**OPINION OF BORROWER’S COUNSEL ON**

**DEFEASANCE OF MORTGAGE LOAN**

**[WITH ENFORCEABILITY OPINION]**

**[DRAFTING NOTE FOR RHODE ISLAND MORTGAGED PROPERTIES ONLY:  BEFORE REQUIRING AN ENFORCEABILITY OPINION IN RHODE ISLAND, LENDER’S COUNSEL MUST CONFIRM WITH RHODE ISLAND COUNSEL WHETHER AN ENFORCEABILITY OPINION MAY BE REQUESTED IN CONNECTION WITH THE MORTGAGE LOAN.]**

[insert defeasance closing date]

Fannie Mae

1100 15th Street, NW

Washington, DC 20005

Re: Lender:

Borrower:

Property Name:

Property Address:

Mortgage Loan Amount: $

Ladies and Gentlemen:

We have acted as [special/general] counsel to [name], a [type of entity] (“**Borrower**”), [and [name], the [general partner/managing member] of Borrower] in connection with the defeasance (the “**Defeasance**”) of a mortgage loan (the “**Mortgage Loan**”), which Mortgage Loan is evidenced by that certain Multifamily Note dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the original principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Note**”).

Borrower has requested that we deliver this opinion to you, has consented to reliance by Fannie Mae on this opinion in permitting the defeasance of the Mortgage Loan, and has waived any privity between Borrower and us in order to permit Fannie Mae to so rely on this opinion. We understand and, with the consent of Borrower, consent to your so relying on this opinion.

In our capacity as counsel to Borrower, we have examined the following:

A. Defeasance Notice dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, executed by Borrower (the “**Notice**”);

B. Investment Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, executed by Borrower (the “**Investment Agreement**”), Fannie Mae and Multifamily Collateral Corporation, as the successor borrower (“**MCC**”);

C. Defeasance Pledge Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, executed by Borrower (the “**Pledge Agreement**”), granting to Fannie Mae a security interest in the Investment Securities as more specifically described in the Investment Agreement (the “**Securities**”);

D. Defeasance Assignment and Assumption Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, executed by Borrower, Fannie Mae and MCC (the “**Assignment and Assumption Agreement**”);

E. [List any and all other documents executed in connection with the Defeasance;]

F. A Certificate of Borrower attached to this opinion as Exhibit A (the “**Borrower’s Certificate**”);

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

H. Certified copies of the resolutions of Borrower [and each general partner/managing member] authorizing the Defeasance;

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

[J. With respect to [the general partner/managing member] of Borrower (i) certificates of [good standing/identify proper name of certificate] issued by the State of \_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a copy of which are attached to Exhibit C hereto (together, the “**[Manager/GP] Good Standing Certificate**”);]

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

The documents listed in A through [E] above are referred to collectively as the “**Defeasance Documents**.” The documents listed in [F] through [K] above are referred to collectively as the “**Ancillary Documents**.” The documents listed in A through [K] above are referred to collectively as the “**Documents**.”

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

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

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

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

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

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

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

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

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

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

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

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

2. [***IF THE GENERAL PARTNER/MANAGING MEMBER OF ANY TYPE OF BORROWER IS AN ENTITY:*** Based solely on the [Manager/GP] Good Standing Certificate, the [general partner/managing member] of Borrower is a [type of entity], duly organized, validly existing and in good standing under the laws of [jurisdiction].]

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

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

5. Each of the Defeasance Documents has been duly executed and delivered by Borrower, and the individual(s) executing the Defeasance Documents on behalf of Borrower have the authority to do so. [***OR, IF BORROWER IS AN INDIVIDUAL:*** Each of the Defeasance Documents has been duly executed and delivered by Borrower.]

6. Each of the Defeasance Documents constitutes the valid and legally binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject to the following qualifications:

(i) the effect of applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws affecting the rights of creditors generally; 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 Defeasance Documents may not be enforceable, but, subject to the qualifications set forth in the foregoing subparagraphs (i) and (ii), such unenforceability will not preclude the enforcement of the exercise of remedies contained in the Pledge Agreement upon the event of a material breach.

7. The execution and delivery of, and the performance of the obligations under, the Defeasance Documents, will not violate the Organizational Documents of Borrower.

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

9. Based solely upon (a) our knowledge and (b) the Borrower’s Certificate, there is no litigation or other claim pending before any court or administrative or other governmental body or threatened against Borrower, the Securities, or any other properties of Borrower, except as may be stated in Exhibit D attached hereto.

10. Based solely on (a) our knowledge and (b) the Borrower’s Certificate, no authorization, consent, approval or other action by, or filing with, any [organizational jurisdiction] or federal court or governmental authority is required in connection with the execution and delivery by Borrower of the Defeasance Documents.

11. Borrower’s granting of a lien and security interest in the Substitute Collateral and the assignment and assumption by MCC, and each of them, when considered in combination and separately, are not subject to avoidance under any applicable federal or state laws, including Sections 547 and 548 of the U.S. Bankruptcy Code.

***[APPLICABLE ONLY IF THE NOTE IS HELD BY A REMIC TRUST:***

12. (A) As of the date hereof:

(i) the Defeasance has been effected in accordance with the requirements of Treasury Regulation Section 1.860G-2(a)(8) (as such regulation may be modified, amended or replaced from time to time);

(ii) the qualification and status of the REMIC Trust as a REMIC will not be adversely affected or impaired as a result of the Defeasance;

(iii) the REMIC Trust will not incur a tax under Section 860G(d) of the Code as a result of the Defeasance; and

(B) the Defeasance will not result in a “sale or exchange” of the Note within the meaning of Section 1001(c) of the Code and the temporary and final regulations promulgated thereunder.

We express no opinion as to the laws of any jurisdiction other than the laws of the state of Borrower’s organization 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 state of Borrower’s organization and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.]

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

**[Remainder of Page Intentionally Blank]**

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

Very truly yours,

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

[Authorized Signature]

**LIST OF EXHIBITS**

EXHIBIT A - Certificate of Borrower

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

Exhibit C - Certificates of Good Standing of Borrower [and Managing Members/General Partners of Borrower]

Exhibit D - List of Litigation

**EXHIBIT A**

**Certificate of Borrower**

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

1. The Organizational Documents (as defined in the Opinion Letter) are the only documents creating or governing the internal affairs of Borrower or authorizing the Defeasance, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.

2. The terms and conditions of the Defeasance as reflected in the Defeasance Documents (as defined in the Opinion Letter) have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Defeasance Documents.

3. Borrower’s [Chief Executive Office/only place of business/residence] is located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

4. No authorization, consent, approval, or other action by, or filing with, any [organizational and Mortgaged Property jurisdiction(s)] or federal court or governmental authority is required in connection with the execution and delivery by Borrower of the Defeasance Documents.

5. The execution and delivery of the Defeasance Documents will not (i) cause Borrower to be in violation of, or constitute a material default under the provisions of any agreement to which Borrower is a party or by which Borrower is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which Borrower is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of Borrower, except as specifically contemplated by the Defeasance Documents.

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

**[Remainder of Page Intentionally Blank]**

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

**BORROWER**:

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

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

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**EXHIBIT B**

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

[LIST ALL ORGANIZATIONAL DOCUMENTS OF PARTIES COVERED BY OPINION]

**EXHIBIT C**

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

[ATTACH GOOD STANDING CERTIFICATES FOR PARTIES COVERED BY OPINION]

**EXHIBIT D**

**List of Litigation**

[If “None,” so state.]