

For use in the Section 202 and 811, Supportive Housing for the Elderly or Disabled Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FEDERAL HOUSING ADMINISTRATION

GUIDE FOR OPINION OF OWNER'S COUNSEL

TO BE TYPED ON FIRM LETTERHEAD

INSERT CAPITAL ADVANCE INITIAL CLOSING DATE

Re: Project Name-----

-

202/811 Project No.-----

Location-----

[OWNER]

[ADDRESS]

FEDERAL HOUSING COMMISSIONER

INSERT APPROPRIATE FIELD OFFICE ADDRESS

Ladies and Gentlemen: We are [I am] [general/special] counsel to --
---- INSERT NAME OF OWNER (the "Owner"), a ----- INSERT TYPE
OF ENTITY organized under the laws of the State of ----- INSERT
STATE, INCLUDES THE DISTRICT OF COLUMBIA AND PUERTO RICO
(the "Organizational Jurisdiction"), in connection with a first
Mortgage (Deed of Trust) and Mortgage Note ("Capital Advance") in
the amount of ----- Dollars (\$ -----) from HUD to the Owner. Such
Capital Advance is being made pursuant to a Capital Advance
Agreement dated as of the date hereof, by and between HUD and the
Owner and will be used to construct, rehabilitate or acquire and
maintain the captioned 202 project ("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 ----- ATTACH LEGAL DESCRIPTION
(together with all improvements and fixtures thereon) (the
"Property"). The Capital Advance is being issued, pursuant to
Section 202 of the Housing Act of 1959, as amended, a firm
commitment dated ----- and which expires on -----
("Commitment"). The Owner has requested that we [I] deliver this
opinion and has consented to reliance by HUD in making the Capital
Advance and has waived any privity between Owner and us [me] in
order to permit such reliance by HUD. We [I] consent to reliance on
this opinion by HUD.

In our [my] capacity as [general/special] counsel to the Owner, we
[I] have prepared or reviewed the following Capital Advance
Documents, Organizational Documents and Collateral Documents
(will be collectively referred to as "the Documents" unless expressly

limited to a group of the above referenced documents).

Note: Numerical references in parenthesis following the Documents listed below are to HUD form numbers:

CAPITAL ADVANCE DOCUMENTS:

A. BEFORE INITIAL CLOSING

1. Capital Advance Agreement (HUD 90167-CA).
2. Requisition for Disbursement of Capital Advance Funds (HUD-92403-CA).
3. Direct Deposit Sign-up Form (SF 1199A)
4. Project Rental Assistance Contracts (PRAC) documents:
 - a. Part I of Agreement to Enter into PRAC (HUD 90172A-CA);
 - b. Part II of Agreement to Enter into PRAC (HUD 90172B-CA);
 - c. Part I of the PRAC (HUD 90173A-CA); and
 - d. Part II of the PRAC (HUD 90173B-CA).

B. INITIAL CLOSING

1. Firm Commitment for Capital Advance Financing (HUD-92432-CA) [including reissued, revised or amended commitments, thereof, if any].
2. Owner's Certificate (HUD 92433-CA). [***8761**]
3. Evidence of Owner's Deposit (minimum capital investment) (escrow agreement, see 6(q)(1) of commitment) and ability to provide moveable furnishings and equipment not covered by capital advance, if necessary.
4. Agreement and Certification (HUD 93566-CA).
5. Mortgage Note (HUD-93432-CA).
6. Mortgage (Deed of Trust) (HUD-90165-CA).
7. Regulatory Agreement (HUD-92466-CA).
8. Use Agreement (HUD 90163-CA).
9. Owner's assurance of funds to cover costs over and above capital advance (if applicable).

ORGANIZATIONAL DOCUMENTS

(Documents regarding Organization of Non-Profit Owner)

1. Approved and certified articles of organization (Certificate of Incorporation (HUD-91732A-CA).
2. Certificate of Good Standing.
3. By-laws.
4. Incumbency Certificate.
5. Owner's I.R.S. Tax-Exemption Ruling.
6. Corporate Resolution.

COLLATERAL AND OTHER DOCUMENTS ("Collateral Documents")

1. Collateral Agreements, if any.
2. INSERT THE NUMBER OF UCC's TO BE FILED Uniform Commercial Code Financing Statements executed by the Owner as debtor and naming HUD as secured party as its interest may appear, to be filed in -----, INSERT LOCATION(S) (the Filing Offices), upon the DESCRIBE EVENTS (the "Financing Statements");
3. The Security Agreement by and between Owner and HUD, granting a security interest under the Uniform Commercial Code, in those items of personalty described therein, dated -----, (the "Security Agreement");
4. A search conducted by ----- dated ----- no earlier than 30 days before this opinion of the financing records of the county and Property Jurisdiction [and Organizational Jurisdiction] (the "UCC Search").
- [5. A receipt from the insurance company providing flood insurance evidencing payment for the premium, dated -----, (the "Flood Insurance Receipt").]
6. The Title Insurance Policy issued by ----- acceptable company under HUD's regulations, together with all endorsements, and naming HUD as insured, dated -----, (the "Title Policy").
- [7. The Surveyor's Plat OR Survey showing completed project, prepared by -----, dated -----, (the "Survey").]
8. The Surveyor's Report (HUD-92457), executed by -----, dated -----, (the "Surveyor's Report").
- [9. The following documents evidencing zoning compliance -----, DESCRIBE ALL DOCUMENTS FULLY (the "Zoning Certificate").]
- [10. The building permit(s) issued on -----, by ----- (the "Building Permit").]
- [11. The following permits, -----, DESCRIBE PERMITS which are required for the operation of the project, issued by ----- on ----- ("Other Permits").]

12. Construction Contract:

- a. Lump Sum (HUD 92442-CA) OR Cost Plus (HUD 92442A-CA), as appropriate;
- b. Contractor's Requisition (HUD 92448); and
- c. Construction Contract, Incentive Payment (HUD 92443-CA), if applicable.

[13. The Contractor's and/or Mortgagor's Cost Breakdown (HUD 92328) executed by the General Contractor, dated -----, (the "Cost Breakdown").]

14. Assurance of Completion:

- a. Performance/Payment Bond 100% Dual-Obligee (92452-CA); OR
- b. Performance Bond (FHA 2452) and Payment Bond (FHA 2452A) and Surety Company's Telegram or Facsimile; OR
- c. Completion Assurance Agreement (HUD 92450-CA).

[15. Owner-Architect Agreement (AIA Document B181) (see attached to Capital Advance Agreement; HUD 90167-CA) and HUD Amendment (HUD 90169-CA) executed by ----- INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT and Owner, dated -----, (the "Owner-Architect Agreement").]

16. Real Estate Tax Exemption (if applicable).

[17. Lease (if mortgage is on leasehold) (Lease Addendum at Appendix 14 of HUD Handbook 4571.5).]

18. Land-Dispositions Contract and Deed (required only for projects in urban renewal areas).

19. Insurance and fidelity bonds:

- a. All applicable insurance policies per Property Insurance Requirements (HUD-90164-CA), including Property Insurance Schedule (HUD-92329); and
- b. Blanket Fidelity Bond.

20. Assurance of Completion of Off-site Facilities, if applicable:

- a. Off-site Bond (HUD 90177-CA); OR
- b. Escrow Agreement for Off-site Facilities (HUD 90170-CA).

21. Fair Housing

- a. FHEO Certification in Connection with the development and operation of the project (assurance of compliance with HUD regulations (HUD Form 915); and

b. Affirmative Fair Housing Marketing Plan (HUD will determine if administratively satisfied; Exhibit 3 to PRAC).

[22. The following documents assuring water, electricity, sewer, gas, heat or other utility services (the "Assurance of Utility Services"):

DESCRIBE FULLY].

[23. The certificate executed by ----- INSERT ARCHITECT OR OTHER PROFESSIONAL, dated -----, (the "certificate").]

[24. A search conducted by ----- dated [no earlier than 30 days before this opinion] of the public records of the federal District Court and State and local courts in (i) the jurisdiction where the Property is located; and (ii) the jurisdiction(s) where the Owner is organized, located and does business ("Docket Search").]

[25. Additional Closing Requirements (State or local requirements).]

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 Owner, 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 Owner in any capacity including, but not limited to, in connection with the Capital Advance. 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 know 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 Owner (and any person executing any of the Documents on behalf of the Owner), has duly and validly executed and delivered each such instrument, document, and **[*8762]** agreement to be executed in connection with the Capital Advance 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 Owner (and any person executing any of the Documents on behalf of the Owner), 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 Owner (and any person executing any of the Documents on behalf of the Owner) are genuine.

(e) All Documents which are 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 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 Owner has title or other interest in each item of (i) real and (ii) tangible and intangible personal property ("Personality") comprising the Property in which a security interest is purported to be granted under the Documents [and, where Personality 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 Capital Advance 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 Owner, 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 our [my] opinion in paragraph 13, we [I] also have assumed that: (i) all Personality in which a security interest is created under the Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property and (ii) Owner's [Chief Executive Office] [only place of business] [residence] is located in ----- . After reasonable inquiry of the Owner, 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 Owner's Opinion Certificate, the Certificate of Good Standing [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Owner as to the accuracy and completeness of the Owner's Opinion Certificate, the Certificate of Good Standing, [and such other Documents], and 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 OWNER'S ATTORNEY

1. The Owner is a private non-profit corporation, duly organized and validly existing under the laws of the Organizational Jurisdiction. The Owner 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 ----- .

2. The Owner has the corporate power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications, tax exempt status and approvals to own (including the authority to borrow the proceeds of the Capital Advance, to encumber the Property with the Security Instrument, to execute the Capital Advance Documents) and operate the Property and such other assets as is necessary to carry on its business and to carry out all of the transactions contemplated by the Capital Advance Documents and Collateral Documents as of the date of this opinion and to comply with all applicable statutes and regulations of the Federal Housing Commissioner in effect on the date of the Firm Commitment.

3. The execution and delivery of the Capital Advance Documents and Collateral Documents (where applicable) by or on behalf of the Owner, and the consummation by the Owner of the transactions contemplated thereby, and the performance by the Owner of its obligations thereunder, have been duly and validly authorized by all necessary corporate action by, or on behalf of, the Owner.

4. All authorizations, consents, approvals, and permits have been obtained from, appropriate actions have been taken by, and necessary filings have been made with all necessary Organizational and Property Jurisdictions or federal courts or governmental authorities, all disclosed on Exhibit ----, attached hereto, and as listed and set forth in Paragraphs -- of this opinion [i.e., good standing certificate]. To the best of our knowledge, these represent all such authorizations, consents, approvals, permits, actions and filings that are required in connection with the execution and delivery by the Owner of the Capital Advance Documents and Collateral Documents (where applicable) and the ownership [and operation] of the Property.

5. Each of the Capital Advance Documents and Collateral Documents (where applicable) has been duly executed and delivered by the Owner and constitute the valid and legally binding promises or obligations of the Owner,

enforceable against the Owner 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;

(ii) the effect of the exercise of judicial discretion in accordance with general **[*8763]** principles of equity (whether applied by a court of law or of equity); and

(iii) certain remedies, waivers, and other provisions of the 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 Owner to make the payments as provided in the Mortgage and Note (and HUD's regulations), and (b) the foreclosure of the Mortgage upon the event of a breach thereunder.

[6. TO BE INSERTED WHEN ANY OR ALL OF THE LOAN DOCUMENTS ARE NOT HUD APPROVED FORMS OR WHEN HUD APPROVED FORMS HAVE BEEN REVISED OR MODIFIED IN CONNECTION WITH THE LOAN The execution and delivery of, and the performance of the obligations under, the Capital Advance Documents and Collateral Documents (where applicable), will not violate the Organizational Documents of the Owner or the applicable provisions of local or State law.]

[7. INSERT FOR LOANS INVOLVING CONSTRUCTION OR REHABILITATION 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 construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated -----, and executed by - ----- INSERT OWNER and ----- INSERT GENERAL CONTRACTOR, and referred to in the Construction Contract (the "Plans and Specification").]

[8. INSERT IF THERE IS NO ZONING ENDORSEMENT INCORPORATED INTO THE TITLE POLICY The attached Zoning Certificate states that the Property appears on the zoning maps of [Property Jurisdiction] as being located in a -- ---- zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a ----- is a permitted use in such zone.

Based solely on the Zoning Certificate, the Property may be used for ----- as a permitted use.]

[9. USE FOR NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION IN CASES WHERE HUD DOES NOT RECEIVE A CERTIFICATE DIRECTLY FROM THE PROFESSIONAL Based solely on the Certificate, construction/rehabilitation of the Project in accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.]

10. Based solely upon (a) our [my] knowledge and (b) the Owner's Opinion Certification, the execution and delivery of the Capital Advance Documents

and Collateral Documents (where applicable) will not: (i) cause the Owner to be in violation of, or constitute a default under the provisions of, any agreement to which the Owner is a party or by which the Owner is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Owner 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 Owner, except as specifically contemplated by the Capital Advance Documents or Collateral Documents.

11. Based solely upon (a) our [my] knowledge, (b) the Owner's Opinion Certification and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Owner, or the Property, [except as identified on Exhibit ---].

12. 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.

13. Filing of the Financing Statements in the Filing Offices will perfect the security interest in the Personalty of the Owner located in the Project Jurisdiction, but only to the extent that, under the Uniform Commercial Code as in effect in the Project Jurisdiction, a security interest in each described item of Personalty can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are required to be filed in order to perfect the security interest in the Personalty.

14. The Capital Advance does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

15. The laws of Property Jurisdiction govern the interpretation and the enforcement of the Capital Advance Documents and Collateral Documents (where applicable) notwithstanding that the Owner may be formed in a jurisdiction other than Property Jurisdiction. The Owner can sue and be sued in Property Jurisdiction, 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.

[16. APPLIES TO CASES WHERE THE LAND IS BEING PURCHASED FROM A PUBLIC BODY There is no default under the Public Entity Purchase 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 Purchase Agreement. RELIANCE IS PERMITTED ON THE BASIS OF KNOWLEDGE AND OWNER'S CERTIFICATE]

[17. APPLIES TO CASES WHERE THE PROJECT IS IN AN URBAN RENEWAL AREA There is no default under the Land Disposition Contract between ----- and -----, dated ----- and the time within which construction must be completed under the Capital Advance Agreement is within the time specified for completion in said Land Disposition Contract.]

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

(i) The Uniform Commercial Code of the Property Jurisdiction requires the periodic filing of continuation statements with ----- [and -----] not more than ----- prior to and not later than the expiration of the --- year period from the date of filing of the Financing statements and the expiration of each subsequent --- year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property Jurisdiction and [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 Owner in **[*8764]** each of the Capital Advance Documents and Collateral Documents (where applicable) and the Title Policy and Firm Commitment is the correct legal name of the Owner;

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

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

(d) other than as counsel for the Owner, we have no interest in the Owner or any other party involved in the Capital Advance transaction and do not serve as [a director, officer or] [an] employee of the Owner. We have no undisclosed interest in the subject matters of this opinion;

(e) based solely upon the Surveyor's Report and the Surveyor's Plat, flood insurance [is OR is not] required pursuant to [42 U.S.C. 4012a\(a\)](#). [INSERT IF FLOOD INSURANCE IS REQUIRED: Based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of [42 U.S.C. 4012a\(a\)](#).]

(f) we [I] do not represent any development team member or any other party or interest in connection with the above referenced housing project other than the Owner except for representation as the personal attorney for an individual associated with a development team member in matters not

involving the housing project. If a dispute arises between the Owner and a development team member, my efforts will be directed exclusively towards serving the Owner. We [I] have submitted to HUD an Identity of Interest and Disclosure Certification; and

(g) to our knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy.

The foregoing opinions are for the exclusive reliance of HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of the Owner, or prospective purchasers of the Project. 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]