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**Housing Tax Credits  
Minnesota Housing Approved Form of Attorney’s Opinion for Issuance of IRS Form 8609 (Projects with Tax-Exempt Volume Limited Bonds)**

**Instructions:** Applicable for the 2024 and 2025 Housing Tax Credits (HTC) rounds. Replace all bracketed red text with the indicated information. Bracketed black text indicates statements/opinions that may or may not apply to a particular project. Delete any inapplicable bracketed black text. Change all text to black, delete any remaining brackets, remove instructions, remove Minnesota Housing logo and print on your letterhead. Upload (1) a completed and signed opinion and (2) a comparison/redline document of the completed, signed opinion against this template to the 8609 checklist in the Multifamily Customer Portal. Any deviation from this template will require review by a Minnesota Housing attorney.

**[Letterhead of Law Firm]**

[Name]

[Title]

[Name of Legal Firm]

[Address]

[City, State ZIP code]

[Date]

Minnesota Housing Finance Agency

400 Wabasha St. N

Suite 400

St. Paul, MN 55102

Re: [Name and Location of Project]

[Minnesota Housing HTC#]

Dear Minnesota Housing:

We have acted as counsel to [ownership entity receiving the tax credits], (Owner) in connection with the Owner’s application to the Minnesota Housing Finance Agency (Minnesota Housing) for an award of federal low-income housing tax credits (HTC) for the above referenced project (Project) pursuant to Minnesota Statutes, Section 462A.222 and Section 42 of the Internal Revenue Code of 1986, as amended (IRC). The Project was financed in part from proceeds of bonds (Bonds) issued on [date] by [issuer] (Issuer).

For the purposes of the opinions expressed herein, we have examined the following:

1. Owner’s application for issuance of Internal Revenue Service (IRS) Form 8609, including the Minnesota Housing Multifamily Workbook and the 8609 Certification by Owner/Application (HTC 3 & HTC 3A) (collectively, the 8609 Application);
2. The [deed or ground lease] dated [date] and the Owner’s title insurance policy issued by [Title Company] as Policy No. [Policy Number] dated [date] (together, Evidence of Title);
3. The [[temporary] certificate of occupancy] [certificate of substantial completion] issued by [entity] on [date] (Evidence of PIS);
4. The Declaration of Land Use Restrictive Covenants made by Owner dated [date] and recorded [date] in property records for the county of [county] as document number [#] (the LURA);
5. The Statement of Final Cost Certification for Housing Tax Credits certified by Owner on [date] and the Independent Auditor’s Report dated [date] prepared by [CPA firm] (together, the Final Cost Certification);
6. [The Notice of Issue dated [dated] certified by the Issuer (Issuer Certificate)]; Delete if Minnesota Housing is Issuer.
7. The statement issued by [CPA firm] on [date] relative to the costs of the Project and the use of proceeds of the Bonds;
8. The preliminary determination letter issued by Minnesota Housing on [date] with respect to the Project (the 42M Letter);
9. The [formation and organization documents] of the Owner (Organizational Documents); and
10. Such other documents and papers as we have deemed relevant and necessary as the basis for our opinions set forth below.

Based upon our review of the documentation described above, which we assume for the purposes of this opinion to be authentic copies of documents actually executed and enforceable in accordance with their respective terms against the parties thereto, it is our opinion that:

1. To the best of our actual knowledge, none of the information, representations, or warranties provided to Minnesota Housing by the Owner in the 8609 Application or in the LURA [or by the Issuer in the Issuer Certificate] is untrue or incomplete in any material respect;
2. The Project is located on the real property described on Exhibit A attached hereto (Property). The legal description set forth on Exhibit A describes precisely the same parcel(s) described in the Evidence of Title, the LURA, and the 42M Letter; Note: If the legal description is different describe how and provide the reasons why.
3. The Owner owns the Project and has [a fee simple interest] [a leasehold interest] in the Property;
4. The Owner is a [type of entity] organized and in good standing under the laws of the State of Minnesota and has full legal power and authority under its Organizational Documents to do all things necessary to receive said HTC;
5. The buildings[s] which [is]/[are] the subject of the 8609 Application were placed in service on the following date[s]:
   1. List all BINs and corresponding PIS dates.
6. [Each building which is the subject of the 8609 Application meets the requirements of Section 42(d)(2)(B) of the IRC;] If a building does not meet the requirements but qualifies for an exception, identify the basis for the exception.
7. [The rehabilitation expenditures for each existing building will be treated as a separate, new building within the meaning of Section 42(e) of the IRC;]
8. [The Property is in a qualified census tract as defined in Section 42(d)(5)(B)(ii) of the IRC and is eligible for the 130% basis boost;]
9. [The Property is in a difficult development area as defined in Section 42(d)(5)(B)(iii) of the IRC and is eligible for the 130% basis boost;]
10. The inclusion in eligible basis of each building of the items set forth in the Final Cost Certification complies with applicable requirements of the IRC and Treasury Regulations;
11. The LURA was duly executed by the Owner and properly recorded against the Property no later than the end of the first year of the credit period and satisfies the requirements of Section 42(h)(6) of the IRC;
12. [{The} {A} {general partner} {managing member} is a qualified nonprofit organization as defined in Section 42(h)(5)(C) of the IRC and will own an interest in the Project and materially participate in the development and operation of the Project through the term of the LURA;]
13. The Project will not provide continual or frequent medical, psychiatric, or nursing services within the meaning of Treasury Regulations § 1.42-11(b)(2) and will not constitute a hospital, nursing home, intermediate care facility, or similar facility within the meaning of Treasury Regulations § 1.42-9(b);
14. The Owner is eligible under the applicable provisions of the IRC, Treasury Regulations, Minnesota state law, and the Minnesota Housing qualified allocation plan for an award of credits for each building that is the subject of the 8609 Application in the amounts shown in the 8609 Application;
15. [The following waivers, if any, are required by the Code and have been obtained from the IRS and are attached as Exhibit B: ;]
16. The following information regarding Owner is correct:
    1. Legal designation of Owner:
    2. Tax Identification Number (TIN) of Owner:
    3. Name(s) and title(s) of required authorized signatories of Owner:
    4. Names of all [general partners] [managing members] of Owner:
    5. Name(s) of contact person(s) for Owner:
17. The following information for each [general partner][managing member] other than the nonprofit [{general partner}{managing member}] of Owner is correct:
    1. Name:
    2. Legal designation:
    3. Name(s) and title(s) of required authorized signatories:
    4. Names of all managing members:
18. The following information for each nonprofit [general partner][managing member][[1]](#footnote-1) of Owner is correct:
    1. Name:
    2. Legal designation:
    3. Tax Identification Number (TIN):
    4. Name(s) and title(s) of required authorized signatories:
    5. Names of all managing members:]
19. The following information for each managing member of a [general partner][managing member] is correct:
    1. Name:
    2. Legal designation:
    3. Tax Identification Number (TIN):
    4. Name(s) and title(s) of required authorized signatories:

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Typed or Printed Name of Law Firm

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

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Typed or Printed Name of Attorney

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. This refers to the nonprofit general partner/managing member of the Owner, not a nonprofit member of such general partner/managing member. [↑](#footnote-ref-1)