

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6627

RECOMMENDING PRELIMINARY APPROVAL TO PORTLAND CITY COUNCIL FOR REFUNDING OF ECONOMIC DEVELOPMENT REVENUE BONDS (PSU BROADWAY HOUSING, LLC), THROUGH ISSUANCE OF ONE OR MORE NEW SERIES OF BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$52,000,000 FOR THE PURPOSE OF REFINANCING THE ACQUISITION, DEVELOPMENT, AND CONSTRUCTION OF STUDENT HOUSING UNITS AND RELATED COMMERCIAL AND ACADEMIC SPACE; AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A LETTER OF INTENT AND INDEMNIFICATION AND COMPENSATION AGREEMENT

WHEREAS, the City of Portland, Oregon ("City") has the authority under ORS 280.410 to 280.485 to issue revenue bonds to finance and refinance economic development projects;

WHEREAS, the City has adopted in Chapter 5.72 of the Portland City Code ("City Code"), its procedures and standards for the application for the issuance of revenue bonds to finance and refinance economic development projects;

WHEREAS, the City previously issued (a) its City of Portland, Oregon Economic Development Revenue Bonds (Broadway Project), Series 2003A in the principal amount of \$42,725,000 and (b) its City of Portland, Oregon Economic Development Revenue Bonds (Broadway Project), Series 2003B in the principal amount of \$4,700,000 (collectively, "2003 Bonds");

WHEREAS, the 2003 Bonds were issued for the purpose of financing the acquisition, development, and construction of student housing units and related commercial and academic space located at 625 SW Jackson Avenue, Portland, Oregon ("Project");

WHEREAS, the Portland Development Commission ("PDC") has received an application ("Application") from Broadway Housing, LLC, an Oregon limited liability company ("Applicant") for economic development revenue refunding bonds in an amount not to exceed \$52,000,000 ("Proposed Bonds") for the purpose of providing funds to refund the 2003 Bonds, including financing the termination payment related to the 2003 Bonds, a deposit to the debt service reserve fund and the costs of issuance of the Proposed Bonds;

WHEREAS, the sole member of Applicant is Portland State University Foundation; and

WHEREAS, the Applicant has requested the Proposed Bonds (a) be issued in an amount not to exceed \$52,000,000, (b) be issued in one or more series of tax exempt and/or federally taxable bonds, (c) be payable solely from the revenues of the Project (including amounts, if any, paid by the State of Oregon, acting by and through the Oregon State Board of Higher Education on behalf of Portland State University ("State"), to the Applicant under any Housing Services and Facilities Agreement(s), and all amendments thereto (as more particularly described hereinafter)), the funds and accounts pledged under an indenture of trust and from amounts, if any, received pursuant to any credit facility that may be obtained by the Applicant at

its expense and (d) be secured by, among other things, a lien on Applicant's right, title and interest in and to the Project and the Project site;

WHEREAS, the Applicant and the State will execute a new Housing Services and Facilities Agreement in connection with the issuance of the Proposed Bonds under which the State will agree to commit certain funds, some of which are subject to appropriation, to the payment of the obligations of Applicant relating to the Proposed Bonds, including the coverage of all indemnification liability of Applicant to PDC in accordance with the terms of the Letter and Agreement (as hereinafter defined); and

WHEREAS, PDC has reviewed the Application and reconfirms its finding under PDC Resolution No. 5994 that the Project does not conflict with any adopted plans or policies of the City and is an "economic development project" within the meaning of Chapter 5.72.020 and 5.72.040.C.6 of the City Code.

NOW, THEREFORE, BE IT RESOLVED that the PDC Board of Commissioners recommends to the Portland City Council the preliminary approval for the issuance of the Proposed Bonds for the Project in an aggregate principal amount not to exceed \$52,000,000 to refund the 2003 Bonds, including financing all or a portion of the termination payment, a deposit to a debt service reserve fund and any costs of issuance of the Proposed Bonds;

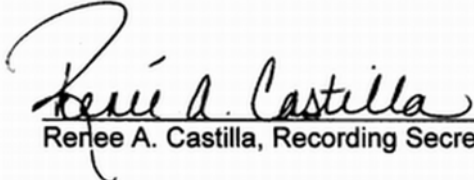
BE IT FURTHER RESOLVED that PDC requests the City's Office of Management and Finance to declare the City's official intent to issue the Proposed Bonds pursuant to Treasury Regulations § 1.150-2 and to determine which commercial bank or investment bank shall act as the underwriter(s) or private placement agent(s) for such Proposed Bonds;

BE IT FURTHER RESOLVED that the PDC Executive Director is hereby directed to execute and deliver a Letter of Intent and Indemnification and Compensation Agreement in substantially the form attached as Exhibit "A" ("Letter and Agreement") with the Applicant, Portland State University Foundation and the City of Portland regarding the issuance of the Proposed Bonds by the City and the due diligence review to be completed by PDC pursuant to Chapter 5.72 of the City Code;

BE IT FURTHER RESOLVED that the City's bond counsel, K&L Gates LLP, is designated as Bond Counsel for the Proposed Bonds; and

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon its adoption.

Adopted by the Portland Development Commission on August 13, 2008.



Renee A. Castilla, Recording Secretary

**LETTER OF INTENT AND INDEMNIFICATION AND
COMPENSATION AGREEMENT**

Among

CITY OF PORTLAND, OREGON

And

THE PORTLAND DEVELOPMENT COMMISSION

And

BROADWAY HOUSING, LLC

And

PORTLAND STATE UNIVERSITY FOUNDATION

THIS LETTER OF INTENT AND INDEMNIFICATION AND COMPENSATION AGREEMENT (the "Letter and Agreement") is between the City of Portland, OREGON (the "City"), acting by and through its City Council, the Portland Development Commission, the duly designated urban renewal agency of the City (the "Commission"), the agency charged with the administration of the economic development and housing revenue bond programs of the City, Broadway Housing, LLC (the "Borrower") and Portland State University Foundation, an Oregon non-profit corporation ("PSU Foundation").

1) Preliminary Statement. Among the matters of mutual inducement, which have resulted in the execution of this Letter and Agreement are the following:

a) The City is a municipal corporation, authorized and empowered by ORS Chapter 280.410 to 280.485 (the "Act"), Chapter 5.72 of the City Code (the "Code") and ORS Chapter 287A to issue revenue bonds for the purposes specified therein upon such terms and conditions as the City and the Commission may deem advisable.

b) The Commission has been charged by the City with the responsibility of receiving, reviewing and processing of applications requesting the issuance by the City of its economic development revenue bonds pursuant to Chapter 5.72 of the City Code.

c) The City proposes to issue multifamily housing revenue bonds pursuant to the Act to refund bonds (the "refunded bonds") issued for the acquisition, construction, improvement and equipping of The Broadway Housing Project which constitutes an "eligible

project” within the meaning of the Act and the Code (the “Project”) and to loan the proceeds of such revenue bonds to the Borrower. The revenue bonds will be issued in an amount not exceeding \$52,000,000 and shall be payable solely from the revenues of the Borrower related to the Project including amounts paid by Portland State University to the Borrower under any Housing Services and Facilities Agreement, the funds and accounts described in the loan documents for the Project, and from amounts, if any, received pursuant to a credit facility. Revenue Bonds for the Project are referred to herein as the “revenue bonds.”

d) The City deems it necessary and advisable that it take such action as may be required under the Act to authorize and issue revenue bonds, in one or more series, on a taxable or tax-exempt basis, to refinance the cost of the Project, including financing all or a portion of the termination payment related to the refunded bonds, a deposit to the debt service reserve fund, and costs of issuance of the revenue bonds, in a total amount not exceeding \$52,000,000.

e) The City finds that the issuance of revenue bonds to refinance the cost of the Project, and the loaning of the proceeds thereof to the Borrower constitutes a valid public purpose.

f) The Borrower wishes to proceed with the preparation of necessary plans and specifications, and to incur expenses in connection with the refinancing, but does not wish to do so without assurances from the City, satisfactory to Borrower, that proceeds of the sale of the revenue bonds of the City will be made available to refinance the Project. Neither the City nor the Commission wish to incur the costs and expenses and proceed with plans for the refinancing without assurances from the Borrower, satisfactory to the City, that the City and Commission fees and costs will be paid by the Borrower. The parties consider it appropriate that the action contemplated hereunder be the subject of this Letter and Agreement.

g) All references in this Letter and Agreement to the City or the Commission shall be deemed to include when appropriate their elected and appointed officials, employees and agents.

2) Undertakings on the Part of the City. Subject to the conditions stated herein and subject to approval by the City Council, the preparation and approval of the various financing documents and review and approval by bond counsel, the City agrees and represents as follows:

a) The City will, upon satisfaction by the Borrower and PSU Foundation of all conditions stated herein and all other conditions imposed on the Borrower and PSU

Foundation by the City prior to issuance of the revenue bonds, authorize and cause the issuance of revenue bonds to be payable solely out of the loan payments paid by the Borrower to the City pursuant to a loan agreement or other financing agreement between the Borrower and the City, which revenue bonds will be in an aggregate principal amount not to exceed \$52,000,000.

b) The City will adopt such proceedings and authorize the execution of such documents as may be necessary and advisable for the authorization, issuance, sale and delivery of the revenue bonds, and the loan of the proceeds of the revenue bonds to the Borrower to refinance the Project, all as authorized by law and as mutually satisfactory to the Borrower and the City.

c) The amounts payable to the City under the loan agreement or other financing agreement will be sufficient to pay the principal of and the interest on, and redemption premium, if any, of the revenue bonds as and when the same become due and payable.

d) The City has appointed K&L Gates LLP, as the City's housing and conduit bond counsel ("Bond Counsel") to supervise the proceedings and to approve the legality of the actions of the City, the Commission, the revenue bonds, and to assist in the preparation and review of the documents necessary for the sale and issuance of the revenue bonds.

e) Neither the revenue bonds nor the interest thereon shall be an obligation of the City, the Commission, or the State of Oregon, or the personal obligations of the elected or appointed officials, employees or agents of the City or the Commission within the meaning of any constitutional or statutory provisions whatsoever, but shall be payable solely from amounts received by the City from the loan agreement and other monies pledged therefor. The revenue bonds shall not be a general obligation of the City or the Commission or their elected or appointed officials, employees or agents nor a pledge of the faith and credit of the City or the Commission or their elected or appointed officials, employees or agents nor a debt or pledge of the faith and credit of the City, the Commission, or the State of Oregon.

f) No presently existing assets of the City or the Commission shall be given to secure the revenue bonds and the revenue bonds shall be repayable out of and, only out of, the Borrower's assets, including foreclosure proceeds of such assets, and income or other credit enhancement to be provided by the Borrower at its expense, if any.

3) Undertakings on the Part of the Borrower. Subject to the conditions above stated, the Borrower agrees as follows:

a) If the revenue bond financing herein contemplated is available, it is the intent of the Borrower to cause the Project to be refinanced, provided, however, that nothing stated in this Letter and Agreement shall require that Borrower close the refinancing.

b) The Borrower will cooperate with the City for the approval of all of the terms and conditions of the issuance of the revenue bonds, and in the sale of the revenue bonds in an aggregate principal amount not to exceed \$52,000,000, to be used to refinance the Project.

c) If the revenue bond proceeds are not sufficient to refinance the Project, fund a debt service reserve fund, and pay all costs of issuance, the Borrower agrees to pay, or cause to be paid, the deficiency.

d) At the time of closing of the revenue bond sale, the Borrower will cause to be delivered an executed loan agreement or other financing agreement with the City, under which terms the Borrower will agree to pay the City loan payments sufficient in the aggregate to pay the principal of and interest on, and redemption premium, if any, of the revenue bonds as and when the same shall become due and payable and shall contain such other provisions as the City, the Commission or Bond Counsel shall require all as negotiated and approved by the parties thereto. The loan agreement or financing agreement shall be secured by an appropriate trust deed or mortgage.

e) The loan agreement or other financing agreement shall contain a provision that the Borrower shall indemnify and hold the City and the Commission and their elected or appointed officials, employees and agents harmless from all liabilities incurred in connection with the Project or the revenue bonds. The Borrower and the State of Oregon, acting by and through the State Board of Higher Education on behalf of Portland State University (the "State"), executed a Housing Services and Facilities Agreement ("HSFA") dated as of April 1, 2003, in connection with the refunded bonds and will execute a new HSFA in connection with the revenue bonds under which the State shall agree to pay the obligations of the Borrower under the loan agreement or other financing agreement, to the extent permitted by law. The State shall execute a reliance letter to the Commission indicating that the new HSFA will include coverage of such indemnity liability of the Borrower to the Commission, and that the Commission is a third-party beneficiary to such provision in the new HSFA.

f) The Borrower and PSU Foundation will cause its counsel to provide the City with legal opinions satisfactory to the City and Bond Counsel.

g) The loan agreement shall also contain such other provisions as may be required or permitted by law and as are mutually acceptable to the parties.

h) The Borrower agrees that the City's Office of Management and Finance shall approve a purchaser for the revenue bonds. The pricing of the revenue bonds shall be subject to the approval of the City's Office of Management and Finance.

i) The Borrower agrees to comply with the requirements of the Act and the Code.

j) The Borrower understands and agrees that preliminary and final approval, if any, of revenue bond financing does not imply or otherwise constitute approval of other City funds or subsidies.

k) The Borrower will take such further action and adopt such further proceedings as may be required to implement these understandings.

4) General Provisions.

a) Except as provided in Section 4(b) and Section 5 hereof or as otherwise provided herein, all obligations arising under this Letter and Agreement are conditioned upon the parties agreeing to mutually acceptable terms for the sale of the revenue bonds and mutually acceptable terms and conditions for the contracts and agreements contemplated herein; provided, however, and subject to Section 3(h) hereof, that neither the City nor the Commission shall participate in or be responsible for the marketing of the revenue bonds.

b) The Borrower will pay, or cause to be paid, to the City and the Commission as applicable, whether the revenue bonds are actually issued or not (but if issued, such amounts shall be paid from the proceeds of sale of the revenue bonds), any and all direct or indirect costs incurred by the City or the Commission in connection with the refinancing of the Project including without limitation, any and all fees and expenses incurred in connection with the issuance, sale and on-going administration of the revenue bonds, including without limitation, the fees and expenses of Bond Counsel, the City's external financial advisor, if any, the trustee, registrar, placement agent, paying agent, ratings and securities depository. The Borrower will also pay the cost of staff time of the City and Commission incurred in connection with the issuance, sale or on-going administration of the revenue bonds. In addition, the Borrower shall pay the out-of-pocket costs of Bond Counsel, the City's external financial advisor, if any, legal counsel and staff in connection with the refinancing of the Project. The Borrower will also pay the costs and fees of its counsel, letter of credit or credit enhancement fees, the placement agent and any other costs incurred in connection with the revenue bonds.

c) The Borrower shall obtain, at its expense, all necessary governmental approvals and opinions of Bond Counsel necessary to ensure the legality of the revenue bonds.

d) The City and the Commission acknowledge and agree that PSU Foundation, the sole member of Borrower assumes no duty and no liability as a result of the participation of the Borrower in this Letter and Agreement. The City and the Commission further agree that, in the event of any default, liability of or claim against the Borrower under this Letter and Agreement or otherwise, the City and the Commission shall have no recourse to PSU Foundation or its assets for any compensation, damages or other relief as a result of any such default, liability or claim, and hereby expressly waive and release PSU Foundation from the same.

e) The Borrower and PSU Foundation hereby acknowledge and agree that the tax-exempt status of the federally tax-exempt revenue bonds depends on the 501(c)(3) status of PSU Foundation and the bond documents will require that PSU Foundation certify as to its activities and 501(c)(3) status and agree to maintain that status for the life of the bonds.

5) Miscellaneous Provisions. The Borrower shall and hereby agrees to indemnify and save the City and the Commission, their appointed or elected officials, employees or agents harmless against and from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the execution of this Letter and Agreement and any actions to be taken by the City or the Commission relating to the refinancing of the Project or the issuance of the revenue bonds for so long as the revenue bonds remain outstanding, including, without limitation, (i) any condition related to the Project; (ii) any breach or default on the part of the Borrower in the performance of any of its obligations under this Letter and Agreement, (iii) any act or negligence of the Borrower or of any of its agents, contractors, servants, employees or licensees (iv) any violation of the federal or state securities laws in connection with the revenue bonds, or (v) any act or negligence of any assignee or lessee of the Borrower, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Borrower. The Borrower shall indemnify and save the City and the Commission and their elected or appointed officials, employees or agents harmless from any such claim arising as aforesaid, or in connection with any action or proceeding and for any costs or fees incurred in any action or proceedings brought thereon whether at trial, on appeal, in bankruptcy proceedings or otherwise, and upon notice from the City or the Commission or their elected or appointed officials, employees or agents, the Borrower shall defend them or either of them in any such action or proceeding at the Borrower's expense.

Notwithstanding the fact that it is the intention of the parties hereto that neither the City nor the Commission or their elected or appointed officials, employees or agents shall incur any pecuniary liability by reason of the terms of this Letter and Agreement or the undertakings required of the City or the Commission or their elected or appointed officials, employees or agents hereunder, by reason of the issuance of the revenue bonds or by reason of the execution of any financing documents relating thereto, or by reason of the performance of any act requested by the City or the Commission, their elected or appointed officials, employees or agents or by the Borrower, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulation pertaining to the foregoing; nevertheless, if the City or the Commission or their elected or appointed officials, employees or agents should reasonably incur any such pecuniary liability, then in such event the Borrower shall indemnify and hold the City or the Commission and their elected or appointed officials, employees or agents harmless against all claims, demands or causes of action whatsoever, by or on behalf of any person, firm or corporation or other legal entity arising out of the same or out of any offering statement or lack of offering statement in connection with the sale or resale of the revenue bonds and all costs, fees and expenses, including without limitation, legal fees and expenses whether incurred at trial, on appeal, in bankruptcy proceedings or otherwise incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the City or the Commission or their elected or appointed officials, employees or agents, the Borrower shall defend the City and the Commission and their elected or appointed officials, employees or agents in any such action or proceeding.

Notwithstanding anything to the contrary contained herein, the Borrower shall have no liability to indemnify the City or the Commission, or their elected or appointed officials, employees or agents, against claims or damages to the extent that such claims or damages result from the City's or the Commission's own negligence, gross negligence or willful misconduct, or that of their elected or appointed officials, employees or agents.

In the event any claim is made against the City or the Commission, their elected or appointed officials, employees or agents (collectively, the "Indemnified Parties") for which indemnification may be sought from the Borrower under the foregoing provisions, the Indemnified Parties shall promptly give written notice thereof to the Borrower; *provided that* any failure to give or delay in giving such written notice shall not relieve the Borrower's indemnification obligations as set forth above except to the extent such failure or delay prejudices the Borrower's ability to defend or settle such claim. Upon receipt of such notice, the

Borrower shall assume the defense thereof in all respects and may settle such claim in such manner as it deems appropriate so long as there is no liability, cost or expense to the Indemnified Party. The Borrower shall select legal counsel to represent each Indemnified Party and shall not be responsible for the legal fees and expenses of any legal counsel retained by any Indemnified Party without the written consent of the Borrower, unless the City or the Commission shall have reasonably concluded that there may be a conflict of interest between the City or the Commission and the Borrower in the conduct of the defense of such action (in which case the Borrower shall not have the right to direct the defense of such act on behalf of the City or the Commission and shall be responsible for the legal fees and expenses of the counsel retained by the Indemnified Party whether incurred at trial, on appeal, in bankruptcy proceedings or otherwise). Borrower agrees to pay, or cause to be paid, the deficiency.

The City, the Commission, the Borrower and PSU Foundation have caused this Letter and Agreement to be authorized by their respective governing bodies and executed by their duly authorized officers as of the ____ day of _____, 2008.

CITY OF PORTLAND, OREGON

BROADWAY HOUSING, LLC

By: _____
Debt Manager

By: _____
Rebecca A. Hein, Management
Committee Chair

APPROVED AS TO FORM:

By: _____
City Attorney

PORTLAND STATE UNIVERSITY
FOUNDATION, a non-profit corporation

PORTLAND COMMISSION DEVELOPMENT,
the duly designated urban renewal agency of
the City of Portland

By: _____
P. A. 'Tony' Leineweber,
Executive Director

By: _____
Executive Director

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6627

Title: RECOMMENDING PRELIMINARY APPROVAL TO PORTLAND CITY COUNCIL FOR REFUNDING OF ECONOMIC DEVELOPMENT REVENUE BONDS (PSU BROADWAY HOUSING, LLC), THROUGH ISSUANCE OF ONE OR MORE NEW SERIES OF BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$52,000,000 FOR THE PURPOSE OF REFINANCING THE ACQUISITION, DEVELOPMENT, AND CONSTRUCTION OF STUDENT HOUSING UNITS AND RELATED COMMERCIAL AND ACADEMIC SPACE; AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A LETTER OF INTENT AND INDEMNIFICATION AND COMPENSATION AGREEMENT

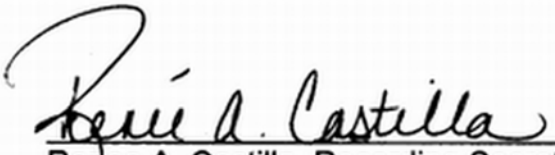
Adopted by the Portland Development Commission on August 13, 2008.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Charles Wilhoite, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Vacant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Consent Agenda		<input type="checkbox"/> Regular Agenda		

Certification

The undersigned hereby certifies that:

The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and duly recorded in the official minutes of the meeting.



Renee A. Castilla, Recording Secretary

Date: August 20, 2008