FORM OF OPINION OF COUNSEL FOR LENDER (UPON DELIVERY AND PLEDGE OF A PERMITTED INVESTMENT OR FUNDS WITH INSTRUCTIONS TO INVEST IN PERMITTED INVESTMENTS)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_

Fannie Mae

1100 15th St., NW

Washington, DC 20005

Attention: Multifamily Lender Risk Management

U.S. Bank National Association

1 Federal Street

Boston, Ma. 02110

Attention: Corporate Trust

 Fannie Mae DUS Account Officer [[1]](#footnote-1)

Re: Delivery and Pledge of Collateral other than a Letter of Credit under Amended and Restated Delegated Underwriting and Servicing Reserve Agreement

Ladies and Gentlemen:

We have acted as counsel to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Lender") in connection with the delivery and pledge of collateral under the [*insert appropriate modifier, if applicable, e.g., Second*] Amended and Restated Delegated Underwriting and Servicing Reserve Agreement ("Reserve Agreement"), executed by Lender, Fannie Mae ("Fannie Mae") and U.S. Bank National Association ("Collateral Custodian"). This opinion is being delivered at the direction of the Lender in satisfaction of certain of the requirements of Section 7.03 of the Reserve Agreement with respect to the initial delivery to Collateral Custodian of Collateral other than a Letter of Credit.

In such capacity as counsel for Lender, we have prepared, reviewed or examined, and are familiar with, originals or copies, certified or otherwise, identified to our satisfaction, of the following documents:

1. Reserve Agreement;
2. [List all organization documents of Lender and any general partner or member of Lender such as the Partnership Agreement, the Articles of Incorporation and By-laws or the Limited Liability Company Agreement] (collectively, the "Organizational Documents") and
3. [Certificate of good standing or equivalent document] respecting Lender dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, issued by the [designate state authority].

In connection with rendering the opinions set forth below, we have examined pertinent statutes and regulations and copies, certified or otherwise, identified to our satisfaction, of the records of [the managing general partner or managing member of Lender and the records of] Lender and have made such other investigation as we have considered necessary as a basis for the opinions expressed below.

In the course of our examination and review and in connection with the opinions expressed below we have assumed (i) the genuineness of all signatures other than Lender's; (ii) the authenticity of all documents submitted to us as copies; (iii) the due authorization, execution and delivery of the Reserve Agreement by all parties thereto other than Lender; (iv) that Collateral Custodian, as collateral agent and bailee of Fannie Mae, acquired its interest in Collateral constituting a Reserve Permitted Investment (as such term is defined in the Reserve Agreement) in good faith, for value, and without notice or knowledge of any lien, mortgage, security interest, encumbrance or other claim against such Collateral; (v) that the Reserve Permitted Investment (a) which is perfected by possession, is held in the continuous actual or constructive possession of Collateral Custodian in the State of Wisconsin following delivery or transfer, as the case may be, to Collateral Custodian and (b) which is perfected by filing pursuant to the Uniform Commercial Code, is held in the continuous actual or constructive possession of Collateral Custodian in the State of Minnesota following delivery or transfer, as the case may be, to Collateral Custodian; and (vi) the books and records of Collateral Custodian will identify such Collateral as held by Collateral Custodian solely and exclusively as collateral agent and bailee for Fannie Mae.

Based upon the foregoing, but subject to exceptions and exclusions set forth herein, it is our opinion that, Lender has duly and validly authorized the pledge of, and grant of a valid security interest in, lien upon and right of set-off against Collateral other than a Letter of Credit pursuant to the Reserve Agreement, and the Reserve Agreement creates the valid pledge and security interest that it purports to create in the Collateral.

The [list all offices, such as the Secretary of State, City Registrar, etc., in all jurisdictions, based on the jurisdiction of Lender's organization, the home office if a federally-chartered enterprise, Lender's principal place of business and Lender's operations, in which filing is advisable for perfection] are the only jurisdictions, and the only offices within such jurisdictions, in which the filing of Uniform Commercial Code financing statements with respect to a Reserve Permitted Investment are or would be necessary in order to perfect a security interest in the Reserve Permitted Investment, to the extent it constitutes or may be construed to constitute a contract right, account or general intangible under the Uniform Commercial Code.

Based on the laws of the State(s) of [jurisdictions in which UCC filings must be made] as of the date of this opinion, in order to continue the effectiveness of the financing statements referred to in the preceding paragraph, appropriate continuation statements must be filed at \_\_\_\_\_-year intervals after the original filing of such financing statements. Other than the foregoing, no recording or filing of the Reserve Agreement or any other documents is necessary to make effective the lien and perfected security interest of Fannie Mae in a Reserve Permitted Investment to the extent it constitutes or may be construed to constitute a contract right, account or general intangible under the Uniform Commercial Code.

We express no opinion as to the priority of the security interest in the Reserve Permitted Investment in favor of Fannie Mae in: (i) any claim or lien in favor of the United States or any state or agency or instrumentality thereof (including, by way of example and not limitation, federal or state tax liens, liens under the Employee Retirement Income Security Act of 1974, as amended, or claims under 31 U.S.C. 3713), or (ii) any liens, claims, interests or rights that arise by operation of law and that may take priority over perfected security interests.

We express no opinion as to the laws of any jurisdiction other than the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [insert jurisdiction(s) of Lender's organization and principal place of business and any other jurisdiction in which UCC filings must be made] and the laws of the United States of America.

In rendering the opinions set forth above, we have relied, with your permission, solely upon the opinion of counsel for Collateral Custodian with respect to the perfection of security interests in instruments and securities under the laws of the State of Wisconsin or the State of Minnesota, as the case may be. A copy of that opinion is attached as Exhibit A.

We are rendering the opinion to you and to Collateral Custodian at the request of our client solely for your benefit in connection with the initial delivery of Collateral other than a Letter of Credit pursuant to the Reserve Agreement, and the opinion may not be relied upon by any party other than the persons to whom it is addressed without our prior written approval.

Very truly yours,

cc: U.S. Bank National Association

[copy of opinion to be delivered concurrently to:

Fannie Mae

1100 15th St., NW

Washington, DC 20005

Attention: Multifamily Legal

Re: Multifamily Matters]

1. Insert Collateral Custodian's correct address, if changed. [↑](#footnote-ref-1)