

**Guide for Opinion of
Operator’s Counsel, and
Certification**
Section 232

**U.S. Department of Housing
and Urban Development**
Office of Residential
Care Facilities

OMB Approval No. 9999-9999
(exp. mm/dd/yyyy)

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{TO BE ON FIRM LETTERHEAD}

{INSERT DATE OF ENDORSEMENT}

[LENDER]
[ADDRESS]

[LENDER’S COUNSEL]
[ADDRESS]

U.S. Department of Housing and
Urban Development
{INSERT APPROPRIATE HUD ADDRESS}

Re: **Project Name:** _____
 FHA Project No.: _____
 Location: _____
 Borrower: _____
 Operator: _____

Dear Sir/Madam:

We are counsel to _____ (“Operator”), a [corporation/limited liability company/limited partnership] organized under the laws of the State of _____ (“Organizational Jurisdiction”) in connection with the mortgage loan (“Loan”) in the original principal amount of _____ (\$_____) from _____, a [insert name and entity type of lender] (“Lender”), to Operator’s landlord, _____, a _____ (“Borrower”). The proceeds of the Loan shall be used to construct/rehabilitate/purchase/refinance that certain [skilled nursing facility/intermediate care facility/board and care home/assisted living facility, as appropriate] commonly known as ____ (“Healthcare Facility”) located in ____ County, _____ (said state to be referred to herein as the “Property Jurisdiction”), on the real property legally described in **Exhibit A** hereto (“Land”). The Healthcare Facility, together with the Land, the improvements

located thereon or to be constructed thereon, and certain other property more particularly described in the Security Instrument (defined herein) is included in the "Project" as that term is used herein and in the Loan Documents. The Loan is being insured by the Federal Housing Administration ("FHA") an organizational unit of the United States Department of Housing and Urban Development ("HUD"), under the provisions of Section 232 of the National Housing Act and the regulations promulgated thereunder. Borrower and Operator have entered into an Operating Lease (defined below) and, in connection with the Loan to Borrower, and in order to secure Operator's performance under the Operating Lease, Operator has granted or will grant to Lender a security interest in certain assets of the Operator, including accounts and healthcare insurance receivables.

Borrower and Operator have requested that we deliver this opinion letter, and Borrower and Operator have consented to reliance on this opinion letter by the Lender and HUD in making and insuring, respectively, the Loan, and by Lender's counsel.

Each initially capitalized term used, but not otherwise defined, in this opinion shall have the meaning ascribed to such term in the Operator Security Agreement or Operator Regulatory Agreement (each defined below). Terms defined in the Uniform Commercial Code of any applicable state ("UCC") shall have the meanings set forth in the UCC. The following terms shall have the following meanings:

I. "Filing Collateral" means Operator's Collateral (defined hereafter) that constitutes any interest in accounts, equipment, inventory, general intangibles, instruments, or chattel paper as defined in the UCC, and for which perfection is completed by filing under Section 9-310(a) of the UCC.

II. "UCC Filing Office" means, with respect to the Operator, the office of the Secretary of State [or specify other comparable office] of the Organizational Jurisdiction.

III. "Land Records Recording Office" means the office of public land records of the county where the Healthcare Facility is located.

IV. "Control Collateral" means Operator's Collateral which constitutes deposit accounts, and upon which a security interest must be perfected by control as specified in Section 9-314 of the UCC.

In our capacity as counsel to the Operator, we have reviewed executed copies of the following:

A. The following documents with respect to Operator [INCLUDE OPERATOR'S PRINCIPAL, IF APPLICABLE]: Certificate of the [Secretary/Manager/Officer] on behalf of Operator, dated _____, 20____, authenticating the following organizational documents and resolutions [list all organizational documents, including]: [appropriate formation document(s) filed with the _____ [appropriate office] of the State of _____ on _____, 20____; the executed _____

[Operating Agreement or Bylaws] of Operator, dated _____, 20__; and the resolution of Operator dated _____, 20__ (collectively, “Organizational Documents”);

B. Healthcare Regulatory Agreement-Operator (HUD-92466A-ORCF) by and between HUD and Operator dated _____, 20__ (“Operator Regulatory Agreement”), and the Memorandum of Lease by and between Borrower and Operator, dated _____, 20__ (hereafter, “Memorandum of Operating Lease”);

C. Operator Security Agreement (HUD-92323-ORCF), dated _____, 20__, executed by the Operator as debtor in favor of Lender [and HUD] as secured parties (“Operator Security Agreement”), and covering the various items of collateral described therein (“**Operator’s Collateral**”);

D. Deposit Account Control Agreement (Non-Government Receipts) dated as of _____, 20__, by and among Operator, Lender and _____ [Depository Bank][(if applicable, add the following:), and _____ (“AR Lender”)] (“Control Agreement”);

E. Deposit Account Instructions Service Agreement (Government Receipts) dated as of _____, 20__, by and among Operator, Lender and _____ [Depository Bank][(if applicable, add the following:), and AR Lender] (“DAISA”);

F. [(Revise as applicable) Subordination, Non-Disturbance, and Attornment Agreement of Operating Lease **OR** Subordination Agreement (HUD-91110-ORCF) **{Use SNDA for Operators having no identity of interest with Borrower, Subordination Agreement for Operators who have an identity of interest with Borrower}** executed by Borrower, Lender, and Operator, dated _____, 20__;]

G. [FOR PROJECTS WITH AR FINANCING] Intercreditor Agreement (HUD-92322-ORCF), dated as of _____, 20__, executed by and among Borrower, Lender, Operator, and _____, a _____ [corporation] (“AR Lender”), and those certain accounts receivable loan documents executed by Operator, as borrower, and AR Lender, as lender, as listed in **Exhibit B** hereto (“AR Loan Documents”) [ADD IF APPLICABLE: ...and those certain accounts receivable loan documents executed by the affiliates of Operator, as borrower, and AR Lender, as lender, as listed in **Exhibit B**, and separately defined therein as the “Affiliated Credit Documents;”]

H. Cross-Default Guaranty of Subtenants (HUD-92331-ORCF) (if applicable), between Guarantor(s) and Sublandlord, dated _____, 20__;

I. Certification of Operator, pertaining to certain factual matters as relied upon by us in rendering this opinion, of even date herewith, a copy of which is attached hereto as **Exhibit C** (“Operator’s Opinion Certification”);

J. Certificate(s) of [Good Standing/Existence/Status] of Operator [INCLUDE OPERATOR’S PRINCIPAL, IF APPLICABLE] issued by the Secretary of State of the Organizational Jurisdiction, dated _____, 20__, [and by the Secretary of State of the

Property Jurisdiction, dated _____ [“Certificate of Foreign Status”] {if Organizational and Property Jurisdictions are not the same, must have Certificates from both jurisdictions for Operator} (“Good Standing Certificate(s)”), attached hereto as **Exhibit D**;

K. License for the Healthcare Facility issued to Operator by the State of _____ Department of _____, license number _____ (“License”) and the Certificate of Need, if any, applicable to the Project;

L. Administrator’s License issued to _____, the Administrator for the Project, by the State of _____ Department of _____, license number _____ (“Administrator’s License”);

M. Project Owner’s/Management Agent’s Certification (HUD-9839-ORCF) (if applicable), between Management Agent _____, and _____, dated _____, 20__;

N. Two (2) UCC-1 Financing Statements naming Operator as grantor and naming Lender [and HUD] as the secured party (ies) (“Operator Financing Statements”) to be filed in the UCC Filing Office and the Land Records Recording Office (together, the “Filing Offices”) in conjunction with the closing of the Loan;

O. Searches, as specified in Program Obligations, conducted by _____ dated _____, 20__ [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 Project is located; (ii) the jurisdiction(s) where the Operator is located and does business; and (iii) (if applicable) the jurisdiction where the general partner or managing member or similar entity of Operator is organized (“Docket Search”);

P. Searches conducted by _____ dated _____, 20__ [no earlier than 30 days before this opinion] of the financing records located in: (i) the Land Records Recording Office; and (ii) the UCC Filing Office (the “UCC Search”);

Q. Operating Lease dated _____, 20__, by and between Borrower and Operator [as amended by _____ dated _____] and the Estoppel Certificate furnished by Borrower and Operator to Lender and HUD dated of even date herewith.

All of the documents listed in A through Q above are referred to collectively as the “Documents”. The documents listed in B through H above are referred to collectively as the “Operator HUD Documents.” Those documents listed on **Exhibit B** hereto are referred to collectively as the “AR Loan Documents” [{ADD IF APPLICABLE:} and the “Affiliated Credit Documents”, respectively]. Operator’s accounts receivable loan evidenced by the AR Loan Documents is hereinafter referred as the “AR Loan.” The Operator HUD Documents and the AR Loan Documents are sometimes hereafter referred to, collectively, as the “Transaction Documents”. The documents listed in H through Q above are referred to collectively as the “Supporting Documents”.

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

In reaching the opinion set forth below, we have assumed, and to our knowledge there are no facts inconsistent with, the following:

AA. Each of the parties to the Transaction Documents, other than the Operator (and any person executing any of the Documents on behalf of the Operator), 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 Transaction Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

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

CC. Each natural person executing any of the Transaction Documents is legally competent to do so.

DD. All signatures of parties other than the Operator (and any person executing any of the Transaction Documents on behalf of Operator) are genuine.

EE. All Transaction Documents which were submitted to us as originals are authentic; all Transaction Documents which were submitted to us as certified or photostatic copies conform to the original document; and all public records reviewed are accurate and complete.

FF. All applicable Transaction Documents have been duly filed, indexed, and recorded among the appropriate official records, and all fees, charges, and taxes due and owing in connection therewith as of this date have been paid.

GG. The parties to the Transaction 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 Transaction 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 Transaction Documents.

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

II. Value has been given to the Operator in consideration of the security interest to be granted by Operator under the Operator Security Agreement, and, where Operator's Collateral is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Operator Security Agreement; and,

JJ. Operator has rights in the Operator's Collateral or the power to transfer rights in the Operator's Collateral to a secured party, including rights to the Project's accounts and deposit accounts for accounts receivables subject to the Control Agreement or the DAISA, or both.

KK. In rendering this opinion we also have assumed that the Transaction 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. We also have assumed that the terms and the conditions of the Loan 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 comprising or embodying same. After reasonable inquiry of the Operator, we have no knowledge of any facts or information that would lead us to believe that the assumptions in this paragraph are not justified.

LL. In rendering our opinion, we have, with your approval, relied as to certain matters of fact set forth in the Operator's Opinion Certification, the Good Standing Certificates, the License, the Transaction Documents and certain other specified Documents, as set forth herein. After reasonable inquiry of the Operator as to the accuracy and completeness of the Operator's Opinion Certification, and other such Documents, we have no knowledge of any facts or information that would lead us to believe that such reliance is not justified.

MM. Each of the Operator HUD Documents is governed by the laws of the Property Jurisdiction and the laws of the United States of America.

[If applicable] In rendering opinions 3 and 5 below, we have relied upon the opinions set forth in that certain opinion letter of _____ [state name of law firm] directed to this firm, dated _____, a copy of which is attached hereto as **Exhibit G, {if applicable}**.

Subject to the foregoing assumptions, and the exceptions and qualifications hereinafter contained, we are of the opinion that, under applicable law in effect on the date of this Opinion:

1. Based solely on the Good Standing Certificates, (a) the Operator is a [Choose, as appropriate: corporation/limited liability company/limited partnership] duly organized and validly existing under the laws of the Organizational Jurisdiction, and (b) the Operator is duly qualified to do business and is in good standing under the laws of the Property Jurisdiction.

[{ADD FOLLOWING REGARDING OPERATOR'S GENERAL PARTNER, MANAGING MEMBER, ETC., AS APPLICABLE:} Based solely on the Good Standing Certificates, the [INSERT GENERAL PARTNER, MANAGING MEMBER, ETC., AS APPLICABLE] of Operator is a [corporation/limited liability company/limited partnership] duly organized and validly existing under the laws of its organizational jurisdiction.]

2. The Operator has all the necessary power and authority of a corporation/limited liability company/limited partnership, and possesses all necessary governmental certificates, permits, licenses, qualifications and approvals to lease and operate the Project, and to carry out all of the transactions required of it in the Transaction Documents. A list of such certificates, permits, licenses, qualifications and approvals is attached hereto as **Exhibit E**.

3. The execution and delivery of the Transaction Documents by or on behalf of the Operator, and the consummation by the Operator of the transactions contemplated thereby, and the performance by the Operator of its obligations thereunder, have been duly and validly authorized by all necessary action as a [Choose, as appropriate: corporation/limited liability company/limited partnership] by, or on behalf of, the Operator.

4. Each of the Transaction Documents has been duly executed and delivered by the Operator and constitutes the valid and legally binding promises or obligations of Operator, enforceable against the Operator 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 Transaction 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 Lender from the practical realization of the principal benefits of the remedies provided for therein in event of a breach thereunder.

5. The execution and delivery by Operator of, and the performance of its obligations under, the Transaction Documents will not violate the Organizational Documents of the Operator.

6. Based solely on (a) our knowledge and (b) the Operator's Opinion Certification, the execution and delivery of the Transaction Documents will not: (i) cause the Operator to be in violation of or constitute a default under the provisions of, any agreement to which the Operator is a party or by which Operator is bound, (ii) conflict with, or result in the breach of, any court judgment, decree, or order of any governmental body to which Operator 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 Operator, except for such lien, charge or encumbrance contemplated by the Transaction Documents.

7. The Operator Security Agreement is effective to create a security interest in the Operator's Collateral in favor of the Lender and HUD (hereinafter sometimes collectively referred to as the "Secured Party") in those items of Operator's Collateral consisting of personal property in which a security interest can be created under Article 9 of the UCC, subject to the following qualification: no opinion is expressed concerning the creation or validity of any security interest in any health care licenses, provider agreements, certificates of need or healthcare receivables or any interest therein (collectively the "Healthcare Entitlements") to the extent that, directly or indirectly, assigning, transferring, pledging, hypothecating or otherwise conveying all or any portion of the Healthcare Entitlements is prohibited under relevant federal, state, or local law.

8. The Lender's security interest in the Control Collateral described in the Control Agreement(s) will be perfected upon (i) execution and delivery of the Operator Security Agreement by all parties thereto and (ii) execution and delivery of the Control Agreement(s) by all parties thereto.

9. [FOR PROJECTS WITH AR FINANCING] Based solely upon our review of the Transaction Documents, AR Loan Documents, and the Operator's Opinion Certification (attached as **Exhibit C** hereto), the accounts receivable and related deposit account collateral provided by Operator to AR Lender under the AR Loan Documents and to Lender under the HUD Documents are not subject to a security interest or otherwise provided as collateral or encumbered in favor of AR Lender to secure any indebtedness or obligation to AR Lender other than the obligations arising under the AR Loan Documents.

10. Based solely on (a) our [my] knowledge, (b) the Operator'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 Operator or the Project, except as identified in the List of Litigation (attached hereto as **Exhibit F**).

In addition to the foregoing opinions, we confirm that (a) the jurisdiction of the Depository Bank, for purposes of the Control Agreement and DAISA, within the meaning of Section 9-304 of the UCC is the state of _____ ("Control Collateral State"); and (b) under the Control Agreement and DAISA, the law governing perfection and priority relating to the deposit accounts designated in the Control Agreement and DAISA is the Uniform Commercial Code of the Control Collateral State.

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

(i) The Uniform Commercial Code, as adopted in the law of the state of the UCC Filing Office, requires the periodic filing of continuation statements with the UCC Filing Office not more than six months prior to and not later than the expiration of the 5-year period from the date of filing of the Operator Financing Statement and the expiration of each subsequent 5-year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Operator Financing Statement in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than (a) the laws of the Organizational Jurisdiction and the Property Jurisdiction, (b) the Uniform Commercial Code of the state of the UCC Filing Office and of the Control Collateral State, and (c) 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 these state laws, and the laws of 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.

The foregoing confirmations and opinions are for the exclusive reliance of HUD [and Lender OR Lender and Lender’s counsel], and have been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD.

By: /s/ _____

Printed Name, Title: _____

Dated: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

[ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES]

*** If counsel rendering this opinion has a concern as to whether issuing the opinion may be considered the unauthorized practice of law in your state, counsel should contact their State Bar for clarification. ***

Attachments:

- Exhibit “A” Legal Description
- Exhibit “B” List of AR Loan Documents [and Affiliated Credit Documents, if applicable]
- Exhibit “C” Certification of Operator
- Exhibit “D” Certificates of Good Standing
- Exhibit “E” List of Permits and Approvals
- Exhibit “F” List of Litigation
- Exhibit “G” [Supplemental] Legal Opinion, if applicable

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT “B”

AR LOAN DOCUMENTS

[Sample document titles]

1. Revolving Credit and Security Agreement
2. Guaranty Agreement
3. Deposit Account Instructions Service Agreement (governmental receivables)
4. Deposit Account Control Agreement (non-governmental receivables)
5. UCC-1 Financing Statements

AFFILIATED CREDIT DOCUMENTS (IF APPLICABLE)

[Sample document titles]

1. Revolving Credit and Security Agreement by and among AR Lender, as lender, and the following affiliates of Operator: _____
2. Deposit Account Instructions Service Agreement (governmental receivables)
3. Deposit Account Control Agreement (non-governmental receivables)
4. UCC-1 Financing Statements
5. [name of Operator-affiliated entity] Revolving Credit and Security Agreement (if applicable) (“Affiliated Non-HUD Credit Agreement”)

EXHIBIT “C”

CERTIFICATION OF OPERATOR

This Certification of Operator is made the ___ day of _____, 20__ by Operator for reliance upon by _____ (“Operator’s Counsel”) in connection with the issuance of opinion letter dated of even date herewith (the “Operator Opinion Letter”) by Operator’s Counsel as a condition for the provision of mortgage insurance by HUD of the Loan from Lender to Borrower. In connection with the Operator Opinion Letter, Operator hereby certifies to Operator’s Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating Operator or authorizing the Operator’s execution of the HUD Documents to which it is a party, and the Organizational Documents have not been amended or modified except as stated in the Operator Opinion Letter.

2. The execution and delivery of the Documents will not (i) cause the Operator to be in violation of, or constitute a material default under the provisions of any agreement to which the Operator is a party or by which the Operator is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Operator 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 Operator, except as specifically contemplated by the Transaction Documents.

3. The License and the Administrator’s License are in good standing and in force without modification or revocation, and are not subject to any consent order or judgment.

4. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Operator, the Healthcare Facility, or any other properties of the Operator[**{INSERT IF APPLICABLE}**], except as identified in **Exhibit F**, List of Litigation, in the Opinion Letter.]

5. [FOR PROJECTS WITH AR FINANCING] The terms and conditions of the AR Loan as reflected in the AR 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 AR Loan Documents.

6. [FOR PROJECTS WITH AR FINANCING] The accounts receivable and related bank deposit account collateral provided by Operator to AR Lender under the AR Loan Documents, if any, and to Lender under the HUD Documents are not subject to a security interest or otherwise provided as collateral or encumbered in favor of AR Lender to secure any indebtedness or obligation to AR Lender other than the obligations arising under the AR Loan Documents.

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

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

OPERATOR:

By: _____

Name: _____

Title: _____

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

Name of Entity: _____

By: /s/ _____

Printed Name: _____

Printed Title: _____

Dated: _____

[ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES]

EXHIBIT “D”

[ATTACH CERTIFICATE(S) OF GOOD STANDING – OPERATOR]

EXHIBIT “E”

[ATTACH List of Permits and Approvals – OPERATOR [if applicable]

EXHIBIT “F”

[ATTACH List of Litigation – OPERATOR [if applicable]]

EXHIBIT “G”

[SUPPLEMENTAL LEGAL OPINION TO OPERATOR’S ATTORNEY]