

**Guide for Opinion of
Master Tenant’s Counsel**
Section 232

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

OMB Approval No. 2502-0605
(exp. 03/31/2018)

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{For use in FHA-Insured Section 232 Transactions}

{TO BE TYPED ON FIRM LETTERHEAD}

{INSERT DATE OF ENDORSEMENT}

_____, 20__

U.S. Department of Housing and
Urban Development
[Address]

[Lender]
[Lender Address]

[Lender’s Counsel]
[Address]

Re: Project Name: _____
FHA Project No.: _____
Location: _____
Borrower: _____
Master Tenant: _____
Operator: _____

Dear Sir/Madam:

We are counsel to _____ (“Master Tenant”) 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 _____ [insert name and entity type] (“Borrower”). The proceeds of the Loan will be used to [finance] OR [refinance a loan or loans secured by] that certain [skilled nursing facility/intermediate care facility/board and care home/assisted living facility, as appropriate] commonly known as _____ (“Healthcare Facility”). 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. The Loan is being secured, in part, by personal property located in or on the Healthcare Facility, the real property on which the Healthcare Facility is located (“Land”) as described in **Exhibit A** attached hereto and incorporated herein, and any other improvements situated on the Land (“Improvements”) (the Land, the Healthcare Facility, and the Improvements, together with any and all assets of whatever nature or wherever situated and by which a lien is secured pursuant to the Loan, are hereinafter sometimes referred to as the “Project”). The Healthcare Facility is located in _____ County, _____ (said state to be referred to herein as the “Property Jurisdiction”).

Borrower and Master Tenant are parties to a Master Lease dated as of _____, 20__ (“Master Lease”), whereby the Master Tenant leases the Project from the Borrower. Master Tenant and _____ a [enter state and type of entity], (the “Operator”) are parties to an operating sublease for the Project dated as of _____, 20__ (“Operating Lease”), whereby the Master Tenant leases the Project to Operator. In order to secure Master Tenant's performance under the Master Lease, Master Tenant has granted or will grant to Lender a security interest in certain assets of the Master Tenant, including accounts and healthcare insurance receivables.

Borrower and Master Tenant have requested that we deliver this opinion letter, and Borrower and Master Tenant have consented to reliance on this opinion letter by the Lender and HUD, and the counsel of each, in making and insuring, respectively, the Loan.

Each initially capitalized term used, but not otherwise defined, in this opinion shall have the meaning ascribed to such term in the Master Tenant Security Agreement (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. “Master Tenant's Collateral” means the collateral granted to the Lender by the Master Tenant pursuant to the Master Tenant Security Agreement.
- II. “Filing Collateral” means Master Tenant's Collateral 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.
- III. “Control Collateral” means Master Tenant'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.

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

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

In our capacity as counsel to the Master Tenant, we have prepared or reviewed executed copies of the following:

- A. The following documents with respect to Master Tenant [INCLUDE MASTER TENANT'S PRINCIPAL, IF APPLICABLE]: Certificate of the [Officer/Manager] on behalf of Master Tenant, 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/Bylaws] of Master Tenant, dated _____, 20 __; and the authorizing resolution dated ____, 20__ (collectively, "Organizational Documents");
- B. Healthcare Regulatory Agreement - Master Tenant (HUD-92337-ORCF) for Healthcare by and between HUD and Master Tenant dated _____, 20__ ("Regulatory Agreement - Master Tenant");
- C. [(Revise as applicable) Master Lease Subordination, Non-Disturbance, and Attornment Agreement **OR** Subordination Agreement (HUD-92333-ORCF) **{Use SNDA for Master Tenant having no identity of interest with Borrower, use Subordination for Master Tenants who have an identity of interest with Borrower}**] executed by Borrower, Master Tenant, Operator and Lender, dated _____, 20__;]
- D. Master Tenant Security Agreement (HUD-92340-ORCF), dated _____, 20__, executed by the Master Tenant as grantor in favor of Lender and HUD as secured parties, and covering the various items of collateral described therein ("Master Tenant's Collateral");
- E. Two (2) UCC-1 Financing Statements naming the Master Tenant as grantor and the Lender and HUD as the secured parties ("Master Tenant Financing Statements") to be filed in the UCC Filing Office and the Land Records Recording Office (together, "Filing Offices") in conjunction with the closing of the Loan;
- F. [If applicable] Deposit Account Control Agreement (Non-Government Receipts) dated as of _____, 20__, by and among [Operator, Master Tenant] Lender and _____ [Depository Bank][(if applicable, add the following:), and _____ ("AR Lender")] ("Control Agreement");

- G. *[If applicable]* Deposit Account Instructions Service Agreement (Government Receipts) dated as of _____, 20__, by and among [Operator, Master Tenant] Lender and _____ [Depository Bank][*(if applicable, add the following:)*, and AR Lender] (“DAISA”);
- H. *[If Master Tenant is a party to AR Financing:* Intercreditor Agreement dated _____, executed by and among [Operator, Master Tenant,] Borrower, Lender and AR Lender;]
- I. *[If Master Tenant is a party to AR Financing:* Those certain accounts receivable loan documents executed by [Master Tenant, Operator] and other parties thereto as borrowers, and AR Lender, as lender, as listed in **Exhibit B hereto** (“AR Loan Documents”);]
- J. Certification of Master Tenant, pertaining to certain factual matters as relied upon by us in rendering this opinion, dated as of even date herewith, a copy of which is attached hereto as **Exhibit C** (“Master Tenant’s Opinion Certification”);
- K. Certificate of [Good Standing/Existence/Status] of Master Tenant [INCLUDE MASTER TENANT’S PRINCIPAL, IF APPLICABLE] issued by the _____ Secretary of State, dated _____, 20__, for Master Tenant as attached in **Exhibit D** hereto, [and, if applicable, a Certificate of Authority to do business as a foreign entity issued by the _____ Secretary of State, dated _____, 20__, for Master Tenant as attached in **Exhibit E** hereto] ([collectively,] “Good Standing Certificates”);
- L. Master Lease Estoppel Certificate furnished by Master Tenant and Borrower to Lender and HUD dated _____, 20__, together with the copy of the Master Lease attached thereto;
- M. Searches, as specified in Program Obligations, conducted by __, dated _____ of the public records of the federal District Court and State and local courts in: (i) the jurisdiction where the Healthcare Facility is located; and (ii) the jurisdiction(s) where the Master Tenant and Operator are located and do business (“Docket Search”);
- N. Searches conducted by _____ dated _____ of the financing records located in: (i) the Land Records Recording Office; and (ii) the UCC Filing Office (“UCC Search”).

All of the documents listed in A through N above are referred to collectively as the “Documents.” The documents listed in B through I above are referred to collectively as the “HUD Documents” or the “Transaction Documents.” Those documents listed in F, G and I and on Exhibit “B” hereto are referred to collectively as the “AR Loan Documents.” The accounts receivable loan evidenced by the AR Loan Documents is hereafter referred to as the “AR Loan.”

The documents listed in J through N above are referred to collectively as the “Supporting Documents.”

In basing the opinions set forth herein on “our knowledge,” the words “our knowledge” signify that, in the course of our representation of the Master Tenant, 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 Master Tenant 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.

As used herein, “Specified Master Tenant Affiliates” means the Operator and all other operators [*use applicable terms*] named in the Master Lease.

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 Documents (other than the Master Tenant and Specified Master Tenant Affiliates, and any person executing any of the Documents on behalf of the Master Tenant or any Specified Master Tenant Affiliates) has duly and validly executed and delivered each such instrument, document and agreement to be executed and 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.

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

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

DD. All signatures of parties other than the Master Tenant and Specified Master Tenant Affiliate (and any person executing any of the Documents on behalf of Master Tenant or any Specified Master Tenant Affiliate) are genuine.

EE. All Documents which were submitted to us as originals are authentic; all 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 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.

GG. The parties to the Documents and their successors and/or assigns will: (i) act in good faith 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.

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 Master Tenant in consideration of the security interest to be granted by Master Tenant under the Master Tenant Security Agreement, and, where Master Tenant's Collateral is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Master Tenant Security Agreement.

JJ. Master Tenant has rights in the Master Tenant's Collateral or the power to transfer rights in the Master Tenant's Collateral to a secured party[, including rights to the Project's accounts and deposit accounts for accounts receivables subject to the Control Agreement].

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 referred to in the HUD 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 comprising or embodying same. After reasonable inquiry of the Master Tenant, 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 Master Tenant's Opinion Certification, the Good Standing Certificates, and certain other specified Documents, as set forth herein. After reasonable inquiry of the Master Tenant as to the accuracy and completeness of the Master Tenant'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 HUD Documents [, with the exception of the AR Loan Documents,] is governed by the laws of the Property Jurisdiction and the laws of the United States of America.

NN. [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, Master Tenant (a) is a [CHOOSE: corporation/limited liability company/limited partnership], duly organized and validly existing under the laws of the Organizational Jurisdiction, and (b) is duly qualified to do business and is in good standing under the laws of the Property Jurisdiction.

[{ADD FOLLOWING REGARDING MASTER TENANT'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 Master Tenant is a [CHOOSE: corporation/limited liability company/limited partnership] duly organized and validly existing under the laws of its organizational jurisdiction.]

2. The Master Tenant has all the necessary power and authority of a [CHOOSE: 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 by the Documents.
3. The execution and delivery of the Transaction Documents by or on behalf of the Master Tenant, and the consummation by the Master Tenant of the transactions contemplated thereby, and the performance by the Master Tenant of its obligations thereunder, have been duly and validly authorized by all necessary action as a [CHOOSE: corporation/limited liability company/limited partnership] by, or on behalf of, the Master Tenant.
4. Each of the Transaction Documents to which Master Tenant is a party has been duly executed and delivered by the Master Tenant and constitutes the valid and legally binding promises or obligations of Master Tenant, enforceable against the Master Tenant 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 and receipt of, and the performance of the obligations under, the Transaction Documents to which Master Tenant is a party will not violate the Organizational Documents of the Master Tenant.
6. Based solely on (a) our knowledge and (b) the Master Tenant's Opinion Certification, the execution and delivery of the Documents will not: (i) cause the Master Tenant to be in violation of or constitute a material default under the provisions of, any agreement to which the Master Tenant is a party or by which Master Tenant is bound, (ii) conflict with, or result in the breach of, any court judgment, decree, or order of any governmental body to which Master Tenant 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 Master Tenant, except for such lien, charge or encumbrance contemplated by the Documents.
7. The Master Tenant Security Agreement is effective to create a security interest in the Master Tenant's Collateral in favor of the Lender and HUD (hereinafter sometimes collectively referred to as the "Secured Party") in those items of Master Tenant'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 Master Tenant Security Agreement authorizes the Lender to file financing statements pursuant to the Uniform Commercial Code, which name the Master Tenant as debtor and identify the Master Tenant's Collateral, in such locations as are necessary and appropriate under the Uniform Commercial Code.
9. The Master Tenant Financing Statements are in proper form for filing and acceptance in the Filing Offices (including specification of Master Tenant's exact legal name), and upon filing and acceptance of the Master Tenant Financing Statements in the Filing Offices, the security interest in the Filing Collateral will be perfected in favor of the Secured Party.
10. *[If AR Financing involved and Master Tenant is a party:]* The Lender's security interest in the bank account described in the Control Agreement, and the proceeds therein, will be perfected upon (i) execution and delivery of the Master Tenant Security Agreement by all parties thereto and (ii) execution and delivery of the Control Agreement by all parties thereto.

11. *[If AR Financing involved and Master Tenant is a party:]* Based solely on our review of the Transaction Documents, the AR Loan Documents, and the Master Tenant’s Opinion Certification, the accounts receivable and related deposit account collateral provided by Master Tenant 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.
12. Based solely on (a) our knowledge, (b) the Master Tenant’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 Master Tenant or the Project, except as identified in the List of Litigation attached hereto as Exhibit F, if any.
13. Under Section 9-304 of the Uniform Commercial Code (“UCC”), the Control Agreement, and the 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.
14. 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) this document does not deviate from the standard Guide for Opinion of Master Tenant’s Counsel, Rev. _____ **{INSERT DATE OF STANDARD FORM}** except for such changes as have been identified to and specifically approved by HUD counsel **{INSERT SPECIFIC CHANGES IF DESIRED BY MASTER TENANT’S COUNSEL}** and as shown on the comparison copy of this opinion to the standard form attached as **Exhibit G**.

In addition to the assumptions, qualifications and confirmations 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 [INSERT STATE] _____ Secretary of State 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 Master Tenant 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 Master Tenant 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

(“UCC”) of the state of the UCC Filing Office, (c) Sections 9-314 and 9-304 of the UCC of the Collateral Control State, and (d) 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: _____

*** 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" – AR Loan Documents

Exhibit "C" – Certification of Master Tenant

Exhibit "D" – Certificate of Good Standing

Exhibit "E" – Certificate of Authority

Exhibit "F" – List of Litigation, if any

Exhibit "G" – Comparison copy of opinion form

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"
AR LOAN DOCUMENTS

EXHIBIT "C"
CERTIFICATION OF MASTER TENANT

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

1. The Organizational Documents are the only documents creating Master Tenant or authorizing Master Tenant'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 Master Tenant Opinion Letter.

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

3. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Master Tenant, the Healthcare Facility, or any other properties of the Master Tenant[, except as identified in Exhibit F, List of Litigation, if any, in the Opinion Letter].

4. [FOR PROJECTS HAVING AR FINANCING TO WHICH MASTER TENANT IS A PARTY:] The accounts receivable and related bank deposit account collateral provided by Master Tenant 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 Master Tenant Opinion Letter.

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

MASTER TENANT: _____

By:/s/ _____

Printed Name, Title: _____

Dated: _____

EXHIBIT "D"
CERTIFICATE OF GOOD STANDING

EXHIBIT "E"
CERTIFICATE OF AUTHORITY

EXHIBIT "F"
LIST OF LITIGATION (if any)

EXHIBIT "G"
COMPARISON COPY OF OPINION FORM