

[NOTE: IF THE SAME FIRM REPRESENTS BOTH THE BORROWER AND A GUARANTOR, THIS OPINION AND THE OPINION OF GUARANTOR'S COUNSEL MAY BE COMBINED.]

**OPINION LETTER
(CME)**

BORROWER AND SPE EQUITY OWNER

(Revised 8-10-2011)

[LETTERHEAD OF COUNSEL]

[OPINION MUST BE DATED AS OF THE DATE OF THE LOAN DOCUMENTS]

[INSERT NAME AND ADDRESS OF LENDER]

Re: Mortgage Loan Made by _____ to _____

Ladies and Gentlemen:

We have acted as counsel to _____ (“**Borrower**”), a [corporation][limited liability company][limited partnership] [general partnership] organized in the State or Commonwealth of **[STATE]** (“**State of Borrower’s Organization**”) **[IF AN SPE EQUITY OWNERS IS APPLICABLE: and _____ (“SPE Equity Owner”), a [corporation][limited liability company] organized in the State or Commonwealth of [STATE] (“State of SPE Equity Owner’s Organization”)] [IF BORROWER IS A GENERAL PARTNERSHIP: and _____, a [corporation][limited liability company][limited partnership] organized in the State or Commonwealth of [STATE] and _____, a [corporation][limited liability company][limited partnership] organized in the State or Commonwealth of [STATE] (each a “General Partner” and collectively, the “General Partners”)] in connection with a mortgage loan in the original principal amount of \$_____ (“Loan”) to be made by _____ (“Lender”). The Loan will be secured by a [Multifamily Deed Of Trust, Assignment Of Rents, Security Agreement And Fixture Filing] [Multifamily Mortgage, Assignment Of Rents And Security Agreement] [Multifamily Deed To Secure Debt, Assignment Of Rents And Security Agreement] (“Mortgage”) encumbering real property owned by the Borrower located at _____ **[INSERT PROPERTY ADDRESS]** (“Property”).**

BACKGROUND

Documents Reviewed.

In our capacity as counsel to the Borrower [and] [SPE Equity Owner] [and General Partners], we have prepared or 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 the Borrower and payable to the order of the Lender
- (b) The Mortgage
- (c) [Multifamily Loan and Security Agreement]
- (d) [Replacement Reserve Agreement]
- (e) [Repair [Escrow] Agreement]
- (f) [Borrower’s Certificate of Representations and Warranties]
- (g) UCC Financing Statement (“**Financing Statement**”) naming Borrower, as debtor, and Lender, as secured party
- (_) [Cross-Collateralization Agreement]
- (_) All other documents executed by the Borrower and the Lender, or executed by the Borrower and delivered to the Lender, in connection with the closing of the Loan

The documents listed above are referred to below collectively as the “**Loan Documents**”.

We have also examined the following documents:

- (_) [Co-Tenancy Agreement]
- (_) **[IF SINGLE MEMBER DELAWARE LIMITED LIABILITY COMPANY, ADD: Certificate of Formation of the Borrower]**
- (_) **[IF SINGLE MEMBER DELAWARE LIMITED LIABILITY COMPANY, ADD: The Operating Agreement]**

Scope of Review.

In rendering this letter we have also examined such certificates of public officials, [corporate] [partnership] [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] [partners] [members] of 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.

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 the Borrower [and SPE Equity Owner] [and General Partners] are genuine.
- (iii) We have assumed that all parties to the Loan Documents other than the Borrower [and the SPE Equity Owner] [and General Partners] have the power and authority to enter into and to execute, deliver and perform their respective obligations under the Loan 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 the Borrower's [and SPE Equity Owner's] [and each General Partner's] good standing, we have relied on a [Certificate of Good Standing **OR INSERT CORRECT NAME OF CERTIFICATE OR, IF NOT APPLICABLE FOR GENERAL PARTNERSHIP, STATE THAT IT IS NOT APPLICABLE**] from the Secretary of State of State of Borrower's Organization [and State of SPE Equity Owner's Organization] [and State of each General Partner's Organization]. [A copy of that certificate is attached to this letter. **OR** A copy of those certificates are attached to this letter.]

[ADD THE FOLLOWING PARAGRAPH IF BORROWER, SPE EQUITY OWNER OR GENERAL PARTNER IS A FOREIGN CORPORATION, FOREIGN LIMITED PARTNERSHIP OR FOREIGN LIMITED LIABILITY COMPANY]

- (vi) With respect to the Borrower's [and SPE Equity Owner's] [and each General Partner's] qualification to conduct business, we have relied on a [Authorization to do Business **OR INSERT CORRECT NAME OF CERTIFICATE**] from the

Secretary of State of State of [Property Jurisdiction]. [A copy of that certificate is attached to this letter. **OR** A copy of those certificates are attached to this letter.]

- (vii) We have assumed that the Borrower holds the requisite title and rights to the Property.
- (viii) We have assumed that there has not been any mutual mistake of fact or misunderstanding, fraud, duress or undue influence.
- (ix) We have assumed that the conduct of the parties to the Loan has complied with any requirement of good faith, fair dealing and conscionability.
- (x) We have assumed that the 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 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.
- (xi) We have assumed that the Mortgage 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 or Commonwealth of **[STATE]** (“**Property Jurisdiction**”) **[(IF A FOREIGN STATE, ADD: , the State of Borrower’s Organization) (IF A FOREIGN STATE, ADD: , the State of SPE Equity Owner’s Organization) (IF A FOREIGN STATE, ADD: , the State of each General Partner’s Organization) (IF A DELAWARE SINGLE MEMBER OPINION IS REQUIRED, ADD: , applicable Delaware law,)]** 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. Borrower is a [corporation (a) duly incorporated, (b) validly existing and (c) in good standing] [limited partnership (a) duly formed, (b) validly existing and (c) in good standing] [limited liability company (a) duly organized, (b) validly existing and (c) in good standing] [general partnership (a) duly formed, (b) validly existing and (c) in good standing] **[ONLY IF APPLICABLE FOR GENERAL PARTNERSHIP]** under the laws of the State or Commonwealth of **[STATE]** **[IF A FOREIGN CORPORATION, FOREIGN LIMITED PARTNERSHIP OR A FOREIGN LIMITED LIABILITY COMPANY, ADD:]** and is duly

qualified to do business (**IF A FOREIGN LIMITED PARTNERSHIP, ADD:** as a foreign limited partnership) (**IF A LIMITED LIABILITY COMPANY, ADD:** as a foreign limited liability company) (**IF A FOREIGN GENERAL PARTNERSHIP, ADD:** as a foreign general partnership) under the law of the Property Jurisdiction].

2. Borrower has the [corporate] [partnership] [limited liability company] power and authority (a) to own, lease and operate the Property and (b) to execute, deliver, and perform Borrower's obligations under the Loan Documents.

[ADD THE FOLLOWING PARAGRAPH 3 IF SPE EQUITY OWNER APPLIES; RE-NUMBER PARAGRAPHS AS APPLICABLE]

3. [The SPE Equity Owner is a [corporation, (a) duly organized, (b) validly existing and (c) in good standing] [limited liability company (a) duly organized, (b) validly existing as a limited liability company and (c) in good standing] under the laws of the State of SPE Equity Owner's Organization and has all requisite [corporate] [limited liability company] power to own and operate its property and conduct its business.] [The SPE Equity Owner is qualified to do business in the Property Jurisdiction.]

[ADD THE FOLLOWING PARAGRAPH 4 IF A GENERAL PARTNERSHIP BORROWER IS USED; RE-NUMBER PARAGRAPHS AS APPLICABLE]

4. [Each General Partner is a [corporation, (a) duly organized, (b) validly existing and (c) in good standing] [limited liability company (a) duly organized, (b) validly existing as a limited liability company and (c) in good standing] [limited partnership (a) duly organized, (b) validly existing as a limited partnership and (c) in good standing] under the laws of the State of each General Partner's Organization and has all requisite [corporate] [limited liability company] [partnership] power to own and operate its property and conduct its business. Each General Partner is qualified to do business in the Property Jurisdiction.]
5.
 - (a) The execution and delivery of the Loan Documents by Borrower and the performance of Borrower's obligations under the Loan Documents have been duly authorized by all requisite action of Borrower.
 - (b) The Loan Documents have been duly executed and delivered by Borrower.

[INCORPORATE EACH OF THE FOLLOWING: PARAGRAPH 7 IF BORROWER IS A LIMITED PARTNERSHIP OR A GENERAL PARTNERSHIP OR PARAGRAPH 8 IF BORROWER IS A LIMITED PARTNERSHIP; MODIFY AS NECESSARY TO REFLECT PROPER ORGANIZATIONAL STRUCTURE; RE-NUMBER PARAGRAPHS AS APPLICABLE]

- [6. The sole General Partner(s) of Borrower is (are) _____ [all of which general partners acting together have] [each of which general partners acting

individually has] the full power and authority to bind Borrower in any or all matters relating to its business activities, including, without limitation, the power to enter into the Loan on behalf of Borrower and to execute and deliver all documents and instruments required in connection therewith.]

- [7. All required consents and approvals of the limited partners of Borrower have been obtained to permit the General Partner, on behalf of Borrower, to execute and deliver the Loan Documents and any other document or instrument required to close the Loan and to mortgage the Property and accept the Loan.]
8. The Loan Documents are the legal, valid and binding obligations of Borrower, enforceable against 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 is also subject to the qualification that certain provisions contained in the Loan 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 invalid as a whole or substantially interfere with the Lender's practical realization of the principal benefits and/or security provided thereby.
9. The execution and delivery by Borrower [and each General Partner] of the Loan Documents do not, and the payment by Borrower of the indebtedness evidenced by the Note will not:
 - (a) conflict with or violate any provision of the [Articles of Incorporation] [Partnership Agreement] [Operating Agreement] of Borrower [and each General Partner], or
 - (b) conflict with or violate any law, rule, regulation or ordinance applicable to Borrower [or any General Partner].
10. To our Actual Knowledge (as defined below), the execution and delivery by Borrower [and each General Partner] of the Loan Documents do not, and the payment by Borrower of the indebtedness evidenced by the Note will not:
 - (a) conflict with or violate or result in a breach of any of the provisions of, or constitute a default under, or result in the creation or imposition of a lien, charge or encumbrance upon any of the properties or assets of Borrower [and each General Partner] pursuant to, any agreement or instrument to which Borrower [or any General Partner] is a party or by which any of its properties is bound, or
 - (b) conflict with or violate any judgment, order, writ, injunction or decree binding on Borrower [or any General Partner].

11. We have no Actual Knowledge of any material pending or threatened lawsuits, claims or criminal proceedings against Borrower [or SPE Equity Owner] [or any General Partner] or specifically applicable to the Property.
12. The Loan, as made, 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.
13.
 - (a) The Mortgage is in proper form for recording and, without the need for the filing of a financing statement with the [Insert County where Property is Located] County Clerk, will perfect Lender's security interest in all real property and fixtures described in the Mortgage.
 - (b) The assignment of leases and rents in the Mortgage creates a valid collateral assignment of, or a valid lien or security interest in, certain rights under and to such leases and rents.
14. The Uniform Commercial Code as adopted in the Property Jurisdiction states that the Uniform Commercial Code as adopted in the State of 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 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.
15.
 - (a) The Loan Documents create a valid security interest in the personal property described in the Financing Statement, which Financing Statement is in appropriate form for filing with the Secretary of State of State of Borrower's Organization.
 - (b) Upon the filing of the Financing Statement with the State of Borrower's Organization Secretary of State, the security interest of Lender in the rights of Borrower in the personal property described in the Financing Statement will be perfected under the State of Borrower's Organization Uniform Commercial Code to the extent such a security interest can be perfected by the filing of financing statements under the State of Borrower's Organization Uniform Commercial Code.

[INCORPORATE THE FOLLOWING PARAGRAPH FOR TENANCY IN COMMON DEALS; INSERT EACH CO-TENANT BORROWER'S NAME IN THE DEFINITION OF BORROWER IN FIRST PARAGRAPH OR PROVIDE SEPARATE OPINIONS FOR EACH CO-TENANT BORROWER; RE-NUMBER PARAGRAPHS AS APPLICABLE]

16. We are of the opinion that a court sitting in the Property Jurisdiction, if properly presented with the facts of the case, would honor the waiver of right of partition contained in the Co-Tenancy Agreement.

[INCORPORATE EACH OF THE FOLLOWING PARAGRAPHS 17 THROUGH 20, IF BORROWER OR SPE EQUITY OWNER IS A SINGLE MEMBER DELAWARE LIMITED LIABILITY COMPANY. MODIFY AS NECESSARY TO REFLECT PROPER ORGANIZATIONAL STRUCTURE; RE-NUMBER PARAGRAPHS AS APPLICABLE.]

17. The [Operating Agreement] of Borrower dated as of _____ (“**Operating Agreement**”) constitutes a legal, valid and binding agreement of _____ (“**Member**”), and is enforceable against the Member in accordance with its terms.
18. While under the Delaware Limited Liability Company Act (“**LLC Act**”), on application to a court of competent jurisdiction, a judgment creditor of the Member may be able to charge the Member’s share of any profits and losses of Borrower and the Member’s right to receive distributions of Borrower’s assets (“**Member’s Interest**”), to the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the Member would otherwise have been entitled in respect of such Member’s Interest. Under the LLC Act, no creditor of the Member shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of Borrower. Thus, under the LLC Act, a judgment creditor of the Member may not satisfy its claims against the Member by asserting a claim against the assets of Borrower.
19. Under the Delaware Limited Liability Company Act, Borrower is a separate legal entity and the existence of the Borrower as a separate legal entity shall continue until the cancellation of the Certificate of Formation of the Borrower.
20. Under the Delaware Limited Liability Company Act and the Operating Agreement, the death, bankruptcy, insolvency or incapacity of the Member will not cause the Borrower to be dissolved or its affairs to be wound up.

INCORPORATE EACH OF THE FOLLOWING PARAGRAPHS 21 THROUGH 22 IF BORROWER OR SPE EQUITY OWNER IS A SINGLE MEMBER DELAWARE LIMITED LIABILITY COMPANY AND AN INDEPENDENT DIRECTOR IS REQUIRED. MODIFY AS NECESSARY TO REFLECT PROPER ORGANIZATIONAL STRUCTURE; RE-NUMBER PARAGRAPHS AS APPLICABLE.

21. A Delaware Court applying Delaware law would conclude that (i) in order for a person to file a voluntary bankruptcy petition on behalf of the Borrower, the prior unanimous consent of the Member and the [Board of Directors] (including the Independent Director), as provided in Section ____ of the Operating Agreement, is required and (ii) such provision contained in Section ____ of the Operating Agreement that requires the prior unanimous consent of the Member and the [Board of Directors] (including the Independent Director) in order for a person to file a voluntary bankruptcy petition of behalf of Borrower, constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member in accordance with its terms.

22. A federal bankruptcy court would hold that Delaware law, and not federal law, governs the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of the Borrower.

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.

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 Loan, preparing the Loan 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.

Sincerely,

[Name of Firm]