**OPINION OF [PROPERTY OPERATOR’S] [BORROWER’S] COUNSEL ON ORIGINATION OF MORTGAGE LOAN**

**(Seniors Housing)**

**NOTE: THIS OPINION COVERS SENIORS HOUSING MATTERS (INCLUDING BUT NOT LIMITED TO LICENSING AND MEDICAID MATTERS) AND IS REQUIRED IN ADDITION TO THE OPINION OF BORROWER’S COUNSEL (6401). THIS OPINION MUST BE DELIVERED FOR BORROWER AND EACH PARTY NAMED AS THE LICENSEE OR PERMITEE AND HOLDING THE LICENSING DOCUMENTS IDENTIFIED ON EXHIBIT C, INCLUDING IF SUCH LICENSEE OR PERMITEE IS A MASTER LESSEE, SUBLESSEE, OR PROPERTY MANAGER UNDER THE LOAN AGREEMENT. REVISE OPINION AS APPROPRIATE.**

[insert Effective Date]

Fannie Mae

1100 15th Street, NW

Washington, DC 20005

[Lender]

Re: Lender:

Borrower:

Property Name:

Property Address:

Mortgage Loan Amount: $

Ladies and Gentlemen:

We have acted as [special/general] counsel to [name], a [type of entity] [(“**Property Operator**”)][(“**Borrower**”)], in connection with a mortgage loan (the “**Mortgage Loan**”) in the original principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_ from [name], a [type of entity] (“**Lender**”) [to [name], a [type of entity] (“**Borrower**”)]. We have been advised that the proceeds of the Mortgage Loan are to be used to [refinance a loan secured by/purchase] a multifamily residential Seniors Housing Facility owned by Borrower and operated by [Property Operator][Borrower] known generally as [name of project] (the “**Mortgaged Property**”) located at [address] in [state and local jurisdictions] (the “**Property Jurisdiction**”).

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

In our capacity as counsel to [Property Operator][Borrower], we have examined the following:

A. the loan documents listed on Exhibit A (the “**Seniors Housing Loan Documents**”);

B. the Certificate of [Property Operator][Borrower] attached to this opinion as Exhibit B (the “**Opinion Certificate**”);

C. the licensing documents listed on Exhibit C and attached to this opinion as Exhibit D (the “**Licensing Documents**”); and

D. such other documents, matters, statutes, ordinances, published rules and regulations, published judicial and governmental decisions interpreting or applying the same, and other official interpretations as we deem applicable in connection with this opinion (the “**Ancillary Documents**”).

Any capitalized term not defined herein has the meaning given to it in the Seniors Housing Loan Documents.

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

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

(a) the due authorization, execution and delivery of all Seniors Housing Loan Documents;

(b) the terms and conditions of the Mortgage Loan as reflected in the Seniors Housing Loan 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 Seniors Housing Loan Documents; and

(c) the Seniors Housing Loan Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and obligations of the parties thereunder.

We have made reasonable inquiry of [Property Operator][Borrower] with respect to the above assumptions and, based on such inquiries, our review of the Seniors Housing Loan Documents and the Ancillary Documents, and our knowledge, nothing has come to our attention that leads us to believe that we are not justified in so assuming. In rendering this opinion we have, with your approval, relied as to certain matters of fact in the Opinion Certificate and on the Ancillary Documents as set forth herein.

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

1. The execution and delivery of the Seniors Housing Loan Documents will not (a) violate any law or regulation and (b) based solely upon (i) our knowledge and (ii) the Opinion Certificate, conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which [Property Operator][Borrower] is subject.

2. No authorization, consent, approval, or other action by, or filing with, the Property Jurisdiction, any state court located within the Property Jurisdiction, federal court or other governmental authority is required in connection with, or as a result of, the execution and delivery by Borrower and Property Operator of the Seniors Housing Loan Documents or the consummation of the transactions contemplated thereby.

3. The Mortgaged Property is used as a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [insert as independent living facility, assisted living facility, etc. as so designated in the Property Jurisdiction]. Exhibit C of this opinion lists all licenses, permits, certificates, and approvals that are necessary and required to lawfully operate the Mortgaged Property as a [insert as independent living facility, assisted living facility, etc. as so designated in the Property Jurisdiction].

4. Each of the items listed on Exhibit C have been lawfully issued to [Property Operator][Borrower], are current, and are in full force and effect and there are no violations of record. Based solely on (a) our knowledge and (b) the Opinion Certificate, there is no legal action pending or threatened which would adversely affect the Licensing Documents or the operations at the Mortgaged Property.

5. The License is valid until \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The License must be renewed every \_\_\_\_ years. Renewal of the License must be applied for between \_\_\_ and \_\_\_ days prior to the expiration of the License. The Issuing Authority may deny or withhold renewal under the following circumstances: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. If the Issuing Authority determines that an application for renewal should not be approved or should be limited or modified, the Issuing Authority must implement the following procedures: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

6. The License may be revoked, suspended or limited under the following circumstances: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Foreclosure of the Mortgaged Property by the Lender or any other transfer of the Mortgaged Property, [will/will not] result in a revocation, suspension or limitation of the License, [except] under the following circumstances:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Based solely upon (a) our knowledge and (b) the Opinion Certificate, there currently exist no grounds for the revocation, suspension or limitation of the License for the Mortgaged Property.

7. Once the License has been issued by the Issuing Authority, a further determination of public need/certificate of need is required only under the following circumstances: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

8. Neither the execution and delivery of the Loan Agreement, the Note, the Security Instrument, or the other Loan Documents, or the Facility Operating Agreement, Borrower’s or Property Operator’s performance thereunder, nor the recordation of the Security Instrument or any other Loan Document will adversely affect the Licenses.

9. Except as indicated below, there are no laws or regulations which establish rent control or maximum amounts of money which can be charged by [Property Operator][Borrower] to the residents or tenants for services or which require or otherwise regulate deposits or other payments in advance (including, without limitation, payments which in other contexts might be referred to as security deposits) other than the legal provisions that such deposits bear interest in favor of the resident at a rate determined by the legislature from time to time: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

10. **[DRAFTING NOTE – Include if [Property Operator’s][Borrower’s] operation of the Mortgaged Property is funded in any part by Medicaid:** [Property Operator][Borrower] has a current Medicaid Provider Agreement. Based upon (a) our knowledge and (b) the Opinion Certificate, there has not been and there currently is not pending or threatened, any claim, penalty, investigation or other action by or on behalf of any court or administrative or other governmental body against [Property Operator][Borrower], or the Mortgaged Property, including, but not limited to, those resulting from a failure to comply with the Stark Law, as amended (42 U.S.C. § 1395nn), the federal Anti-Kickback Law (42 U.S.C. § 1320a-7b), the False Claims Act (31 U.S.C. § 3729, et seq.), any applicable conditions of participation with respect to Medicaid or any other laws or regulations involving governmental reimbursement, and there are no other proceedings pending which would prevent [Property Operator][Borrower] or the Mortgaged Property from participating in Medicaid.**]**

11. **[DRAFTING NOTE – Include if [Property Operator’s][Borrower’s] operation of the Mortgaged Property is funded in any part by Medicaid:** The granting to Lender of a security interest in the Medicaid payments in the manner contemplated by the Seniors Housing Loan Documents does not violate the provisions of 42 U.S.C. §§ 1395g(c) or 1396a(a)(32) or the laws of the Property Jurisdiction applicable to the reassignment of Medicaid payments.**]**

We express no opinion as to the laws of any jurisdiction other than the laws of the Property Jurisdiction and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the Property Jurisdiction and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

We confirm that we have no financial interest in the Mortgaged Property, nor the Mortgage Loan, and that other than as counsel to [Property Operator][Borrower], we have no interest in Borrower, Property Operator or Lender and do not serve as a director, officer or employee of Borrower, Property Operator or Lender. We have no undisclosed interest in the subject matters of this opinion.

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

Very truly yours,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Authorized Signature]

LIST OF EXHIBITS

EXHIBIT A - List of Seniors Housing Loan Documents

Exhibit B - Opinion Certificate

Exhibit C -List of All Licenses, Permits, Certificates and Approvals Necessary to Operate Seniors Housing Facility

Exhibit D - Copies of All Licenses, Permits, Certificates and Approvals Necessary to Operate Seniors Housing Facility

**EXHIBIT A**

**List of Seniors Housing Loan Documents**

1. Multifamily Loan and Security Agreement (and any schedules, exhibits and/or other addenda) dated as of \_\_\_\_\_\_\_\_\_\_\_\_, executed by Borrower and Lender (the “**Loan Agreement**”);
2. Multifamily Note (and any schedules) dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in the original principal amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) executed by Borrower payable to the order of Lender (the “**Note**”);
3. Multifamily [Deed of Trust] [Mortgage] [Deed to Secure Debt], Assignment of Leases and Rents [and] Security Agreement [and Fixture Filing] (and any exhibits), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, executed by Borrower for the benefit of Lender (the “**Security Instrument**”), granting a security interest in the Mortgaged Property;
4. [Indicate number of UCCs to be filed] Uniform Commercial Code Financing Statements naming Borrower as debtor and naming Lender as secured party; and [indicate number of UCCs to be filed] Uniform Commercial Code Financing Statements naming Property Operator as debtor and naming Lender as secured party (collectively, the “**Financing Statements**”);
5. [Subordination, Non-Disturbance and Attornment Agreement and Assignment of Leases and Rents, dated as of \_\_\_\_\_\_\_\_\_\_\_\_, executed by Borrower [, Master Lessee] [, Sublessee] and Lender;]
6. [Guaranty of Non-Recourse Obligations executed by Guarantor;]
7. Environmental Indemnity Agreement executed by Borrower for the benefit of Lender;
8. [Assignment of Management Agreement (Seniors Housing), dated as of \_\_\_\_\_\_\_\_\_\_\_\_, executed by Borrower [, Property Manager] [, Master Lessee] and Lender;]
9. [Collateral Assignment of Contracts, dated as of \_\_\_\_\_\_\_\_\_\_\_\_, executed by Borrower [, Master Lessee] [, Property Manager] and Lender;]
10. [Collateral Assignment of Licenses, dated as of \_\_\_\_\_\_\_\_\_\_\_\_, executed by Borrower [, Master Lessee] [, Property Manager] and Lender;]
11. [List all other Seniors Housing loan documents executed in connection with the Mortgage Loan; e.g., Modification to Multifamily Loan and Security Agreement (Medicaid Transition Reserve), Government Receivables Collection Account Agreement, Government Receivables Depositary Agreement, etc.].

**EXHIBIT B**

**Opinion Certificate**

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

1. There are no legal actions pending or threatened which would adversely affect the Licensing Documents (as defined in the Opinion Letter) or the operations at the Mortgaged Property (as defined in the Opinion Letter).

2. There currently exist no grounds for the revocation, suspension or limitation of the License (as defined in the Opinion Letter) for the Mortgaged Property.

3. The execution and delivery of the Seniors Housing Loan Documents will not conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which [Property Operator][Borrower] is subject.

4. **[DRAFTING NOTE: INCLUDE IF OPINION #10 RE: MEDICAID IS INCLUDED ABOVE]** There has not been and there currently is not pending or threatened, any claim, penalty, investigation or other action by or on behalf of any court or administrative or other governmental body against [Property Operator][Borrower] or the Mortgaged Property, including, but not limited to, those resulting from a failure to comply with the Stark Law, as amended (42 U.S.C. § 1395nn), the federal Anti-Kickback Law (42 U.S.C. § 1320a-7b), the False Claims Act (31 U.S.C. § 3729, et seq.), any applicable conditions of participation with respect to Medicaid or any other laws or regulations involving governmental reimbursement**[**, and there are no other proceedings pending which would prevent [Property Operator][Borrower] or the Mortgaged Property from participating in Medicaid**]**.

5. Due inquiry has been made of all individuals who could reasonably be expected to have knowledge of the matters contained herein.

6. [Include additional certifications from [Property Operator][Borrower] as may be required to support Counsel Opinion.]

IN WITNESS WHEREOF, [Property Operator][Borrower] has executed this Opinion Certificate effective as of the date set forth above.

**[PROPERTY OPERATOR][BORROWER]**:

By:

Name:

Title:

**EXHIBIT C**

**List of Licensing Documents**

**[Because licensing and regulatory requirements vary significantly from jurisdiction to jurisdiction, the following provisions provide guidance only as to types of certificates required and these provisions may be modified to accurately address the actual requirements in the Property Jurisdiction. It is essential that the listing be complete and thorough and all required state and local licenses, certificates, and permits required to lawfully operate the Mortgaged Property as an independent living facility, assisted living facility, Alzheimer’s or dementia care facility, or any combination thereof as such facility is designated in the Property JURISDICTION, as well as any other type of permit including, but not limited to, those set forth below, are listed and are in good standing.]**

1. License issued to \_\_\_\_\_\_\_\_\_\_\_\_\_ [Property Operator][Borrower] with respect to operating the Mortgaged Property as a [independent living facility, assisted living facility, etc., as so designated in the Property Jurisdiction] issued by the [identify issuing authority] (the “**Issuing Authority**”) as License No. \_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_ with an expiration date of \_\_\_\_\_\_\_\_\_\_\_\_, with a maximum capacity of \_\_\_\_\_\_ residents; (the “**License**”);
2. [A license issued to [Property Operator] [Borrower] to engage in a controlled substance activity identified as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ issued by the \_\_\_\_\_\_\_\_\_\_\_\_\_ [identify issuing authority] as License No. \_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_ with an expiration date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Controlled Substance License**”);]
3. [A license/certification issued to [Property Operator] [Borrower] to operate a laboratory or provide waived testing issued by the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [identify issuing authority] as License/Certification No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_ with an expiration date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Laboratory Certificate**”);]
4. [A food service establishment permit issued to [Property Operator] [Borrower] authorizing the Mortgaged Property to be operated as an “eating place” as License No. \_\_\_\_\_\_\_\_\_\_, issued by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [identify issuing authority] on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with an expiration date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Food Service Permit**”)].

The documents listed above as items 1 – [4] are attached hereto as Exhibit D.

**EXHIBIT D**

**Copies of Licensing Documents**

[See attached]