

_____, 20__

Freddie Mac

Re Mortgage Loan assumed by ABC LLC

Ladies and Gentlemen:

We have acted as counsel to ABC LLC (“**New Borrower**”), a limited liability company organized in the State of Delaware (“**State of New Borrower’s Organization**”), and Gary Guarantor and Grant Guarantor (each a “**Guarantor**” and together, the “**Guarantors**”) in connection with mortgage loan in the original principal amount of \$_____ (“**Loan**”) that was made by Larry Lender, L.P. (“**Original Lender**”) to Betty Borrower, LLC (“**Original Borrower**”) and was assumed by New Borrower (the “**Assumption**”). The Loan is secured by a Multifamily Mortgage, Assignment Of Rents And Security Agreement, as assigned pursuant to the Assignment of Security Instrument, dated as of _____, 20__, by the Original Lender, as assignor, to Federal Home Loan Mortgage Corporation, a corporation organized and existing under the laws of the United States (“**Lender**”), as assignee, as assumed by the Assumption Agreement (defined below) (“**Mortgage**”) encumbering real property previously owned by Original Borrower and now owned by New Borrower located at _____ (as described on Exhibit "A" of the Mortgage, the “**Property**”). This opinion is being delivered in satisfaction of the requirements of Lender's approval of the assumption of the Loan by New Borrower.

BACKGROUND

Documents Reviewed.

In our capacity as counsel to New Borrower and Guarantors, we have examined the following documents, all dated as of _____, 20__, except where otherwise noted:

- (a) Multifamily Note (“**Note**”) in the original principal amount of \$_____, executed by Original Borrower and payable to the order of Original Lender;
- (b) The Mortgage;
- (c) Multifamily Loan and Security Agreement between Original Borrower and Original Lender;
- (d) Agreement for Amendment of Documents by the Original Borrower, _____ and _____ for the benefit of Original Lender;

- (e) UCC-1 Financing Statement (the “**Financing Statement**”) naming Original Borrower, as debtor, and Original Lender, as secured party;
- (f) Guaranty of each of the Guarantors;
- (f) Borrower's Underwriting Certificate by the Original Borrower for the benefit of the Original Lender; and
- (g) The Recycled Borrower's Certification by the Original Borrower.

We also have examined the following documents, all dated as of _____, 20__ except where otherwise noted:

- (h) Assumption Agreement executed by New Borrower, Original Borrower and Lender (“**Assumption Agreement**”);
- (i) Reaffirmation Agreement executed by Original Borrower, Guarantors and Lender (“**Reaffirmation Agreement**”);
- (j) Amendment to Multifamily Note executed by New Borrower for the benefit of Lender;
- (k) Amendment to Multifamily Loan and Security Agreement executed by New Borrower and Lender; and
- (l) Assignment of Management Agreement and Subordination of Management Fees between New Borrower, Lender and _____.
- (m) The UCC-3 Amendment to Financing Statement

The documents listed as (a) through (h) above are referred to below collectively as the “**Loan Documents.**” The documents listed as (i) through (l) above are referred to below collectively as the “**Assumption Documents.**”

We have also examined the following documents:

Scope of Review.

In rendering this letter we have also examined such certificates of public officials, limited liability company documents and records and other certificates and instruments as we have deemed necessary for the purposes of the opinions herein expressed. As to various questions of fact material to our opinions, we have relied upon certificates and written statements of officers, members or managers of New Borrower. In rendering our opinion, we have relied upon the opinion of _____ dated as of the date hereof as to the organization, existence and good standing of New Borrower in the State of Borrower’s Organization, the power and authority of New Borrower and the execution and delivery of the Loan Documents and Assumption Documents by New Borrower

Reliance Without Investigation.

We understand that with respect to title matters, you will be relying on the title insurance policy issued to you by the title insurance company. We have not made any investigation of and do not express an opinion as to, any matters of title to any property (whether real, personal or mixed). We also do not express any opinion as to the adequacy of the description of the property contained in the Financing Statement or the Mortgage or Assumption Agreement.

Opinion Assumptions.

In preparing this letter:

- (i) We have assumed the legal competency of all individual signers of documents.
- (ii) We have assumed that all signatures of parties other than New Borrower are genuine.
- (iii) We have assumed that all parties to the Assumption Documents and Loan Documents other than New Borrower have the power and authority to enter into and to execute, deliver and perform their respective obligations under the Assumption Documents to which they are a party.
- (iv) In those cases where we have examined copies of documents, we have assumed that those copies are complete and accurate. We have also assumed that all public records are accurate and complete.
- (v) With respect to New Borrower's qualification to conduct business, we have relied on a Certificate of Good Standing issued by the Secretary of State of California dated _____, 20__. A copy of that certificate is attached to this letter.
- (vi) We have assumed that New Borrower holds the requisite title and rights to the Property.
- (vii) We have assumed that there has not been any mutual mistake of fact or misunderstanding, fraud, duress or undue influence.
- (viii) We have assumed that the conduct of the parties to the Loan Documents and the Assumption Documents has complied with any requirement of good faith, fair dealing and conscionability.
- (ix) We have assumed that the Loan Documents and the Assumption 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 and there are no agreements or understandings among the parties, written or oral, and there is no usage of trade or course of prior dealing among the parties that would, in either case, define, supplement or qualify the terms of the Loan Documents or the Assumption Documents.

- (x) We have assumed that the Mortgage, Assumption Agreement and Financing Statement have been or will be duly recorded and/or filed and indexed in all places necessary (if and to the extent necessary) to create the encumbrance and lien as provided therein.

Opining Jurisdiction.

We express no opinion with respect to the effect of any law other than the law of the State of California (“**Property Jurisdiction**”) and the federal law of the United States.

OPINIONS

Based on the foregoing and upon such investigation as we have deemed necessary, and subject to the qualifications and exceptions herein contained, we are of the opinion that:

1. New Borrower is duly qualified to do business as a foreign limited liability company under the law of the Property Jurisdiction.
2. The Loan Documents and Assumption Documents are the legal, valid and binding obligations of New Borrower, enforceable against New Borrower in accordance with their respective terms, except as may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally, and (ii) general principles of equity (regardless of whether considered in a proceeding in equity or at law). The aforesaid opinion as to enforceability of the Loan Documents and Assumption Documents is also subject to the qualification that certain provisions contained in the Loan Documents and Assumption Documents may not be enforceable, but (subject to the limitations set forth in the foregoing clauses (i) and (ii)) such unenforceability will not render the Loan Documents or Assumption Documents invalid as a whole or substantially interfere with Lender’s practical realization of the principal benefits and/or security provided thereby.
3. The Guaranty and Reaffirmation Agreement are the legal, valid and binding obligations of each Guarantor, enforceable against such Guarantor in accordance with their terms, except as may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally, and (ii) general principles of equity (regardless of whether considered in a proceeding in equity or at law). The aforesaid opinion as to enforceability of the Guaranty and Reaffirmation Agreement is also subject to the qualification that certain provisions contained in the Guaranty and Reaffirmation Agreement may not be enforceable, but (subject to the limitations set forth in the foregoing clauses (i) and (ii)) such unenforceability will not render the Guaranty and Reaffirmation Agreement invalid as a whole or substantially interfere with the Lender’s practical realization of the principal benefits and/or security provided thereby.
4. The Loan, as assumed, will not violate any applicable usury laws of the Property Jurisdiction, or other applicable laws of the Property Jurisdiction regulating the interest

rate and the interest, fees and other charges that may be charged and/or collected with respect to the Loan.

5. (a) The Assumption Agreement is in proper form for recording and upon proper recording and indexing with the County of _____, California, the Mortgage and Assumption Agreement will continue to perfect Lender's security interest in all real property and fixtures described in the Mortgage, without the need for the filing of a financing statement with the County Clerk of _____ County, California.
- (b) The assignment of leases and rents in the Mortgage, as assumed pursuant to the Assumption Agreement, creates a valid collateral assignment of, or a valid lien or security interest in, certain rights under and to such leases and rents.
6. The Uniform Commercial Code as adopted in the Property Jurisdiction states that the Uniform Commercial Code as adopted in the State of New Borrower's Organization governs the method of perfection of the secured party's security interest in personal property that can be perfected pursuant to the Uniform Commercial Code as in effect in the State of New Borrower's Organization, except as to possessory security interests, negotiable documents, instruments, money, chattel, paper, fixtures, goods covered by certificates of title, deposit accounts, investment property and letters of credit.
7. The Loan Documents and Assumption Documents create a valid security interest in the personal property described in the Financing Statement. [**We need the UCC-3**]

QUALIFICATIONS

Notwithstanding any provision in this letter to the contrary, each of the opinions and confirmations set forth in this letter is subject to the following additional qualifications:

Exclusions.

No opinions should be implied beyond those expressly stated in this letter. Without limiting the generality of the preceding sentence, unless explicitly addressed in this letter, the opinions and confirmations set forth in this letter do not address any of the following legal issues, and we specifically express no opinion with respect thereto:

- (i) securities laws and regulations administered by the Securities and Exchange Commission (other than the Public Utility Holding Company Act of 1935), state "Blue Sky" laws and regulations, and laws and regulations relating to commodity (and other) futures and indices and other similar instruments;
- (ii) Federal Reserve Board margin regulations;
- (iii) pension and employee benefit laws and regulations (*e.g.*, ERISA);

- (iv) antitrust and unfair competition laws and regulations;
- (v) laws and regulations concerning filing and notice requirements (*e.g.*, Hart-Scott-Rodino and Exon-Florio), other than requirements applicable to charter-related documents such as a certificate of merger;
- (vi) compliance with fiduciary duty requirements;
- (vii) environmental laws and regulations;
- (viii) zoning, land use, condominium, cooperative, subdivision and other development laws and regulations;
- (ix) tax laws and regulations;
- (x) patent, copyright and trademark, state trademark, and other Federal and state intellectual property laws and regulations;
- (xi) racketeering laws and regulations (*e.g.*, RICO);
- (xii) health and safety laws and regulations (*e.g.*, OSHA);
- (xiii) labor laws and regulations;
- (xiv) laws, regulations and policies concerning (A) national and local emergency, (B) possible judicial deference to acts of sovereign states, and (C) criminal and civil forfeiture laws;
- (xv) bulk transfer law;
- (xvi) law concerning access by the disabled and building codes;
- (xvii) title to any property, the characterization of any property as real property, personal property or fixtures, or the accuracy or sufficiency of any description of collateral or other property; and
- (xviii) rank or priority of any lien or security interest.

Limitations.

Each of the opinions and confirmations set forth in this letter is subject to the effect of generally applicable rules of law that:

- (i) limit or affect the enforcement of provisions of a contract that purport to require waiver of the obligations of good faith, fair dealing, diligence, and reasonableness;

- (ii) provide that forum selection clauses in contracts are not necessarily binding on the court(s) in the forum selected;
- (iii) limit the availability of a remedy under certain circumstances where another remedy has been elected;
- (iv) limit the right of a creditor to use force or cause a breach of the peace in enforcing rights;
- (v) relate to the sale or disposition of collateral or the requirements of a commercially reasonable sale, including, without limitation, statutory cure provisions and rights of reinstatement and limitations on deficiency judgments;
- (vi) limit the enforceability of provisions releasing, exculpating or exempting a party from, or requiring indemnification of a party for, liability for its own action or inaction, to the extent the action or inaction involves gross negligence, recklessness, willful misconduct or unlawful conduct;
- (vii) may, where less than all of a contract may be unenforceable, limit the enforceability of the balance of the contract to circumstances in which the unenforceable portion is not an essential part of the agreed exchange;
- (viii) govern and afford judicial discretion regarding the determination of damages and entitlement to attorneys' fees and other costs;
- (ix) may, in the absence of a waiver or consent, discharge a guarantor to the extent that (A) action by a creditor impairs the value of collateral securing guaranteed debt to the detriment of the guarantor, or (B) guaranteed debt is materially modified;
- (x) may permit a party who has materially failed to render or offer performance required by the contract to cure that failure unless (A) permitting a cure would unreasonably hinder the aggrieved party from making substitute arrangements for performance, or (B) it was important in the circumstances to the aggrieved party that performance occur by the date stated in the contract;
- (xi) limit or affect the enforceability of a waiver of a right of redemption;
- (xii) impose limitations on attorneys' or trustees' fees;
- (xiii) purport to establish evidentiary standards;
- (xiv) provide for payment of penalty interest; and
- (xv) purport to select any State's law (other than that of the Property Jurisdiction) as the governing law for the Loan Documents or the Assumption Documents.

Additional Qualifications

- (i) Except as specifically set forth in paragraph 4 above, nothing herein shall be interpreted as an opinion, with respect to perfection, that perfection has in fact occurred.
- (ii) The enforceability of the Loan Documents and Assumption Documents under California's version of the Uniform Fraudulent Transfer Act, the rights and discharges of sureties and guarantors, and the enforceability of the waivers of the rights and defenses (including the right to a jury trial), are included, without limitation, within the limitations of creditors' rights which we except generally from our opinion.
- (iii) If California law is applied to the resolution of any issue involving interest or finance charges, you should be advised that the maximum interest rate under California law for the type of loans contemplated by this transaction is _____ percent (____%) per annum. You are advised that the enforceability or validity of provisions such as those found in the Loan Documents and Assumption Documents which seek to limit the interest rate to the maximum lawful rate have not been judicially determined under California law. We have also assumed that courts applying equitable principles would not re-characterize any of the fees, expense reimbursements, charges, taxes, or prepayments chargeable to New Borrower under the Loan Documents and Assumption Documents as interest for purposes of determining whether or not payments made or due from New Borrower exceed the _____% per annum maximum limit.
- (iv) Insofar as any of the opinions herein expressed concern the perfection of a security interest in proceeds, please be advised that such security interest will cease to be perfected within _____ (____) days after the receipt of such proceeds by the New Borrower unless compliance is made with the provisions of Section 1-9-315 of the Uniform Commercial Code governing the continuation of such perfection.
- (v) The perfection, priority and effectiveness of security interests in the Property which are purported to be created by the Mortgage and Assumption Agreement may be affected by the following: (i) liens, other security interests and encumbrances which may have priority or parity under the Uniform Commercial Code by virtue of matters or circumstances other than the chronological order of filings of financing statements under the Uniform Commercial Code, (ii) the perfection of security interests in and assignments of proceeds are limited by the operation of Section 1-9-315 of the Uniform Commercial Code and the other provisions of the Uniform Commercial Code referred to therein; and (iii) the rights of purchasers under Section 1-9-320, 1-9-323, 1-9-330 and 1-9-331 of the Uniform Commercial Code. In certain instances, liens for real and personal property taxes, levies or assessments, and mechanics' and materialmen's liens may have priority over the security interests perfected by the Mortgage and Assumption Agreement.

Knowledge.

As used in this letter, “**Actual Knowledge**” means, without investigation, analysis, or review of court or other public records or our files or inquiry of persons, with respect to the undersigned law firm (“**Opinion Giver**”), the conscious awareness of facts or other information by the Primary Lawyer or Primary Lawyer Group. “**Primary Lawyer**” means the lawyer in the Opinion Giver’s organization who signs this letter; any lawyer in the Opinion Giver’s organization who has active involvement in negotiating the Assumption, preparing the Assumption Documents or preparing this letter; and solely as to information relevant to a particular opinion issue or confirmation regarding a particular factual matter (*e.g.*, pending or threatened legal proceedings), any lawyer in the Opinion Giver’s organization who is primarily responsible for providing the response concerning that particular opinion issue or confirmation. “**Primary Lawyer Group**” means all of the Primary Lawyers when there are more than one.

Effective Date; No Obligation to Update.

This letter is rendered as of its date, and we express no opinion as to circumstances or events which may occur subsequent to such date. Further, we undertake no, and hereby disclaim any, obligation to advise you of any changes in or any new developments which might affect any matters or opinions set forth herein.

USE

This letter is furnished to you solely for your benefit, the benefit of subsequent holders of the Note, and any statistical rating agency that provides a rating on securities backed in part by the Mortgage. This letter may not be used, quoted from or relied upon by any other person without our prior written consent, except that you or a subsequent holder of the Note may deliver copies of this letter to (a) independent auditors, accountants, attorneys and other professionals acting on behalf of you or a subsequent holder of the Note, (b) governmental agencies having regulatory authority over you or a subsequent holder of the Note, (c) designated persons pursuant to an order or legal process of any court or governmental agency, (d) prospective purchasers of the Note and (e) any statistical rating agency which provides a rating on securities backed in part by the Mortgage.

Very truly yours,

Joe Smith, P.C.