**ANNEX R INITIAL DETERMINATION LETTER**

[Date]

[Address]

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**TC # / TC Project Name**

The captioned housing project (the "Project") is intended to be financed with notes, bonds or obligations (the "Bonds") to be issued by the Puerto Rico Housing Finance Authority (the "Authority), the interest on which is exempt from federal income tax under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). You have advised us that you intend to seek an allocation of low-income housing tax credits for the Project pursuant to Section 42(h)(4) of the Code.

Pursuant to Section 42(m)(1)(D) of the Code, the Authority, in its capacity as the tax credit allocation agency for Puerto Rico, hereby advises you of its determination that the Project satisfies the requirements for allocation of housing tax credits under the Authority's Low-Income Housing Tax Credit Allocation Plan (the "Allocation Plan"). This determination is made solely on the basis of your representations made to the Authority, and does not constitute a determination that the Project otherwise complies with Section 42 of the Code nor a commitment or assurance that any housing credit dollar amounts will be allocated to the buildings comprising the Project or that the Authority will approve a loan to you or issue the Bonds.

At the time any buildings in the Project are placed in service, you must apply to the Authority for the issuance of Internal Revenue Service Form 8609, Low-Income Housing Credit Allocation Certification. The application must be made on a form supplied by the Authority, and must be accompanied by (i) resolution of concerns of the Authority, the list of which is attached hereto as Exhibit A, (ii) an opinion of your legal counsel as to placement in service and compliance with Section 42 of the Code in the form attached hereto as Exhibit B. In connection with the issuance of the Form 8609, you will be required to enter into a Land Use Restriction Agreement with the Authority, which will be recorded, providing for ongoing compliance with Section 42 of the Code and for the Authority's monitoring of such compliance. With respect to such monitoring attached for your information as Exhibit C is a copy of the Authority's Compliance Manual.

Section 42(m)(2)(D) of the Code requires that, at the time of "application for the housing credit dollar amount" and, again, at the time of placement in service and the issuance of the Form 8609, the Authority as the issuer of the Bonds make a determination that the housing credit dollar amount to be allocated to the Project does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified low-income housing project throughout the credit period. Although the Code is not clear as to when an "application" for a credit amount is deemed to be made with respect to a tax-exempt bond financed project, the Authority proposes to treat your request for determination of compliance with the Allocation Plan as your application for this purpose. Accordingly, based solely on the information that you provided, the Authority has preliminarily determined that the "feasibility amount" of tax credits is **$\_\_\_\_\_\_\_\_\_**, as set forth in the calculation attached hereto as Exhibit D. This determination is not a representation or warranty as to the feasibility or viability of the Project.

Section 42(b)(2)(A) of the Code provides that the *applicable percentage* used to calculate the tax credit amount is the percentage prescribed by the Secretary of the Treasury for the earlier of the month the building is placed in service or, at the election of the taxpayer, the month in which the Bonds are issued. If you wish to elect the month in which the Bonds are issued, you must complete Exhibit E hereto and return it to the Authority not later than the 5th day after the close of such month.

Section 42(g)(2)(A) of the Code provides that a low-income unit in the Project is "rent-restricted" if the gross rent with respect to such unit does not exceed 30% of the imputed income limitation applicable to the unit. Under Revenue Procedure 94-57, the effective date of the income limitation used to establish the gross rent floor for purposes of Section 42(g)(2)(A) is the date the Authority initially issues a "determination letter" to the Project unless you designate a building's placed-in-service date as the effective date for the gross rent floor. In this context, we believe that "determination letter" refers to a determination of the "feasibility amount" of tax credits; the Authority will deem this letter to be such determination letter for the purpose of Revenue Procedure 94-57. If you wish to designate the placed-in-service date as the effective date of the gross rent floor, you must complete Exhibit F hereto and return it to the Authority by no later than the placed-in-service date.

The determination as to compliance with the Allocation Plan shall remain valid and effective through December 31, \_\_\_\_. Because the Allocation Plan may be amended from time to time, if the Project is not placed in service by that date it will be necessary to re-determine compliance with the then-current Allocation Plan.

Very truly yours,

PUERTO RICO HOUSING FINANCE AUTHORITY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Executive Director

Enclosures

Exhibit A

ISSUES TO BE RESOLVED

|  |  |
| --- | --- |
| PROJECT NUMBER: |  |
| PROJECT NAME: |  |

1.

2.

3.

4.

5.

Exhibit B

FORM OF OWNER'S ATTORNEY'S OPINION

Tax-exempt Bond-financed Project

**[Must be submitted with Issuance of 8609(s) Application on Firm's Letterhead]**

[Date]

Agency Name

Agency Address

City, State Zip

Re: Issuance of 8609(s)

Name of Project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner Tax Identification No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Gentlemen:

We have acted as counsel to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Owner") in connection with the Owner's application to Agency Name (the "Authority") for an allocation of low-income housing tax credits with respect to the captioned Project. The Project was financed in part from proceeds of bonds (the “Bonds”) issued on \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_ by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Issuer”).

We have examined the Owner's Application for Issuance of 8609(s) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Application"), the Development Budget and Development Financing worksheets and the Form 8609 Certificate, each included as part of the Application (collectively the “Owner’s Certification”), the certification of the Issuer dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_ (the “Issuer Certificate”) and the [Authority’s form] of Land Use Restriction Agreement for Low-Income Housing Tax Credits [between the Owner and the Authority] (the "Land Use Agreement"). We have reviewed and are relying upon the statement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ issued by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [name of accountant], the Owner's tax accountant, relative to the costs of the Project and the use of proceeds of the Bonds. We have also reviewed Section 42 and other applicable provisions of the Internal Revenue Code of 1986, as amended, and applicable Treasury Regulations (the "Code"), judicial and administrative interpretations of the Code and such other records of the Owner as we believe to be applicable to the issuance of the opinions hereinafter expressed.

Based upon the foregoing reviews and upon due investigation of such matters as we deem necessary in order to render the opinions hereinafter expressed, but without expressing any opinion as to the reasonableness or accuracy of the estimated or projected figures set forth in the Application, we are of the opinion that:

1. To the best of our actual knowledge, none of the information, representations or warranties provided to the Authority by the Owner in the Application, Owner's Certification and in the Land Use Agreement, or by the Issuer in the Issuer Certificate, is untrue or incomplete in any material respect.

2. The building(s) which is (are) the subject of the Application have been "placed in service" within the meaning ascribed to such quoted term in Section 42 of the Code.

3. Based upon the policy of title insurance issued by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the Owner has fee simple title to each of the buildings which is the subject of the Application.

4. The inclusion in "eligible basis" of each building of the cost items set forth in the Development Budget, complies with applicable requirements of the Code.

5. If all information and representations contained in the Application (including the Owner's Certification), the Issuer Certificate and all current laws remain unchanged, the Owner is entitled under the applicable provisions of the Code to an allocation of credits for each building which is the subject of the Application.

6. Each building which is the subject of the Application meets the ten (10) year "look-back" requirements of Section 42(d)(2)(B) of the Code. [If building does not meet requirements but is eligible for exception, so state and identify the basis for qualification.] [Delete if no acquisition credit is requested.]

This opinion is rendered solely for the purpose of inducing the Authority to allocate credits to the Owner. Accordingly, it may be relied upon only by the Authority and not by any other party for any other purpose.

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

Firm Name

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exhibit C

Puerto Rico Housing Finance Authority - Compliance Monitoring Plan

Exhibit D

Initial Tax Credit Calculation

Exhibit E

ELECTION OF APPLICABLE PERCENTAGE

**(TAX-EXEMPT BOND-FINANCED PROJECT)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the owner (“Owner”) of a multifamily rental housing project known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ located in (City), (State), consisting of \_\_\_\_ building(s) (the “Project”). The Project is to be financed with proceeds of obligations (“Bonds”) described in Section 42(h)(4)(A) of the Internal Revenue Code of 1986, as amended and regulations issued thereunder (the “Code”). The Bonds were issued by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Issuer”) during the month of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

Pursuant to Section 42(b)(2)(A)(ii)(II) of the code, Owner hereby elects as the “applicable percentage” with respect to the Project the appropriate percentage prescribed by the Secretary of the Treasury for the month of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (being the month in which the Bonds were issued). In connection with the foregoing election, we advise you as follows:

(1) The Bonds were designated as the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.1

(2) The percentage of the aggregate basis of each building in the Project and the land on which the building is located that is to be financed with the proceeds of the Bonds is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ percent (\_\_\_%) [as set forth in Attachment 1 hereto].2

(3) If the Bonds were issued other than by the Puerto Rico Housing Finance Authority, attached is the signed statement of the Issuer as required by Reg. §1.42-8(b)(4).

IN WITNESS WHEREOF, the Owner has executed this election this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

OWNER

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

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

1 Insert name of bonds, including any series designation.

2 Use attachment only if basis percentage differs among multiple buildings; delete if inapplicable.

3 Must be executed by the Owner, notarized and provided to PRHFA before the close of the fifth calendar day following the end of the month in which the Bonds were issued.

**Affidavit:**

[If affidavit is made in Puerto Rico]

Sworn and subscribed before me by [name], of legal age, [marital status], [profession], resident of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_], personally known to me [or identified through [identification evidence]], in [place of execution of affidavit] this \_\_\_\_\_\_\_\_\_\_, \_\_ 20\_\_\_.

[If affidavit in made outside of Puerto Rico]

I, the undersigned, a Notary Public in and for the Commonwealth of Puerto Rico, hereby certify that  whose name(s)  signed to the foregoing instrument, and who  known to me, acknowledged before me on this date that, being informed of the contents of this document,  executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this, 20   .

Notary Public

**(SEAL)**

Exhibit F

**DESIGNATION OF PLACED-IN-SERVICE DATE**

**AS EFFECTIVE DATE OF GROSS RENT FLOOR**

**(TAX-EXEMPT BOND-FINANCED PROJECT)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the owner ("Owner") of a multifamily rental housing project known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ located or to be located in (City), (State), consisting of \_\_\_\_\_\_ building(s) (the "Project"). The Project is to be financed with proceeds of obligations ("Bonds") described in Section 42(h)(4)(A) of the Internal Revenue Code of 1986, as amended and regulations issued thereunder (the "Code").

Pursuant to Revenue Procedure 94-57, the Owner hereby designates the date each building in the Project is placed in service, within the meaning of the Code, as the date on which the gross rent floor in Section 42(g)(2)(A) of the Code will take effect for such building.

IN WITNESS WHEREOF, the Owner has executed this designation this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

OWNER

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

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_