, it has been determined that a zoning certificate is not essential in Section 241(f) equity loan cases; however, the attorney for the mortgagor will have to state: "The project complies with all applicable land use and zoning requirements." It is important that HUD be assured that there have been no changes in the land use or zoning which would adversely affect the continued use of the property as a rental housing project. In this context, we reemphasize that the attorney responsible for this matter must be licensed in the property jurisdiction.

- U. Building permit(s): If no building permit is required (as would normally be the case in a pure Section 241(f) equity loan), this document is not applicable and should be deleted from the Opinion. (This would also be true with respect to occupancy permits (under V.) unless new permits are required under local law in connection with "pure" refinancing transactions.)
- V. Permits required for the operation of the project: Several practitioners have argued that the

documentation is unnecessary in equity loan and refinancing transactions; however, they have not indicated whether such a position would affect their wording of Paragraph 4 of the Guide. In all cases (including Section 241(f) equity loans), HUD is concerned that any permits required for the continued operation of the project be proper and in place such that an opinion can be rendered with respect to Paragraph 4. It is crucial in existing projects that HUD be assured that no new requirements have been imposed which would thwart continued operation of the project. If no such permits are required, Paragraph 4 should be amended accordingly. This is a matter which counsel to the mortgagor, as a specialist in the property jurisdiction, should be able to ascertain.

W. Surveyor's plat or survey: The survey must be signed, sealed and dated within 90 days of the closing. In a pure Section 241(f) equity loan and certain refinancing transactions, a survey would not normally be required because no new construction would have taken place and, presumably, nothing would have changed with respect to the building(s) and the site. In such situations, if there is other satisfactory evidence that no site changes have occurred, an administrative waiver would necessitate the deletion of the item from the Opinion. See X. below. If the mortgagor's attorney were to become aware of any changes, this would have to be addressed in the Opinion and a survey could be required by HUD depending upon the circumstances.

X. Surveyor's Report: Unless there is a title endorsement protecting against any encroachments, etc., there will have to be a surveyor's certificate indicating that nothing has changed since the last survey with respect to encroachments, lot line violations, construction activity, etc. HUD should not be incurring the risk of insuring any loan if there has been any action which would impair the lender's and HUD's respective positions. As an alternative to a surveyor's certificate, the mortgagor's attorney could rely upon an appropriate certificate from a qualified architect and insert appropriate language in the Opinion.

Z. Assurance of completion (bonds or agreement): This documentation (now bracketed) would not be utilized in a pure refinancing or equity loan transaction and, therefore, would only be used in cases involving some construction where the regulation pertaining to assurance of completion is applicable.

AA. Owner-Architect Agreement: This document (now bracketed like Documents J and K) should only be indicated (where the Guide indicates "**{INSERT DESIGN AND/OR**

CONSTRUCTION ARCHITECT}) in cases involving new construction or substantial rehabilitation.

BB. Off-Site Bond or Agreement: This document should only be used in cases where off-site work is involved. As such, the document would not normally be used in pure equity loan transactions or in refinancing transactions involving no construction.

CC. Assurance of utility services: These documents do not pertain to pure Section 241(f) equity loan transactions and certain refinancing transactions and, therefore, should be deleted in those instances.

FF. Escrow Deposit for On-Site Improvements: If any such improvements are required in connection with an equity loan, supplemental loan or refinancing transaction, the form document specified should be tailored to the situation as determined by field counsel. In a situation where such an escrow is necessary, counsel to the mortgagor should modify the form as necessary and present it to field counsel for review.

GG. Contractor's Prevailing Wage Certificate: This item is no longer required in the HUD closing checklist; therefore, some attorneys have taken the position that it can be eliminated from the Opinion. HUD believes the item should be reviewed by counsel to the Mortgagor for the purpose of assuring consistency between the documents and performance under the Construction Contract to which the Mortgagor is a party.

KK. Public Entity Agreement: The references to this document and to the Regulatory Agreement in Paragraph 6 of the Certification of Mortgagor have created some confusion about whether the reference to the Regulatory Agreement should be changed to Public Entity Agreement. The two separate references were intended, and no change should be made.

LL. Bond Documents: This does not include all documents involved in the typical bond financing. It does include those principal documents such as the Prospectus, the Indenture, a sample Bond, etc. All documents executed by the Mortgagor or which establish or describe any obligations of the Mortgagor must be included.

NN. Certificate issued by architect or other professional: Normally such a document would not be necessary in the case of a pure Section 241(f) equity loan and certain refinancing transactions and should be deleted unless those

circumstances mentioned under the last sentence pertaining to Document X, above, make the certificate appropriate. Note that "Certificate" is a defined term and that the Certificate can come from "an architect or other professional." Consequently, there is no form for the Certificate and HUD field counsel should defer to HUD administrators specializing in architectural and engineering matters in determining the acceptability of the Certificate. It is referenced in Paragraph 9 of the Opinion and should not be confused with the Zoning Certificate which is also a defined term and is referenced in Paragraph 8.

OO. Docket search: The Docket Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Mortgagor or any other attorney licensed in the jurisdiction. Arguments have been made by private counsel that such a docket search is not necessary in all transactions. One of the main purposes of the new Guide was to clearly define the work to be performed by counsel to the mortgagor. It was determined that such a search was within the scope of the fees permitted as a mortgage line item for counsel to the mortgagor. Such a search is important in the case of an existing subsidized project where matters of public record could reveal circumstances wherein it would be inadvisable for HUD to go forward with insuring another loan.

An argument has also been made that several record searches in separate jurisdictions could be necessitated in some cases and that this would cost a significant amount of money with little benefit. As the Guide was being developed, HUD was cognizant of such a scenario; however, the benefit to HUD of establishing that the public records are clear outweighs the costs to the mortgagor of conducting such searches. In the case where a sole-asset mortgagor is being created, however, a search of the public records in the jurisdiction where the mortgagor is located (assuming a different location from the others iterated) is unnecessary. The Opinion could be amended in those instances to indicate that particular state of facts; however, all of the other searches would have to be done.

Opinions:

1. This paragraph contains several options depending upon whether the Mortgagor's organizational documents were prepared by counsel rendering the Opinion and the type of mortgagor entity. Care should be taken to ensure that the correct option is selected and that the requisite information is inserted correctly. It is intended that, where the mortgagor entity or general

partner of the mortgagor entity is established by counsel to the Mortgagor, no reliance on other sources is permitted and counsel must opine as to the due organization of the Mortgagor. If a Certificate of Good Standing is not available in the State, but an equivalent document is (i.e., Certificate of Existence), then the bracketed language must be revised to reflect the name/title of the equivalent document so obtained. Any Certificate of Good Standing or equivalent document issued by the applicable governmental authority must be dated no more than 30 days prior to the date of the Opinion of Mortgagor's counsel. If the Mortgagor is a foreign corporation or partnership, the Opinion must recite the review of all government approvals required to do business in the Property jurisdiction. If a Certificate of Good Standing or equivalent document cannot be obtained from the applicable governmental authority (e.g., for general partnerships, then the Mortgagor's attorney will be required to do the due diligence necessary to give the opinion or may engage other counsel to render such opinion). If the Property jurisdiction is not the State of formation for the mortgagor entity, counsel must also opine that the Mortgagor is qualified to transact business in the Property jurisdiction. Such opinion may be made solely on the basis of a certificate from the applicable governmental authorities of the Property jurisdiction, and if counsel is relying on such certificate(s), then the opinion must expressly identify those certificate(s) and they must be attached to the Opinion as an exhibit. If the Mortgagor is an individual, paragraph one should be deleted from the Opinion.

2. This paragraph provides, among other things, that the Mortgagor possesses all the necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property. This particular provision has generated considerable controversy--particularly where health care facilities are being constructed or substantially rehabilitated in large, urban jurisdictions having a multitude of regulatory requirements pertaining to ownership and operation. Consequently, field counsel have discretion to permit a modification in which Counsel to the Mortgagor itemizes those local governmental requirements which have been evaluated and indicates that, after due diligence inquiry and insofar as the attorney is aware, these local requirements comprise the entire universe of such requirements. The Opinion should further state that, based upon such itemized local requirements and compliance therewith (with all permits, certificates, etc. being itemized), the Mortgagor possesses the power and authority necessary

to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA commitment. In most instances involving new construction, a certificate of occupancy will not have been obtained by the time of closing. In such instances, field counsel have discretion to permit an appropriate clarification with respect to that particular instrument.

11. If the Mortgagor or any principal of the Mortgagor is involved in any litigation, all such litigation matter(s) must be disclosed in writing to HUD field counsel in order that the Department can determine whether the endorsement of the loan is possible. Note that litigation involving a principal of the Mortgagor must be disclosed. Confusion has developed when there has been litigation involving lower tiers of a partnership. If the issue cannot be resolved through reference to the definition of "principal" in the 2530 regulations, HUD field counsel should consult with HUD program administrators and determine whether the litigation should be disclosed. If the litigation involves HUD's compliance with civil rights requirements, it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel (regardless of whether a "principal" or some lesser component of the Mortgagor is the subject of the litigation). As an example, it is not uncommon for neighbors of a proposed site for a group home for persons with disabilities to harbor discriminatory attitudes toward persons with disabilities and to sue to attempt to block the establishment or operation of a group home.

13. If any UCC Financing Statements have been filed on the Personalty in conjunction with any transaction other than the Loan, they must be identified to the HUD field counsel as well as details with respect to how such Financing Statements will be terminated at the time of closings.

If the property is an elderly housing project or a health care facility or if the loan otherwise is to be secured by significant amounts of personal property, the matter should be discussed with field counsel. In the event further discussion is necessary, field counsel should contact the Assistant General Counsel, Multifamily Mortgage Division. For projects in which the personalty is mostly household appliances (e.g., refrigerators) or a limited quantity of smaller equipment, the Opinion will be limited as shown. In other instances, the Opinion may have to be expanded particularly with respect to ensuring that items such

as receivables, income stream, etc. are security property.

One or more UCC searches performed not more than 30 days prior to the date of the Opinion must be made and attached to the Opinion.

15. If the Mortgagor is a trust (other than a land trust), then Paragraph 15 must be included in the Opinion. The second sentence need only be included if the trust was formed in a jurisdiction other than the Property jurisdiction.

Acceptability of Counsel:

- Mortgagor's counsel must opine as to the law of the Property jurisdiction and the State of Mortgagor's organization, if different from the Property jurisdiction. HUD requires that Mortgagor's counsel be admitted to practice law in each jurisdiction in which such admission is required by the laws or ethical considerations of the bar to be able to give the opinion. If multiple jurisdictions are involved, two opinions may be required: one with respect to the organization of the Mortgagor and another with respect to the real property and loan issues. A combination of the Mortgagor's regular counsel and special local counsel may be required to satisfy this requirement. If counsel's satisfaction of these requirements is not evident from the letterhead of the firm, the field counsel should include a written explanation in the Washington docket. In all events, each provision in the Guide must be addressed whether one or more opinions is required to do so.

Signatures:

- The Opinion may be signed by an authorized person of the law firm, in that person's name.

Certification of Mortgagor:

- A form of Certification of Mortgagor is attached. The form represents the minimum amount of information that should be obtained from the Mortgagor (but additions, revisions and rephrasings are acceptable so long as the Mortgagor is certifying as to factual matters and not legal conclusions). The Certification of Mortgagor must be dated the same date as the Loan Documents.

Identity of Interest:

- Numerous issues have been raised with respect to the confirmation in (d) of the penultimate paragraph

of the Guide. A decision was made that the attorney signing the Opinion could not have an identity of interest with the Mortgagor entity. No waivers are possible in such instance. In instances where other members of the firm have an interest in the Mortgagor entity, such interest must be disclosed and such interest must be acceptable to field counsel based upon the ethics rules of the applicable bar. Furthermore, any interest must be administratively acceptable to HUD and 2530 clearance must be obtained. In addition, there appears to be an increasing trend wherein mortgagees are insisting upon using counsel to the mortgagee to handle many aspects of the transaction even though the Opinion is being signed by a separate attorney. There have been some instances where counsel to the mortgagee has asked to represent the mortgagor in whole or in part and to provide all or a part of the Opinion. Confirmation (d) in the penultimate paragraph has been clarified to reflect the intent of HUD from the inception of the Opinion that any such representation of both parties is not permitted.

Liens:

- Paragraph (f), which is in the penultimate paragraph of the Opinion, contains a statement that there are no liens or encumbrances against the Property. Several attorneys have objected to making the statement because they indicate that, at the time of closing, there may be liens that have actually not been released even though the title company has received funds and/or release documents to do so and intends to process the release after the closing. Except in cases involving the insurance of secondary loans, HUD is only authorized to insure first mortgages; consequently, there cannot be any liens and encumbrances on the property when HUD endorses the mortgage note for insurance. As a result, there cannot be any liens outstanding which would prime the insured mortgage loan. Hence, Paragraph (f) should not be changed.

Reliance on other opinions:

- The issue of proper wording and format has probably surfaced most often in cases where counsel to the Mortgagor is relying on opinions issued by other attorneys. This has occurred most often in cases involving a separate opinion for bond financing documentation, property jurisdiction vs. organizational jurisdiction, zoning, etc. In this area, it is imperative that counsel to the Mortgagor specifically reference and attach the additional opinion(s) and that such opinions track the language of the Guide as close as is practical under the circumstances. HUD field

counsel should exercise discretion in this area, taking the unique circumstances into account.

Opinion by Counsel to the
Mortgagor (FHA)

**U.S. Department of Housing and
Urban Development**
Federal Housing Administration
Office of General Counsel

OMB No. 2510-0010
(exp 10/31/2012)

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APRIL 2003

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION**

GUIDE FOR

OPINION OF MORTGAGOR'S COUNSEL

{TO BE TYPED ON FIRM LETTERHEAD}

{INSERT DATE OF ENDORSEMENT}

Re: Project Name _____
FHA Project No. _____
Location _____
Mortgagor

[MORTGAGEE]
[ADDRESS]

[MORTGAGEE'S ATTORNEY]
[ADDRESS]

FEDERAL HOUSING COMMISSIONER
{INSERT APPROPRIATE FIELD OFFICE ADDRESS}

Ladies and Gentlemen:

We are [I am] [general/special] counsel to _____ **{INSERT NAME OF MORTGAGOR}** (the "Mortgagor"), a _____, **{INSERT TYPE OF ENTITY}** organized under the laws of the State of _____ **{INSERT STATE}** (the "Organizational Jurisdiction), in connection with a mortgage loan (the "Loan") in the [original/ increased] principal amount of _____ Dollars (\$ _____) from _____ **{INSERT NAME AND TYPE OF MORTGAGEE}** (the "Mortgagee") to the Mortgagor. The proceeds of the Loan will be used to [construct/rehabilitate/purchase/ refinance] that certain [multifamily housing/ hospital/ extended care facility/nursing home/board and care] project (the "Project"), commonly known as _____ and located in _____ **{INSERT COUNTY AND STATE}** (said State to be referred to hereinafter as the "Property Jurisdiction") on the property described in Exhibit B **{ATTACH LEGAL DESCRIPTION}** (together with all improvements and fixtures thereon) (the "Property"). The Loan is being insured by the Federal Housing Administration (FHA), an organizational unit of the United States Department of Housing and Urban Development ("HUD"), pursuant to a commitment for insurance [of advances **OR** upon completion **OR** for refinancing] issued to Mortgagee by _____, Agent of the Federal Housing Commissioner, dated _____ [as amended by that certain letter from _____ to _____, dated _____] ("FHA Commitment"). The Loan is being funded from _____ **{DESCRIBE FINANCING SOURCE, e.g., tax-exempt bonds/mortgage backed securities guaranteed by GNMA/participation certificates, etc.}** The Mortgagor has requested that we [I] deliver this opinion and has consented to reliance by Mortgagee's counsel in rendering its opinion to Mortgagee and to reliance by Mortgagee and HUD in making and insuring, respectively, the Loan and has waived any privity between Mortgagor and us [me] in order to permit said reliance by Mortgagee, counsel to Mortgagee and HUD. We [I] consent to reliance on this opinion by Mortgagee, counsel to Mortgagee, and HUD.

In our [my] capacity as [general/special] counsel to the Mortgagor, we [I] have prepared or reviewed the following:

- A. The [**{DESCRIBE ORGANIZATIONAL DOCUMENTS, e.g. for corporations: State certified copies of the articles of incorporation, the by-laws, the borrowing resolution, the incumbency certificate and the good standing certificate(s), fictitious Name Registration, Foreign Corporation Registration; for partnerships: certified copies of the partnership agreement and any amendments thereto, the certificate of limited partnership, and any amendments thereto, the good standing certificate (or its equivalent) if provided in the Organizational Jurisdiction, etc.}**] of the Mortgagor (collectively, the "Organizational Documents");

- B. The FHA Commitment [extensions and assignment(s) thereof, if any];
- C. The Commitment issued by the Mortgagee and accepted by the Mortgagor, dated _____, (the "Loan Commitment");
- D. The Regulatory Agreement (_____) **{INSERT APPROPRIATE FORM NO.}** by and between HUD and the Mortgagor, dated _____, (the "Regulatory Agreement");
- E. The Note (_____) **{INSERT APPROPRIATE FORM NO.}** [in the original principal amount of _____ Dollars (\$_____) **OR** in the increased principal amount of _____ Dollars (\$_____) by Mortgagor in favor of Mortgagee, dated _____, (the "Note");
- F. [The Mortgage **OR** Deed of Trust] (_____) **{INSERT APPROPRIATE FORM NO.}**, executed by Mortgagor for the benefit of Mortgagee, granting a security interest in the Property, dated _____, (the "Mortgage");
- G. **{INSERT THE NUMBER OF UCC's TO BE FILED}** Uniform Commercial Code Financing Statements executed by the Mortgagor as debtor and naming the Mortgagee and HUD as secured parties or as their interests may appear, to be filed in _____, **{INSERT LOCATION(S)}** (the Filing Offices), upon the **{DESCRIBE EVENTS}** (the "Financing Statements");
- H. The Security Agreement by and between Mortgagor and the Mortgagee, granting a security interest under the Uniform Commercial Code, in those items of personalty described therein, dated _____, (the "Security Agreement");
- [I. **{TO BE INSERTED IF THE MORTGAGE IS ON A LEASEHOLD ESTATE}** The Ground Lease executed by _____ **{INSERT LESSOR}** as lessor and Mortgagor as lessee recorded in the land records of _____, dated _____, (the "Ground Lease").]
- [J. **{TO BE INSERTED FOR CONSTRUCTION/REHABILITATION LOANS}** The Building Loan Agreement (2441) executed by Mortgagee and Mortgagor, dated _____, (the "Building Loan Agreement").]
- [K. **{TO BE INSERTED FOR CONSTRUCTION/REHABILITATION LOANS}** The Construction Contract [Lump Sum (2442) or Cost Plus (2442-A)] executed by _____ (the "General Contractor") and Mortgagor, dated _____ (the "Construction Contract").]

L. The Mortgagee's Certificate (2434), executed by the Mortgagee, dated _____.

M. The Mortgagor's Certificate (2433), executed by the Mortgagor, dated _____.

N. The Agreement and Certification (3305 or 3305A or 3306 or 3306A), executed by the Mortgagor, dated _____.

O. The Mortgagor's Oath (2478), executed by the Mortgagor, dated _____.

P. The Mortgagor's Opinion Certification, pertaining to factual matters relied on by us [me] in rendering this opinion, executed by the Mortgagor, dated _____, a copy of which is attached hereto as Exhibit __ (the "Certification of Mortgagor").

Q. A search conducted by _____ dated _____ **{no earlier than 30 days before this opinion}** of the financing records of the county and Property Jurisdiction [and Organizational Jurisdiction] (the "UCC Search").

[R. A receipt from the insurance company providing flood insurance evidencing payment for the premium, dated _____, (the "Flood Insurance Receipt").]

S. The Title Insurance Policy [or date-down if appropriate in a refinancing, for example] issued by _____ **{acceptable company under HUD's regulations}**, together with all endorsements, and naming HUD and the Mortgagee as insureds as their interests may appear, dated _____, (the "Title Policy").

[T. The following documents evidencing zoning compliance, _____, **{DESCRIBE ALL DOCUMENTS FULLY}** (the "Zoning Certificate").]

[U. The building permit(s) issued on _____ by] _____ (the "Building Permit").

[V. The following permits, _____, **{DESCRIBE PERMITS}** which are required for the operation of the project, issued by _____ on _____ ("Other Permits").]

[W. The Surveyor's Plat **OR** Survey showing completed project, prepared by _____, dated _____, (the "Survey").]

X. The Surveyor's Report (2457), executed by _____, dated _____, (the "Surveyor's Report").

[Y. The deferred note (1710, 1712 or 2223) executed by Mortgagor in favor of _____, dated _____, (the "Deferred Note").]

[Z. The Performance Bond (2452) and the Payment Bond (2452-A) issued by _____ (Surety) to secure payment and performance of _____ (General Contractor) and running to _____ **OR** the Completion Assurance Agreement (2450) executed by the General Contractor, dated _____, (the "Assurance of Completion").]

[AA. The Owner-Architect Agreement (AIA B181 with HUD Supplement) executed by _____ **{INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT}** and Mortgagor, dated _____, (the "Owner-Architect Agreement").]

[BB. The Off-Site Bond (2479) issued by _____ (Surety) to secure the completion of off-site work by _____ (General Contractor) and running to the Mortgagee and HUD **OR** Escrow Agreement for Off-Site Facilities (2446) with Schedule "A" executed by _____ dated _____ (the "Assurance of Completion of Off-Site Facilities").]

[CC. The following documents assuring water, electricity, sewer, gas, heat or other utility services (the "Assurance of Utility Services"):
_____ **{DESCRIBE FULLY}**.]

[DD. The Contractor's and/or Mortgagor's Cost Breakdown (2328) executed by the General Contractor, dated _____, (the "Cost Breakdown").]

[EE. The Latent Defects Bond (3259) issued by _____ and securing the performance of the General Contractor and running to the Mortgagee and HUD **OR** Escrow executed by _____, dated _____ (the "Guarantee against Latent Defects").]

[FF. The Escrow Deposit Agreement for Incomplete On-Site Improvements (2456) with Schedule A executed by the General Contractor, dated _____, (the "On-Site Deposit Escrow").]

[GG. The Contractor's Prevailing Wage Certificate (2403-A) executed by _____, dated _____, (the "Contractor's Prevailing Wage Certificate").]

[HH. The Request for Endorsement of Credit Instrument (2023) and/or Certificate of Mortgage and Mortgagee (2455) executed by the Mortgagor and the Mortgagee, dated _____, (the "Request for Endorsement").]

{MODIFY AS APPROPRIATE FOR INSURANCE UPON COMPLETION, REFINANCINGS, ETC.}

[II. The Operating Deficit Escrow (2476a) executed by _____, dated _____, (the "Operating Deficit Escrow").]

[JJ. The Repair Escrow executed by _____, dated _____, (the "Repair Escrow").]

[KK. All documents executed by Mortgagor and any State or local government entity pertaining to development of the Property (the "Public Entity Agreement").]

[LL. The following documents executed or delivered in connection with the financing of the loan with the proceeds of bonds exempt from federal taxation: _____ **{LIST DOCUMENTS IN ACCORDANCE WITH INSTRUCTIONS}** (the "Bond Documents").]

MM. The Good Standing Certificate(s) **{SEE "A" ABOVE}** issued by [Organizational Jurisdiction **OR** Property Jurisdiction , if different], dated _____ **{DATE INSERTED MUST BE WITHIN 30 DAYS OF THE DATE OF ENDORSEMENT}**, (the "Good Standing Certificate").

[NN. The certificate executed by _____ **{INSERT ARCHITECT OR OTHER PROFESSIONAL}**, dated _____, (the "Certificate").]

OO. A search conducted by _____ dated [no earlier than 30 days before this opinion] of the public records of the federal District Court and State and local courts in: (i) the jurisdiction where the Property is located; (ii) the jurisdiction(s) where the Mortgagor is located and does business; and (iii) the jurisdiction where the general partner of the Mortgagor is organized (the "Docket Search").

NOTE: Numerical references in parentheses above are to FHA and HUD form numbers.

The documents listed in B through I above are referred to collectively as the "Loan Documents." The documents listed in J through OO are referred to collectively as the "Supporting Documents." The documents listed in A through OO are referred to collectively as the "Documents."

In basing the several opinions set forth in this document on "our [my] knowledge," the words "our [my] knowledge" signify that, in the course of our [my] representation of the Mortgagor, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words "our [my] knowledge" as

used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Mortgagor in any capacity including, but not limited to, in connection with this Loan. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to known facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Mortgagor (and any person executing any of the Documents on behalf of the Mortgagor), has duly and validly executed and delivered each such instrument, document, and agreement to be executed in connection with the Loan to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

(b) Each person executing any of the Documents, other than the Mortgagor (and any person executing any of the Documents on behalf of the Mortgagor), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Mortgagor (and any person executing any of the Documents on behalf of Mortgagor) are genuine.

(e) All Documents which were submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and/or 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 Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair and impartial dealing; and (iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

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

(i) The Mortgagor has title or other interest in each item of (i) real and (ii) tangible and intangible personal property ("Personalty") comprising the Property in which a security interest is purported to be granted under the Loan Documents [and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Loan as stated in the Documents 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 Documents. After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering our [my] opinion in paragraph 13, we [I] also have assumed that: (i) all Personalty in which a security interest is created under the Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property and (ii) Mortgagor's [Chief Executive Office] [only place of business] [residence] is located in _____. After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering this opinion, we [I] have, with your approval, relied as to certain matters of fact set forth in the Certification of Mortgagor, the Good Standing Certificate(s) [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Mortgagor as to the accuracy and completeness of the Certification of Mortgagor, the Good Standing Certificate(s), [and such other Documents], we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

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

**{TO BE USED IN CASES WHERE ORGANIZATIONAL DOCUMENTS
WERE PREPARED BY MORTGAGOR'S ATTORNEY}**

1. The Mortgagor is a _____ **{INSERT TYPE OF ENTITY}** duly organized and validly existing under the laws of the Organizational Jurisdiction. The Mortgagor is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [___], is in good standing under the laws of the

Organizational Jurisdiction, [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction based on a review of _____.]

{OR, IF THE MORTGAGOR IS A TRUST}

The Mortgagor is _____ **{INSERT NAME OF THE TYPE OF TRUST}** duly formed and validly existing under the laws of the Organizational Jurisdiction [, and is qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP MORTGAGOR IS AN ENTITY}

The general partner of the Mortgagor is a _____ **{INSERT TYPE OF ENTITY}**, duly organized, validly existing and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [___], in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ **{INSERT TYPE OF ENTITY}** in the Property Jurisdiction].

{TO BE USED IN CASES, PRINCIPALLY REFINANCINGS, WHERE ORGANIZATIONAL DOCUMENTS WERE NOT PREPARED BY MORTGAGOR'S ATTORNEY}

1. Based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [___], the Mortgagor is a _____ **{INSERT TYPE OF ENTITY}** validly existing under the laws of the Organizational Jurisdiction and in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction.

{OR, IF THE MORTGAGOR IS A TRUST}

The Mortgagor is _____ **{INSERT NAME OF THE TYPE OF TRUST}** validly existing under the laws of the Organizational Jurisdiction [and is duly qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP MORTGAGOR IS AN ENTITY}

Based solely on the Good Standing Certificate(s), copy attached hereto as Exhibit [___], the general partner of the Mortgagor is a _____ **{INSERT TYPE OF ENTITY}**, validly existing and in good standing under the laws of _____ **{INSERT STATE}** [and is qualified to do business as a foreign _____ **{INSERT TYPE OF ENTITY}** in the Property Jurisdiction].

2. The Mortgagor has the [corporate/partnership/trust] power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA Commitment.

3. The execution and delivery of the Loan Documents by or on behalf of the Mortgagor, and the consummation by the Mortgagor of the transactions contemplated thereby, and the performance by the Mortgagor of its obligations thereunder, have been duly and validly authorized by all necessary [corporate/partnership/trust] action by, or on behalf of, the Mortgagor.

4. All authorizations, consents, approvals, and permits have been obtained from, appropriate actions have been taken by, and necessary filings have been made with all necessary Organizational and Property Jurisdictions or federal courts or governmental authorities, all as disclosed on Exhibit __, attached hereto, and as listed and set forth in Paragraph(s) 2 and ____ of this opinion [i.e. good standing certificate]. To the best of our knowledge, these represent all such authorizations, consents, approvals, permits, actions and filings that are required in connection with the execution and delivery by the Mortgagor of the Loan Documents and the ownership [and operation] of the Property.

5. Each of the Loan Documents has been duly executed and delivered by the Mortgagor and constitute the valid and legally binding promises or obligations of the Mortgagor, enforceable against the Mortgagor in accordance with its terms, subject to the following qualifications:

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

(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 may not be enforceable, but, subject to the qualifications set forth in this paragraph at (i) and (ii) above, such unenforceability will not preclude (a) the enforcement of the obligation of the Mortgagor to make the payments as provided in the Mortgage and Note (and HUD's regulations), and (b) the foreclosure of the Mortgage upon the event of a breach thereunder.

[6. {TO BE INSERTED WHEN ANY OR ALL OF THE LOAN DOCUMENTS ARE NOT HUD APPROVED FORMS OR WHEN HUD APPROVED FORMS HAVE BEEN REVISED OR MODIFIED IN CONNECTION WITH THE LOAN} The execution and delivery of, and the performance of the obligations under, the Loan Documents will not violate the Organizational Documents of the Mortgagor or any applicable provisions of local or State law.

[7. **{INSERT FOR LOANS INVOLVING CONSTRUCTION OR REHABILITATION}** To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated _____, executed by _____ **{INSERT MORTGAGOR}** and _____ **{INSERT GENERAL CONTRACTOR}**, and referred to in the Construction Contract (the "Plans and Specifications").]

[8. **{INSERT IF THERE IS NO ZONING ENDORSEMENT INCORPORATED INTO THE TITLE POLICY}** The attached Zoning Certificate states that the Property appears on the zoning maps of [Property jurisdiction] as being located in a _____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a _____ is a permitted use in such zone.

OR

Based solely on the Zoning Certificate, the Property may be used for _____ as a permitted use.]

[9. **{USE FOR NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION IN CASES WHERE THE DEPARTMENT DOES NOT RECEIVE A CERTIFICATE DIRECTLY FROM THE PROFESSIONAL}** Based solely on the Certificate, construction/rehabilitation of the Project in accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.

{USE FOR REFINANCINGS} Based solely on the Certificate, the Project complies with all applicable land use and zoning requirements.]

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

11. Based solely on (a) our [my] knowledge, (b) the Certification of Mortgagor and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the

Mortgagor, or the Property, [**{TO BE INSERTED WHEN MORTGAGOR IS NOT A SOLE-ASSET MORTGAGOR}**] or any other properties of the Mortgagor] [, except as identified on Exhibit ____].

12. The Mortgage is in appropriate form for recordation in _____ **{INSERT PROPER NAME OF LOCAL LAND RECORDS OFFICE}** of _____ **{INSERT COUNTY OR CITY}** of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

13. Filing of the Financing Statements in the Filing Offices will perfect the security interest in the Personalty of the Mortgagor located in the Project Jurisdiction, but only to the extent that, under the Uniform Commercial Code in effect in the Project Jurisdiction, a security interest in each described item of Personalty can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are required to be filed in order to perfect the Mortgagee's security interest in the Personalty.

14. The Loan does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

[15. **{FOR USE ONLY IF MORTGAGOR IS A TRUST}** The Mortgagor is an irrevocable trust that has a term consistent with HUD's requirements and the term of the irrevocable trust is not affected by the terms of any of the beneficiaries' interests.] [The laws of the Property Jurisdiction govern the interpretation and the enforcement of the Loan Documents notwithstanding that the Mortgagor may be formed in a jurisdiction other than the Property Jurisdiction. The Mortgagor can sue and be sued in the Property Jurisdiction without the necessity of joining any of the beneficiaries of the Mortgagor, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Mortgage. Venue for any foreclosure proceeding under the Mortgage may be had in [Property jurisdiction].

[16. **{USE IN CASES INVOLVING BOND FINANCING}** Based solely on the opinion of _____ **{INSERT BOND COUNSEL}**, dated as of the date hereof and attached hereto as Exhibit ___, to the extent that any of the provisions of the Bond Documents are inconsistent with any of the provisions of the Loan Documents or Supporting Documents, the provisions of the Loan Documents or Supporting Documents shall govern.]

[17. **{USE IN CASES WHERE THE DEVELOPMENT OF THE PROPERTY IS GOVERNED BY AN AGREEMENT WITH A PUBLIC ENTITY}** Based upon our knowledge and the Certification of Mortgagor, there is no default under the Public Entity Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Agreement.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

(i) The Uniform Commercial Code of the Property Jurisdiction requires the periodic filing of continuation statements with _____ [and _____] not more than _____ prior to and not later than the expiration of the _____ year period from the date of filing of the Financing Statements and the expiration of each subsequent _____ year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property jurisdiction [and the Organizational Jurisdiction, if it is different,] 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 Property Jurisdiction [and the Organizational Jurisdiction, if it is different] 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 [I] confirm that:

(a) based on the Organizational Documents, the name of the Mortgagor in each of the Documents and the Title Policy and FHA Commitment is the correct legal name of the Mortgagor;

(b) the legal description of the Property is consistent in the Documents wherein it appears and in Exhibit B hereto;

(c) we [I] do not have any financial interest in the Project, the Property, or the Loan, other than fees for legal services performed by us, arrangements for the payment of which has been made; and we [I] agree not to assert a claim or lien against the Project, the Property, the Mortgagor, the Loan proceeds or income of the Project;

(d) other than as counsel for the Mortgagor, we have no interest in the Mortgagor (or any principal thereof) or the Mortgagee or any other party involved in the Loan transaction and do not serve as [a director, officer or] [an] employee of the Mortgagor or the Mortgagee. We have no undisclosed interest in the subject matters of this opinion. We do not represent the mortgagee-of-record, any investing lender or investor in the loan transaction, any bridge lender involved in the loan transaction, any lender with a commitment to purchase the loan or any interest therein or any other party involved in the Project or the loan transaction;

(e) based solely on the Surveyor's Report and the Surveyor's Plat, flood insurance [is **OR** is not] required pursuant to 42 U.S.C. 4012a(a); [**INSERT IF FLOOD INSURANCE IS REQUIRED**]; Based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of 42 U.S.C. 4012a(a);] and

(f) to our knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy.

The foregoing opinions are for the exclusive reliance of [Mortgagee, its counsel] and HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of Mortgagee, or prospective purchasers of the Loan. We [I] acknowledge that the making, or causing to be made, of a false statement of fact in this opinion letter and accompanying materials may lead to criminal prosecution or civil liability as provided pursuant to applicable law, which may include 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.

Sincerely,

[Authorized Signature]

**Guide For Opinion Of
Borrower's Counsel**

U.S. Department of Housing
and Urban Development
Office of Housing

OMB Approval No. 0000-0000
(Exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

{For use in HUD Insured MULTIFAMILY Transactions}

{TO BE ON FIRM LETTERHEAD}

{INSERT DATE OF ENDORSEMENT}

Re: Project Name _____
HUD Project No. _____
Location _____
Borrower _____

[LENDER]
[ADDRESS]

[LENDER'S ATTORNEY]
[ADDRESS]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
{INSERT APPROPRIATE HUD ADDRESS}

Ladies and Gentlemen:

We are [I am] [general/special] counsel to _____ **{INSERT NAME OF BORROWER}** (**Borrower**), a _____, **{INSERT TYPE OF ENTITY}** organized under the laws of the State of _____ **{INSERT STATE}** (**Organizational Jurisdiction**), in connection with a mortgage loan (**Loan**) in the [original/ increased] principal amount of _____ Dollars (\$ _____) from _____ **{INSERT NAME AND TYPE OF LENDER}** (**Lender**) to Borrower. The proceeds of the Loan shall be used to [construct/rehabilitate/purchase/refinance] that certain multifamily housing project (**Project**), commonly known as _____ and located in _____ **{INSERT COUNTY AND**

STATE} (said State to be referred to hereinafter as the “**Property Jurisdiction**”) on the property described in Exhibit B {ATTACH LEGAL DESCRIPTION} (together with all improvements and fixtures thereon) (**Property**). The Loan is being insured by the Federal Housing Administration (**FHA**), an organizational unit of the United States Department of Housing and Urban Development (**HUD**), pursuant to a commitment for insurance [of advances **OR** upon completion **OR** for refinancing] issued to Lender by _____, Agent of the Federal Housing Commissioner, dated _____ [as amended by that certain letter from _____ to _____, dated _____] (**FHA Commitment**). Borrower has requested that we [I] deliver this opinion and has consented to reliance by Lender's counsel in its legal representation of Lender, including rendering any opinion to Lender and to reliance by Lender and HUD in making and insuring, respectively, the Loan and has waived any privity between Borrower and us [me] in order to permit said reliance by Lender, counsel to Lender and HUD. We [I] consent to reliance on this opinion by Lender, counsel to Lender, and HUD.

In our [my] capacity as [general/special] counsel to Borrower, we [I] have prepared or reviewed the following:

- A. The [{**DESCRIBE ORGANIZATIONAL DOCUMENTS, e.g. for corporations: State certified copies of the articles of incorporation, the by-laws, the borrowing resolution, the incumbency certificate and the good standing certificate(s), fictitious Name Registration, Foreign Corporation Registration; for partnerships: certified copies of the partnership agreement and any amendments thereto, the certificate of limited partnership, and any amendments thereto, the good standing certificate (or its equivalent) if provided in the Organizational Jurisdiction, etc.}**] of Borrower (collectively, **Organizational Documents**);
- B. FHA Commitment [extensions and assignment(s) thereof, if any];
- C. Commitment issued by Lender and accepted by Borrower, dated _____ (**Loan Commitment**);
- D. Regulatory Agreement (_____) **{INSERT APPROPRIATE FORM NO.}** by and between HUD and Borrower, dated _____ (**Regulatory Agreement**);
- E. Note (94001M) in the original principal amount of _____ Dollars (\$ _____) **OR** in the increased principal amount of _____ Dollars (\$ _____) by Borrower in favor of Lender, dated _____ (**Note**);
- F. [The Security Instrument (Mortgage **OR** Deed of Trust)] (94000M **{WITH APPROPRIATE STATE RIDER ATTACHED}**), executed by Borrower for the

benefit of Lender, granting a security interest in the Property, dated _____, (**Security Instrument**);

G. **{INSERT THE NUMBER OF UCC's TO BE FILED}** Uniform Commercial Code Financing Statements to be filed by Lender and naming Borrower as debtor, executed by Borrower as debtor, and naming Lender and HUD, as its interest appears, as secured parties, to be filed in _____ **{INSERT LOCATION(S)}** (the Filing Offices), upon the **{DESCRIBE EVENTS}** (**Financing Statements**);

H. Security Agreement by and between Borrower and Lender, granting a security interest under the Uniform Commercial Code, in those items of personalty described therein, dated _____ (**Security Agreement**);

[I. **{TO BE INSERTED IF THE SECURITY INSTRUMENT IS ON A LEASEHOLD ESTATE}** Ground Lease executed by _____ **{INSERT LESSOR}** as lessor and Borrower as lessee recorded in the land records of _____, dated _____ (**Ground Lease**).]

[J. **{TO BE INSERTED FOR CONSTRUCTION/REHABILITATION LOANS}** Building Loan Agreement (HUD-92441M) executed by Lender and Borrower, dated _____ (**Building Loan Agreement**).]

[K. **{TO BE INSERTED FOR CONSTRUCTION/REHABILITATION LOANS}** Construction Contract (HUD-92442M) executed by _____ (**General Contractor**) and Borrower, dated _____ (**Construction Contract**).]

L. Lender's Certificate (HUD-92434M), executed by Lender, dated _____.

M. Escrow Agreement for Working Capital (HUD-92412M), executed by Borrower and Lender, dated _____.

N. Agreement and Certification (HUD-93305M) properly executed by Borrower and _____ **{INSERT APPROPRIATE PARTIES, IF ANY}**, dated _____.

O. Mortgagor's Oath (HUD-92478M), executed by Borrower, dated _____.

P. Borrower's Opinion Certification, pertaining to factual matters relied on by us [me] in rendering this opinion, executed by Borrower, dated _____, a copy of which is attached hereto as Exhibit (**Certification of Borrower**).

[Q. A receipt from the insurance company providing flood insurance evidencing payment for the premium, dated _____, (**Flood Insurance Receipt**).]

R. Title Insurance Policy [or Date-Down Endorsement if appropriate in a refinancing, for example] issued by _____ **{acceptable company under HUD's regulations}**, together with all endorsements, and naming HUD and Lender as insureds as their interests may appear, dated _____, (**Title Policy**).

[S. The following documents evidencing zoning compliance, _____, **{DESCRIBE ALL DOCUMENTS FULLY (Zoning Certificate)}**.]

[T. The building permit(s) issued on _____ by _____ (**Building Permit**).]

[U. The following permits, _____, **{DESCRIBE PERMITS}** that are required for the operation of the Project, issued by _____ on _____ (**Other Permits**).]

[V. Surveyor's Plat **OR** Survey showing completed Project, prepared by _____, dated _____, (**Survey**).]

W. Surveyor's Report (HUD-92457M), executed by _____, dated _____, (the "**Surveyor's Report**").

[X. Deferred note (HUD-91710M, HUD-91712M or HUD-92223M) executed by Borrower in favor of _____, dated _____, (**Deferred Note**).]

[Y. Performance Bond (HUD-92452M) and Payment Bond (HUD-92452A-M) issued by _____ (Surety) to secure payment and performance of _____ (General Contractor) and running to _____ **OR** the Completion Assurance Agreement (HUD-92450M) executed by General Contractor, dated _____, (**Assurance of Completion**).]

[Z. Owner-Architect Agreement (AIA B181 with HUD Supplement) executed by _____ **{INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT}** and Borrower, dated _____, (**Owner-Architect Agreement**).]

[AA. Off-Site Bond (HUD-92479M) issued by _____ (Surety) to secure the completion of off-site work by _____ (General Contractor) and running to Lender and HUD **OR** Escrow Agreement for Off-Site Facilities (HUD-92446M) with Schedule "A" executed by _____ dated _____ (**Assurance of Completion of Off-Site Facilities**).]

[BB. The following documents assuring water, electricity, sewer, gas, heat or other utility services (**Assurance of Utility Services**): _____
{DESCRIBE FULLY}.]

[CC. Contractor's and/or Borrower's Cost Breakdown (HUD-92328M) executed by the General Contractor, dated _____, (**Cost Breakdown**).]

[DD. Latent Defects Bond (HUD-93259M) issued by _____ and securing the performance of General Contractor and running to Lender and HUD **OR** Escrow executed by _____, dated _____
(Guarantee against Latent Defects).]

[EE. Escrow Agreement for Incomplete Construction (HUD-92456M) with Exhibit A executed by General Contractor, dated _____, (**On-Site Deposit Escrow**).]

[FF. Contractor's Prevailing Wage Certificate (on page 2 of HUD-92448M) executed by _____, dated _____, (**Contractor's Prevailing Wage Certificate**).]

GG. Request for Final Endorsement of Credit Instrument (HUD-92023M) and/or Request for Endorsement of Credit Instrument and Certificate of Lender, Borrower and General Contractor (HUD-92455M) executed by Borrower and Lender, dated _____, (**Request for Endorsement**). **{MODIFY AS APPROPRIATE FOR INSURANCE UPON COMPLETION, REFINANCINGS, ETC.}**

[HH. Escrow Agreement for Operating Deficit (HUD-92476a-M) executed by _____, dated _____, (**Operating Deficit Escrow**).]

[II. Repair Escrow executed by _____, dated _____, (**Repair Escrow**).]

[JJ. All documents executed by Borrower and any State or local government entity pertaining to development of the Property (**Public Entity Agreement**).]

[KK. The following documents executed or delivered in connection with the financing of the Loan with the proceeds of bonds or other third party source :
_____ **{LIST DOCUMENTS IN ACCORDANCE WITH INSTRUCTIONS}**
(Source Documents).]

LL. Good Standing Certificate(s) **{SEE "A" ABOVE}** issued by [Organizational Jurisdiction **OR** Property Jurisdiction, if different], dated _____
{DATE INSERTED MUST BE WITHIN THIRTY (30) DAYS OF THE DATE OF

ENDORSEMENT}, (Good Standing Certificate).

MM. A search conducted by _____ dated [no earlier than thirty (30) days before this opinion] of the public records of the federal District Court and State and local courts in: (i) the jurisdiction where the Property is located; (ii) the jurisdiction(s) where Borrower is located and does business; and (iii) the jurisdiction where the general partner, managing member, or similar person or entity is organized (**Docket Search**).

NOTE: Numerical references in parentheses above are to FHA and HUD form numbers.

The documents listed in B through I above are referred to collectively as the “**Loan Documents**.” The documents listed in J through NN are referred to collectively as the “**Supporting Documents**.” The documents listed in A through NN are referred to collectively as the “**Documents**.”

In basing the several opinions set forth in this document on “our [my] knowledge,” the words “our [my] knowledge” signify that, in the course of our [my] representation of Borrower, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words “our [my] knowledge” as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing Borrower in any capacity including, but not limited to, in connection with this Loan. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to known facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than Borrower (and any person executing any of the Documents on behalf of Borrower), has duly and validly executed and delivered each such instrument, document, and agreement to be executed in connection with the Loan to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

(b) Each person executing any of the Documents, other than Borrower (and any person executing any of the Documents on behalf of Borrower), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than Borrower (and any person executing any of the Documents on behalf of Borrower) are genuine.

(e) All Documents that were submitted to us [me] as originals are authentic; all Documents that were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records and all fees, charges, and taxes due and owing as of this date have been paid.

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

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

(i) Borrower has title or other interest in each item of (i) real and (ii) tangible and intangible personal property (**Personalty**) comprising the Property in which a security interest is purported to be granted under the Loan Documents [and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Loan as stated in the Documents 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 Documents. After reasonable inquiry of Borrower, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering our [my] opinion, we [I] also have assumed that: (i) if Fixture filings are required under the UCC, all Fixtures in which a security interest is created under the UCC are located at the Property except for the following itemized property: _____, and (ii) if Borrower is not a registered entity, Borrower's [state of organizational formation] [Chief Executive Office] [only place of business] [residence] is

located in _____. After reasonable inquiry of Borrower, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions and factual exception set forth in this paragraph are not justified.

In rendering this opinion, we [I] have, with your approval, relied as to certain matters of fact set forth in the Certification of Borrower, the Good Standing Certificate(s) [and certain other specified Documents,] as set forth herein. After reasonable inquiry of Borrower as to the accuracy and completeness of the Certification of Borrower, the Good Standing Certificate(s), [and such other Documents], we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

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

{TO BE USED IN CASES WHERE ORGANIZATIONAL DOCUMENTS WERE PREPARED BY BORROWER'S ATTORNEY}

1. Borrower is a _____ **{INSERT TYPE OF ENTITY}** duly organized and validly existing under the laws of the Organizational Jurisdiction. Borrower is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [], is in good standing under the laws of the Organizational Jurisdiction, [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction based on a review of _____.]

{OR, IF BORROWER IS A TRUST OR LIMITED LIABILITY COMPANY (LLC)}

Borrower is _____ **{INSERT NAME OF THE TYPE OF TRUST OR NAME OF LLC}** duly formed and validly existing under the laws of the Organizational Jurisdiction [, and is qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP BORROWER OR MANAGING MEMBER OF AN LLC BORROWER IS AN ENTITY}

The general partner or managing member of Borrower is a _____ **{INSERT TYPE OF ENTITY}**, duly organized, validly existing and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [], in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ **{INSERT TYPE OF ENTITY}** in the Property Jurisdiction].

{TO BE USED IN CASES, PRINCIPALLY REFINANCINGS, WHERE ORGANIZATIONAL DOCUMENTS WERE NOT PREPARED BY BORROWER'S ATTORNEY}

1. Based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [], Borrower is a _____ **{INSERT TYPE OF ENTITY}** validly existing under the laws of the Organizational Jurisdiction and in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{OR, IF BORROWER IS A TRUST}

Borrower is _____ **{INSERT NAME OF THE TYPE OF TRUST}** validly existing under the laws of the Organizational Jurisdiction [and is duly qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP BORROWER OR THE MANAGING MEMBER OF AN LLC IS AN ENTITY}

Based solely on the Good Standing Certificate(s), copy attached hereto as Exhibit [], the general partner of Borrower is a _____ **{INSERT TYPE OF ENTITY}**, validly existing and in good standing under the laws of _____ **{INSERT STATE}** [and is qualified to do business as a foreign _____ **{INSERT TYPE OF ENTITY}** in the Property Jurisdiction].

2. Borrower has the [corporate/partnership/trust] power and authority to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA Commitment.

3. 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 [corporate/partnership/trust] action by, or on behalf of, Borrower.

4. Each of the Loan Documents has been duly executed and delivered by Borrower and constitute the valid and legally binding promises or obligations of Borrower, enforceable against Borrower in accordance with its terms, subject to the following qualifications:

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

(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 may not be enforceable, but, subject to the qualifications set forth in this paragraph at (i) and (ii) above, such unenforceability shall not preclude (a) the enforcement of the obligation of Borrower to make the payments as provided in the Security Instrument and Note (and HUD's regulations), and (b) the foreclosure of the Security Instrument upon the event of a breach thereunder.

[5. {TO BE INSERTED WHEN ANY OR ALL OF THE LOAN DOCUMENTS ARE NOT HUD APPROVED FORMS OR WHEN HUD APPROVED FORMS HAVE BEEN REVISED OR MODIFIED IN CONNECTION WITH THE LOAN} The execution and delivery of, and the performance of the obligations under, the Loan Documents shall not violate the Organizational Documents of Borrower or any applicable provisions of local or State law.

[6. {INSERT IF THERE IS NO ZONING ENDORSEMENT INCORPORATED INTO THE TITLE POLICY} The attached Zoning Certificate states that the Property appears on the zoning maps of [Property Jurisdiction] as being located in a _____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a _____ is a permitted use in such zone.

OR

{INSERT WHERE THE USE IS AN EXCEPTION TO THE ZONING ORDINANCE} Based solely on the Zoning Certificate, the Property may be used for _____ as a permitted use.]

7. Based solely on (a) our [my] knowledge and (b) the Certification of Borrower, the execution and delivery of the Loan Documents shall not: (i) cause Borrower to be in violation of, or constitute a 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, or (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever on any of the property or assets of Borrower, except as specifically contemplated by the Loan Documents.

8. The Security Instrument is in appropriate form for recordation in _____ **{INSERT PROPER NAME OF LOCAL LAND RECORDS OFFICE}** of _____ **{INSERT COUNTY, STATE OR CITY, STATE}** of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

[9. **{FOR USE ONLY IF BORROWER IS A TRUST}** Borrower is an irrevocable trust that has a term consistent with Program Obligations and the term of the irrevocable trust is not affected by the terms of any of the beneficiaries' interests.] [The laws of the Property Jurisdiction govern the interpretation and the enforcement of the Loan Documents notwithstanding that Borrower may be formed in a jurisdiction other than the Property Jurisdiction. Borrower can sue and be sued in the 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. Venue for any foreclosure proceeding under the Security Instrument may be had in [Property Jurisdiction].]

[10. **{USE IN CASES INVOLVING TAXABLE OR TAX EXEMPT BOND FINANCING AND ANY OTHER FINANCINGS WHERE A THIRD PARTY SOURCE IS INVOLVED}** Based solely on the opinion of _____ **{INSERT BOND COUNSEL OR COUNSEL RENDERING OPINION IN THIRD PARTY SOURCE TRANSACTIONS}**, dated as of the date hereof and attached hereto as Exhibit, to the extent that any of the provisions of the Source Documents are inconsistent with any of the provisions of the Loan Documents or Supporting Documents, the provisions of the Loan Documents or Supporting Documents shall govern.]

[11. **{USE IN CASES WHERE THE DEVELOPMENT OF THE PROPERTY IS GOVERNED BY AN AGREEMENT WITH A PUBLIC ENTITY}** Based upon our knowledge and the Certification of Borrower, there is no default under the Public Entity Agreement, **{ADD THE FOLLOWING WHERE CONSTRUCTION IS INVOLVED}** and construction within the time frame specified in the Construction Contract shall not lead to a default under the Public Entity Agreement.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

We express no opinion as to the laws of any jurisdiction other than the laws of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different,] 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 Property Jurisdiction [and the Organizational Jurisdiction, if it is different] 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, after the date of this opinion, we become aware of any facts that might change the opinions expressed above.

We [I] confirm that:

- (a) Based on the Organizational Documents, the name of Borrower in each of

the Documents and the Title Policy and FHA Commitment is the correct legal name of the Borrower;

(b) The legal description of the Property is consistent in the Documents wherein it appears and in Exhibit B hereto;

(c) Except as provided in paragraph (d), we [I] do not have any financial interest in the Project, the Property, or the Loan, other than fees for legal services performed by us, arrangements for the payment of which have been made; and we [I] agree not to assert a claim or lien against the Project, the Property, Borrower, the Loan proceeds or income of the Project;

(d) Other than as Counsel to Borrower, we [I] have no interest in Borrower (or any principal thereof) or Lender or any other party involved in the Loan transaction and do not serve as [a director, officer or] [an] employee of Borrower or Lender. We [I] have no interest in the subject matters of this opinion other than as previously disclosed to and approved by HUD. We [I] do not represent Lender, any investing lender or investor in the Loan transaction, any bridge lender involved in the Loan transaction, any lender with a commitment to purchase the Loan or any interest therein or any other party involved in the Project or the Loan transaction;

(e) Based solely on the Surveyor's Report and the Surveyor's Plat or _____, flood insurance [is **OR** is not] required pursuant to 42 U.S.C. 4012a(a); **[{INSERT IF FLOOD INSURANCE IS REQUIRED}]** Based solely on the Flood Insurance Receipt, flood insurance is in effect that satisfies the requirements of 42 U.S.C. 4012a(a);]

(f) To our [my] knowledge, there are no liens or encumbrances against the Property that are not reflected as exceptions to coverage in the Title Policy;

(g) Based upon the Certification of Borrower and to the best of our [my] knowledge, there are no side-deals (transactions outside the parameters of the HUD form closing documents and the commitment) between Borrower and any party to the transaction) other than as disclosed in the Documents; and

(h) Based solely on (a) our [my] knowledge, (b) the Certification of Borrower and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body against Borrower (or any Principal thereof as defined in the HUD regulations), or the Property, **[{TO BE INSERTED WHEN BORROWER IS NOT A SOLE-ASSET BORROWER}]** or any other properties of Borrower (or any Principal) [, except as identified on Exhibit ____].

(i) This document does not deviate from the format approved by OMB and obtained from HUD on _____ except for such changes as have been identified to and specifically approved by HUD counsel.

The foregoing opinions are for the exclusive reliance of HUD, [Lender **OR** Lender and Lender's counsel] and any subsequent holder of the Note

Sincerely,

[Authorized Partner Signature]

This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD.

Name of Entity: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

{ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES}

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.