

Opinion by Counsel to
the Mortgageor

**U.S. Department of Housing and
Urban Development**
Office of General Counsel

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For use in Green Retrofit Transactions

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This information is required by Title XII of the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (the "Recovery Act"). The information will be used to assure that the mortgageor or owner entity has been validly formed, lawfully exists, and that the security property and the construction thereupon comply with appropriate local laws. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

APRIL 2003

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION**

GUIDE FOR

OPINION OF MORTGAGOR'S COUNSEL

{TO BE TYPED ON FIRM LETTERHEAD}

Re: Project Name _____
FHA Project No. (If applicable)
Location _____
Mortgagor _____

[PAE] ("PAE")
[ADDRESS]

[PAE'S ATTORNEY]
[ADDRESS]

SECRETARY OF HOUSING AND URBAN DEVELOPMENT

C/O OFFICE OF AFFORDABLE HOUSING PRESERVATION ("OAHP")

Ladies and Gentlemen:

We are [I am] [general/special] counsel to _____ **{INSERT NAME OF MORTGAGOR}** (the "Mortgagor"), a _____, **{INSERT TYPE OF ENTITY}** organized under the laws of the State of _____ **{INSERT STATE}** (the "Organizational Jurisdiction), in connection with a mortgage loan (the "Loan") in the original principal amount of _____ Dollars (\$_____) from _____ the Secretary of Housing and Urban Development (the "Mortgagee" or "HUD") to the Mortgagor. The proceeds of the Loan will be used for energy retrofit and green investments in that certain multifamily housing project (the "Project"), commonly known as _____ and located in _____ **{INSERT COUNTY AND STATE}** (said State to be referred to hereinafter as the "Property Jurisdiction") on the property described in Exhibit B **{ATTACH LEGAL DESCRIPTION}** (together with all improvements and fixtures thereon) (the "Property"). Title XII of the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (the "Recovery Act") authorizes the Secretary to create a program to make grants and loans for energy retrofit and green investments in certain multifamily rental apartment projects that receive project-based assistance (the "Green Retrofit Program"), and the Owner has received approval from HUD to participate in the Green Retrofit Program and receive the Loan under the Recovery Act for such purpose. A Participating Administrative Entity ("PAE") has assisted HUD's Office of Affordable Housing Preservation ("OAHP") with the implementation of the Green Retrofit Program.

The Mortgagor has requested that we [I] deliver this opinion and has consented to reliance by PAE's counsel in rendering its opinion to Mortgagee and to reliance by Mortgagee and OAHP in making and approving, respectively, the Loan and has waived any privity between Mortgagor and us [me] in order to permit said reliance by Mortgagee, PAE and its counsel, and OAHP. We [I] consent to reliance on this opinion by Mortgagee, PAE and its counsel, and OAHP.

In our [my] capacity as [general/special] counsel to the Mortgagor, we [I] have prepared or reviewed the following:

A. The [**{DESCRIBE ORGANIZATIONAL DOCUMENTS, e.g. for corporations: State certified copies of the articles of incorporation, the by-laws, the borrowing resolution, the incumbency certificate and the good standing certificate(s), fictitious Name Registration, Foreign Corporation Registration; for partnerships: certified copies of the partnership agreement and any amendments thereto, the certificate of limited partnership, and any amendments thereto, the good standing certificate (or its equivalent) if provided in the Organizational Jurisdiction, etc.}**] of the Mortgagor (collectively, the "Organizational Documents");

B. The Green Retrofit Plan Commitment dated _____, 200_ (the "Commitment");

C. The Use Agreement for the Green Retrofit Program by the Mortgagor for the benefit of HUD, dated _____, (the "Use Agreement");

D. The Green Retrofit Program Note (_____) **{INSERT APPROPRIATE FORM NO.}** [in the original principal amount of _____ Dollars (\$_____) by Mortgagor in favor of Mortgagee, dated _____, (the "Note");

E. The [state form FHA Mortgage **OR** Deed of Trust] ("Mortgage"), as modified by that certain [Mortgage **OR** Deed of Trust] Modification Agreement executed by Mortgagor for the benefit of Mortgagee, which includes the granting of a security interest in the Property, dated _____, (collectively, the "GRP Mortgage");

F. The Green Retrofit Program Rehabilitation Escrow Deposit Agreement executed by Mortgagor for the benefit of HUD, dated _____ (the "Green Retrofit Program REDA").]

G. The Mortgagor's Opinion Certification, pertaining to factual matters relied on by us [me] in rendering this opinion, executed by the Mortgagor, dated _____, a copy of which is attached hereto as Exhibit __ (the "Certification of Mortgagor").

H. The Good Standing Certificate(s) **{SEE "A" ABOVE}** issued by [Organizational Jurisdiction **OR** Property Jurisdiction , if different], dated _____ **{DATE INSERTED MUST BE WITHIN 30 DAYS OF THE DATE OF CLOSING}**, (the "Good Standing Certificate").

The documents listed in B through [--] above are referred to collectively as the "Green Retrofit Loan Documents." The documents listed in [--] through [--] are referred to collectively as the "Supporting Documents." The documents listed in [--] through [--] are referred to collectively as the "Documents."

In basing the several opinions set forth in this document on "our [my] knowledge," the words "our [my] knowledge" signify that, in the course of our [my] representation of the Mortgagor, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words "our [my] knowledge" as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Mortgagor in any capacity including, but not limited to, in connection with this Loan. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to known facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Mortgagor (and any person executing any of the Documents on behalf of the Mortgagor), has duly and validly executed and delivered each such instrument, document, and agreement to be executed in connection with the Loan to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

(b) Each person executing any of the Documents, other than the Mortgagor (and any person executing any of the Documents on behalf of the Mortgagor), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Mortgagor (and any person executing any of the Documents on behalf of Mortgagor) are genuine.

(e) All Documents which were submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and/or 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 Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair and impartial dealing; and (iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

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

(i) The Mortgagor has title or other interest in each item of (i) real and (ii) tangible and intangible personal property ("Personalty") comprising the Property in which a security interest is purported to be granted under the Loan Documents [and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I]

also have assumed that the terms and the conditions of the Loan as stated in the 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 Documents. After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering this opinion, we [I] have, with your approval, relied as to certain matters of fact set forth in the Certification of Mortgagor, the Good Standing Certificate(s) [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Mortgagor as to the accuracy and completeness of the Certification of Mortgagor, the Good Standing Certificate(s), [and such other Documents], we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

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

{TO BE USED IN CASES WHERE ORGANIZATIONAL DOCUMENTS WERE PREPARED BY MORTGAGOR'S ATTORNEY}

1. The Mortgagor is a _____ **{INSERT TYPE OF ENTITY}** duly organized and validly existing under the laws of the Organizational Jurisdiction. The Mortgagor is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [___], is in good standing under the laws of the Organizational Jurisdiction, [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction based on a review of _____.]

{OR, IF THE MORTGAGOR IS A TRUST}

The Mortgagor is _____ **{INSERT NAME OF THE TYPE OF TRUST}** duly formed and validly existing under the laws of the Organizational Jurisdiction [, and is qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP MORTGAGOR IS AN ENTITY}

The general partner of the Mortgagor is a _____ **{INSERT TYPE OF ENTITY}**, duly organized, validly existing and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [___], in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ **{INSERT TYPE OF ENTITY}** in the Property Jurisdiction].

{TO BE USED IN CASES, WHERE ORGANIZATIONAL DOCUMENTS WERE NOT PREPARED BY MORTGAGOR'S ATTORNEY}

1. Based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [], the Mortgagor is a _____ **{INSERT TYPE OF ENTITY}** validly existing under the laws of the Organizational Jurisdiction and in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction.

{OR, IF THE MORTGAGOR IS A TRUST}

The Mortgagor is _____ **{INSERT NAME OF THE TYPE OF TRUST}** validly existing under the laws of the Organizational Jurisdiction [and is duly qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP MORTGAGOR IS AN ENTITY}

Based solely on the Good Standing Certificate(s), copy attached hereto as Exhibit [], the general partner of the Mortgagor is a _____ **{INSERT TYPE OF ENTITY}**, validly existing and in good standing under the laws of _____ **{INSERT STATE}** [and is qualified to do business as a foreign _____ **{INSERT TYPE OF ENTITY}** in the Property Jurisdiction].

2. The Mortgagor has the [corporate/partnership/trust] power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the Commitment.

3. The execution and delivery of the Loan Documents by or on behalf of the Mortgagor, and the consummation by the Mortgagor of the transactions contemplated thereby, and the performance by the Mortgagor of its obligations thereunder, have been duly and validly authorized by all necessary [corporate/partnership/trust] action by, or on behalf of, the Mortgagor.

4. To the best of our knowledge there are no impediments to the mortgagor receiving all authorizations, consents, approvals, and permits required in the commitment with the execution, delivery and performance of the Loan Documents.

5. Each of the Loan Documents has been duly executed and delivered by the Mortgagor and constitute the valid and legally binding promises or obligations of the Mortgagor, enforceable against the Mortgagor in accordance with its terms, subject to the following qualifications:

(i) the effect of applicable bankruptcy, insolvency, 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 Loan Documents may not be enforceable, but, subject to the qualifications set forth in this paragraph at (i) and (ii) above, such unenforceability will not preclude (a) the enforcement of the obligation of the Mortgagor to make the payments as provided in the Mortgage and Note and (b) the foreclosure of the Mortgage upon the event of a breach thereunder.

6. The execution and delivery of, and the performance of the obligations under, the Loan Documents will not violate the Organizational Documents of the Mortgagor or any applicable provisions of local or State law.

7. To our [my] knowledge, the Mortgagor has received the requisite consents from the holders of all liens and/or encumbrances evidenced by any and all mortgages, deeds of trust, and other financing documents and regulatory documents of record relating to the Project.

8. To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the terms and conditions of the Green Retrofit Program REDA, dated _____, executed by _____ **{INSERT MORTGAGOR}**.

9. Based solely on (a) our [my] knowledge and (b) the Certification of Mortgagor, the execution and delivery of the Loan Documents will not: (i) cause the Mortgagor to be in violation of, or constitute a default under the provisions of, any agreement to which the Mortgagor is a party or by which the Mortgagor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Mortgagor is subject, or (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever on any of the property or assets of the Mortgagor, except as specifically contemplated by the Loan Documents.

10. Based solely on (a) our [my] knowledge, and (b) the Certification of Mortgagor; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Mortgagor, or the Property, [**{TO BE INSERTED WHEN MORTGAGOR IS NOT A SOLE-ASSET MORTGAGOR}** or any other properties of the Mortgagor] [, except as identified on Exhibit ____].

11. The Mortgage is in appropriate form for recordation in _____ **{INSERT PROPER NAME OF LOCAL LAND RECORDS OFFICE}** of _____ **{INSERT COUNTY OR CITY}** of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

12. The Loan does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

[13. **{FOR USE ONLY IF MORTGAGOR IS A TRUST}** The Mortgagor is an irrevocable trust that has a term consistent with HUD's requirements and the term of the irrevocable trust is not affected by the terms of any of the beneficiaries' interests.] [The laws of the Property Jurisdiction govern the interpretation and the enforcement of the Loan Documents notwithstanding that the Mortgagor may be formed in a jurisdiction other than the Property Jurisdiction. The Mortgagor can sue and be sued in the Property Jurisdiction without the necessity of joining any of the beneficiaries of the Mortgagor, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Mortgage. Venue for any foreclosure proceeding under the Mortgage may be had in [Property jurisdiction].

[14. **{USE IN CASES WHERE THE DEVELOPMENT OF THE PROPERTY IS GOVERNED BY AN AGREEMENT WITH A PUBLIC ENTITY}** Based upon our knowledge and the Certification of Mortgagor, there is no default under the Public Entity Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Agreement.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

We express no opinion as to the laws of any jurisdiction other than the laws of the Property jurisdiction [and the Organizational Jurisdiction, if it is different,] 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 Organizational Jurisdiction, if it is different] 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 [I] confirm that:

(a) based on the Organizational Documents, the name of the Mortgagor in each of the Documents is the correct legal name of the Mortgagor;

(b) the legal description of the Property is consistent in the Documents wherein it appears and in Exhibit B hereto;

(c) we [I] do not have any financial interest in the Project, the Property, or the Loan, other than fees for legal services performed by us, arrangements for the payment of which has been made; and we [I] agree not to assert a claim or lien against the Project, the Property, the Mortgagor, the Loan proceeds or income of the Project;

(d) other than as counsel for the Mortgagor, we have no interest in the Mortgagor (or any principal thereof) or the Mortgagee or any other party involved in the Loan transaction and do not serve as [a director, officer or] [an] employee of the Mortgagor or the Mortgagee. We have no undisclosed interest in the subject matters of this opinion. We do not represent the mortgagee-of-record, any investing lender or investor in the loan transaction, any bridge lender involved in the loan transaction, any lender with a commitment to purchase the loan or any interest therein or any other party involved in the Project or the loan transaction.

The foregoing opinions are for the exclusive reliance of PAE, its counsel, OAHF and HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of Mortgagee, or prospective purchasers of the Loan. We [I] acknowledge that the making, or causing to be made, of a false statement of fact in this opinion letter and accompanying materials may lead to criminal prosecution or civil liability as provided pursuant to applicable law, which may include 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.

Sincerely,

[Authorized Signature]

To be used in the Green Retrofit Program

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This information is required by 24 CFR 200.45, 200.46, and 200.60 through 200.78. The information will be used to assure that the mortgagor or owner entity has been validly formed, lawfully exists, and that the security property and the construction thereupon comply with appropriate local laws. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

APRIL 2003

**EXHIBIT A
TO OPINION OF MORTGAGOR'S COUNSEL**

CERTIFICATION OF MORTGAGOR

This Certification of Mortgagor is made the _____ day of _____, 20__, by _____, (the "Mortgagor") for reliance upon by _____ (the "Mortgagor's Counsel") in connection with the issuance of an opinion letter dated of even date herewith (the "Opinion Letter") by ("Mortgagor's Counsel") as a condition for the provision by the Secretary of Housing and Urban Development ("HUD") of the \$_____ loan (the "Loan") to Mortgagor. In connection with the Opinion Letter, the Mortgagor hereby certifies to Mortgagor's Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating the Mortgagor and that establish the criteria for authorizing the Loan, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.
2. The terms and conditions of the Loan as reflected in the 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 Loan Documents.

3. All tangible personal property of the Mortgagor in which a security interest is granted under the Loan Documents is located at the Property.
4. The execution and delivery of the Loan Documents will not (i) cause the Mortgagor to be in violation of, or constitute a material default under the provisions of any agreement to which the Mortgagor is a party or by which the Mortgagor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Mortgagor 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 the Mortgagor, except as specifically contemplated by the Loan Documents.
5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Mortgagor, the Property, or any other properties of the Mortgagor [except as identified on Exhibit [___], List of Litigation, in the Opinion Letter.]
6. There is no default under the Public Entity Agreement (as defined in the Opinion Letter) nor have events occurred which with the passage of time will result in a default under the Regulatory Agreement.

NOTE: All capitalized terms not defined herein shall have the meanings set forth in the Opinion Letter.

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

MORTGAGOR:

