

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**RESOLUTION NO. 6636**

**RESOLUTION RECOMMENDING FINAL APPROVAL TO CITY COUNCIL FOR ECONOMIC DEVELOPMENT REVENUE REFUNDING BONDS (BROADWAY PROJECT), SERIES 2008A (TAX-EXEMPT) AND ECONOMIC DEVELOPMENT REVENUE REFUNDING BONDS (BROADWAY PROJECT), SERIES 2008B (FEDERALLY TAXABLE), WHICH TOGETHER IN AN AGGREGATE PRINCIPAL AMOUNT WILL NOT EXCEED \$52,000,000, FOR THE PURPOSE OF PROVIDING FUNDS FOR THE REFINANCING OF THE ACQUISITION, DEVELOPMENT AND CONSTRUCTION OF STUDENT HOUSING UNITS AND RELATED COMMERCIAL AND ACADEMIC SPACE.**

**WHEREAS**, the Portland Development Commission (the "Commission"), by Resolution No. 6627, adopted on August 13, 2008 (the "Resolution"), recommended to the Council of the City of Portland, Oregon (the "City") preliminary approval of revenue bonds in an aggregate principal amount not to exceed \$52,000,000 ("Proposed Bonds") to refinance the acquisition, development and construction of student housing units and related commercial and academic space located at 1948 SW Broadway Street, also known by the address 625 SW Jackson Street, in Portland, Oregon (the "Project");

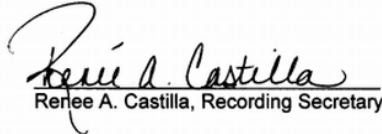
**WHEREAS**, the Resolution reconfirmed the Commission's finding in Resolution No. 5994 that (i) the Project does not conflict with any adopted plans or policies of the City and (ii) the Project constituted an "economic development project" within the meaning of Chapter 5.72 of the Portland City Code (the "Code"). Further, by Ordinance No. 182188 enacted on September 10, 2008, the Council authorized the Commission to proceed with the processing of the application submitted by Broadway Housing, LLC ("Borrower") for the issuance of the Proposed Bonds, to execute a Letter of Intent and Indemnification and Compensation Agreement, and to proceed with a review of the proposed terms and conditions of the refinancing of the Project; and

**WHEREAS**, Commission staff has received and reviewed all requested and required final documents to be executed in connection with the issuance and sale of the Proposed Bonds ("Final Bond Documents") and finds that such Final Bond Documents comply with the rules and policies established within Chapter 5.72 of the Code.

**NOW, THEREFORE, BE IT RESOLVED** that the Commission recommends to the Council the issuance of the Proposed Bonds to refund the bonds originally issued to finance the Project, including financing the interest rate swap termination payment related to those original bonds, financing a reserve, and paying for costs of issuance related to the Proposed Bonds, in an aggregate principal amount not to exceed \$52,000,000 in accordance with the Final Bond Documents attached hereto as Exhibits A through E be authorized by emergency Ordinance;

**BE IT FURTHER RESOLVED** that the Commission, acting on behalf of the City, concurs with the terms and conditions of the issuance and sale of City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008A (Tax-Exempt) and Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008B (Federally Taxable), which together in an aggregate principal amount will not exceed \$52,000,000, as set forth in the Final Bond Documents; and

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



Renee A. Castilla, Recording Secretary

**EXHIBIT A**  
**FORM OF TRUST INDENTURE**

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**TRUST INDENTURE**

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*between*

**CITY OF PORTLAND, OREGON**  
acting by and through the City Council  
on the recommendation of the Portland Development Commission

as Issuer

*and*

**WELLS FARGO BANK, NATIONAL ASSOCIATION**  
as Trustee

**Relating To The  
Issuance Of**

**City of Portland, Oregon  
Economic Development Revenue Refunding Bonds  
(Broadway Project)  
\$\_\_\_\_\_ Series 2008A (Tax-Exempt)  
\$\_\_\_\_\_ Series 2008B (Federally Taxable)**

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**Dated as of October 1, 2008**

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reference only and is not a part of this Indenture)

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## TRUST INDENTURE

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This **TRUST INDENTURE** (the “**Indenture**”), dated as of October 1, 2008, is between the **CITY OF PORTLAND, OREGON**, acting by and through the City Council, on the recommendation of the Portland Development Commission (together with its successors and assigns, the “**Issuer**”), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association organized under the laws of the United States of America, acting in its capacity as Trustee (together with its permitted successors and assigns, the “**Trustee**”).

THE MEANING OF CAPITALIZED TERMS CAN BE  
DETERMINED BY REFERENCE TO THE LOAN  
AGREEMENT

### RECITALS

A. The Issuer is authorized by the Act and the City Code to issue revenue bonds for the purpose of financing and refinancing economic development projects and to enter into loan agreements with entities such as the Borrower.

B. The Issuer previously issued its City of Portland, Oregon Economic Development Revenue Bonds (Broadway Project) Series 2003A (Tax-Exempt) and Series 2003B (Federally Taxable) (collectively, the “2003 Bonds”).

C. The 2003 Bonds were issued for the purpose of financing the acquisition, development and construction of student and faculty housing, academic and commercial facilities located at 625 SW Jackson Avenue, Portland, Oregon (the “Project”).

D. The Borrower has requested the Issuer to provide financing to refund the 2003 Bonds, including financing a swap termination payment related to the 2003 Bonds, a deposit to the Debt Service Reserve Fund and financing Issuance Costs.

E. The Issuer has determined that the issuance and sale of the Bonds and the application of the net bond proceeds to fund the Loan will facilitate the refinancing of the Project and will accomplish a valid public purpose of the Issuer.

F. Pursuant to the Act, the Issuer has adopted a Bond Ordinance authorizing (a) the issuance of its revenue bonds in the aggregate principal amount of \$\_\_\_\_\_ to be designated “City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008A (Tax-Exempt),” and authorizing the issuance of its revenue bonds in the aggregate principal amount of \$\_\_\_\_\_ to be designated “City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008B (Federally Taxable)” (collectively, the “Bonds”) for the purpose of (i) refunding the 2003 Bonds (ii) financing a swap termination payment (iii) funding a Debt Service Reserve Fund, and (iv) financing Issuance Costs; (b) the execution and delivery of this Indenture to establish the terms of the Bonds and the security for the Bonds; and (c) the execution and delivery of a Loan Agreement, dated as of even date herewith (the “Loan Agreement”) to provide for and establish certain terms and conditions of the Loan.

G. To accomplish the financing as contemplated in the Bond Ordinance, the Issuer and the Borrower will enter into the Loan Agreement, pursuant to which the Issuer will loan the proceeds of the Bonds to the Borrower and the Borrower will pay to the Issuer such loan payments at such times and in such amounts as will be required to pay the principal of, premium, if any, and interest on the Bonds to be issued, as and when the same become due.

H. To evidence the obligation of the Borrower to make loan payments sufficient to pay the principal of, premium, if any and interest on the Bonds, the Borrower will execute and deliver to the Issuer its Series 2008A Note in the original principal amount of \$ \_\_\_\_\_, and its Series 2008B Note in the original principal amount of \$ \_\_\_\_\_.

I. To secure its obligations under the Loan Agreement and the Notes, the Borrower: (a) has conveyed to the Trustee a first lien deed of trust in the property described in Exhibits C and D attached hereto and has assigned and pledged to the Trustee the Borrower's interest in the leases, rents, issues, profits, revenues, income, receipts, moneys, royalties, rights and benefits of and from the Project pursuant to a Trust Deed, dated as of even date herewith, from the Borrower to the Trustee; (b) has granted to the Trustee a first priority security interest in the accounts, documents, chattel paper, instruments, and general intangibles arising in any manner from the Borrower's operation of the Project, and in the Equipment (as defined in the Loan Agreement) pursuant to a Security Agreement, dated as of even date herewith, from the Borrower to the Trustee, all subject to Permitted Encumbrances (as defined in the Loan Agreement); and (c) has assigned to the Trustee its rights under the Management Agreement, and the Housing Services Agreement pursuant to an Assignment of Contract Documents, dated as of even date herewith, from the Borrower to the Issuer.

J. To secure its obligation to pay principal of, premium, if any, and interest on the Bonds, the Issuer has agreed (i) to assign and pledge to the Trustee, and grant a first priority security interest to the Trustee in, all of its right, title, and interest in the Loan Agreement (except for Unassigned Rights as defined in the Loan Agreement), the Notes, and all revenues, payments, receipts, and moneys to be received and held thereunder, all pursuant to the granting clauses of this Indenture, and (ii) to endorse the Notes to the order of the Trustee.

K. The Issuer hereby finds and determines that the financing of the Project and its assistance in the financing thereof will further the purposes and policies of the Act and the City Code.

L. The Issuer has determined that all things necessary to make the Bonds, when executed by the Issuer and authenticated by the Trustee and issued in accordance with this Indenture, the valid, binding and legal special and limited obligations of the Issuer, have been duly taken, and the creation, execution and delivery of this Indenture and the creation, execution and delivery of the Bonds, subject to the terms of this Indenture, have been duly authorized by the Issuer.

M. The Trustee has trust powers and the power and authority to enter into this Indenture, to accept trusts generally and to accept and execute the trust created by this Indenture; the Trustee has accepted the trust so created, and to evidence such acceptance, has joined in the execution of this Indenture.



**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS TRUST INDENTURE WITNESSETH:**

That the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the Owners thereof, and of the sum of one dollar, lawful money of the United States of America, to it duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds (as hereinafter defined) according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby, subject to the terms and provisions of the Loan Agreement, grant, bargain, sell, transfer, convey, mortgage, pledge, and assign, without recourse and irrevocably in trust, unto Wells Fargo Bank, National Association, as trustee, and unto its successors in trust, and to its assigns forever, and does hereby grant a continuing security interest in (to the extent permitted by law), for the securing of the performance of the obligations of the Issuer and Borrower hereinafter set forth, the property, real or personal, tangible or intangible, which property is more particularly described below:

**GRANTING CLAUSE FIRST**

All the right, title, and interest of the Issuer in and to (a) the Loan Agreement, dated as of October 1, 2008, between the Issuer and Borrower (except for Unassigned Rights, as defined in the Agreement), and (b) the Notes, and all extensions and renewals of the terms thereof, if any, and all amounts encumbered thereby, including, but without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive, and make receipt for payments and other sums of money payable, receivable, or to be held thereunder, to bring any actions and proceedings thereunder or for the enforcement thereof, and to do any and all other things which the Issuer is or may become entitled to do under the foregoing, provided that the assignment made by this clause shall not impair or diminish any obligation of the Issuer under the provisions of the foregoing or impair or diminish the right of the Issuer to enforce compliance with the obligations of the Borrower under the foregoing, as long as no Event of Default (as hereinafter defined) has occurred and is continuing hereunder.

**GRANTING CLAUSE SECOND**

All the right, title, and interest of the Issuer in and to all cash proceeds and receipts arising out of or in connection with the sale of the Bonds and all other moneys, investments, and instruments held by the Trustee in the funds created under this Indenture (except the Rebate Fund), including the Revenue Fund, Bond Fund, Capital Replacement Fund, Debt Service Reserve Fund, Issuance Cost Fund, Operating Reserve Fund, Surplus Fund, Insurance Fund, and Condemnation Fund created hereunder, or held by the Trustee as special trust funds derived from any other source.

**GRANTING CLAUSE THIRD**

All the right, title, and interest of the Issuer in and to all moneys and securities and interest earnings thereon from time to time delivered to and held by the Trustee under the terms of this Indenture (except the Rebate Fund) and all other rights of every name and nature and any and all other property from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned, or transferred as and for additional security hereunder by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

#### **GRANTING CLAUSE FOURTH**

All the right, title, and interest of the Issuer in and to all proceeds (cash and noncash) of any or all of the foregoing, including, without limiting the generality of the foregoing, all inventory, accounts, chattel paper, documents, equipment, instruments, farm products, consumer goods, and general intangibles constituting proceeds acquired with cash proceeds of any or all of the foregoing.

IN EACH CASE, whether now owned or hereafter acquired by the Issuer and howsoever its interest therein may arise or appear (whether by ownership, security interest, claim, or otherwise) and whether due or to become due and whether or not earned by performance;

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby pledged, conveyed, and assigned, or agreed or intended so to be, to the Trustee and its successors in said trusts and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security, and protection of all present and future Owners of Bonds from time to time issued under and secured by this Indenture without privilege, priority, or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds;

PROVIDED, HOWEVER, that if the Issuer, the Borrower, or their successors or assigns shall well and truly pay or cause to be paid to the Owners of Bonds the principal, interest, and premium, if any, due or to become due thereon at the times and in the manner stipulated in the Bonds and herein, according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as required hereby, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount now or hereafter due thereon and if the Issuer shall well and truly keep, perform, and observe all and singular the covenants, conditions, and premises in the Bonds and in this Indenture expressed as to be kept, performed, and observed by it or on its part, and shall pay or cause to be paid to the Trustee all sums of money due or scheduled to become due to it in accordance with the terms and provisions hereof, including all fees, charges and expenses (including legal expenses) of the Trustee and any paying agent, then these presents and the estate and rights hereby granted shall cease, determine, terminate, and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be reasonably necessary to satisfy the lien hereof and reconvey to the Issuer the estate hereby conveyed and assign and deliver to the Issuer any property at the time subject to the lien of this Indenture which may then be in its possession, except amounts in the funds created hereunder required to be paid to the Borrower under Section 5.12 hereof and except cash held by the Trustee for the payment of interest on and retirement of the Bonds; otherwise this Indenture to be and remain in full force and effect until such time as the principal of the Bonds and the interest and premium, if any, thereon have been paid or provided for as hereinafter set out.

THIS TRUST INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated, and delivered and all said revenues, receipts, and property hereby conveyed, pledged, mortgaged, and assigned and which are the subject of a grant of a security interest are to be dealt with and disposed of under, upon, and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant, with the Trustee and Owners, from time to time, of the Bonds, as follows:

## ARTICLE I. DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

**Section 1.1 Definitions.** Capitalized terms used in this Indenture shall have the meaning given to those terms in Section 1.2 of the Loan Agreement, or as elsewhere defined in this Indenture, unless the context or use clearly indicates a different meaning.

**Section 1.2 Construction of Certain Terms.** For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

(a) The use of the masculine, feminine, or neuter gender is for convenience only and shall be deemed and construed to include correlative words of the masculine, feminine, or neuter gender, as appropriate.

(b) "This Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

(c) All references in this instrument to designated "Articles," "Sections," and other subdivisions are to the designated Articles, Sections, and other subdivisions of this instrument. The words "herein," "hereof," "hereto," "hereby," and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section, or other subdivision.

(d) Capitalized terms used in this Indenture and the Loan Agreement shall have the meanings assigned to them in this Indenture and the Loan Agreement and shall include the plural as well as the singular.

(e) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles promulgated by the American Institute of Certified Public Accountants, on and as of the date of this instrument.

**Section 1.3 Table of Contents; Titles and Headings.** The table of contents, the titles of the articles, and the headings of the sections of this Indenture are solely for convenience of reference, are not a part of this Indenture, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

**Section 1.4 Contents of Certificates or Opinions.** Every certificate or opinion with respect to the compliance with a condition or covenant provided for in this Indenture and which is precedent to the taking of any action by the Trustee under this Indenture shall include a (i) statement that the person or persons making or giving such certificate or opinion have read such covenant or condition herein and the definitions herein relating thereto, (ii) statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with, and (iii) statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such certificate or opinion made or given by an officer of the Issuer or an officer of the Borrower may be based, insofar as it relates to legal or accounting matters, upon a certificate or an opinion of counsel or an Accountant, which certificate or opinion has been given only after due inquiry of

the relevant facts and circumstances, unless such officer knows that the certificate or opinion with respect to the matters upon which his certificate or opinion may be based as aforesaid is erroneous or in the exercise of reasonable care should have known that the same was erroneous. Any such certificate or opinion made or given by counsel or an Accountant may be based (insofar as it relates to factual matters with respect to information which is in the possession of an officer of the Issuer or an officer of the Borrower or any third party) upon the certificate or opinion of or representations by an officer of the Issuer or an officer of the Borrower or any third party on whom counsel or an Accountant could reasonably rely, unless such counsel or such Accountant knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion may be based as aforesaid are erroneous or in the exercise of reasonable care should have known that the same were erroneous. The same officer of the Issuer or officer of the Borrower or the same counsel or Accountant, as the case may be, need not certify or opine to all of the matters required to be certified or opined under any provision of this Indenture, but different officers, counsel, or Accountants may certify or opine to different matters, respectively.

## ARTICLE II. THE BONDS

**Section 2.1 Restriction on Issuance of Bonds.** No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued hereunder is expressly limited to \$52,000,000.

### **Section 2.2 Issuance of Bonds; Terms of Bonds.**

(a) General Provisions. The Series 2008A Bonds (a) shall be initially issued in the aggregate principal amount of \$ \_\_\_\_\_ and (b) shall mature and bear interest as set forth below:

(b) The Series 2008B Bonds (a) shall be initially issued in the aggregate principal amount of \$ \_\_\_\_\_ and (b) shall mature and bear interest as set forth below:

Each Bond shall be dated as of the Closing Date, and shall bear interest from the Closing Date. If, as shown by the records of the Trustee, interest on a Bond is in default, any Bond issued in exchange for such Bond surrendered for registration upon transfer or exchange shall bear interest from the date to which interest has been paid in full on such Bond, or, if no interest has been paid on such Bond, from the Closing Date.

Principal of, and premium, if any, on each Bond shall be payable by the Trustee to the Bondholders upon presentation and surrender of such Bond as the same become due at the Principal Corporate Trust Office of the Trustee. The payment of principal of the Bonds shall be made to the Owner of \$1,000,000 or more in aggregate principal amount of Bonds upon such Owner providing the Trustee with written wire transfer instructions before the applicable Record Date and upon compliance by such Owner at the request of the Trustee with any reasonable requirements of the Trustee with respect to such wire transfers as are necessary to comply with any applicable provisions of Article 4A of the Uniform Commercial Code of the State. Interest on the Bonds shall be paid by the Trustee by check or draft drawn upon the Trustee and mailed by first-class mail on the respective Interest Payment Dates to the Bondholders at their addresses shown on the registration books of the Trustee as of the close of business on the Record Date with respect to such Interest Payment Date, or to such other addresses as are furnished to the Trustee (in form satisfactory to the Trustee) by such Bondholders prior to such Record Date; provided that payment of interest shall be made by the Trustee by wire transfer to the Owner of \$1,000,000 or more in aggregate principal amount of Bonds upon such Owner providing the Trustee with written wire transfer instructions before the applicable Record Date and upon compliance by such Owner at the request of the Trustee with any reasonable requirements of the Trustee with respect to such wire transfers as are necessary to comply with any applicable provisions of Article 4A of the Uniform Commercial Code of the State. Such interest shall be paid notwithstanding the cancellation of any Bonds upon any exchange or registration of transfer thereof subsequent to the Record Date and prior to such Interest Payment Date, except that, if and to the extent there shall be a default in the payment of interest due on such Interest Payment Date, such defaulted interest shall be paid to the Bondholders in whose names such Bonds (or any Bond or Bonds issued upon registration of transfer or exchange thereof) are registered at the close of business on the Business Day next preceding the date of payment of such defaulted interest. Payment of principal of, premium, if any, and interest on the Bonds shall be made in such lawful money of the United States of America as, at the respective times of payment, shall be legal tender for the payment of public and private debts.

**Section 2.3 Execution; Limited Obligation; Temporary Bonds.** The Bonds may be executed on behalf of the Issuer by its Mayor with his or her manual or facsimile signature and may be attested by the manual or facsimile signature of its Auditor. All such facsimile signatures shall have the same force and effect as if said officers had manually signed each of the Bonds. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, and the Bonds may be issued and delivered as if such officer had remained in office until delivery.

The Bonds, together with interest thereon, shall be limited and not general obligations of the Issuer giving rise to no pecuniary liability of the Issuer, shall be payable solely from the Security, and shall be a valid claim of the respective Owners thereof only against the Security, including the revenues and receipts from the Project, which revenues and receipts (except for the Unassigned Rights) are hereby again specifically pledged and assigned to the Trustee for the equal and ratable payment of the Bonds shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the Bonds except as may be otherwise expressly authorized in this Indenture. THE BONDS SHALL BE LIMITED OBLIGATIONS OF THE ISSUER AS PROVIDED THEREIN PAYABLE SOLELY FROM THE REVENUES AND COLLATERAL PLEDGED TO THE PAYMENT THEREOF. THE BONDS AND THE INTEREST THEREON SHALL NOT CONSTITUTE A GENERAL OR MORAL OBLIGATION OF THE ISSUER NOR A DEBT, INDEBTEDNESS, OR OBLIGATION OF, OR A PLEDGE OF THE FAITH AND CREDIT OF MULTNOMAH COUNTY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF MULTNOMAH COUNTY, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO. NEITHER THE MEMBERS OF THE GOVERNING BODY OF THE ISSUER NOR ANY PERSON EXECUTING THE BONDS SHALL BE LIABLE PERSONALLY ON THE BONDS BY REASON OF THE ISSUANCE THEREOF.

Until Bonds in definitive form of any series are ready for delivery, or by agreement with the purchasers of all Bonds of any series, the Issuer may execute, and upon its request in writing, the Trustee shall authenticate and deliver in lieu of definitive Bonds, subject to the same provisions, limitations, and conditions, one or more printed, lithographed, or typewritten Bonds in temporary form, substantially of the tenor of the Bonds in this Article II described, with appropriate omissions, variations, and insertions as may be required. Bonds in temporary form shall be for such principal amounts as the Issuer shall determine.

Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the same security, lien, and benefit of this Indenture and shall have the same rights, remedies, and security hereunder as definitive Bonds to be issued and authenticated hereunder. The Issuer shall, without unreasonable delay, prepare, execute, and deliver definitive Bonds to the Trustee, and thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form to the Trustee at its principal corporate trust office, the Trustee shall cancel the same and authenticate and deliver, in exchange therefore, a Bond or Bonds of the same maturity, interest rate, and series, in definitive form in the authorized denominations, and for the same aggregate principal amount as the Bond or Bonds in temporary form surrendered. Such exchange shall be made without making any charge therefore to any Bondholder.

**Section 2.4 Authentication.** Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth in Exhibits A and B to this Indenture and duly executed by the Trustee shall be entitled to any right, security, or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture and that the Owner thereof is entitled to the benefits of the trust hereby created. The Trustee's certificate of authentication on any Bond shall be deemed to have been duly executed by it if (a) signed by an authorized officer or signatory of the Trustee, but it shall not be necessary that the same officer or signatory sign the certificate of authentication on all of the Bonds or on all of the Bonds of any series issued hereunder, and (b) the date of registration and authentication of the Bond is inserted in the place provided therefore on the certificate of authentication.

**Section 2.5 Form; Denomination; Medium of Payment.** The Bonds shall be issuable only as fully registered Bonds without coupons in Authorized Denominations. The Bonds shall be substantially in the form set forth in Exhibits A and B of this Indenture with such variations, insertions, or omissions as are appropriate and not inconsistent therewith and shall conform generally to the rules and regulations of any governmental authority or usage or requirement of law with respect thereto. Principal of and interest and premium, if any, on the Bonds shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

**Section 2.6 Mutilated, Lost, Stolen, or Destroyed Bonds.** If any Bond is mutilated, lost, stolen, or destroyed, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond of like date, number, series, interest rate, maturity, and denomination as that mutilated, lost, stolen, or destroyed; provided, that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen, or destroyed Bond, there shall be first furnished to the Issuer, Borrower and Trustee evidence of such loss, theft, or destruction satisfactory to the Issuer, Borrower and Trustee, together with indemnity satisfactory to them. If any such Bond shall have matured, or shall be about to mature or have been called for redemption, instead of issuing a duplicate Bond the Issuer may pay the same without surrender thereof, provided that the conditions of this Section 2.6 shall have been satisfied. The Issuer, Borrower and Trustee may charge the Owner of such Bond with their reasonable fees and expenses in connection with actions taken under this Section and may require the Owner of such Bond to pay any tax, fee, or other governmental charge that may be imposed in relation thereto as conditions precedent to the issuance of any replacement Bond(s). The Issuer shall cooperate with the Trustee and the Borrower in connection with the issue of replacement Bonds, but nothing in this Section shall be construed in derogation of any rights which the Issuer, Borrower or Trustee may have to receive indemnification against liability, or payment or reimbursement of expenses, in connection with the issue of a replacement Bond.

Every substituted Bond issued pursuant to this Section shall constitute an original additional contractual obligation of the Issuer, whether or not the Bond alleged to have been mutilated, destroyed, lost, or stolen shall be at any time enforceable by anyone, and shall be entitled to all the rights and benefits of this Indenture equally and proportionately with any and all other Bonds Outstanding of the same series duly issued hereunder.

All Bonds shall be held and owned upon the express condition that the foregoing provisions are, to the extent permitted by law, exclusive with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Bonds, and shall preclude any and all other rights or remedies.

**Section 2.7 Cancellation and Destruction of Surrendered Bonds.** Whenever any Outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount or interest represented thereby, or for replacement pursuant to Section 2.6 hereof or transfer or exchange pursuant to Section 2.8 hereof, such Bond shall be promptly canceled and cremated or otherwise destroyed by the Trustee, and counterparts of a certificate of destruction evidencing such cremation or other destruction shall be furnished by the Trustee to the Issuer, if requested.

**Section 2.8 Negotiability; Registration, Transfer, and Exchange.** The Bonds shall be and shall have all the qualities and incidents of negotiable instruments under the laws of the State, and the Bondholders, in accepting any of the Bonds, shall be conclusively deemed to have agreed that the Bonds shall be and have all of said qualities and incidents of negotiable instruments.

The Issuer shall cause books for the registration of the Bonds and for the registration of transfer of the Bonds as provided in this Indenture to be kept by the Trustee which is hereby appointed the Issuer's bond registrar and agent for the transfer and exchange of the Bonds and as such shall maintain the books of the Issuer for the registration of ownership of each Bond as provided in this Indenture. The Trustee, for and on behalf of the Issuer, shall keep the Bond registration record, in which shall be recorded any and all transfers of ownership of Bonds. No Bonds shall be registered to bearer. The registration records kept by the Trustee shall at all times comply with all requirements of Section 149(a) of the Code and all Regulations from time to time promulgated thereunder as such apply to the Bonds and as may be applicable to such registration records and the Bonds. Any Bond may be transferred upon the registration books upon surrender thereof by the registered Bondholder in person or by his attorney-in-fact or legal representative duly authorized in writing together with a written instrument of transfer in form and with guarantee of signature satisfactory to the Trustee duly executed by the registered Bondholder or his attorney-in-fact or legal representative duly authorized in writing and upon payment by such registered Bondholder of a sum sufficient to cover any governmental tax, fee, or charge required to be paid as provided in this Indenture. Upon any such registration of transfer, the Issuer shall cause to be executed and the Trustee shall authenticate and deliver in the name of the transferee a new fully registered Bond or Bonds of authorized denominations and of the same series, maturity or maturities, and interest rate(s) and in the same aggregate principal amount(s), and the Trustee shall enter the transfer of ownership in the registration books. No transfer of any Bond shall be effective until entered on the registration books.

Any Bonds, upon surrender thereof at the Principal Corporate Trust Office of the Trustee with a written instrument of transfer in form and with guarantee of signature satisfactory to the Trustee, duly executed by the registered Owner or his attorney-in-fact or legal representative duly authorized in writing, may be exchanged, at the option of the registered Owner thereof, and upon payment by such registered Owner of a sum sufficient to cover any governmental tax, fee, or charge required to be paid as provided in this Indenture, when not prohibited by law, for an equal aggregate principal amount of Bonds of the same series, interest rate, and maturity or maturities and of any other authorized denominations and registered in the name of the same registered Owner. When Bonds are presented for exchange in accordance with this Section 2.8, the Issuer shall cause to be executed and the Trustee shall authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not then outstanding, and the Trustee, as bond registrar, shall enter the exchange in the registration books.

Except as provided herein with respect to exchanges for certain temporary Bonds, the cost of printing, lithographing, and engraving of all Bonds shall be deemed to be an Ordinary Expense of the Trustee, and there shall be no charge to any Bondholder for the registration, exchange, or transfer of Bonds, although in each case the Trustee may require the payment by the Bondholder requesting



exchange or transfer of any tax, fee, or other governmental charge required to be paid with respect thereto and may require that such amount be paid before any such new Bond shall be delivered.

The Issuer and Trustee may deem and treat the registered Bondholder of any Bond as the absolute Owner of such Bond for the purpose of receiving any payment on such Bond and for all other purposes of this Indenture and the Agreement, whether such Bond shall be overdue or not, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. Payment of, or on account of, the principal of and interest and redemption premium, if any, on any Bond shall be made to or upon the written order of such registered Bondholder or his attorney-in-fact or legal representative duly authorized in writing. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

The execution and attestation by the manual or facsimile signature of the Mayor and Auditor of the Issuer of any Bond of any authorized denomination shall constitute full and due authorization of such denomination, and the Trustee shall thereby be authorized to authenticate and deliver such Bond. New Bonds delivered upon any transfer or exchange shall be valid limited obligations of the Issuer, evidencing the same obligation as the Bonds surrendered, shall be secured by this Indenture, and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered. The Trustee shall not be required to transfer or exchange any Bond (a) after the notice calling such Bond for redemption has been given as herein provided or (b) during a period beginning at the opening of business on the fifteenth (15th) day (regardless of whether such day is a Business Day) next preceding either any Interest Payment Date or any date of selection of Bonds to be redeemed and ending at the close of business on the Interest Payment Date or day on which the applicable notice of redemption is given.

**Section 2.9 Number Provisions.** The Series 2008A Bonds shall be numbered consecutively from AR-1 upward and the Series 2008B Bonds shall be numbered consecutively from BR-1 upward, or in such other manner as the Issuer, with the concurrence of the Trustee, shall determine. The Trustee shall insert the date of registration and authentication of each Bond in the place provided for such purpose in the form of certificate of authentication of the Trustee to be printed on each Bond. If interest on the Bonds shall be in default, Bonds issued in exchange for Bonds surrendered for transfer or exchange shall be dated as of the date to which interest has been paid in full on the Bonds surrendered.

**Section 2.10 Delivery of Bonds.** Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee and the Trustee shall authenticate the Series 2008A Bonds in the aggregate principal amount of \$\_\_\_\_\_ and the Series 2008B Bonds in the aggregate principal amount of \$\_\_\_\_\_, and deliver them to the Persons designated by the Underwriter.

Prior to the registration and authentication by the Trustee of any of the Bonds, there shall be filed with and delivered to the Trustee:

(a) closing certificate of the Issuer incorporating copies of the Bond Ordinance,

(b) closing certificate of the Borrower incorporating a copy of the Borrower's Articles of Organization and Operating Agreement and a copy of the resolution of the Management Committee of the Borrower authorizing and approving the execution and delivery of the Loan Agreement, Notes, Trust Deed, Security Agreement, Assignment of Contract Documents, the Housing Services Agreement and all other documents to be delivered by the Borrower in connection with the transactions contemplated by said instruments,

(c) the Borrower's Tax Compliance Agreement,

(d) original executed counterparts of this Indenture, the Agreement, Notes, Trust Deed, Security Agreement and Assignment of Contract Documents,

(e) the mortgagee's title insurance policy (or appropriate binder) required by Section 3.5 of the Agreement,

(f) a request and authorization to the Trustee on behalf of the Issuer, signed by the Authorized Officer of the Issuer, to authenticate and deliver the Bonds to be issued to the Underwriter upon payment to the Trustee, but for the account of the Issuer, of the sum therein specified in the Bond Purchase Agreement,

(g) a certification by the Authorized Officer of the reasonable expectations of the Issuer on the date of the issuance of the Bonds regarding the amount and use of the proceeds of the Bonds and setting forth the facts and estimates on which the Issuer's expectations are based,

(h) opinions dated as of the date of the closing of (i) counsel for PSU Foundation, (ii) Bond Counsel, (iii) counsel for the Borrower, (iv) the Attorney General of the State (addressed solely to PSU), and (v) counsel to the Underwriter in form and substance satisfactory to the Underwriter, and the Issuer,

(i) such other documents, certificates, and instruments in connection with the transactions contemplated by this Indenture, in form and substance satisfactory to the Underwriter as the Underwriter may reasonably request (payment for the Bonds by the Underwriter being conclusive evidence that the Underwriter has received all documents, certificates, and instruments required by it),

(j) a closing certificate of PSU and a copy of the resolution of its governing body authorizing and approving the execution and delivery of the Housing Services Agreement, and

(k) a certificate of the Insurance Consultant to the effect that all insurance policies required by Section 6.4 of the Loan Agreement to be in effect on the Closing Date are in effect and that such policies comply with the requirements of Sections 6.4 and 6.6 of the Loan Agreement.

Upon receipt of the foregoing and of the purchase price for the Bonds, the Trustee shall register, authenticate, and deliver the Bonds to or upon the order of the purchasers thereof.

**Section 2.11 Book Entry System.** The Bonds will be issued by means of a book-entry system with no physical distribution of Bonds made to the public. One Bond for each maturity will be issued to The Depository Trust Company ("DTC") and immobilized in its custody. A book-entry system will be employed, evidencing ownership of the Bonds, with transfers of beneficial ownership effected on the records of DTC and its participants (the "DTC Participants") pursuant to rules and procedures established by DTC.

Each DTC Participant will be credited in the records of DTC with the amount of such DTC Participant's interest in the Bonds. Beneficial ownership interests in the Bonds may be purchased by and through DTC Participants. The holders of these beneficial ownership interests are hereinafter referred to as the "Beneficial Owners." The Beneficial Owners will not receive Bonds representing their beneficial ownership interests. The ownership interests of each Beneficial Owner will be recorded through the records of the DTC Participant from which such Beneficial owner purchased its Bonds. Transfers of

ownership interests in the Bonds will be accomplished by book entries made by DTC and, in turn, by DTC Participants acting on behalf of Beneficial Owners.

SO LONG AS CEDE & CO, AS NOMINEE FOR DTC, IS THE REGISTERED OWNER OF THE BONDS, THE TRUSTEE SHALL TREAT CEDE & CO. AS THE ONLY HOLDER OF THE BONDS FOR ALL PURPOSES UNDER THE INDENTURE, INCLUDING RECEIPT OF ALL PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, RECEIPT OF NOTICES, VOTING AND REQUESTING OR DIRECTING THE TRUSTEE TO TAKE OR NOT TO TAKE, OR CONSENTING TO, CERTAIN ACTIONS UNDER THE INDENTURE.

Payments of principal, interest and redemption premium, if any, with respect to the Bonds, so long as DTC is the only Owner of the Bonds, will be paid by the Trustee directly to DTC or its nominee, Cede & Co. as provided in the letter of representation, from the Issuer, the Borrower and Trustee to DTC. DTC will remit such payments to DTC Participants, and such payments thereafter will be paid by DTC Participants to the Beneficial Owners. The Issuer and Trustee shall not be responsible or liable for payment by DTC or DTC Participants for sending transaction statements or for maintaining, supervising or reviewing records maintained by DTC or DTC Participants.

If (a) DTC determines not to continue to act as securities depository for the Bonds or (b) the Issuer determines that the continuation of the book-entry system of evidence and transfer of ownership of the Bonds would adversely affect the interests of the Issuer or the Beneficial Owners of the Bonds, the Issuer shall discontinue the book-entry system with DTC. If the Issuer fails to identify another qualified securities depository to replace DTC, the Issuer will cause the Trustee to authenticate and deliver replacement Bonds in the form of fully registered Bonds to each Beneficial Owner.

THE ISSUER, THE BORROWER AND THE TRUSTEE DO NOT HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO ANY DTC PARTICIPANT OR ANY BENEFICIAL OWNER WITH RESPECT TO (a) THE BONDS; (b) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DTC PARTICIPANT; (c) THE PAYMENT OF DTC OR ANY DTC PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER WITH RESPECT TO THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON THE BONDS; (d) THE DELIVERY OR TIMELINESS OF DELIVERY BY DTC OR ANY DTC PARTICIPANT OF ANY NOTICE DUE TO ANY BENEFICIAL OWNER WHICH IS REQUIRED OR PERMITTED UNDER THE TERMS OF THE INDENTURE TO BE GIVEN TO OWNERS; (e) THE SELECTION OF BENEFICIAL OWNERS TO RECEIVE PAYMENTS IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE BONDS; OR (f) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC, OR ITS NOMINEE, CEDE & CO., AS OWNER.

In the event that a book-entry system of evidence and transfer of ownership of the Bonds is discontinued pursuant to the provisions of this Section, the Bonds shall be delivered solely as fully registered Bonds without coupons in Authorized Denominations and shall be payable, executed, authenticated, registered, exchanged and canceled pursuant to the provisions of Article II hereof. In addition, the Issuer will cause the Borrower to pay all costs and fees associated with the printing of the Bonds and issuance of the same in certificated form. While the Bonds are registered in a book-entry system, all tenders and deliveries will be made pursuant to the DTC delivery order procedures.

### ARTICLE III. REDEMPTION AND PURCHASE OF BONDS

**Section 3.1 Privilege of Redemption and Redemption Price.** The Bonds shall be subject to redemption and, in certain instances, to purchase prior to maturity to the extent and in the manner provided in this Indenture.

**Section 3.2 Issuer's Election to Redeem.** At the written request of the Borrower, the Issuer shall give written notice to the Trustee of its election to redeem, of the redemption date, and of the principal amount of each maturity of each series of redeemable Bonds to be redeemed, which notice shall be given at least sixty (60) days prior to the redemption date or such shorter period not less than thirty (30) days as shall be acceptable to the Trustee. If notice of redemption shall have been given pursuant to Section 3.3 hereof, the Issuer shall, prior to the redemption date, pay to the Trustee, solely from funds provided by the Borrower, an amount in cash which, in addition to other moneys, if any, available therefore held by the Trustee, will be sufficient to redeem at the redemption price thereof, plus interest accrued to the redemption date, all of the Bonds to be redeemed.

**Section 3.3 Notice of Redemption.** If any of the Bonds are called for redemption as aforesaid, notice thereof identifying the Bonds or portions thereof to be redeemed shall be given by the Trustee by mailing a copy of the redemption notice by first-class mail (postage prepaid) not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption to the registered Owner of each Bond to be redeemed in whole or in part at the address shown on the registration books at the close of business on the fifth (5th) day preceding the date of mailing; provided, however, that failure to give such notice by mailing to any Owner of Bonds, or any defect therein, shall not affect the validity of any proceedings for the redemption of any other Bonds. Each notice shall specify the CUSIP numbers of the Bonds being called, the numbers of the Bonds of each series being called if less than all of the Bonds of any series are being called, redemption date, redemption price, and place or places where amounts due upon such redemption will be payable. Such notice shall further state that payment of the applicable redemption price plus accrued interest to the date fixed for redemption, if any, will be made upon presentation and surrender of the Bonds to be redeemed and that on the redemption date, the redemption price will become due and payable upon each Bond to be redeemed and that interest thereon will cease to accrue on and after such date, provided collected funds for the redemption of the Bonds to be redeemed are on deposit at the place of payment at that time. Any notice mailed as provided in this Section 3.3 shall be conclusively presumed to have been duly given, whether or not the Owner of such Bonds actually receives the notice. Notwithstanding the foregoing, upon the written direction of the Borrower, the notice of redemption for optional redemption pursuant to Section 3.4(b) hereof shall contain a statement to the effect that the redemption of the Bonds is conditioned upon the receipt by the Trustee, prior to the date fixed for such redemption, of amounts equal to the redemption price of the Bonds to be redeemed, and that if such moneys shall not have been so received, the notice will be of no force and effect and the Issuer shall not be required to redeem such Bonds and such Bonds shall not become due and payable.

### **Section 3.4 Redemption Dates and Prices for Bonds.**

(a) Extraordinary Redemption. The Bonds may be called for redemption, at the direction of the Borrower, in the event of: (i) damage to or destruction of the Project or any part thereof to the extent permitted in Section 11.2(a) of the Agreement or (ii) condemnation of all or a portion of the Project to the extent permitted in Section 7.2(c) or Section 11.2(b) of the Agreement. Notwithstanding the foregoing, the Bonds shall be called for redemption in the event of: (i) damage to or destruction of the Project or any part thereof to the extent required by Section 11.2(a) of the Agreement or (ii) condemnation of all or a portion of the Project to the extent required by Section 11.2(b) of the Agreement, unless the Borrower shall furnish to the Trustee the items required by Section 7.1(b) of the Agreement or Section 7.2(d) of the Agreement, whichever is applicable.

If the Bonds are called for redemption in the events described in the first sentence of the immediately preceding paragraph, the Bonds shall be subject to redemption at any time within 180 days of such event in whole or (in the case of partial redemption as a result of condemnation of a portion of the Project) in part at a redemption price of 100% of the principal amount thereof plus accrued interest to the redemption date. If the Bonds are called for redemption in the events described in the second sentence of the immediately preceding paragraph, the Bonds shall be redeemed by the Issuer at any time within 180 days of such event in whole and not in part at a redemption price of 100% of the principal amount thereof plus accrued interest to the redemption date.

(b) Optional Redemption. The Bonds shall be subject to redemption prior to maturity, in whole or in part on any date, upon the written request of the Borrower, from Available Moneys paid by the Borrower pursuant to the Loan Agreement, Available Moneys on deposit in the Bond Fund, and any other Available Moneys held by the Trustee to be applied to the redemption of Bonds as follows: on any date on or after \_\_\_\_\_ at a price of one hundred percent (100%) of the principal amount thereof plus accrued interest to the redemption date.

(c) Mandatory Redemption. Bonds are subject to mandatory redemption prior to maturity, in part by lot, in such manner as may be designated by the Trustee, in specified amounts pursuant to the terms provided by Section 3.5 hereof at a price of one hundred percent (100%) of the principal amount thereof plus accrued interest to the redemption date.

**Section 3.5 Mandatory Redemption of Bonds.** As and for the retirement of Series 2008A Bonds maturing \_\_\_\_\_, the Basic Loan Payments specified in Section 5.2 of the Agreement which are to be deposited in the Bond Fund beginning on \_\_\_\_\_, 20\_\_ and on the \_\_\_\_\_ ( ) day of each month thereafter, to and including \_\_\_\_\_, 20\_\_, shall include an amount sufficient to redeem in part, by lot (after credit as provided below), the following principal amounts (which include the principal amount which will be outstanding on the date of maturity) of such Series 2008A Bonds:

<u>April 1 of the Year</u>	<u>Principal Amount</u> \$
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As and for the retirement of Series 2008B, the Basic Loan Payments specified in Section 5.2 of the Agreement which are to be deposited in the Bond Fund shall include an amount sufficient to redeem in part, by lot (after credit as provided below), the following principal amounts (which include the principal amount which will be outstanding on the date of maturity) of such Series 2008B Bonds:

<u>April 1 of the Year</u>	<u>Principal Amount</u> \$
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The Issuer shall be entitled to receive a credit in respect of its mandatory redemption obligation under this Section 3.5 for Bonds delivered, purchased, or redeemed, as hereinafter provided, if the Borrower at its option purchases in the open market and delivers to the Trustee for cancellation Bonds or redeems Bonds (other than through mandatory redemption) and such Bonds have not theretofore been applied as a credit against any mandatory redemption obligation. Each such Bond so purchased or redeemed shall be credited by the Trustee at 100% of the principal amount thereof on the obligation of the Issuer on such mandatory redemption payment date, and any excess shall be credited on future mandatory redemption obligations in chronological order, and the principal amount of such Bonds to be redeemed by operation of mandatory redemption and the Basic Loan Payments specified in Section 5.2 of the Agreement for mandatory redemption shall be accordingly reduced.

**Section 3.6 Partial Redemption.** If less than all of the Bonds of any series are called for redemption in any of the circumstances set forth above other than mandatory redemption pursuant to Section 3.5 hereof, Bonds having a maturity or maturities selected by the Borrower shall be redeemed and if less than all of the Bonds of a maturity are to be redeemed, the particular Bonds or portions thereof of such series to be redeemed within a maturity shall be selected by lot in such manner as the Trustee shall determine. Bonds shall be redeemed in the principal amount of \$5,000 or any integral multiple thereof. Upon surrender of any Bond for redemption in part, the Issuer shall execute and the Trustee shall authenticate and deliver to the Owner thereof a new Bond or Bonds of the same series, interest rate, and maturity and of authorized denominations in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered.

**Section 3.7 Payment Upon Redemption.** On or prior to each redemption date, the Trustee shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust, an amount of available funds from the Bond Fund sufficient to pay the (a) principal of and interest on such Bonds, and (b) premium, if any, on such Bonds. Upon presentation and surrender of any such Bond at the Principal Corporate Trust Office of the Trustee on or after the date fixed for redemption, the Trustee shall pay the principal of and premium, if any, on such Bond from the moneys set aside for such purpose.

**Section 3.8 Effect of Redemption.** Notice of redemption having been given as provided in Section 3.3 hereof, the Bonds or portions thereof designated for redemption shall become and be due and payable on the date fixed for redemption at the redemption price provided for herein, provided immediately available funds for their redemption are on deposit at the place of payment at that time, and, unless the Issuer defaults in the payment of the principal thereof and premium, if any, and interest thereon, such Bonds or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date. If any Bond or portion thereof called for redemption is not so paid upon presentation and surrender thereof for redemption, such Bond or portion thereof shall continue to bear interest at the rate set forth therein until paid or until due provision is made for the payment of the same.

**Section 3.9 Purchase of Bonds.** At the direction of the Borrower in writing, the Trustee shall apply moneys in the Bond Fund held for redemption or payment of Bonds, in excess of any amount set aside for payment of Bonds theretofore matured or called for redemption and unpaid interest in all cases where such Bonds have not been presented for payment, to the purchase on the open market of Outstanding Bonds subject to redemption or payment from such moneys as herein provided, and upon such purchase such Bonds shall be canceled and the amount of such redemption or principal payment shall thereupon be reduced by the principal amount of such Bonds so purchased and canceled, provided that no credit shall be given for such Bonds so purchased within the forty-five (45) days next preceding the redemption or payment date. Subject to the above limitations, the Trustee shall, if directed by the Borrower in writing, purchase Bonds on the open market for cancellation at such times, for such prices (not to exceed the redemption price to redeem such bonds pursuant to Section 3.4(b) hereof), in such amounts, and in such manner (whether after advertisement for tenders or otherwise) as so directed by the Borrower and as may be possible with the amount of money available in the Bond Fund. The expenses of such purchase shall be deemed an Ordinary Expense of the Trustee.

**Section 3.10 Cancellation.** All Bonds which have been purchased, redeemed, paid, or retired, or received by the Trustee for exchange, shall not be reissued but shall be canceled and destroyed by the Trustee, in accordance with Section 2.7 hereof.

#### ARTICLE IV. GENERAL COVENANTS

**Section 4.1 Condition of Issuer's Obligation; Payment of Principal and Interest.** Each and every covenant herein made, including all covenants made in the various sections of this Article IV, is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall never constitute an indebtedness or general obligation of the Issuer nor constitute an indebtedness or general obligation of the State of Oregon, Multnomah County, or any other political subdivision of the State of Oregon, within the meaning of any constitutional or statutory provision whatsoever. The principal of, premium, if any, and interest on the Bonds shall be payable solely from the Security, and nothing in the Bonds or in this Indenture shall be considered as pledging any other funds or assets of the Issuer.

The Issuer covenants that it shall promptly pay from the sources provided herein and in the Agreement the principal of, including any applicable redemption premiums, and interest on every Bond issued under this Indenture at the place, on the dates, and in the manner provided herein and in said Bonds, according to the true intent and meaning thereof. The Issuer hereby appoints and designates the principal corporate trust office of the Trustee as the place of payment for the Bonds, and the Trustee as the paying agent for the Bonds, such designation and appointment to remain in effect until written notice of change is filed as provided in Section 11.6 or Section 11.7 and Section 13.4 hereof.

**Section 4.2 Performance of Covenants; Authority of the Issuer.** The Issuer covenants that it shall faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions made by the Issuer contained in this Indenture, in any and every Bond executed, authenticated, and delivered hereunder, and in all proceedings pertaining thereto. The Issuer covenants that it is duly authorized under the constitution and laws of the State, including particularly the Act, to issue the Bonds authorized hereby and to execute this Indenture, to convey the Trust Estate to the Trustee, and to pledge the receipts, revenues, and collateral hereby pledged in the manner and to the extent herein set forth, that all action required on its part for the issuance of the Bonds and the execution and delivery of this Indenture have been duly and effectively taken, and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable limited obligations of the Issuer according to the import thereof.

**Section 4.3 Instruments of Further Assurance.** The Issuer agrees that the Trustee may defend its rights to the payments and other amounts due under the Agreement, Notes, Trust Deed, Security Agreement, and Assignment of Contract Documents for the benefit of the Bondholders, against the claims and demands of all Persons whomsoever. The Issuer covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered such indentures supplemental hereto and such further acts, instruments, and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning, and confirming unto the Trustee the Trust Estate to the extent permitted by law, any and all property hereafter acquired which is of the kind or nature provided herein to be and become subject to the lien and security interest hereof shall, without any further conveyance, assignment, or act on the part of the Issuer or Trustee, be and become subject to the lien and security interest of this Indenture as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Issuer under this Section. The Issuer covenants and agrees that, except as herein and in the Agreement provided, it has not and will not sell, convey, assign, pledge, mortgage, encumber, grant a security interest in, or otherwise dispose of, or create or suffer to be created any lien, encumbrance, security interest, or charge upon, any part of the Trust Estate or of its rights under the Agreement or the Notes, or enter into any contract or take any action by which the rights of the Trustee or the Bondholders may be impaired.



**Section 4.4 Rights Under the Agreement, Notes, Trust Deed, Security Agreement, and Assignment of Contract Documents.** The Agreement, Notes, Trust Deed, Security Agreement, and Assignment of Contract Documents, duly executed counterparts of which have been filed with the Trustee, set forth the covenants and obligations of the Issuer and Borrower. Pursuant to the granting clauses of this Indenture, the Issuer has assigned to the Trustee its right, title, and interest (other than Unassigned Rights) in and to the Agreement and the Notes, and the Trustee may enforce all rights of the Issuer and all obligations of the Borrower under and pursuant to the Agreement and the Notes, and may enforce all rights of the Issuer for and on behalf of the Bondholders, whether or not the Issuer is in default hereunder.

So long as any of the Bonds remain Outstanding, and for such longer period when required by the Agreement, the Issuer shall faithfully and punctually perform and observe all obligations and undertakings on its part to be performed and observed under the Agreement. The Issuer covenants to maintain, at all times, the validity and effectiveness of the Agreement and the Notes, and (except as expressly permitted by the Agreement) shall take no action, shall permit no action to be taken by others, and shall not omit to take any action or permit others to omit to take any action, which action or omission might release the Borrower from its liabilities or obligations under the Agreement and the Notes, or result in the surrender, termination, amendment, or modification of, or impair the validity of, the Agreement or the Notes.

Except as otherwise contemplated hereby, the Issuer covenants to enforce diligently all covenants, undertakings, and obligations of the Borrower under the Agreement and the Notes, and the Issuer hereby authorizes and directs the Trustee to enforce, except as otherwise contemplated hereby, any and all of the Issuer's rights under the Agreement and the Notes on behalf of the Issuer and Owners of Bonds.

The Trustee shall retain possession of executed counterparts of the Agreement, Notes, Trust Deed, Security Agreement, and Assignment of Contract Documents, and shall release the same only in accordance with the provisions thereof. The Trustee shall make copies of the Agreement, Notes, Trust Deed, Security Agreement, and Assignment of Contract Documents available for the Issuer, the Borrower, and any Owner of any Bond upon request and payment of the expenses associated with the provision of such copies.

**Section 4.5 Designation of Additional Paying Agents.** The Issuer shall, upon the written request of the Borrower and payment of any expenses incurred in connection therewith pursuant to Section 5.2 of the Agreement, cause the necessary arrangements to be made through the Trustee for the designation of additional paying agents as specified by the Borrower for the making available of funds for the payment of such of the Bonds as shall be presented when due at the principal office of said additional paying agents.

**Section 4.6 Continuing Disclosure.** The Issuer hereby acknowledges the entry by the Borrower, PSU and the Trustee as disclosure agent into the Continuing Disclosure Agreement under which the Trustee has assumed certain obligations, in addition to those assumed under this Indenture, on behalf of the Holders and beneficial owners of the Bonds. The Trustee agrees to perform its obligations under the Continuing Disclosure Agreement and acknowledges that provision satisfactory to it has been made under the Agreement and the Continuing Disclosure Agreement for the payment to the Trustee by the Borrower of compensation for its services to be performed under the Continuing Disclosure Agreement, and that the Issuer shall not have any liability to the Trustee for any such payment. Notwithstanding any other provision of this Indenture, any failure by the Borrower or PSU to comply with any provision of the Continuing Disclosure Agreement shall not be a failure or a default, or an Event of Default, under the Agreement or this Indenture.

## ARTICLE V. FUNDS

**Section 5.1 Revenue Fund.** There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated the "Revenue Fund." Pursuant to Section 5.5 of the Agreement, the Borrower has agreed that daily, on each Business Day, it will deliver Revenues to the Trustee for deposit in the Revenue Fund. PSU has agreed in the Housing Services Agreement to deliver Available Funds to the Trustee in the amounts required to be paid by this Indenture. On the fifteenth (15th) day (or if such day is not a Business Day, the immediately following Business Day) of each month (the "Determination Date"), the Borrower shall determine the amount required to be on deposit in the Revenue Fund in order to ensure that each of the following payments and deposits will be made on the immediately following Transfer Date (hereinafter defined). If the amounts on deposit in the Revenue Fund and the Surplus Fund on the Determination Date will be insufficient to make any of the following payments or transfers on the Transfer Date, the Borrower shall immediately notify PSU and PSU shall transfer from Available Funds the amount of such deficiency to the Trustee by the twenty-fifth (25th) day (or if such day is not a Business Day, the immediately following Business Day) of each month and the Trustee shall deposit such amounts paid by PSU into the Revenue Fund. Three (3) Business Days prior to the first Business Day of each month (the "Transfer Date") the Trustee shall make the following transfers and payments from the Revenue Fund in the following order, provided that in the event funds on deposit in the Revenue Fund and the Surplus Fund on any Transfer Date shall be insufficient to make any one or more of such transfers, immediately the Trustee shall notify PSU and PSU shall pay to the Trustee the amount of such deficiency. Any and all of such deficiencies shall be remedied prior to making any subordinated payments or transfers to any subordinated funds (based on the following order of priority) in any future month:

FIRST, to the Rebate Fund, any amounts required to be paid to the Rebate Fund as directed by the Borrower in accordance with the terms of the Tax Compliance Agreement;

SECOND, to the Principal Account and Interest Account of the Bond Fund, amounts representing the Basic Loan Payment payable and to be applied as provided under Section 5.2(a) of the Loan Agreement;

THIRD, to the Debt Service Reserve Fund, any amount required to cause the balance of the Debt Service Reserve Fund to equal the Debt Service Reserve Requirement, or to the provider of a DSR Surety Bond (defined in Section 5.5 hereof) interest or fees for such DSR Surety Bond due or to become due within 30 days;

FOURTH, to the operating account for the Project, designated and held by the Borrower, an amount that will bring said operating account to a balance equal to the budgeted operating expenses (other than management fees) for the Project through the end of the next calendar month as shown on a certificate provided to the Trustee by the Borrower or (if authorized by the Borrower) by the Borrower's designee and the fees and expenses then due, if any, of the Trustee, the Issuer, the Independent Engineer and the Insurance Consultant;

FIFTH, to the Operating Reserve Fund any amount required to cause the balance of the Operating Reserve Fund to equal the Operating Reserve Requirement;

SIXTH, to the Capital Replacement Fund, the Capital Replacement Requirement;

SEVENTH, to the Manager any management fees owed as Additional Loan Payments pursuant to Section 5.2(c) of the Loan Agreement; and

EIGHTH, to the Surplus Fund, the balance of the amounts in the Revenue Fund.

**Section 5.2 Rebate Fund.** There is hereby created by the Issuer and ordered established with the Trustee a special trust fund designated the "Rebate Fund" which will be held, invested, expended and accounted for as directed by the Borrower in accordance with the Tax Agreement. Moneys in the Rebate Fund shall not be considered moneys held under this Indenture and shall not constitute part of the Trust Estate held for the benefit of the Registered Owners of the Bonds or the Issuer. Moneys in the Rebate Fund shall be held in trust by the Trustee and shall be held for future payment to the United States of America as directed by the Borrower and as contemplated under the provisions of the Tax Agreement.

**Section 5.3 Bond Fund.** There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated the "Bond Fund" which shall be used as a sinking fund to pay the principal of, premium, if any, and interest on the Bonds. There shall be created within the Bond Fund a Principal Account and an Interest Account.

There shall be deposited into the Bond Fund, as and when received, (i) the amounts required by the terms of this Indenture, including the amounts provided in Section 5.1 hereof, clause "SECOND," and (ii) all other moneys received by the Trustee under and pursuant to any of the provisions of the Agreement, which pursuant to such provisions can be directed to the Bond Fund, when accompanied by written directions from the Borrower that such moneys are to be paid into an account within the Bond Fund.

Except as provided in Sections 5.12 hereof, moneys in the Bond Fund shall be used solely as a fund for the payment of the principal of, premium, if any, and interest on Bonds, for redemption of the Bonds at or prior to maturity or to purchase Bonds in the open market pursuant to Section 3.9 of this Indenture. However, upon an Event of Default, the Trustee, may use moneys in the Bond Fund for the benefit of Bondholders and to pay the fees and expenses of the Trustee. Except as provided in Article III hereof or any corresponding article in an indenture supplemental hereto, no part of Basic Loan Payments in the Bond Fund shall be used to redeem, prior to maturity, a part of the Bonds Outstanding; provided, that whenever the amount in the Bond Fund from any source whatsoever is sufficient to redeem all Bonds Outstanding hereunder, to pay interest to accrue thereon to such redemption date, to pay all costs and expenses accrued and to accrue to such redemption date, if so directed by the Borrower pursuant to the Agreement, the Issuer covenants and agrees to take and cause to be taken the necessary steps to redeem all of said Bonds on the next succeeding redemption date for which the required redemption notice may be given; and provided further that any moneys in the Bond Fund, other than Basic Loan Payments, shall be used at the written request of the Issuer if so directed by the Borrower pursuant to the Agreement to redeem a part of the Bonds Outstanding on the next succeeding redemption date for which the required notice of redemption may be given or to purchase Bonds pursuant to Section 3.9 of this Indenture so long as the Borrower is not in default with respect to any Basic Loan Payments required to be made under Section 5.2(a) of the Agreement and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption and unpaid interest in all cases where such Bonds have not been presented for payment.

The Issuer hereby authorizes and directs the Trustee to withdraw sufficient funds from the Principal Account and Interest Account of the Bond Fund to pay principal of (including mandatory redemption requirements) and interest and premium, if any, on the Bonds, as the same become due and payable, and to make said funds so withdrawn available to the Trustee and to the paying agent or agents for the purpose of paying said principal, interest, and premium, if any, which authorization and direction the Trustee hereby accepts.

If on any Interest Payment Date there are insufficient funds in the Bond Fund with which to pay interest, premium, if any, and principal on the Bonds, the Trustee shall transfer money to the Bond Fund from the following funds in the following order of priority: first, the Surplus Fund, second, the Capital Replacement Fund, third the Operating Reserve Fund and, fourth the Debt Service Reserve Fund.

If on any Bond Payment Date, prior to any transfers (other than transfers from the Surplus Fund) described in the immediately preceding paragraph shall have been made, there are insufficient funds in the Bond Fund and Surplus Fund available therefore to pay interest, premium, if any, and principal on the Bonds then due, the Trustee shall give immediate notice of the amounts of such Bond Fund and Surplus Fund deficiency to PSU, and PSU shall transfer from Available Funds such amounts to the Trustee for deposit into the Bond Fund, provided that, if any money shall have been transferred from any fund pursuant to the immediately preceding paragraph (other than transfers from the Surplus Fund) to pay any such deficiencies prior to the Trustee receiving any payments from PSU, the Trustee shall deposit from the amounts transferred by PSU first, into the Debt Service Reserve Fund, second, into the Operating Reserve Fund third, into the Capital Replacement Fund, to the extent that any money shall have been transferred from any such fund or account pursuant to the immediately preceding paragraph of this Section.

**Section 5.4 Capital Replacement Fund.** There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated the “Capital Replacement Fund.” The Trustee shall deposit in the Capital Replacement Fund as and when received by the Trustee any moneys paid to the Trustee or the Issuer as provided by this Indenture and the Loan Agreement for credit or transfer to the Capital Replacement Fund.

The Issuer hereby authorizes and directs the Trustee to withdraw funds from the Capital Replacement Fund for the non-routine maintenance, improvement, and repair costs related to the Project to the extent such costs constitute Capital Expenditures which the Borrower is obligated or authorized to pay in order to maintain the Project in accordance with Section 6.1 of the Agreement.

Moneys in the Capital Replacement Fund for the purpose described in the preceding paragraph shall be disbursed by the Trustee only upon receipt of a requisition for payment substantially in the form attached hereto as Exhibit E executed by an Authorized Borrower Representative, and Trustee is hereby authorized and directed to make payment for each disbursement described in the preceding paragraph upon receipt of such a requisition, however, if an Event of Default shall have occurred and be continuing the Trustee shall not disburse funds from the Capital Replacement Fund. The Trustee shall be entitled to rely on any such requisition and shall have no liability for making disbursements on the basis of such requisition.

The Trustee shall value the investments held in the Capital Replacement Fund as of the close of business on the last Business Day of each month. Such investments shall be valued pursuant to Section 7.5 hereof.

The Issuer hereby authorizes and directs the Trustee to transfer funds from the Capital Replacement Fund to the Bond Fund in accordance with and under the circumstances described in Section 5.3 hereof, and funds so transferred shall be credited against payments of Basic Loan Payments required under Section 5.2(a) of the Agreement. The Trustee shall give written notice to the Borrower and Issuer of any such transfers.

If there are insufficient funds in the Capital Replacement Fund with which to pay Capital Expenditures, the Trustee shall transfer money to the Capital Replacement Fund from the

Surplus Fund. If there are still amounts remaining due after such transfer is made, the Trustee shall give immediate notice of the amounts of such deficiencies to PSU and PSU shall transfer from Available Funds such amounts to the Trustee for deposit into the Capital Replacement Fund.

**Section 5.5 Debt Service Reserve Fund.** There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated the “Debt Service Reserve Fund.” There shall be deposited into the Debt Service Reserve Fund from the initial issuance of the Bonds the amounts specified in Article VI hereof. The Trustee shall deposit in the Debt Service Reserve Fund any moneys paid to the Trustee under the Agreement or this Indenture for credit or transfer to the Debt Service Reserve Fund. If the Borrower has exercised its option or is obligated to prepay the Loan in whole and not in part pursuant to the terms of Article XI of the Agreement, and has paid the sums as provided therein, all of the moneys then in the Debt Service Reserve Fund shall be deposited in the Bond Fund.

The Issuer hereby authorizes and directs the Trustee to transfer funds from the Debt Service Reserve Fund to the Bond Fund in accordance with Section 5.3, and funds so transferred shall be credited against payments of Basic Loan Payments required under Section 5.2(a) of the Agreement. The Trustee shall give written notice to the Borrower, Issuer and Underwriter of any such transfer.

When the amount of principal of, premium, if any, and interest on the Outstanding Bonds due or to become due is equal to or less than the sum of the balance of the Bond Fund and the balance of the Debt Service Reserve Fund, the amount held in such Debt Service Reserve Fund shall be deposited by the Trustee in the Principal Account and Interest Account and credited against payments of Basic Loan Payments required under Section 5.2(a) of the Agreement.

The Trustee shall value the investments held in the Debt Service Reserve Fund as of the close of business on the last Business Day of each month. Such investments shall be valued pursuant to Section 7.5 hereof. When the valued amount of the Debt Service Reserve Fund is in excess of the Debt Service Reserve Requirement, such excess shall be deposited by the Trustee in the Interest Account and credited against payments of Basic Loan Payments required under Section 5.2(a) of the Agreement.

Following any valuation of the Debt Service Reserve Fund or any transfer of amounts there to the Bond Fund, the Debt Service Reserve Fund shall be restored to the Debt Service Reserve Requirement, from the following funds in the order indicated, pro tanto: (1) the Surplus Fund, (2) the Capital Replacement Fund, and (3) the Operating Reserve Fund.

The obligation to fund the Debt Service Reserve Fund may be fulfilled, in whole or in part, by depositing into the Debt Service Reserve Fund an irrevocable surety bond or an irrevocable letter of credit which is rated by either Moody’s Investors Service (“Moody’s”) or Standard & Poor’s Ratings Service (“S&P”) in its highest rating category as of the time of purchase/deposit, which contains provisions satisfactory to the Borrower and the Trustee permitting such surety bond or letter of credit to be drawn upon prior to the expiration thereof to fund the Debt Service Reserve Fund in an amount equal to such surety bond or letter of credit in the event that the expiration or termination date of such surety bond or letter of credit is not extended prior to the expiration or termination date thereof (if such expiration or termination date is prior to the maturity date of the Bonds with respect to which such surety bond or letter of credit is issued) and which is payable on any interest or interest and principal payment date in an amount equal to any portion of the balance then required to be maintained within the Debt Service Reserve Fund (a “DSR Surety Bond”). Before any such surety bond or letter of credit is substituted for cash or deposited in lieu of cash in the Debt Service Reserve Fund, there shall be filed with the Trustee (i)

an opinion of nationally recognized bond counsel to the effect that such substitution or deposit will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any outstanding Series 2008A Bond; (ii) a certificate evidencing that at least 30 days prior notice of the proposed substitution or deposit of such surety bond or letter of credit was given to Moody's and S&P, including a description of such surety bond or letter of credit and the proposed date of substitution or deposit; and (iii) a copy of the surety bond or letter of credit issued to fulfill the obligation to fund the Debt Service Reserve Fund, together with an opinion of counsel to the issuer of the surety bond or letter of credit to the effect that the surety bond or letter of credit is valid and enforceable in accordance with its terms. In the event that such letter of credit or surety bond expires prior to the maturity date of the Bonds with respect to which it is issued, unless the Trustee receives at least five (5) Business Days prior to the expiration of the letter of credit or surety bond from the issuer of such surety bond or letter of credit an extension of the expiration or termination date thereof, or unless the Borrower provides the Trustee at least five (5) Business Days prior to the expiration of the letter of credit or surety bond with a substitute surety bond or irrevocable letter of credit in accordance with this paragraph, then the Trustee is hereby directed to draw upon such surety bond or letter of credit in an amount equal to the face amount thereof and shall deposit such moneys in the Debt Service Reserve Fund. Any reimbursement agreement entered into between the Borrower and the issuer(s) of such surety bond or letter of credit may provide that the Borrower will be obligated to repay the issuer(s) of such surety bond or letter of credit an amount equal to any drawdown on the surety bond or letter of credit plus a market rate of interest over a specified period of time not to exceed three years; provided, however, that such reimbursement agreement must provide that (i) any moneys available to repay the issuer of such surety bond or a letter of credit must first be used to reinstate the surety bond or letter of credit to its original amount, and (ii) payment of any interest or fees due to the issuer of such surety bond or letter of credit, other than for reinstatement, are subordinate to any amounts required to be paid into the Bond Fund or the Debt Service Reserve Fund for the benefit of the owners of the Bonds.

**Section 5.6 Issuance Cost Fund.** There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated the "Issuance Cost Fund," which shall be used as a fund to pay Issuance Costs. There shall be deposited into the Issuance Cost Fund, the amounts specified in Article VI hereof. Moneys in the Issuance Cost Fund shall be disbursed upon receipt of a requisition for payment substantially in the form attached hereto as Exhibit F executed by the Authorized Borrower Representative. The Trustee is hereby authorized and directed to make payments upon receipt of such a requisition. If any funds remain in the Issuance Cost Fund after payment of all Issuance Costs, upon receipt of a certificate of the Borrower stating that all Issuance Costs have been paid, the Trustee shall transfer such remaining funds to the Principal Account and Interest Account of the Bond Fund.

The Trustee shall keep and maintain adequate records pertaining to the Issuance Cost Fund and all disbursements there from, and after all amounts are disbursed from the Issuance Cost Fund, the Trustee shall, if requested by the Borrower, file an accounting thereof with the Issuer and Borrower.

**Section 5.7 Reserved.**

**Section 5.8 Operating Reserve Fund.** There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated the "Operating Reserve Fund." There shall be deposited therein the Operating Reserve Requirement. Upon written requests of the Borrower, amounts in the Operating Reserve Fund shall be paid to or as directed by the Borrower for the payment of operating expenses of the Project. If an Event of Default shall have occurred and be continuing, no amounts shall be paid from the Operating Reserve Fund.

The Trustee shall value the investments held in the Operating Reserve Fund semi-annually on each \_\_\_\_\_ and \_\_\_\_\_. Such investments shall be valued pursuant to Section 7.5 hereof.

The Issuer hereby authorizes and directs the Trustee to transfer funds from the Operating Reserve Fund to the Bond Fund in accordance with Section 5.3, and funds so transferred shall be credited against payments of Basic Loan Payments required under Section 5.2(a) of the Agreement. The Issuer hereby further authorizes and directs the Trustee to transfer funds from the Operating Reserve Fund to the Revenue Fund pursuant to Section 5.14 hereof. The Trustee shall give written notice to the Borrower, Issuer, and Underwriter of any such transfers.

**Section 5.9 Surplus Fund.** There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated the "Surplus Fund." There shall be deposited therein the amounts required by Section 5.1.

(a) The Trustee shall value the investments held in the Surplus Fund as of the close of business on the last Business Day of each month. Such investments shall be valued pursuant to Section 7.5 hereof.

(b) Commencing on the Closing Date, if and only if (i) the Trustee receives a certificate from the Borrower stating that (A) the most recently due audited annual financial statements required by Section 8.7 of the Agreement have been delivered and show a Debt Service Coverage Ratio of at least 1.0:1.0, (B) PSU has made all payments required under the Housing Services Agreement, and (C) no Event of Nonappropriation has occurred and is continuing; and (ii) there has been no previous payment pursuant to this clause (b) since the date of delivery of such financial statements, (iii) there is no uncured Event of Default hereunder, and (iv) the amount on deposit in the Debt Service Reserve Fund shall not be less than the Debt Service Reserve Requirement, THEN such portion of the remaining funds in the Surplus Fund as the Borrower may request shall be paid to the Borrower, without restriction.

(c) To the extent any funds in the Surplus Fund may not be used to make payments from the Surplus Fund pursuant to the foregoing clause (b) due to the failure to satisfy the conditions set forth in such clause, such funds shall remain on deposit in the Surplus Fund until such time as all such conditions are satisfied or such funds are otherwise applied in accordance with this Indenture.

The Issuer hereby authorizes and directs the Trustee to transfer funds from the Surplus Fund to the Bond Fund in accordance with and under the circumstances described in Section 5.3, and funds so transferred shall be credited against payments of Basic Loan Payments required under Section 5.2(a) of the Agreement. The Issuer also hereby authorizes and directs the Trustee to transfer funds from the Surplus Fund as required by Section 5.3, Section 5.4 and Section 5.14.

**Section 5.10 Moneys to be Held in Trust.** All moneys and instruments required to be deposited with or paid to the Trustee for the account of the Revenue Fund, Bond Fund, Capital Replacement Fund, Debt Service Reserve Fund, Issuance Cost Fund, Operating Reserve Fund, Surplus Fund, Insurance Fund, Condemnation Fund, or any other trust fund or reserve under any provision of this Indenture, other than the Rebate Fund, and any investments purchased with such moneys, shall be held by the Trustee in trust and shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the trust created hereby and any lien or security interest granted with respect to the Trust Estate and shall be and remain entitled to the benefit and shall be subject to the security of this Indenture for the equal and proportionate benefit of the Owners of all Outstanding Bonds, except for amounts held in the



Insurance Fund or Condemnation Fund or certain amounts held in the Bond Fund to be applied pursuant to Section 10.6 hereof, which shall be held for the specific purposes herein specified. The Trustee hereby covenants that all moneys, investments, and instruments held in any fund under this Indenture, other than the Rebate Fund, are a part of the Trust Estate, and that the rights and interests of the Bondholders in and to such moneys, investments, and instruments are and, subject to the provisions of Section 11.2 hereof with respect to the payment of the fees and expenses of the Trustee, shall be superior to the claims of the creditors and depositors of the Trustee.

**Section 5.11 Amounts Remaining in Funds and Accounts.** Any amounts remaining in the Revenue Fund, Bond Fund, Capital Replacement Fund, Debt Service Reserve Fund, Issuance Cost Fund, Operating Reserve Fund, Insurance Fund, Condemnation Fund, Rebate Fund, Surplus Fund, or any other fund, account, or reserve created under this Indenture, after payment in full of the principal of, interest, and premium, if any, on the Bonds (or provision for payment thereof as provided in this Indenture), the fees, charges, and expenses of the Trustee, any paying agents, and the Issuer, the amounts required to be paid to the United States pursuant to the Tax Compliance Agreement, and all other amounts required to be paid hereunder or by the Borrower under any of the Bond Documents, shall be promptly paid to the Borrower as a refund of excess loan payments under the Agreement.

**Section 5.12 Insurance and Condemnation Funds.** Reference is hereby made to Article VII of the Agreement whereunder it is provided that under certain circumstances the Net Proceeds of insurance or condemnation awards are to be paid to the Trustee and deposited in the Insurance Fund or Condemnation Fund, as appropriate, and are to be disbursed and paid out as therein provided. The Trustee hereby accepts and agrees to perform the duties and obligations as therein specified. There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated the "Insurance Fund" and a trust fund to be designated the "Condemnation Fund," either of which shall be opened only if funds are required to be deposited therein as provided in Article VII of the Agreement. Funds held in the Insurance Fund or Condemnation Fund shall be disbursed in accordance with Section 7.5 of the Agreement.

**Section 5.13 Non-presentment of Bonds.** If any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity, at the date fixed for redemption thereof, or otherwise, if funds sufficient to pay such Bonds shall have been made available to the Trustee for the benefit of the Owner or Owners thereof, all liability of the Issuer and Borrower to the Owner or Owners thereof for the payment of such Bonds shall forthwith cease, determine, and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner or Owners of such Bonds, who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his or their part under this Indenture or on, or with respect to, said Bonds.

Any moneys so deposited with and held by the Trustee not so applied to the payment of Bonds, if any, within four (4) years after the date on which the same shall have become due (or such earlier date as immediately precedes the date on which such funds would be required to escheat or be payable to the State or any other governmental unit under any laws governing unclaimed funds) shall be paid by the Trustee to the Borrower upon receipt of a written request of the Borrower, and thereafter Bondholders shall be entitled to look only to the Borrower for payment, and then only to the extent of the amount so repaid, and the Borrower shall not be liable for any interest thereon and shall not be regarded as a trustee of such money. If the Borrower fails to make the aforementioned written request, the Trustee shall apply such moneys in accordance with applicable laws governing unclaimed funds.

**Section 5.14 Operating Expense Deficiencies.** If at any time there is a deficiency in the amounts available to make the payments for operating expenses or any other costs or expenses (other than Capital Expenditures) of the Project or the Borrower through the end of the next calendar month over the amounts provided by Section 5.1 hereof, clause “FOURTH,” then upon receipt of a certificate of the Borrower or (if authorized by the Borrower) of the Borrower’s designee, the Trustee is authorized and directed to transfer the amount of such deficiency to the Revenue Fund from the following funds in the order indicated: first, from the Surplus Fund; second, from the Operating Reserve Fund; and third, from the Capital Replacement Fund. The Trustee shall give written notice to the Borrower, and the Issuer of any such transfer.

(b) Prior to any transfers (other than transfers from the Surplus Fund) described in the immediately preceding paragraph being made, the Trustee shall give immediate notice of the amounts of such operating account and Surplus Fund deficiencies to PSU, and PSU shall transfer from Available Funds such amounts to the Trustee for deposit into the Revenue Fund, provided that, if any money shall have been transferred from any fund pursuant to the immediately preceding paragraph to pay any such deficiency prior to the Trustee receiving payment from PSU, the Trustee shall deposit from the amounts transferred by PSU first, into the Capital Replacement Fund, and second, into the Operating Reserve Fund, to the extent that any money shall have been transferred from any such fund pursuant to the immediately preceding paragraph of this Section.

**ARTICLE VI. CUSTODY AND APPLICATION OF PROCEEDS OF BONDS**

(a) Upon the date of the issuance and delivery of the Series 2008A Bonds, the Trustee shall transfer the proceeds of the Series 2008A Bonds as follows, or as otherwise directed by written order of the Authorized Officer of the Issuer:

- (1) to the Issuance Cost Fund the sum of \$\_\_\_\_\_;
- (2) to the Debt Service Reserve Fund the sum of \$\_\_\_\_\_; and
- (3) to the Trustee for redemption of the 2003 Bonds the sum of \$\_\_\_\_\_.

(b) Upon the date of the issuance and delivery of the Series 2008B Bonds, the Trustee shall transfer the proceeds of the Series 2008B Bonds as follows, or as otherwise directed by written order of the Authorized Officer of the Issuer:

- (1) to the Issuance Cost Fund the sum of \$\_\_\_\_\_;
- (2) to the Debt Service Reserve Fund the sum of \$\_\_\_\_\_; and
- (3) to the Trustee for redemption of the 2003 Bonds and payment of the Termination Payment the sum of \$\_\_\_\_\_.

(c) Any excess proceeds of the Series 2008A Bonds or Series 2008B Bonds remaining after redemption of the 2003 Bonds shall be deposited by the Trustee into the Interest Account of the Bond Fund and credited against payments of Basic Loan Payments required under Section 5.2(a) of the Agreement.

## ARTICLE VII. INVESTMENTS

**Section 7.1 Investment of Funds and Accounts.** Subject to Article IX hereof, any moneys held as part of the Revenue Fund, Bond Fund, Capital Replacement Fund, Debt Service Reserve Fund, Surplus Fund, Issuance Cost Fund, Operating Reserve Fund, Insurance Fund, Condemnation Fund, Rebate Fund, reserves in connection with contested liens, or other special trust funds created under this Indenture, or other accounts or funds held by the Trustee, to the extent permitted by law shall be invested and reinvested by the Trustee in Permitted Investments, but only at the written request of and as specified by an Authorized Borrower Representative, in accordance with the provisions of Sections 4.4 and 7.4 of the Agreement. Any such investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the Revenue Fund, Bond Fund, Capital Replacement Fund, Debt Service Reserve Fund, Surplus Fund, Issuance Cost Fund, Operating Reserve Fund, Insurance Fund, Condemnation Fund, Rebate Fund, other special trust fund, or other account or fund, as the case may be, and the interest accruing thereon and any profit realized from such investments shall be credited as set forth in Section 7.2 of this Indenture, and any loss resulting from such investments shall be charged to such fund. The Trustee is directed to sell and reduce to cash funds a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient for the uses prescribed for moneys held in such fund or account. The Trustee may transfer investments from any fund or account to any other fund or account in lieu of cash when required or permitted by the provisions of this Indenture. The Trustee shall not be liable for any depreciation in the value of any obligations in which moneys of funds or accounts shall be invested, as aforesaid, or for any loss arising from any investment. Borrower covenants and agrees that such investments shall be made only as follows:

- (a) moneys in the Revenue Fund, Capital Replacement Fund, Surplus Fund, Issuance Cost Fund, Operating Reserve Fund, Insurance Fund, Condemnation Fund, Rebate Fund, and any other accounts or funds only in obligations maturing or redeemable at the option of the holder in such amounts and on such dates as may be necessary to provide moneys to meet the payments from each such respective fund,
- (b) moneys in the Bond Fund only in obligations maturing or redeemable at the option of the holder not later than the next-succeeding principal, mandatory redemption, or Interest Payment Date of the Bonds, and
- (c) moneys in the Debt Service Reserve Fund only in the type of obligation listed in Clause (10) of Permitted Investments or in Permitted Investments maturing or redeemable at the option of the holder not later than 180 days from the date of purchase.

The Issuer covenants that none of the moneys held under this Indenture will knowingly be used in any manner which will cause any Bonds, the interest on which is excludable from the gross income of the Owners thereof for federal income tax purposes, to become arbitrage bonds within the meaning of Section 148 of the Code and any Regulations proposed or promulgated in connection therewith or to become federally guaranteed within the meaning of Section 149(b) of the Code and any Regulations proposed or promulgated in connection therewith. The Issuer may rely solely upon the written investment instructions of the Authorized Borrower Representative in fulfilling its obligations set forth above and shall be fully protected in doing so.

**Section 7.2 Allocation of Income from Investments.** All interest accruing from investments of moneys in the Revenue Fund, Bond Fund, Capital Replacement Fund, Debt Service Reserve Fund, Surplus Fund, Issuance Cost Fund, Operating Reserve Fund, and other funds and any profit realized therefrom shall be allocated as follows:

(a) all interest and profits from the investments of moneys in the funds and accounts other than the Bond Fund and the Capital Replacement Fund shall be transferred to the Interest Account of the Bond Fund, either as such interest and profits accrue or as of each valuation date and the interest and profits from the investment of moneys in the Bond Fund and Capital Replacement Fund shall be retained, respectively, in the Bond Fund and Capital Replacement Fund.

**Section 7.3 Trustee's Own Bond or Investment Department.** The Trustee may make any and all investments permitted under Section 7.1 hereof through its own or its affiliates' bond or investment departments.

**Section 7.4 Investment Records.** The Trustee shall keep or cause to be kept proper and detailed books of record and account containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation, and application of the moneys held under this Indenture. The Trustee shall make copies of such records available to the Borrower, upon its reasonable written request. The Trustee agrees to retain investment records relating to the moneys held under this Indenture until six (6) years after the Bonds are no longer Outstanding.

**Section 7.5 Valuation of Permitted Investments** The valuation of Permitted Investments held in the funds and accounts under this Indenture shall be valued on each valuation date in the following manner:

(a) Demand deposits and other investments which mature in two years or less after the valuation date shall be valued at their face amount, plus accrued interest;

(b) Investments which mature more than two years after the valuation date and for which bid and asked prices are published on a regular basis in the Wall Street Journal (or, if not there, then in the New York Times) shall be valued at the average of their most recently published bid and asked prices;

(c) Investments which mature more than two years after the valuation date and for which the bid and asked prices are not published on a regular basis in the Wall Street Journal or the New York Times shall be valued at the average bid price quoted by any two nationally recognized government securities dealers (selected by the Borrower in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;

(d) An irrevocable surety bond or an irrevocable letter of credit in the Debt Service Reserve Fund shall be valued at the amount which is available to be drawn or paid under them;

(e) Certificates of deposit and bankers acceptances which mature in more than two years after the valuation date shall be valued at their face amount, plus accrued interest; and

(f) Guaranteed investment contracts which mature in more than two years after the valuation date shall be valued at par.

(g) Any investment which is not specified above and which matures more than two years after the valuation date shall be valued at its fair market value as reasonably estimated by the Borrower.

## ARTICLE VIII. PARTIAL RELEASE OF THE PROJECT

**Section 8.1 Release of the Premises.** Reference is made to the provisions of the Agreement, including, without limitation, Sections 8.5 and 11.5 of the Agreement, whereby the Issuer and Borrower have reserved the right to withdraw or subordinate the lien of the Trust Deed with respect to certain portions of the Premises upon compliance with the terms and conditions of the Agreement. The Trustee shall release from or subordinate the lien of the Trust Deed with respect to any such land or interests in land upon the Borrower's compliance with the provisions of the Agreement.

**Section 8.2 Release of Equipment.** Reference is made to the provisions of the Agreement, including, without limitation, Section 6.2 thereof, whereby the Borrower may withdraw certain items of equipment constituting Equipment upon compliance with the terms and conditions of the Agreement. The Trustee shall release from the security interest of the Security Agreement any such item of equipment upon the Borrower's compliance with the provisions of the Agreement.

**Section 8.3 Granting of Easements.** Reference is made to the provisions of the Agreement, including, without limitation, Section 8.5 of the Agreement, whereby the Borrower may grant easements and take other action upon compliance with the terms and conditions of the Agreement. The Trustee shall execute or confirm the grants or releases of easements, licenses, rights of way, and other rights and privileges permitted by Section 8.5 of the Agreement upon the Borrower's compliance with the provisions of the Agreement.

#### ARTICLE IX. DISCHARGE OF LIEN

(a) If the Issuer shall pay or cause to be paid, or there shall be otherwise paid or provisions for payment made, to or for (i) the Owner of any Bond, or any portion of any such Bond, the principal, interest, and premium, if any, due or to become due thereon, then such Bond or portion thereof, and (ii) the Owners of all Outstanding Bonds the principal, interest, and premium, if any, due or to become due thereon and shall pay or cause to be paid all fees and expenses of the Trustee and each paying agent due or to become due under this Indenture then this Indenture and these presents and the estate, lien, interests, and rights hereby created and granted shall cease, determine, terminate, and become null and void (except as to any surviving rights of registration, transfer, or exchange of Bonds herein provided for and except for obligations under Section 7.4 hereof), and thereupon the Trustee shall cancel and discharge the lien and security interest of this Indenture and execute and deliver to the Issuer and Borrower such instruments in writing as shall be requested by the Issuer or Borrower and requisite to discharge and satisfy the lien and security interest hereof. At the time of such cessation, termination, discharge and satisfaction, (1) the Trustee shall execute and deliver to the Issuer and Borrower all such instruments as may be appropriate or reasonably requested by the Issuer or Borrower to evidence such cessation, termination, discharge and satisfaction, and (2) the Trustee and the paying agents shall pay over or deliver to the Borrower or on its order all moneys and securities held by them pursuant to this Indenture which are not required for (x) the payment of the principal of, premium, if any, and interest on Bonds not theretofore surrendered for payment or redemption, (y) the payment of all other amounts due or scheduled to become due under this Indenture, the Agreement or any other Bond Document and (z) the payment of any amounts the Trustee has been directed to pay to the United States under the Tax Agreement or this Indenture.

(b) Any Outstanding Bond shall, prior to the maturity or redemption date thereof, be deemed to have been paid and defeased within the meaning and with the effect expressed in the first paragraph of this Article with respect to payment of such Bond hereunder if (i) there shall have been irrevocably deposited with the Trustee, in trust, either moneys in an amount which shall be sufficient, along with any other moneys or investments held by the Trustee and available therefore, or Defeasance Obligations not redeemable by the issuer, the principal of and interest on which when due, without reinvestment, will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal or redemption price, if applicable, and interest due and to become due on said Bonds on the earliest possible redemption date and if all Bonds Outstanding are to be deemed to have been paid and defeased, an amount equal to the Trustee's and paying agents' necessary and proper fees, compensation, and expenses under this Indenture accrued and to accrue until such redemption date or date of maturity, (ii) if such Bonds are to be redeemed and are subject to immediate redemption, the Issuer shall have given the Trustee in form satisfactory to it irrevocable written instructions to give notice of redemption of such Bonds as provided in Section 3.3 of this Indenture, (iii) if said Bonds are to be redeemed and are not by their terms subject to redemption within the next succeeding sixty (60) days, the Issuer shall have given the Trustee in form satisfactory to it irrevocable written instructions to (a) give notice of redemption of such Bonds as provided in Section 3.3 of this Indenture not less than thirty (30) nor more than sixty (60) days prior to a date on which such Bonds are subject to redemption and (b) give, as soon as practicable in the same manner as a notice of redemption of such Bonds as provided in Section 3.3 of this Indenture, a notice to the Owners of such Bonds stating that the deposit required by (i) above has been made with the Trustee, stating that said Bonds are deemed to have been paid in accordance with this Article, and stating such maturity or redemption dates upon which moneys are to be



available for the payment of the principal of, premium, if any, and interest on such Bonds, (iv) if said Bonds are to be redeemed and are not by their terms subject to redemption within the next succeeding 60 days, there shall have been submitted to the Issuer of the Bonds to be redeemed and the Trustee a certificate of an Accountant to the effect that the deposit required by (i) above will provide funds sufficient to pay when due the principal or redemption price, if applicable, and interest due and to become due on such Bonds on and prior to the redemption date or maturity date thereof, as the case may be, (v) if said Bonds to be redeemed are not by their terms subject to redemption within the next succeeding sixty (60) days, unless there shall have been delivered funds sufficient to pay the principal or redemption price, if applicable, and interest due and to become due on such Bonds without taking into account any investment earnings, there shall have been submitted to the Issuer and Trustee a certificate of an Accountant to the effect that the deposit required by (i) above will provide funds sufficient to pay when due the principal or redemption price, if applicable, and interest due and to become due on such Bonds on and prior to the redemption date or maturity date thereof, as the case may be, and (vi) there shall have been submitted to the Issuer and Trustee an opinion of Bond Counsel to the effect that the defeasance of the Bonds in accordance with this Article will not cause interest on any of the Bonds, the interest on which is excludable from the gross income of the Owners thereof for federal income tax purposes, to become includable in gross income for federal income tax purposes. Neither Defeasance Obligations nor moneys deposited with the Trustee pursuant to this Section nor principal nor interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or redemption price, if applicable, and interest on said Bonds; provided, that any cash received from such principal or interest payments on such Defeasance Obligations deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, at the written direction of the Borrower, be reinvested in Defeasance Obligations maturing at times and in amounts sufficient to pay when due the principal or redemption price, if applicable, and interest to become due on said Bonds on and prior to such redemption date or maturity date thereof, as the case may be, and an amount equal to the Trustee's and paying agents' fees and expenses under this Indenture accrued and to accrue until such redemption date or date of maturity.

(c) The items required by (i), (ii), (iii), and (iv) of the preceding paragraph may be submitted with respect to any particular Bonds or series of Bonds (whether upon or prior to the maturity or the redemption date of such Bonds), in which case such Bonds shall no longer be deemed to be Outstanding and shall be deemed to be paid within the meaning of this Article, and the Owners of such Bonds shall be secured only by such deposit and not by any other part of the Security.

(d) Anything in Article XII hereof to the contrary notwithstanding, if such moneys or Defeasance Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of Bonds and interest and premium thereon, if any, and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the Owner of each Bond affected thereby.

**ARTICLE X. DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS**

**Section 10.1 Defaults; Events of Default.** If any of the following events occur, subject to the provisions of Sections 10.10 and 10.11 hereof, it is hereby defined as and declared to be and to constitute a default and an “Event of Default”:

- (a) default in the due and punctual payment of any interest on any Bond,
- (b) default in the due and punctual payment of the principal of any Bond (or premium thereon, if any), whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon the maturity thereof by declaration,
- (c) the occurrence of an “Event of Default” under the Loan Agreement, and
- (d) any material breach by the Issuer of any representation or warranty made in this Indenture or default in the performance or observance of any other of the covenants, agreements, or conditions on the part of the Issuer in this Indenture (other than as described in (a) and (b) above) or in the Bonds contained, subject to the provisions of Section 10.11 of this Indenture.

**Section 10.2 Acceleration.** If an Event of Default shall occur and be continuing, the Trustee may, and shall, at the direction of the Owners of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable, anything herein or in the Bonds to the contrary notwithstanding. Upon any declaration of acceleration hereunder the Trustee on behalf of the Issuer shall immediately declare all installments of Basic Loan Payments payable under Section 5.2(a) of the Agreement to become immediately due and payable in accordance with Section 10.2 of the Agreement.

The above provisions of Sections 10.1 and 10.2 hereof, however, are subject to the condition that if, after the principal of all Bonds then Outstanding shall have been so declared to be due and payable, all arrears of interest upon such Bonds and the principal and redemption premium, if any, on all Bonds then Outstanding which shall have become due and payable otherwise than by acceleration, and all other sums payable under this Indenture, except the principal of and interest on the Bonds which by such declaration shall have become due and payable, shall have been paid by or on behalf of the Issuer, together with the reasonable expenses of the Trustee and of Owners of such Bonds, including reasonable attorneys’ fees actually paid or incurred, and the Agreement shall be in full force and effect, then and in every such case, the Trustee, may and shall, at the direction of the Majority Bondholders, annul such declaration of maturity and its consequences, which waiver and annulment shall be binding upon all Bondholders; but no such waiver, rescission, and annulment shall extend to or affect any subsequent default or impair or exhaust any right, power, or remedy consequent thereon. In the case of any such annulment, the Issuer, the Trustee, and the Bondholders shall be restored to their former positions and rights under this Indenture.

**Section 10.3 Remedies Upon Event of Default.** If an Event of Default occurs and is continuing, the Trustee shall have the power to proceed with any available right or remedy granted by the Bond Documents or the constitution and laws of the State, as it may deem best, including foreclosure sale under the Trust Deed and any suit, action, mandamus, or special proceeding in equity or at law or in bankruptcy or otherwise for the collection of all amounts due and unpaid under the Bond Documents, for specific performance of any covenant or agreement contained herein or therein, or for the enforcement of

any proper legal or equitable remedy as the Trustee shall deem most effective to protect the rights aforesaid, insofar as such may be authorized by law. Notwithstanding anything to the contrary contained herein, the Trustee shall not be required to foreclose the Trust Deed or to bid at any foreclosure sale if, in the Trustee's reasonable judgment, such action would subject it to personal liability, expense, or loss, including the cost of investigation, removal, or other remedial action with respect to the environmental condition of the Project; the Trustee shall not be required to take any action with respect to the Project which could cause it to be considered an "owner" or "operator" within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, or any other statute dealing with hazardous substances; and the Trustee shall have no authority to manage or operate the Project, except as necessary to exercise remedies upon default. The Trustee, as the assignee of all of the right, title, and interest of the Issuer in and to the Agreement (except for the Unassigned Rights) and the Notes shall have the power to enforce each and every right granted to the Issuer under the Agreement (except for the Unassigned Rights) and the Notes. Upon the occurrence of an Event of Default, the Trustee, in its own name and as trustee of an express trust, or in the name of the Issuer without the necessity of joining the Issuer, shall be entitled to institute any action or proceedings at law or in equity and may prosecute any such action or proceedings to judgment or final decree and may enforce any such judgment or final decree against any obligor thereon and collect in the manner provided by law, but limited as provided in the Bond Documents, out of the property of any obligor thereon wherever situated the moneys adjudged or decreed to be payable for the benefit of the Bondholders, or on behalf of the Issuer. Except as otherwise specifically provided herein or in any of the other Bond Documents, the rights herein specified are to be cumulative to all other available rights, remedies, or powers and shall not exclude any such rights, remedies, or powers.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of any obligor under the Agreement under federal bankruptcy law or any other applicable law, or in the case a receiver or trustee shall have been appointed for the property of any such obligor, or in the case of any other judicial proceedings relative to any obligor under the Agreement or relative to the creditors or property of any such obligor, the Trustee (irrespective of whether the principal of the Bonds shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the power vested in it by this Indenture) shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys, and counsel and for reimbursement of all expenses and liabilities incurred and all advances made by the Trustee except as a result of its negligence, bad faith, breach of contract or misconduct) and of the Bondholders allowed in any such judicial proceedings relative to the Borrower or any other obligor under the Agreement, or relative to the creditors or property of the Borrower, or relative to any such other obligor, as the case may be, and to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute all amounts received with respect to the claims of the Bondholders and of the Trustee on their behalf. Any receiver, assignee, or trustee in bankruptcy or reorganization is hereby authorized by each of the Bondholders to make payments to the Trustee and if the Trustee shall consent to the making of payments directly to the Bondholders, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys, and counsel and all other expenses and liabilities incurred and all advances made by the Trustee except as a result of its negligence, bad faith, breach of contract or misconduct.

**Section 10.4 Rights of Bondholders to Require Trustee to Pursue Remedies.** If an Event of Default occurs and is continuing, and if requested to do so by Owners of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding and if indemnified as provided in Section 11.15 hereof, the Trustee shall be obligated to exercise one or more of the rights and powers conferred by this Section and by Sections 10.2 and 10.3 as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders.

Except as otherwise specifically provided herein or in any of the other Bond Documents, no lien, right, or remedy by the terms of this Indenture conferred upon or reserved or otherwise available to the Trustee or Bondholders is intended to be or shall be construed to be exclusive of any other available lien, right, or remedy, but each and every such lien, right, or remedy shall be cumulative and shall be in addition to any other lien, right, or remedy given to the Trustee or Bondholders hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right, power, or remedy accruing upon any default or Event of Default shall impair any such right, power, or remedy or shall be construed to be a waiver of any such default or Event of Default or an acquiescence therein, but every such right, power, or remedy may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder, whether by the Trustee or Bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon. The giving, taking, or enforcement of any other or additional security, collateral, or guarantee for the payment of Bonds shall not operate to prejudice, waive, or affect the Security or any rights, powers, or remedies under this Indenture, nor shall the Trustee be required to first look to, enforce, or exhaust such other additional security, collateral, or guarantees.

**Section 10.5 Rights of Bondholders to Direct Proceedings.** Owners of 25% or more in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, provided the Trustee is indemnified pursuant to Section 11.15 hereof, to direct the time, method, and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or in connection with the appointment of a receiver or in connection with any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

**Section 10.6 Application of Moneys.** Upon an Event of Default and if moneys held by the Trustee are insufficient to pay the principal of, premium, if any, and interest on the Bonds, all moneys received and held by the Trustee pursuant to this Indenture as Security (except for moneys held in the Bond Fund for the payment of Bonds not presented for redemption) and all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST - To the payment of Ordinary Expenses and Extraordinary Expenses of the Trustee, the costs and compensation of any advances made by the Trustee and any receiver and the reasonable attorneys' fees of the Trustee or any receiver, and any other costs and expenses incurred in the collection of such money;

SECOND – If directed by the Bondholders pursuant to Section 10.5 hereof, to the payment of expenses and for reasonable renewals, repairs, and replacements of the Project necessary to prevent impairment of the Security and to the payment of the costs and compensation of any advances made by the Issuer and the reasonable attorneys' fees of the Issuer;

THIRD - To the payment to the Persons entitled thereto of the unpaid principal of and premium, if any, on any of the Bonds which shall have become due (other than Bonds matured or called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest at the same rate as the interest on such Bonds from the respective dates upon which they became due and, if the amount available shall not be sufficient to pay in full principal of, premium, if any, and interest on the Bonds due on any particular date, then to the payment ratably, according to the amount of the principal, interest, and premium, if any, due on such date, to the Persons entitled thereto without any discrimination or privilege;

FOURTH - To be held for the payment to the Bondholders entitled thereto as the same shall become due of the principal of, premium, if any, and interest on Bonds which may thereafter become due either at maturity or upon call for redemption prior to maturity, and if the amount available shall not be sufficient to pay in full the Bonds due on any particular date, together with interest and premium, if any, then due and owing thereon, payment shall be made ratably according to the amount of principal, premium, if any, and interest due on such date to Bondholders entitled thereto;

FIFTH – To or as directed by the Borrower.

(b) If the principal of all Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied first to the items described in paragraph FIRST of the preceding subsection (a) then to the items described in and pursuant to paragraph SECOND of the preceding subsection (a) then to the payment to the Persons entitled thereto of the principal, premium, if any, and interest then due and unpaid upon the Bonds without preference or priority of principal over interest. or of interest over principal or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal, premium, if any, and interest to the Persons, without any discrimination or privilege including, if applicable, the Persons described in Section 5.12 hereof.

(c) If the principal of all Bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then the moneys shall be applied in accordance with the provisions of paragraph (a) of this Section, subject to the provisions of paragraph (b) of this Section if the principal of all Bonds shall later become due or be declared due and payable.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available for such application and the likelihood of additional money becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, but in accordance with the

provisions of Section 2.8 hereof, and shall not be required to make payment to the Owner of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

**Section 10.7 Remedies Vested in the Trustee.** All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Owners of Bonds, and any recovery of judgment shall be for the equal and ratable benefit of Owners of Outstanding Bonds.

**Section 10.8 Limitations on Rights and Remedies of Bondholders.** No Bondholder shall have any right to institute any suit, action, or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder or under the Bond Documents, unless: (i) a default has occurred of which the Trustee has been notified as provided in subsection (h) of Section 11.1, or of which by said subsection it is deemed to have notice, (ii) such default shall have become an Event of Default, (iii) Owners of at least twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee and provided the indemnity required by Section 11.15 of this Indenture and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit, or proceeding in its own name, and (iv) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted or to institute such action, suit, or proceeding in its, his, or their own name or names. Such notification, request, and offer of opportunity and indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture and to any action or cause of action for the enforcement of this Indenture or for the appointment of a receiver or for any other remedy hereunder or under the Bond Documents; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of this Indenture by its, his, or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the equal and ratable benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondholder to enforce the payment of the principal of, premium, if any, and interest on any Bond at and after the maturity thereof or the obligation of the Issuer to pay the principal of, premium, if any, and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source, and in the manner in said Bonds expressed.

**Section 10.9 Termination of Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Issuer, the Trustee, and the Bondholders shall be restored to their former positions and rights hereunder, and all rights, remedies, and powers of the Trustee shall continue unimpaired as if no such proceedings had been taken.

**Section 10.10 Waivers of Events of Default.** The Trustee may in its discretion waive any Event of Default hereunder and rescind its consequences and shall waive any Event of Default hereunder and its consequences and shall rescind any declaration of maturity of principal of and interest on the Bonds upon the written request of the Majority Bondholders; provided, however, that there shall not be waived any Event of Default in the payment when due of (i) principal of any Outstanding Bonds at the date of maturity specified therein or upon proceedings for redemption pursuant to any mandatory sinking fund payments required or (ii) interest or premium on any such Bonds, unless prior to such waiver or

rescission the consent of Owners of 100% in aggregate principal amount of Bonds then Outstanding to such waiver shall have been obtained and all arrears of interest and all arrears of payments of principal or premium, if any, when due, with interest on such overdue amounts (to the extent permitted by law) at the rate borne by the Bonds, and all expenses of the Trustee in connection with such default, shall have been paid or provided for. In the case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee, then and in every such case the Issuer, Trustee, and Bondholders shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to any subsequent or other default or impair any right consequent thereon. All waivers under this Indenture shall be in writing.

**Section 10.11 Notice of Defaults; Opportunity of the Issuer and Borrower to Cure Defaults.** Anything herein to the contrary notwithstanding, no default under Section 10.1(d) hereof shall constitute an Event of Default until actual written notice of such default by registered or certified mail shall be given by the Trustee or by Owners of not less than twenty-five percent (25%) of the aggregate principal amount of Bonds then Outstanding to the Borrower and Issuer, and the Borrower and Issuer shall have had thirty (30) days after receipt of such notice to correct said default or cause said default to be corrected and shall not have corrected said default or caused said default to be corrected within the applicable period; provided, however, if said default be such that it cannot with due diligence be cured within the applicable period but can be wholly cured within a period of time not materially detrimental to the rights of the Trustee or the Bondholder, it shall not constitute an Event of Default if corrective action is instituted by the Borrower or Issuer, as the case may be, within the applicable period and diligently pursued until the default is corrected.

With regard to any default concerning which notice is given to the Borrower under the provisions of this Section 10.11, the Issuer hereby grants the Borrower full authority for the account of the Issuer to perform any covenant or obligation alleged in said notice to constitute a default, in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts and with power of substitution.

In addition, the Trustee shall give written notice of all other Events of Default to the Borrower by registered or certified mail, by facsimile transmission, or by personal delivery, provided, however, such notice shall not be a condition precedent to the Trustee or the Bondholders exercising any right or remedy granted to them hereunder.

Any notice of default hereunder shall prominently include in the title:

- (i) The complete title of the Bonds,
- (ii) The complete name of the Issuer and the Borrower,
- (iii) The entire nine-digit CUSIP number for each affected maturity of Bonds,
- (iv) the record date, if any, for the notice, and
- (v) a title or reference line that provides a comprehensive summary of the subject of the notice, including a statement that the notice relates to defaulted municipal securities, in no more than 500 characters.

Any notice of default hereunder shall also be given to:

The Depository Trust Company  
Proxy Department  
55 Water Street, 50th Floor  
New York, New York 10041-0099  
Facsimile 212-709-6896



## ARTICLE XI. THE TRUSTEE

**Section 11.1 Acceptance of the Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, represents and covenants that it is fully empowered under applicable laws and regulations to accept said trusts, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as an ordinary, prudent fiduciary would exercise or use under the circumstances in the conduct of its affairs on behalf of its beneficiaries.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, accountants, agents, receivers, or employees, and shall not be responsible for the acts of any attorneys, accountants, agents, or receivers appointed by it in good faith, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder and may in all cases pay such reasonable compensation to all such attorneys, accountants, agents, receivers, and employees as may be reasonably employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorneys (who may be the attorney or attorneys for the Issuer or Borrower) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action taken in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital other than its own contained herein or in the Bonds (except in respect to the authentication certificate of the Trustee endorsed on the Bonds) or for insuring the property conveyed hereby or for collecting any insurance moneys or for the validity of the execution by the Issuer of this Indenture or any supplemental indentures hereto or instruments of further assurance or for the sufficiency of the Security for the Bonds issued hereunder or intended to be secured hereby or for the value or title of the property conveyed hereby or otherwise as to the maintenance of the Security; except that if the Trustee enters into possession of a part or all of the property conveyed hereby pursuant to any provision of this Indenture, it shall use the same degree of care and skill in the performance of its duties as a prudent person would exercise under the circumstances in the conduct of such person's own affairs in preserving such property. The Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions, or agreements on the part of the Issuer or on the part of the Borrower under the Agreement except as herein expressly set forth. The Trustee may require of the Issuer and the Borrower full information as to their performance of the covenants, conditions or agreements under the Agreement. The Trustee shall have no obligation to perform any of the duties of the Issuer under the Agreement. The Trustee shall perform all of the duties or obligations set forth for it under the Agreement, but shall not be answerable for the performance of any such duty or obligation for other than its negligence or willful misconduct.

(d) The Trustee shall not be accountable for the use of the proceeds from the sale of the Bonds disbursed in accordance with the provisions of the Agreement. The Trustee may become the Owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(e) The Trustee shall be protected in acting upon any notice, request, resolution, consent, certificate, order, affidavit, letter, or other paper or document, or oral communication or direction, believed to be genuine and correct and to have been signed or sent or given by the proper person or persons. The Trustee shall not unreasonably withhold its consent to, approval of, or action with respect to any reasonable request of the Issuer or Borrower. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Bond shall be conclusive and binding upon all future Owners of the same Bond and of any Bond or Bonds issued in exchange therefore or upon transfer of or in place thereof.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper, or proceedings, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Issuer by the Authorized Officer of the Issuer or upon a certificate signed on behalf of the Borrower by an Authorized Borrower Representative as sufficient evidence of the facts therein contained and shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction, or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Authorized Officer of the Issuer to the effect that a resolution in the form therein set forth has been adopted by the governing body of the Issuer as conclusive evidence that such a resolution has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable with respect to any such permissive right for other than its negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the Borrower to make any of the payments to the Trustee required to be made by Section 5.2 of the Agreement, unless the Trustee shall have actual knowledge thereof, or be specifically notified in writing of such default by the Issuer or by Owners of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then Outstanding. All notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the principal corporate trust office of the Trustee, and in the absence of having such knowledge or such notice so delivered the Trustee may conclusively assume there is no default except as aforesaid.

(i) The Trustee shall not be liable for any debts contracted or for damages to persons or to personal property injured or damaged or for salaries or nonfulfillment of contracts during any period in which it may be in the possession of or managing the Project as in this Indenture provided.

(j) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants, and representatives shall have the right, but shall not be required, to inspect any and all of the Project, including all books, papers, and records of the Issuer pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto

as may be desired, subject to the limitations imposed upon such rights of inspection pursuant to Section 8.2 of the Agreement.

(k) The Trustee shall not be required to give any certificate, bond or surety in respect of the execution of its trusts and powers hereunder or otherwise in respect of the premises hereof or to file any returns or reports to any court in the execution of its trusts.

(l) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or the taking of any action whatsoever within the purview of this Indenture, the delivery of any showings, certificates, opinions, appraisals, or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of any such action by the Trustee, deemed reasonably necessary for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

(m) All moneys received by the Trustee or any paying agent shall, until used or applied or invested as herein contemplated, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law or by this Indenture. Neither the Trustee nor any paying agent shall be under any liability for interest on any moneys received hereunder except for interest paid on investments of such moneys and such as may otherwise be agreed upon.

(n) The Trustee shall not be liable and shall be fully protected with respect to any action taken or omitted to be taken by it in accordance with the direction of Owners of twenty-five percent (25%) in aggregate principal amount of the Outstanding Bonds relating to the time, method, and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Indenture.

(o) Notwithstanding anything else herein contained, (i) the Trustee shall not be liable for any error in judgment made in good faith unless it is proven that the Trustee was negligent in ascertaining the pertinent facts, and (ii) no provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(p) In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of the Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

(q) The Trustee shall have no responsibility for any information in any offering memorandum, official statement or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

(r) At the Borrower's expense, the Trustee shall be responsible for the filing and recording of all continuation statements when due that were filed and recorded in connection with

this Indenture, the Trust Deed, the Security Agreement and the Assignment of Contract Documents. Notwithstanding anything to the contrary contained herein, the Trustee shall not be responsible for any initial filings of any financial statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such filings, and unless the Trustee shall have been notified by the Borrower that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in relying on such initial filing and descriptions in filing any financing or continuation statement(s) pursuant to this Section 11.1(r).

**Section 11.2 Fees, Charges, and Expenses of the Trustee.** The Trustee shall be entitled to payment and/or reimbursement for reasonable fees for Ordinary Services of the Trustee rendered hereunder, and all advances, attorneys' fees, and other Ordinary Expenses of the Trustee made or incurred by the Trustee in connection with such Ordinary Services of the Trustee, and if it should become necessary that the Trustee perform Extraordinary Services of the Trustee, it shall be entitled to reasonable extra compensation therefore and to reimbursement for reasonable and necessary Extraordinary Expenses of the Trustee in connection therewith; provided, that if such Extraordinary Services of the Trustee or Extraordinary Expenses of the Trustee are the result of the negligence or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefore. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as bond registrar and paying agent for the Bonds as hereinabove provided. Notwithstanding any other provision of this Indenture or the Agreement to the contrary, at all times while any Bonds are Outstanding, payments to the Trustee for services hereunder shall be superior to the payment of principal of and premium, if any, and interest on the Bonds. The Trustee shall, subject to Section 10.6 of the Agreement, look only to funds of the Borrower for payment of such fees, advances and expenses as described in this Section 11.2. The Issuer shall have no liability for payment of same.

**Section 11.3 Notice to Bondholders if Payment Default Occurs.** If a default occurs of which the Trustee is by subsection (h) of Section 11.1 hereof required to take notice or if notice of default is given as in said subsection (h) provided, the Trustee shall give such notice to the Borrower and Issuer as is specified in Section 10.11 hereof and such notice to the Borrower as is specified in Section 10.1 of the Agreement and shall give written notice thereof by first-class mail, within fifteen (15) days (unless such default is cured or waived), to Owners of all Bonds then Outstanding shown by the registration books maintained by the Trustee pursuant to Section 2.8 hereof provided that, except in the case of a default in the payment of the principal of, premium, if any, or interest on any Bond, the Trustee may withhold such notice to the Bondholders if and so long as the board of directors, the executive committee, or a trust committee of directors or responsible officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Bondholders and the Trustee shall not be liable for withholding notice upon making such a determination.

**Section 11.4 Intervention by the Trustee.** The Trustee may intervene on behalf of Bondholders in any judicial proceeding to which the Issuer or Borrower is a party and which, in the reasonable opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners of the Bonds and shall do so if requested in writing by Owners of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then Outstanding and the indemnity required by Section 11.14 hereof has been provided. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

**Section 11.5 Successor Trustee.** Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell, lease, or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or

association resulting from any such conversion, sale, merger, consolidation, or transfer to which it is a party, ipso facto, shall be and become successor trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, rights, obligations, duties, remedies, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed, or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**Section 11.6 Resignation by the Trustee.** The Trustee and any successor trustee may at any time resign from the trusts hereby created by giving thirty (30) days written notice to the Issuer, to the Borrower, and, by first-class (postage prepaid) registered or certified mail, to each Bondholder shown on the registration records maintained pursuant to Section 2.8 hereof, and such resignation shall take effect at the appointment of a successor trustee pursuant to the provisions of Section 11.8 hereof and acceptance by the successor trustee of such trusts. Such notice to the Issuer and to the Borrower may be served personally or sent by registered mail. If no successor trustee shall have been so appointed pursuant to Section 11.8 hereof within thirty (30) days after delivery of such notices, a temporary trustee may be appointed by the Issuer pursuant to Section 11.8 hereof. If no successor trustee is appointed and has accepted appointment within sixty (60) days of the giving of written notice by the resigning trustee as aforesaid the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee.

**Section 11.7 Removal of the Trustee.** The Trustee and any successor trustee may be removed at any time (i) by the Issuer for any breach of the trusts set forth herein or for failure or refusal to act as trustee, (ii) by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer and signed by the Majority Bondholders, or (iii) by an instrument in writing delivered to the Trustee and signed by the Borrower provided the Borrower is not in default as to the payment of any Basic Loan Payments and no other Event of Default is continuing. Removal of the Trustee pursuant to (ii) or (iii) above shall not be effective until the Trustee is paid for all Ordinary Services and Extraordinary Services of the Trustee rendered hereunder and for all Ordinary Expenses and Extraordinary Expenses of the Trustee incurred hereunder and a successor trustee has been appointed.

**Section 11.8 Appointment of Successor Trustee; Temporary Trustee.** In case the Trustee hereunder shall (a) resign or be removed or (b) be dissolved or shall be in the course of dissolution or liquidation, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court or otherwise become incapable of acting hereunder, a successor may be appointed by an instrument executed and signed by the Authorized Officer of the Issuer and executed by the Borrower; provided, that if a successor trustee is not so appointed within thirty (30) days after notice of resignation is mailed or an instrument of removal is delivered as provided under Sections 11.6 and 11.7 hereof, respectively, or within thirty (30) days of the Issuer's knowledge of any of the events specified in (b) hereinabove, then the Majority Bondholders, by an instrument or concurrent instruments in writing signed by or on behalf of such Owners, delivered personally or sent by registered mail to the Issuer and Borrower and approved in writing by the Issuer and Borrower, may designate a successor trustee, and until a successor trustee shall be so appointed by the Bondholders in the manner above provided, the Issuer, by resolution and upon written notice to the Borrower, shall appoint a temporary trustee to fill such vacancy, and any such temporary trustee so appointed by the Issuer shall immediately and without further act be superseded by the successor trustee so appointed by the Bondholders and approved by the Issuer and the Borrower. Notice of the appointment of a successor trustee shall be given in the same manner as provided by Section 11.6 hereof with respect to the resignation of the Trustee. Every such successor trustee appointed pursuant to the provisions of this Section shall be a trust company or bank organized under the laws of the United States of America or any state thereof and which is in good standing within or outside the State, shall be eligible to serve as trustee, Bond registrar, and paying agent

under the Act, shall be duly authorized to exercise trust powers and subject to examination by federal or state authority, shall have a reported combined capital, surplus, and undivided profits of not less than \$75,000,000, and shall be an institution willing, qualified, and able to accept the trusteeship upon the terms and conditions of this Indenture.

In case at any time the Trustee shall resign and no appointment of a successor trustee shall be made pursuant to the foregoing provisions of this Article prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the Owner of any Bond or the resigning Trustee may apply to any court of competent jurisdiction to appoint a successor trustee, provided such resignation shall not take effect until a successor trustee has been appointed. Such court may thereupon, after such notice, if any, as it may deem proper, appoint a successor Trustee.

**Section 11.9 Concerning Any Successor Trustee.** Every successor trustee appointed hereunder shall execute, acknowledge, and deliver to its predecessor and also to the Issuer an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed, or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, remedies, immunities, privileges, duties, and obligations of its predecessor, but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor, and upon payment of all amounts due such predecessor pursuant to Section 11.2 hereof, execute and deliver an instrument transferring to such successor trustee all the estates, properties, obligations, duties, remedies, immunities, privileges, rights, powers, and trusts of such predecessor hereunder, and every predecessor trustee shall deliver all securities and moneys held by it as trustee hereunder to its successors, and every predecessor trustee shall deliver the registration books held by it as bond registrar hereunder to its successors. Should any instrument in writing from the Issuer be required by a successor trustee for more fully and certainly vesting in such successor the estates, trusts, rights, obligations, remedies, immunities, privileges, rights, powers, and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged, and delivered by the Issuer.

**Section 11.10 Right of the Trustee to Pay Insurance, Taxes, and Other Charges.** In case any tax, assessment, or governmental or other charge upon, or insurance premium with respect to, any part of the property herein conveyed is not paid as required herein or in the Agreement and is not being contested pursuant to Section 6.3 of the Agreement, the Trustee may pay such tax, assessment, or governmental or other charge, or insurance premium, without prejudice, however, to any rights of the Trustee or Bondholders hereunder arising in consequence of such failure, and any amount at any time so paid under this Section or Section 6.8 of the Agreement, with interest thereon from the date of payment at the rate charged prime corporate borrowers per annum on demand loans by Wells Fargo Bank, National Association, shall become an additional obligation secured by this Indenture and the same shall be given a preference in payment over any of the Bonds and shall be paid out of the revenues herein pledged to the payment of the Bonds if not otherwise caused to be paid, but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Owners of at least twenty-five percent (25%) in the aggregate principal amount of all Bonds then Outstanding and shall have been provided with adequate funds for the purpose of such payment.

**Section 11.11 Trustee Protected in Relying Upon Resolutions.** The resolutions, opinions, certificates, and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection, and authority to the Trustee for the release of property and the withdrawal of cash hereunder.

**Section 11.12 Trustee's Survival of Rights.** The Trustee's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or

removal and the final payment or the defeasance of the Bonds (or the discharge of the Bonds or the defeasance of the lien of this Indenture).

**Section 11.13 Successor Trustee as Trustee of Funds and Accounts, as Paying Agent, and as Bond Registrar.** Upon a change in the office of trustee, the predecessor trustee which has resigned or has been removed shall cease to be trustee of the Bond Fund, Issuance Cost Fund, Debt Service Reserve Fund, Capital Replacement Fund, Operating Reserve Fund, Insurance Fund, Condemnation Fund, Rebate Fund, Surplus Fund and any special trust funds hereunder created and shall cease to be paying agent for the payment of principal of and interest and premium, if any, on the Bonds and shall cease to be bond registrar, and the successor trustee as qualified under Section 11.8 hereof shall become such trustee, paying agent, and bond registrar.

**Section 11.14 Trust Estate May Be Vested in Separate Trustee or Co-Trustee.** It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Bond Documents and in particular in case of the enforcement of either on an Event of Default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights, or remedies herein granted to the Trustee or may not hold title to the Trust Estate, in trust, as herein granted, or may not take any other action which may be necessary or desirable in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate trustee or co-trustee. The following provisions of this Section 11.14 are adopted to these ends.

If the Trustee appoints an additional individual or institution as a separate trustee or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, duty, obligation, interest, security interest, and lien expressed or intended by this Indenture to be exercised by or vested in or granted or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate trustee or co-trustee but only to the extent necessary to enable such separate trustee or co-trustee to exercise such powers, rights, and remedies, and every covenant and obligation necessary to the exercise thereof by such separate trustee or co-trustee shall run to and be enforceable by either of them.

Should any deed, conveyance, or instrument in writing from the Issuer be required by the separate trustee or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties, and obligations, any and all such deeds, conveyances, and instruments in writing shall, on request, be executed, acknowledged, and delivered by the Issuer. In case any separate trustee or co-trustee, or a successor to either, shall die, become incapable of acting, resign, or be removed, all the estates, properties, rights, powers, trusts, duties, and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

**Section 11.15 Indemnification of Trustee.** Before taking any action under this Indenture or any Security Documents (other than making a claim on insurance, a mandatory redemption, accelerating the Bonds, or paying Bondholders) at the direction or request of the Bondholders, the Trustee may require that a satisfactory indemnity bond be furnished for reimbursement of all expenses it may incur and to protect it against all liabilities.

**Section 11.16 List of Bondholders.** The Trustee shall keep on file a list of names and addresses of all Owners of Bonds as may from time to time be shown on the registration books in the hands of the Trustee together with the principal amount and numbers of such Bonds. The Trustee shall be

under no responsibility with regard to the accuracy of said list. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied by the Issuer, Underwriter, Borrower, or Owners (or a designated representative thereof) of fifteen percent (15%) or more in aggregate principal amount of Bonds then Outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee. Amendments to Indenture and Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and Trustee may, without the consent of or notice to any of the Bondholders but with notice thereof to the Borrower, enter into an amendment to this Indenture or an indenture or indentures supplemental to this Indenture as shall not be inconsistent with the terms and provisions hereof for any one or more of the following purposes:

(1) to cure any ambiguity or formal defect or omission in, or to correct or supplement any defective provision of, this Indenture,

(2) to add to the covenants and agreements of, and limitations and restrictions upon, the Issuer in this Indenture other covenants, agreements, limitations, and restrictions to be observed by the Issuer for the protection of the Bondholders,

(3) to evidence the appointment of a separate trustee or a co-trustee, or the succession of a new trustee or the appointment of a new or additional paying agent or bond registrar,

(4) to grant to or confer upon the Trustee for the benefit of Bondholders any additional rights, remedies, powers, benefits, security, liabilities, duties, or authority that may lawfully be granted to or conferred or imposed upon the Bondholders or Trustee or either of them,

(5) to subject to the lien and security interest of this Indenture additional revenues, properties, or collateral,

(6) to modify, amend, or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any state, and, if they so determine, to add to this Indenture or any indenture supplemental hereto such other terms, conditions, and provisions as may be permitted by the Trust Indenture Act of 1939, as amended, or any similar federal statute,

(7) to modify, amend, or supplement this Indenture in such manner to assure the continued exclusion from gross income of the Owners thereof for federal income tax purposes of interest on any Bond which is excludable from the gross income of the Owners thereof for federal income tax purposes,

(8) to comply with any provisions of the Securities Act of 1933, as amended or the Securities Exchange Act of 1934, as amended, or any rules or regulations promulgated thereunder,

(9) to reflect a change in applicable law provided that the Trustee shall determine (which may be in reliance on an opinion of counsel) that such amendment or supplemental indenture does not prejudice the rights of Bondholders,



(10) in connection with any other change herein which, in the judgment of the Trustee (which may be in reliance of an opinion of counsel), does not prejudice or materially adversely affect the Bondholders or impair the Security.

(b) The Issuer and Trustee shall, without the consent of or notice to any of the Bondholders, but with notice thereof to the Borrower, enter into an indenture or indentures supplemental to this Indenture (i) to the extent necessary with respect to the land and interests in land, buildings, furnishings, machinery, equipment, and all other real and personal property which may form a part of the Project, so as to more precisely identify the same or to substitute or add additional land or interests in land, buildings, furnishings, machinery, equipment, or real or personal property as Security pursuant to the Agreement, or (ii) with respect to any changes required to be made in the description of the Security in order to conform with similar changes made in the Agreement as permitted by Section 13.1 hereof.

(c) Prior to entering into an amendment or supplemental indenture pursuant to (a) or (b) above, there shall be delivered to the Issuer and Trustee an opinion of Bond Counsel to the effect that such amendment or supplemental indenture will not cause the interest on any Bond which was previously excludable from the gross income of the Owners thereof to become includable therein for federal income tax purposes.

**Section 11.17 Amendments to Indenture and Supplemental Indentures Requiring Consent of Bondholders.** Exclusive of amendments and indentures supplemental hereto covered by Section 12.1 hereof and subject to the terms and provisions contained in this Section and not otherwise, the Majority Bondholders shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and Trustee of an amendment or amendments to this Indenture or such indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing contained in this Section shall permit, or be construed as permitting, (a) an extension of the stated maturity or reduction in the principal amount of, or a reduction in the rate or an extension of the time of payment of interest on, or a reduction of any premium payable on the redemption of, any Bonds, without the consent of every Owner of such Bonds, or (b) the creation of any lien or security interest (other than any Permitted Encumbrances) prior to or on a parity with the lien and security interest of this Indenture, without the consent of the Owners of all Bonds at the time Outstanding which would be affected by the action to be taken, or (c) a reduction in the amount, or an extension of the time of any payment, required by the mandatory redemption provisions of Section 3.5 of this Indenture, without the consent of the Owners of all Bonds at the time Outstanding which would be affected by the action to be taken, or (d) a reduction in the aforesaid aggregate principal amount of Bonds the Owners of which are required to consent to any such amendment or supplemental indenture, without the consent of the Owners of all Bonds at the time Outstanding which would be affected by the action to be taken, or (e) the modification of the trusts, powers, obligations, remedies, privileges, rights, duties, or immunities of the Trustee, without the written consent of the Trustee, or (f) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (g) the release of or requirements for the release of this Indenture and the Owners of all Bonds at the time Outstanding which would be affected by the action to be taken.

Prior to entering into such an amendment or supplemental indenture there shall be delivered to the Issuer and Trustee an opinion of Bond Counsel to the effect that such amendment or supplemental indenture will not cause the interest on any Bond which was previously excludable from the gross income of the Owners thereof to become includable therein for federal income tax purposes. If at any time the

Issuer shall request the Trustee to enter into any such amendment or supplemental indenture for any of the purposes allowed by this Section, the Trustee shall, upon being reasonably indemnified with respect to expenses, cause notice of the proposed execution of such amendment or supplemental indenture to be given in substantially the manner provided in Section 3.3 hereof with respect to redemption of Bonds. Such notice shall briefly set forth the nature of the proposed amendment or supplemental indenture and shall state that copies thereof are available from the Trustee upon request. The costs of such copies shall be an Ordinary Expense. If, within sixty (60) days or such longer period as shall be reasonably prescribed by the Issuer following the giving of such notice, the Majority Bondholders at the time of the execution of any such amendment or supplemental indenture shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein or to the operation thereof or in any manner to question the propriety of the execution thereof or to enjoin or restrain the Trustee or Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment or supplemental indenture as in this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith. The Trustee may rely upon an opinion of counsel as conclusive evidence that execution and delivery of an amendment or supplemental indenture has been effected in compliance with the provisions of this Article XI.

**Section 11.18 Consent of Borrower.** Anything herein to the contrary notwithstanding, an amendment or supplemental indenture under this Article XI which affects any rights or obligations of the Borrower or which changes the priority or use of moneys under this Indenture shall not become effective unless and until the Borrower shall have consented to the execution and delivery of such amendment or supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such amendment or supplemental indenture, together with a copy of such amendment or supplemental indenture, to be mailed by certified or registered mail or personally delivered to the Borrower at least fifteen (15) days prior to the proposed date of execution and delivery of any such amendment or supplemental indenture.

## ARTICLE XII. AMENDMENT OF OTHER BOND DOCUMENTS

**Section 12.1 Amendments to Other Bond Documents Not Requiring Consent of Bondholders.** The Issuer and Trustee at the expense of the Borrower shall consent to any amendment, change, or modification of the Bond Documents other than the Indenture as may be required (i) by the provisions of the Agreement and this Indenture, (ii) for the purpose of curing any ambiguity or formal defect or omission therein, or to correct or supplement any defective provision thereof, (iii) in connection with the land and interests in land, buildings, machinery, equipment, and other real or personal property described in Exhibits C and D to this Indenture so as to identify more precisely the same or to substitute or add additional land or interests in land, buildings, machinery, equipment, or other real or personal property, (iv) so as to add additional rights acquired in accordance with the provisions of the Bond Documents, (v) to substitute a new borrower under the Agreement as provided therein, (vi) to comply with any provisions of the Securities Act of 1933, as amended or the Securities Exchange Act of 1934, as amended, or any rules or regulations promulgated thereunder, or (vii) in connection with any other change therein which, in the judgment of the Trustee (which may rely on an opinion of counsel), does not prejudice the Trustee or materially adversely affect Owners of Bonds. Upon a request by the Trustee to Bond Counsel, prior to entering into any amendment, change, or modification of the Bond Documents other than the Indenture, there shall be delivered to the Issuer and Trustee an opinion of Bond Counsel to the effect that such amendment of supplemental indenture will not cause the interest on any Bond which was previously excludable from the gross income of the Owners thereof to become includable therein for federal income tax purposes.

**Section 12.2 Amendments to Other Bond Documents Requiring Consent of Bondholders.** Except for the amendments, changes, or modifications as provided in Section 12.1 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change, or modification of the Bond Documents other than the Indenture without giving notice to and obtaining the written approval or consent of the Majority Bondholders given and procured as in this Section 12.2 provided; provided, however, that nothing in this Section or Section 12.1 hereof shall permit or be construed as permitting, (a) an extension of the time for payment of any amounts payable under the Agreement or a reduction in the amount of any payment or in the total amount due under the Agreement, without the consent of every Owner of Bonds affected thereby or (b) a reduction in the aforesaid aggregate principal amount of Bonds the Owners of which are required to consent to any such amendment, change, or modification of such other Bond Documents and the Owners of all Bonds at the time Outstanding which would be affected by the action to be taken. Prior to entering into any amendment, change, or modification of the Bond Documents other than the Indenture, there shall be delivered to the Issuer and Trustee an opinion of Bond Counsel to the effect that such amendment of supplemental indenture will not cause the interest on any Bond which was previously excludable from the gross income of the Owners thereof to become includable therein for federal income tax purposes. If at any time the Issuer or Borrower shall request any such proposed amendment, change, or modification of such other Bond Documents, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change, or modification to be given in the same manner as provided by Section 11.2 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change, or modification and shall state that copies of the instrument embodying the same are on file at the principal corporate trust office of the Trustee for inspection by all Bondholders. If, within sixty (60) days or such longer period as shall be prescribed by the Issuer following the giving of such notice, the Trustee and the Majority Bondholders at the time of the execution of such proposed amendment, change, or modification shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein or to the operation thereof or in any manner to question the propriety of the execution

thereof or to enjoin or restrain the Trustee from consenting to the execution thereof or to enjoin or restrain the Issuer or Borrower from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment, change, or modification as in this Section permitted and provided, such other Bond Documents shall be and be deemed to be modified, changed, and amended in accordance therewith.

### ARTICLE XIII. MISCELLANEOUS

**Section 13.1 Consents of Bondholders.** Any consent, request, direction, approval, waiver, objection, or other instrument required by this Indenture to be signed and executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any consent, request, direction, approval, waiver, objection, or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken under such request or other instrument, namely:

(a) the fact and date of the execution by any person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such instrument or writing acknowledged to him the execution thereof; where such execution is by an officer of a limited liability company or association or a member of a partnership on behalf of such corporation, association, or partnership, such affidavit or certificate shall also constitute sufficient proof of his authority;

(b) the fact of ownership of Bonds and the amount or amounts, numbers, other identification of such Bonds, and the date of ownership shall be proved by the registration books of the Issuer maintained by the Trustee pursuant to Section 2.8 hereof;

(c) any request, consent, or vote of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefore or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or Issuer in pursuance of such request, consent, or vote; and

(d) in determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent, or waiver under this Indenture, Bonds which are owned by the Issuer, Borrower, or any other obligor under the Agreement or on the Bonds, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer, Borrower, or any other obligor under the Agreement or on the Bonds, shall be disregarded and deemed not to be outstanding for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent, or waiver, but only Bonds which the Trustee knows to be so owned shall be disregarded; Bonds so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section 13.1 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer, the Borrower, or any other obligor under the Agreement or on the Bonds; in case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

(e) Any Bondholder failing to respond within thirty (30) days of notice of any approval, request, consent or vote hereunder shall be deemed to have approved the matter submitted for an approval, request, consent, or vote.

**Section 13.2 Severability.** If any provision of this Indenture shall be held or be deemed to be or shall, in fact, be illegal, invalid, inoperative, or unenforceable as applied in any particular case in any

jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained illegal, invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses, or sections in this Indenture contained shall not affect the remaining portions of this Indenture or any part thereof.

**Section 13.3 Notices.** All notices and other communications hereunder shall be effective if and only if in writing and delivered personally, transmitted by facsimile which the sender's facsimile machine indicates has been sent (in the case of an addressee whose facsimile number is supplied), sent by Federal Express or similar courier, or mailed by registered or certified mail (return receipt requested), charges or postage prepaid, to the addressee at the address that shall most recently have been designated, by effective notices hereunder from the addressee to the sender, as the addressee's desired address for notices hereunder (or, prior to any such notice, at the address for the addressee set forth below):

If to the Issuer:	City of Portland, Oregon 1120 S.W. Fifth Avenue, Suite 1250 Portland, OR 97204 Attention: Debt Manager Telephone: (503) 823-6851 Facsimile: (503) 823-4209
If to the Borrower:	Broadway Housing, LLC c/o Portland State University Foundation, Inc. 2125 SW Fourth Avenue, Suite 510 Portland, OR 97201-0243 Attention: Management Committee Telephone: (503) 725-59881 Facsimile: (503) 725-5800
If to the Trustee:	Wells Fargo Bank, National Association MAC P6101-114 1300 SW 5 <sup>th</sup> Avenue Portland, OR 97201 Attention: Telephone: (503) 886-1367 Facsimile: (503) 886-3300
If to Moody's:	Moody's Investors Services 99 Church Street, 9 <sup>th</sup> Floor New York, NY 10007 Attention: Joann Hempel Telephone: 212-553-4743 Facsimile: 212-553-4090

If to S&P: Standard & Poor's  
55 Water Street, 38<sup>th</sup> Floor  
New York, NY 10041-0001  
Attention: Public Finance  
Telephone:  
Facsimile: 212-438-2157

Unless otherwise provided, written notices so delivered, transmitted, sent or mailed shall be effective on the earlier of (x) actual delivery, (y) the date of transmission, if by facsimile, or (z) as applicable, either (i) the first business day following the date of deposit with a qualified courier service or (ii) the third business day following the date of deposit with the United States Post Office or in a regularly maintained receptacle for the deposit of United States Mail. Any refusal to accept delivery of any such communication shall be considered successful delivery thereof.

**Section 13.4 Payments Due on Saturdays, Sundays, and Holidays.** In any case where the date of maturity of interest on or principal of any Bonds or the date fixed for redemption of any Bonds shall be, in the location of the Principal Corporate Trust Office of the Trustee, a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized by law to close, then payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding Business Day not a Saturday, Sunday, legal holiday, or day upon which banking institutions are authorized by law to close with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

**Section 13.5 Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 13.6 Laws Governing Indenture and Situs and Administration of Trust.** The effect and meanings of this Indenture and the rights of all parties hereunder shall be governed by and construed according to the laws of the State, exclusive of such State's rules regarding choice of law.

**Section 13.7 No Liability of Issuer's or Trustee's Officers.** No recourse under or upon any obligation, covenant, or agreement contained in this Indenture, or in the Bonds, or for any claim based thereon, or under any judgment obtained against the Issuer or Trustee, or by the enforcement of any assessment or penalty or otherwise or by any legal or equitable proceeding by virtue of any constitution, rule of law or equity, or statute or otherwise or under any other circumstances, under or independent of this Indenture, shall be had against any incorporator, employee, agent, member, director or officer, as such, past, present, or future of the Issuer, Trustee, or any incorporator, employee, agent, member, director or officer of any successor corporation, as such, either directly or through the Issuer, Trustee, or any successor corporation, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Trustee, as trustee for the Bondholders, or otherwise, of any sum that may be due and unpaid by the Issuer upon the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, employee, agent, member, director or officer, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Trustee as trustee for the Bondholders or otherwise, of any sum that may remain due and unpaid upon the Bonds, is hereby expressly waived and released as a condition of and in consideration for the execution of this Indenture and the issuance of the Bonds.

**Section 13.8 Attorney's Fees.** The parties hereby agree that each party's obligations hereunder to pay attorneys' fees and expenses of another party, or to reimburse another party for such fees and expenses, shall extend only to such fees and expenses as are actually incurred by such other party.

**Section 13.9 Notice to Rating Agency.** Moody's and S&P shall receive notice of the following events:

- (a) Any substitution of the Trustee or paying agent;
- (b) Any material amendments or supplements to this Indenture or the other Bond Documents made pursuant to Article XI or Article XII hereof; and
- (c) Any redemption or defeasance of the Bonds.

**Section 13.10 Advance Waiver and Release** Issuer and Trustee acknowledge and agree that PSU Foundation is not a Party to this Indenture and assumes no duty and no liability as a result of the participation of the Borrower in the Agreement. Issuer and Trustee further agree that, in the event of any default, liability of or claim against the Borrower under the Agreement or otherwise, Issuer and Trustee 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, except to the extent that PSU Foundation shall have or obtain an interest (other than as a member of the Borrower) in the Project or the other Security; provided, however, that the Issuer's and Trustee's remedies shall be limited to pursuing a Listed Remedy, and Issuer and Trustee shall be entitled to enforce a Listed Remedy only to the extent of PSU Foundation's interest in the Project or the other security.



**SIGNATURES**

IN WITNESS WHEREOF, the Issuer has executed this Indenture by causing its name to be hereunto subscribed by its duly authorized officer and the Trustee has executed this Indenture by causing its name to be hereunto subscribed by its authorized officer, all being done as of the day and year first above written.

**CITY OF PORTLAND, OREGON,  
Acting by and through the City Council  
on the recommendation of the Portland Development  
Commission**

By: \_\_\_\_\_  
Authorized Officer

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION,  
as Trustee**

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

**EXHIBIT B**

**FORM OF LOAN AGREEMENT**

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**LOAN AGREEMENT**

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*between*

**CITY OF PORTLAND, OREGON**

acting by and through the City Council  
on the recommendation of the Portland Development Commission

as Issuer

*and*

**BROADWAY HOUSING, LLC**

as Borrower

**Relating To The  
Issuance Of**

**City of Portland, Oregon  
Economic Development Revenue Refunding Bonds  
(Broadway Project)**

\$ \_\_\_\_\_ Series 2008A (Tax-Exempt)  
\$ \_\_\_\_\_ Series 2008B (Federally Taxable)

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**Dated as of October 1, 2008**

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reference only and is not a part of this Agreement.)

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EXHIBIT C - SERIES A PROMISSORY NOTE

EXHIBIT D - SERIES B PROMISSORY NOTE

EXHIBIT E - PERMITTED USES

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## LOAN AGREEMENT

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This LOAN AGREEMENT, dated as of October 1, 2008, is by and between the CITY OF PORTLAND, OREGON, acting by and through the City Council on the recommendation of the Portland Development Commission (collectively, the “Issuer”), and BROADWAY HOUSING, LLC, an Oregon limited liability company (together with its successors and assigns, the “Borrower”).

THE MEANING OF CAPITALIZED TERMS CAN BE  
DETERMINED BY REFERENCE TO SECTION 1.2.

RECITALS:

A. As more fully set forth in the Indenture, the Issuer has determined to issue the Bonds and to lend the net Bond proceeds to the Borrower pursuant to and in accordance with the terms and conditions of this Loan Agreement and the Bond Documents.

B. The parties to this Loan Agreement acknowledge the matters set forth in the Recitals to the Indenture.

The parties to this Loan Agreement, in consideration of the premises and the mutual covenants and commitments of the parties set forth in this Loan Agreement, the receipt and sufficiency of which are acknowledged by the parties to this Loan Agreement, agree as follows:

### ARTICLE XIV. DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

#### Section 14.1 Incorporation of Recitals.

The Recitals to the Indenture and to this Loan Agreement are, by this reference, incorporated into and deemed a part of this Loan Agreement.

#### Section 14.2 Definitions.

All capitalized terms used in this Loan Agreement shall have the meanings given to those terms in this Section 1.2 or as elsewhere defined in this Loan Agreement unless the context or use clearly indicates a different meaning. Certain capitalized terms used and not otherwise defined in this Loan Agreement are defined in the Indenture.

“Accountant” means an independent certified public accountant or firm of independent certified public accountants (which may be the accountant or firm of accountants retained by the Borrower).

“Act” means Oregon Revised Statutes Sections 280.410 to 280.485, inclusive, which authorizes the Issuer to issue revenue bonds to finance economic development projects.

“Additional Loan Payments” means the payments, fees and expenses as described in the first paragraph of Section 5.2(c) hereof.

“Additions or Alterations” means modifications, repairs, renewals, improvements, replacements, alterations, additions, enlargements, or expansions in, on, or to the Project, including any and all machinery, furnishings, and equipment therefore.

“Affiliate” of a Person means any Person (a) directly or indirectly controlling, controlled by, or under common control with such Person; or (b) a majority of the members of the Directing Body of which are members of the Directing Body of such Person. For purposes of this definition, control means with respect to: (a) a corporation having stock, the ownership, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the directors of such corporation; (b) a not for profit corporation not having stock, having the power to elect or appoint, directly or indirectly, a majority of the members of the Directing Body of such corporation; or (c) any other entity, the power to direct the management of such entity through the ownership of at least a majority of its voting securities or interest or the right to designate or elect at least a majority of the members of its Directing Body, by contract or otherwise. For the purposes of this definition, “Directing Body” means with respect to: (a) a corporation having stock, such corporation’s board of directors and owners, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the directors of such corporation (both of which groups shall be considered a Directing Body); (b) a not for profit corporation not having stock, such corporation’s members if the members have complete discretion to elect the corporation’s directors, or the corporation’s directors if the corporation’s members do not have such discretion; or (c) any other entity, its governing entity, body or board. For the purposes of this definition, all references to directors and members shall be deemed to include all entities performing the function of directors or members however denominated.

“Agreement” or “Loan Agreement” means this Loan Agreement between the Issuer and Borrower, as the same may be amended or supplemented from time to time in accordance with the provisions of the Indenture.

“Agreement Term” means the duration of this Agreement as specified in Section 18.1 hereof.

“Annual Budget” means the annual budget for the Project required by Section 8.10 hereof.

“Annual Debt Service” means, with respect to the Bonds, the debt service payments with respect to Outstanding Bonds for the Fiscal Year of calculation.

“Assignment of Contract Documents” means the Assignment of Contract Documents, dated as of October 1, 2008, from the Borrower to the Trustee, as the same may be amended or supplemented from time to time as permitted by the Indenture.

“Audit Report” means an audit report resulting from an audit conducted by an Accountant in conformity with generally accepted auditing standards prepared in accordance with GAAP.

“Authorized Borrower Representative” means any person or persons at the time designated to act on behalf of the Borrower by written certificate furnished to the Issuer and Trustee, containing the specimen signature of such person and signed on behalf of the Borrower by or on behalf of any authorized managing member of the Borrower. Such certificate or any subsequent or supplemental certificate so executed may designate an alternate or alternates.

“Authorized Denominations” means denominations of Five Thousand Dollars (\$5,000) and any integral multiple in excess thereof.

“Authorized Officer” means the Debt Manager, the Director of the Bureau of Financial Management of the City, the Chief Administrative Officer of the Office of Management and Finance, or the person designated by the Chief Administrative Officer of the Office of Management and Finance, to act on behalf of the City by a written certificate furnished to the Trustee (a copy of which shall be forwarded by the Trustee to the Borrower, which certificate is signed by the Chief Administrative Officer of the Office of Management and Finance and contains the specimen signature of such other officer or employee of the Issuer.

“Available Funds” means (i) funds appropriated or otherwise made available by the Oregon Legislative Assembly including limited and non-limited funds, or allotments pursuant to ORS Chapter 291, sufficient to allow PSU, in the exercise of its reasonable administrative discretion, to pay amounts due under the Housing Services Agreement for the fiscal period in which the amounts are due, and (ii) all unrestricted funds of PSU not otherwise encumbered, or statutorily or contractually restricted, including but not limited to auxiliary housing services, auxiliary administration, vending machines, auxiliary copy service, auxiliary room rentals, unrestricted reserves and unrestricted funds being held by PSU.

“Available Moneys” means, as of any date (a) funds which (i) have been paid to the Trustee by the Borrower or any Affiliate of the Borrower, and deposited into and held in a separate and segregated subaccount or subaccounts in the Bond Fund, or the Debt Service Reserve Fund in which no moneys not deposited on the same date were at any time held, and (ii) have been on deposit with the Trustee in such subaccount or subaccounts in the Bond Fund or the Debt Service Reserve Fund for a period of at least three hundred sixty-six (366) consecutive days prior to such date, during and prior to which period no Event of Bankruptcy has occurred and (iii) are represented by cash or investments described in clause (A)(2) of the definition of Permitted Investments; (b) proceeds from investment of the foregoing, provided such proceeds are retained in the Fund in which they were earned; and (c) any other funds so long as, in the opinion of nationally recognized Independent Counsel experienced in bankruptcy matters, payments therefrom will not constitute an avoidable preference under the Bankruptcy Code.

“Basic Loan Payments” means the loan payments payable by the Borrower to the Issuer, described under the subheading “Basic Loan Payments” in Section 5.2 hereof.

“Beneficial Owner” has the meaning given to that term in Section 2.11 of the Indenture.

“Bond” or “Bonds” means, collectively, the Series 2008A Bonds and the Series 2008B Bonds.

“Bond Counsel” means Independent Counsel nationally recognized as experienced in matters relating to the exclusion from gross income for federal tax purposes of interest on obligations of states and political subdivisions and which is reasonably acceptable to the Issuer and Trustee.

“Bond Documents” means, collectively, this Agreement, the Notes, Indenture, Trust Deed, Security Agreement, Housing Services and Facilities Agreement, Assignment of Contract Documents, Bond Purchase Agreement, Tax Certificate, Tax Compliance Agreement, and any management agreement entered into between the Borrower and the Manager.

“Bond Fund” means the fund created in Section 5.3 of the Indenture.



“Bondholders” or “Bondowners” or “Owners” means the Persons in whose names any of the Bonds are registered on the books kept and maintained by the Trustee as bond registrar.

“Bond Ordinance” means the ordinance or ordinances enacted by the Issuer authorizing and approving the issuance and sale of the Bonds and the security therefore.

“Bond Payment Date” means each Interest Payment Date and each date on which principal or interest or premium, if any, or a sinking fund payment, shall be payable on the Bonds according to their terms and the terms of the Indenture, including without limitation, scheduled mandatory redemption dates, unscheduled mandatory redemption dates, dates of acceleration of the Bonds pursuant to this Indenture, optional redemption dates, and the maturity date of the Bonds, so long as any Bonds shall be Outstanding.

“Bond Purchase Agreement,” with respect to the Bonds, means the Bond Purchase Agreement among the Issuer, the Borrower, and the Underwriter dated \_\_\_\_\_, 2008.

“Bond Year” has the meaning given to that term in the Tax Certificate.

“Borrower” means Broadway Housing, LLC, a limited liability company duly organized and existing under of the laws of the State of Oregon, and its successors and assigns.

“Building” means those certain buildings and all other facilities and improvements constituting part of the Project and not constituting part of the Equipment which are or will be located on the Premises.

“Business Day” means any day other than a day on which (a) banks located in the city in which the Principal Corporate Trust Office of the Trustee is located are authorized or required by law to close and (b) The New York Stock Exchange is closed.

“Capital Expenditures” means capital repair, replacement, or upgrade costs and extraordinary maintenance expenses to the extent considered capital in nature under GAAP.

“Capital Replacement Fund” means the fund created in Section 5.4 of the Indenture.

“Capital Replacement Requirement” means commencing with the Closing Date, a monthly amount to be deposited into the Capital Replacement Fund equal to the number of residential units at the Project (383) times \$\_\_\_\_\_ times one-twelfth (1/12th). The amount per unit to be used in the foregoing calculation in any year shall be adjusted by the increase in the Consumer Price Index per Fiscal Year over the amount in effect in the immediately preceding Fiscal Year. For purposes of this Agreement, the term “Consumer Price Index” means the Consumer Price Index (All Urban Consumers: U.S. city average, all items published by the Bureau of Labor Statistics of the United States Department of Labor, or any equivalent successor or substitute index published by the Bureau of Labor Statistics or a successor governmental agency.

“City Code” means the code of the City of Portland, Oregon as it may be revised from time to time.

“Closing Date” means the date upon which the Bonds are issued in exchange for payment by the Underwriter.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable and binding Regulations, including Regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds under the Code and under the statutory predecessor of the Code and any successor provisions to the relevant provisions of the Code or Regulations.

“Condemnation Fund” means the fund created in Section 5.13 of the Indenture.

“Continuing Disclosure Agreement” means, \_\_\_\_\_.

“Debt Service” means, for any period, the sum of all cash outflows of the Borrower for (i) interest on Indebtedness, and (ii) scheduled payments of principal on Indebtedness.

“Debt Service Coverage Ratio” means, for any period, the ratio of Revenue Available for Debt Service to Debt Service.

“Debt Service Reserve Fund” means the fund created in Section 5.5 of the Indenture.

“Debt Service Reserve Requirement” means, with respect to the Bonds, an amount equal to the lesser of (a) the Tax Maximum for the Bonds (\$\_\_\_\_\_) or (b) Maximum Annual Debt Service on the Bonds recalculated as of each date the Debt Service Reserve Fund is valued pursuant to Section 5.5 of the Indenture.

“Defaulted Interest” means any interest on any Bond which is due and payable, but which is not punctually paid or duly provided for on any Interest Payment Date.

“Defeasance Obligations” means (i) Cash (insured at all times by the Federal Deposit Insurance Corporation) and (ii) direct obligations of (including obligations issued or held in book-entry form on the books of the Department of the Treasury) the United States of America.

“Environmental Reports” means, collectively, the following environmental reports provided in relation to issuance of the Series 2003 Bonds:

- (a) Phase II Environmental Site Assessment (“ESA”), dated April 25, 2000, prepared by Farallon Consulting;
- (b) Phase I ESA, dated June 9, 2000, prepared by ATC Associates, Inc. (Tax Lot 3800 only);
- (c) Site Remediation Summary Report, dated August 25, 2000, prepared by Farallon Consulting;
- (d) Site Closure Letter from Department of Environmental Quality, dated October 16, 2000;
- (e) Phase I ESA, dated November 6, 2001, prepared by ATC Associates, Inc.;
- (f) Limited Phase II Investigation, Tax Lot 4300, SW College Street and SW Broadway, dated August 15, 2002, prepared by GeoDesign, Inc.;

(g) Limited Phase II Investigation, Tax Lots 3800 and 3900, SW Jackson Street and SW Broadway Avenue, dated August 16, 2002, prepared by GeoDesign, Inc.;

(h) Underground Storage Tank Removal Report, Tax Lots 3800 and 3900, SW Jackson Street and SW Broadway Avenue, dated September 6, 2002, prepared by GeoDesign, Inc.;

(i) Heating Oil Tank Decommissioning and Risk-Based Cleanup Report, 1984 SW Broadway Street, initially issued August 28, 2002 and revised September 17, 2002, prepared by Cascade Environmental Services Inc.;

(j) Site Closure Letter from Department of Environmental Quality, dated September 17, 2002;

(k) Phase I ESA, Asbestos-Containing Materials Survey and Geophysical Survey, dated January 24, 2003 prepared by GeoDesign, Inc.;

(l) Phase II ESA, dated January 27, 2003, prepared by GeoDesign, Inc.;

(m) Summary of Environmental Services, dated February 5, 2003, prepared by GeoDesign, Inc.;

(n) Phase I ESA Update, Asbestos-Containing Materials Survey, Geophysical Survey, and Phase II ESA, dated February 10, 2003 (Tax Lot 4000 only);

(o) Phase I ESA Update, Asbestos-Containing Materials Survey, Geophysical Survey, and Phase II ESA, dated February 10, 2003 (Tax Lot 4100 only); and

(p) Risk-Based Analysis of Benzene in Subsurface Soils, dated March 12, 2003, prepared by GeoDesign, Inc. (Tax Lot 3800 only).

“Equipment” means the equipment, machinery, furnishings, and other tangible personal property (other than the furnishings and tangible personal property owned by the tenants of the Project) constituting a part of the Project, and all replacements, substitutions, and additions thereto.

“Event of Default” means any of the events specified in Section 10.1 hereof.

“Event of Nonappropriation” means the event whereby PSU does not (i) receive from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority, (ii) receive allotments pursuant to ORS Chapter 291, or (iii) have any unrestricted funds sufficient to allow PSU, in the exercise of its reasonable administrative discretion, to pay the amounts due under the Housing Services Agreement for any fiscal period or portion thereof in which amounts are due.

“Examination Report” means an examination report resulting from an examination conducted by an Accountant in conformity with generally accepted standards for accountants’ services on prospective financial information prepared in accordance with GAAP.

“Expenses” means, for any period, the aggregate of all operating expenses of the Borrower with respect to the Project, calculated under GAAP, excluding (i) extraordinary expenses (including without limitation losses on the sale of assets other than in the ordinary course of business and losses on the

extinguishment of debt or termination of pension plans), (ii) any expenses resulting from a forgiveness of or the establishment of reserves against Indebtedness of an Affiliate of the Borrower which does not constitute extraordinary expense, (iii) losses resulting from any reappraisal, revaluation, or write-down of assets, and (iv) tenant improvements that are considered capital expenses and that are payable from the Capital Replacement Fund.

“Extraordinary Services of the Trustee” and “Extraordinary Expenses of the Trustee” mean all reasonably necessary services rendered and all reasonably necessary expenses incurred by the Trustee under the Indenture, including reasonable counsel fees, other than Ordinary Services of the Trustee and Ordinary Expenses of the Trustee.

“Favorable Opinion of Bond Counsel” means an opinion of Bond Counsel, addressed to the Issuer, PDC, the Borrower, and the Trustee to the effect that the action proposed to be taken is authorized or permitted by the laws of the State and the Bond Documents and will not adversely affect any exclusion from gross income for federal income tax purposes or any exemption from State income taxes, of interest on any Series 2008A Bond.

“Financing Documents” means the Indenture, this Agreement, the Trust Deed, the Security Agreement, the Housing Services Agreement, the Assignment of Contract Documents, the Tax Certificate, the Tax Compliance Agreement, Continuing Disclosure Agreement and any management agreement entered into between the Borrower and the Manager.

“Fiscal Year” means any period of twelve consecutive months adopted by the Borrower as its fiscal year for financial reporting purposes and shall initially mean the year ending June 30, 2009.

“GAAP” means generally accepted accounting principles promulgated by the American Institute of Certified Public Accountants.

“Housing Services Agreement” means the Housing Services and Facilities Agreement dated as of \_\_\_\_\_, 2008 by and between the Borrower and the State, acting by and through the State Board of Higher Education on behalf of Portland State University, as the same may be amended or supplemented from time to time.

“Indebtedness” means (i) all indebtedness, whether or not represented by bonds, debentures, notes, or other securities, for the repayment of money borrowed, (ii) all deferred indebtedness for the payment of the purchase price of properties or assets purchased (but not to include trade payables or similar accounts incurred in the ordinary course of business), (iii) all guaranties, endorsements (other than endorsements in the ordinary course of business), assumptions, and other contingent obligations in respect of, or to purchase or to otherwise acquire, indebtedness of others, (iv) all indebtedness secured by mortgage, pledge, security interest, or lien existing on property owned which is subject to such mortgage, pledge, security interest, or lien, whether or not the indebtedness secured thereby shall have been assumed, and (v) all capitalized lease obligations; provided, however, that for the purpose of computing Indebtedness, there shall be excluded any particular Indebtedness if, upon or prior to the maturity thereof, there shall have been deposited with the proper depository in trust the necessary funds (or direct obligations of the United States of America not redeemable by the issuer) for the payment, redemption, or satisfaction of such Indebtedness, and thereafter such funds and such direct obligations of the United States of America so deposited shall not be included in any computation of the assets of the Borrower and the income derived from such funds and such direct obligations of the United States of America so deposited shall not be included in any computation of the income of the Borrower.

“Indenture” means the Trust Indenture, dated as of the date hereof, between the Issuer and Trustee, as the same may be amended or supplemented from time to time in accordance with the provisions of the Indenture.

“Independent Counsel” means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state of the United States and not in the full-time employment of the Issuer or Borrower.

“Independent Engineer” means any architect, engineer or firm of architects or engineers which is independent of the Borrower and PSU and which is appointed by the Borrower, at the cost of the Borrower, to report and be accountable solely to the Trustee for the benefit of the Bondholders and who has all licenses and certifications necessary for the performance of project monitoring services and has a favorable reputation for skill and experience in performing similar services in respect of facilities of a comparable size and nature.

“Insurance Consultant” means Northrup Corporation and subsequently any person, who is not the Borrower or an Affiliate of the Issuer or Borrower, appointed by the Borrower, who is qualified to survey risks and to recommend insurance coverage for a student housing facility and organizations engaged in like operations as that of the Borrower in the State and who has a favorable reputation for skill and experience in such surveys and such recommendations and who may be a broker or agent with whom the Borrower or Issuer transacts business.

“Insurance Fund” means the fund created and so designated in Section 5.13 of the Indenture.

“Interest Payment Date” means each April 1 and October 1, beginning April 1, 2009.

“Issuance Cost Fund” means the fund created in Section 5.6 of the Indenture.

“Issuance Costs” means:

(a) the initial or acceptance fee of the Trustee, the fees and taxes for recording and filing the Trust Deed, Security Agreement, financing statements, and any title curative documents that either the Trustee or Independent Counsel may reasonably deem desirable to file for record in order to perfect or protect the lien or security interest created or granted by the Trust Deed or Security Agreement, and the reasonable fees and expenses in connection with any actions or proceedings that either the Trustee or Independent Counsel may reasonably deem desirable to bring in order to perfect or protect the lien or security interest created or granted by the Trust Deed or Security Agreement;

(b) the costs of legal fees and expenses, underwriter’s spread, underwriting fees, financing costs, Issuer’s fees, Issuer’s counsel’s fees and expenses, financial advisor’s fees, accounting fees and expenses, consulting fees, escrow agent fees, Trustee’s fees, paying agent and certifying and authenticating agent fees, reasonable fees of counsel to the Trustee, publication costs, title insurance premiums, and printing and engraving costs incurred in connection with the authorization, sale and issuance of the Bonds, the accomplishment of the refunding and preparation of the Bond Documents; and

(c) other costs in connection with the issuance of the Bonds permitted by the Act to be paid or reimbursed from Bond proceeds.

“Issuer” means City of Portland, Oregon, a public body corporate and politic, created under the laws of the State, and its successors and assigns.

“Listed Remedy” shall have the meaning given to that term in Section 10.6 of this Agreement.

“Loan” means the loan made by the Issuer to the Borrower pursuant to this Agreement for the purpose of providing funds to the Borrower to refund the Series 2003 Bonds, including paying the swap termination payment, funding a Debt Service Reserve Requirement and paying issuance costs.

“Loan Payments” means the loan payments payable by the Borrower described in Section 5.2 hereof.

“Majority Bondholders” means, at the time of determination, those Persons owning more than 50% of the aggregate principal amount of all Bonds Outstanding.

“Manager” means the Person appointed pursuant to Section 8.15 of this Agreement to manage and operate the Project. The initial manager shall be Portland State University pursuant to \_\_\_\_\_ dated \_\_\_\_\_ 2008.

“Maximum Annual Debt Service” means the maximum Annual Debt Service that will come due in any Bond Year or Fiscal Year, as the case may be.

“Moody’s” means Moody’s Investors Service, Inc.

“Net Proceeds,” when used with respect to any insurance or condemnation award or with respect to any other recovery on a contractual claim or claim for damage to or for taking of property, means the gross proceeds from the insurance or condemnation award or recovery remaining after payment of all expenses (including attorneys’ fees and any Extraordinary Expenses of the Trustee) incurred in the collection of such gross proceeds.

“Notes” means, collectively, the Series 2008A Note and the Series 2008B Note.

“NRMSIR” means each Person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

“Official Statement” means \_\_\_\_\_.

“Operating Reserve Fund” means the fund created by Section 5.9 of the Indenture.

“Operating Reserve Requirement” means the reserve for operating expenses initially equal to \$229,275. The Operating Reserve Requirement shall be equal to two (2) months average operating expenses for the ensuing Fiscal Year as shown in the Annual Budget or, if such Annual Budget has not been approved for such Fiscal Year, as shown in the current Fiscal Year’s Annual Budget.

“Ordinary Services of the Trustee” and “Ordinary Expenses of the Trustee” mean those reasonable services rendered and those reasonable expenses incurred by the Trustee in the performance of its duties under the Indenture of the type ordinarily performed by corporate trustees under like indentures, including reasonable counsel fees.

“Outstanding Bonds” or “Bonds Outstanding” or “Outstanding” means all Bonds which have been duly authenticated and delivered by the Trustee under the Indenture, except:

- (a) Bonds theretofore canceled or required to be canceled by the Trustee,
- (b) Bonds which are deemed to have been paid in accordance with Article IX of the Indenture, and
- (c) Bonds in substitution for which other Bonds have been authenticated and delivered under Section 2.4 of the Indenture.

“Owner” or “Owners” means the Persons in whose names any of the Bonds are registered on the books kept and maintained by the Trustee as bond registrar.

“PDC” means the Portland Development Commission.

“Permitted Encumbrances” means, as of any particular time, (i) liens for ad valorem taxes, special assessments, and other charges not then delinquent or for taxes, assessments, and other charges being contested in accordance with Section 6.3 hereof, (ii) the Bond Documents, (iii) presently existing utility, access, and other easements and rights of way, restrictions, and exceptions described in the title policy required by Section 3.5 hereof, (iv) inchoate mechanics’ and materialmen’s liens which arise by operation of law, but which have not been perfected by the required filing of record, for work done or materials delivered after the date of recording the Trust Deed in connection with Additions or Alterations, (v) the mechanics’ and materialmen’s liens contested by the Borrower pursuant to Section 6.1 hereof, (vi) the subordination and the easements permitted under Section 8.5 hereof, and (vii) liens or encumbrances securing the Bonds permitted by Section 8.8 hereof and by Section 2.11 of the Indenture; and (viii) a pending and presently inchoate City of Portland lien for street improvements (Street LID - Lien No. 00136227).

“Permitted Investments” means, to the extent permitted by applicable law, any of the following: (1) cash (insured at all times by the Federal Deposit Insurance Corporation); (2) direct obligations of (including obligations issued or held in book entry form on the books of the Department of Treasury) the United States of America; (3) direct obligations of the following federal agencies, which obligations represent the full faith and credit of the United States of America: Export-Import Bank, the Farm Credit System Financial Assistance Corporation, the Rural Economic Community Development Administration (formerly the Farmers Home Administration), the United States Maritime Administration, the Small Business Administration, the United States Department of Housing and Urban Development (PHA's), the Federal Housing Administration and the Federal Financing Bank; (4) direct obligations of the following federal agencies, which obligations are not fully guaranteed by the full faith and credit of the United States of America: senior debt obligations rated "Aaa" by Moody's and "AAA" by S&P issued by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC), obligations of the Resolution Funding Corporation (REFCORP), senior debt obligations of the Federal Home Loan Bank System; (5) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks, including the Trustee or its affiliates, which have a rating on their short term certificates of deposit on the date of purchase of "P-1" by Moody's and "A-1" or "A-1+" by S&P and maturing no more than 360 days after the date of purchase (ratings on holding companies are not considered as the rating of the bank); (6) commercial paper which is rated at the time of purchase in the single highest classification, "P-1" by Moody's and "A-1+" by S&P and which matures not more than 270 days after the date of purchase; (7) investments in a money market fund rated "AAAm" or "AAAm-G" or better by S&P and/or "Aaa" by Moody's; (8) Pre-Refunded Municipal Obligations;

(9) municipal obligations rated "Aaa/AAA" or general obligations of states with a rating of at least "A2/A" or higher by both Moody's and S&P; (10) investment agreements rated Aa2/AA or better by S&P and/or Moody's (supported by appropriate opinions of counsel). Permitted Investments shall be valued monthly as provided in Section 7.5 of the Indenture.

"Person" means natural persons, firms, associations, trusts, partnerships, corporations, limited liability companies, and public bodies.

"Premises" means the real estate described in Exhibit A attached hereto which, by this reference thereto, is incorporated herein.

"Prerefunded Municipal Obligations" means any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

(A) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of Moody's or S&P or any successors thereto; or

(B)(i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in clause (2) of the definition of Permitted Investment, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate.

"Principal Corporate Trust Office" means the office of the Trustee at Wells Fargo Bank, National Association, 1300 SW 5<sup>th</sup> Avenue, Portland, Oregon, 97201, or such other or additional offices as may be specified to the Issuer and the Borrower by the Trustee; provided, however, that for the purposes of maintenance of the Bond registration books and presentation of Bonds for transfer, exchange, or payment, such term shall mean in care of the corporate trust office of Wells Fargo Bank, National Association, or such other or additional offices as may be specified by the Trustee in writing to the Issuer and the Borrower.

"Project" means the student and faculty housing, academic and commercial facilities that were acquired, constructed, furnished, and equipped with proceeds of the Series 2003 Bonds and refinanced with the Series 2008 Bonds and consists of the Premises, the Building and the Equipment, more fully described in Exhibit B attached hereto and made a part hereof by this reference.

"PSU" means the State of Oregon, acting by and through the State Board of Higher Education on behalf of Portland State University.

"PSU Foundation" means the Portland State University Foundation, Inc., an Oregon nonprofit corporation, the sole member of the Borrower.

"Rebate Fund" means the fund created in Section 5.2 of the Indenture.



“Regulations” means the Treasury Regulations promulgated under and pursuant to the Code.

“Record Date” means the fifteenth (15th) day of the month (whether or not a Business Day) next preceding each Interest Payment Date.

“Reserve Loan Payments” means the loan payments payable by the Borrower to the Trustee, described in the last sentence under the subheading “Reserve Loan Payments” in Section 5.2(b) hereof.

“Revenue Available For Debt Service” means, for any period, the excess of: (a) the sum of (i) Revenues and (ii) to the extent included in Expenses, (w) interest on Indebtedness, (x) depreciation, (y) amortization and (z) required deposits and other additions to reserves, other than required deposits to the Capital Replacement Fund; over (b) the sum of (i) Expenses and (ii) to the extent not included in Expenses, required deposits to the Capital Replacement Fund.

“Revenue Fund” means the fund created in Section 5.1 of the Indenture.

“Revenues” means, for any period, the gross revenues of the Borrower with respect to the Project, less provisions for uncollectible accounts, and including earnings on reserves held with respect to the Bonds or the Project and amounts deposited by PSU into the Revenue Fund pursuant to the Housing Services Agreement; but excluding in any event (i) any gains on the sale or other disposition of investments or fixed or capital assets not in the ordinary course of business, (ii) earnings resulting from any reappraisal, revaluation, or write-up of assets, (iii) refundable tenant security deposits until earned, and (iv) net proceeds of insurance (other than business interruption insurance) and condemnation awards.

“Rule” means the SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

“Security” means any of the property subject to the operation of the granting clauses contained in the Trust Deed, the Security Agreement, the Assignment of Contract Documents and the Indenture that is part of the Trust Estate and that serves as collateral for the Bonds.

“Security Agreement” means the Security Agreement, dated as of October 1, 2008, from the Borrower to the Trustee, as the same may be amended or supplemented from time to time as permitted by the Indenture.

“Security Documents” means, collectively, the Indenture, the Trust Deed, the Security Agreement, and the Assignment of Contract Documents.

“Series 2003 Bonds” means collectively the City of Portland, Oregon Economic Development Revenue Bonds (Broadway Project) \$42,725,000 Series 2003A (Tax-Exempt) and \$4,700,000 Series 2003B (Federally Taxable).

“Series 2008A Bonds” means the revenue bonds designated “City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008A (Tax-Exempt),” in the aggregate principal amount of \$\_\_\_\_\_, to be issued pursuant to the Indenture.

“Series 2008B Bonds” means the revenue bonds designated “City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008B (Federally Taxable),” in the aggregate principal amount of \$ \_\_\_\_\_, to be issued pursuant to the Indenture.

“Series 2008A Note” means the Series 2008A Promissory Note of the Borrower, in the original principal amount of \$ \_\_\_\_\_, payable to the Issuer, given to evidence the obligation to pay Loan Payments to repay the portion of the Loan relating to the Series 2008A Bonds, in substantially the form attached hereto as Exhibit “C.”

“Series 2008B Note” means the Series 2008B Promissory Note of the Borrower, in the original principal amount of \$ \_\_\_\_\_, payable to the Issuer, given to evidence the obligation to pay Loan Payments to repay the portion of the Loan relating to the Series 2008B Bonds, in substantially the form attached hereto as Exhibit “D.”

“SID” means any Person designated by the State or an authorized department, officer, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

“State” means the State of Oregon.

“Surplus Fund” means the fund created in Section 5.10 of the Indenture.

“Tax Certificate” means the Tax Certificate of the Issuer dated as of October \_\_, 2008.

“Tax Compliance Agreement” means the Tax Compliance Agreement of the Borrower dated as of October \_\_\_\_, 2008.

“Tax-Exempt Organization” means a Person organized under the laws of the United States of America or any state thereof which is an organization described in Section 501(c)(3) of the Code, which is exempt from federal income taxation under Section 501(a) of the Code, or corresponding provisions of federal income tax laws from time to time in effect (except for unrelated business taxable income subject to taxation under Section 511 of the Code).

“Tax Maximum” means the least of: the greatest amount of principal and interest required to be paid in any Fiscal Year on the Bonds; 125% of the average amount of principal and interest required to be paid on the Bonds during all Fiscal Years or portions thereof in which the Bonds will be Outstanding, calculated as of the date of issuance of the Bonds; or, ten percent of the principal amount of the Bonds (provided, however, that if the Bonds have more than a de minimis amount of original issue discount or premium, the issue price of the Bonds will be used to measure this ten percent limitation).

“Title Company” means Ticor Title Insurance Company, or any other title insurance company issuing a title insurance policy on the Premises and naming the Trustee as insured.

“Title Policy” means the ALTA lender’s title insurance policy issued by the Title Company in favor of the Trustee.

“Trust Deed” means the Trust Deed dated as of October 1, 2008, from the Borrower to the Trustee, which includes an assignment of rents and leases, as the same may be amended or supplemented from time to time in accordance with the provisions of the Indenture.

“Trustee” means the trustee and/or the co-trustee at the time serving as such under the Indenture. Wells Fargo Bank, National Association, is the initial Trustee.

“Trust Estate” means any and all property subject to the operation of the granting clauses of the Indenture, the Trust Deed, the Security Agreement and the Assignment of Contract Documents.

“Unassigned Rights” means all of the rights of the Issuer to receive reimbursements and payments pursuant to Sections 5.2, 6.8, 8.6, and 10.4 hereof, and to be held harmless and indemnified pursuant to Section 8.6 hereof.

“Underwriter” means Citigroup Global Markets Inc., and its successors and assigns.

**Section 14.3 Construction of Certain Terms.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

(a) The use of the masculine, feminine, or neuter gender is for convenience only and shall be deemed and construed to include correlative words of the masculine, feminine, or neuter gender, as appropriate.

(b) This Agreement” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more loan agreements supplemental hereto entered into pursuant to the applicable provisions hereof.

(c) All references in this instrument to designated “Articles,” “Sections,” and other subdivisions are to the designated Articles, Sections, and other subdivisions of this instrument. The words “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or other subdivision.

(d) The terms defined in this Article shall have the meanings assigned to them in this Article and include the plural as well as the singular.

(e) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as promulgated by the American Institute of Certified Public Accountants, on and as of the date of this instrument.

**Section 14.4 Table of Contents; Titles and Headings.** The table of contents, the titles of the articles, and the headings of the sections of this Agreement are solely for convenience of reference, are not a part of this Agreement, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

**Section 14.5 Contents of Certificates or Opinions.** Every certificate or opinion with respect to the compliance with a condition or covenant provided for in this Agreement shall include: (i) a statement that the person or persons making or giving such certificate or opinion have read such covenant or condition and the definitions herein relating thereto, (ii) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with, and (iii) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such certificate or opinion made or given by an officer of the Issuer or an officer of the Borrower may be based, insofar as it relates to legal or accounting matters, upon a certificate or an opinion of counsel or an accountant, which certificate or opinion has been given only after due inquiry of the relevant facts and circumstances, unless such officer knows that the certificate or opinion with respect to the matters upon which his certificate or opinion may be based as aforesaid is erroneous or in the exercise of reasonable care should have known that the same was erroneous. Any such certificate or opinion made or given by counsel or an accountant may be based (insofar as it relates to factual matters with respect to information which is in the possession of an officer of the Issuer or an officer of the Borrower or any third party) upon the certificate or opinion of or representations by an officer of the Issuer or an officer of the Borrower or any third party on whom counsel or an accountant could reasonably rely unless such counsel or such accountant knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion may be based as aforesaid are erroneous or in the exercise of reasonable care should have known that the same were erroneous. The same officer of the Issuer or officer of the Borrower, or the same counsel or accountant, as the case may be, need not certify or opine to all of the matters required to be certified or opined under any provision of this Agreement, but different officers, counsel, or accountants may certify or opine to different matters, respectively.

## ARTICLE XV. REPRESENTATIONS AND UNDERTAKINGS

**Section 15.1 Representations by the Issuer.** The Issuer makes the following representations and findings as the basis for the undertakings on its part herein contained:

(a) *Organization and Authority.* The Issuer is a public body corporate and politic, organized and validly existing under the laws of the State (including the provisions of the Act). The Issuer is authorized to issue its revenue bonds for the purpose of paying all or part of the cost of any economic development project or the refunding thereof, including the acquisition, construction, and installation of land, buildings, equipment, and furniture for the essential public purpose of the development of trade, commerce, industry, and employment opportunities. A project may be for any use provided by the Act.

(b) *Pending Litigation.* To the knowledge of the Issuer, there are no actions, suits, proceedings, inquiries, or investigations pending or, threatened against or affecting the Issuer in any court or by or before any governmental authority or arbitration board or tribunal, which would materially and adversely affect the transactions contemplated by this Agreement or which would adversely affect the validity or enforceability against the Issuer of the Bonds, the Bond Documents, or any agreement or instrument to which the Issuer is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby, nor is the Issuer aware of any facts or circumstances presently existing which would form the basis for any such actions, suits, or proceedings.

(c) *Issue, Sale, and Other Transactions Are Legal and Authorized.* The issue and sale of the Bonds and the execution and delivery by the Issuer of this Agreement and the Indenture, the endorsement of the Notes to the order of the Trustee, and the compliance by the Issuer with all of the provisions of each thereof and of the Bonds (i) are within the purposes, powers, and authority of the Issuer, (ii) have been done in full compliance with the provisions of the Act and have been approved by the Issuer and are legal and do not conflict with or constitute on the part of the Issuer a violation of or a breach of or a default under, or result in the creation or imposition of any lien, charge, restriction, or encumbrance (other than Permitted Encumbrances) upon any property of the Issuer under the provisions of, any charter instrument, bylaw, indenture, mortgage, deed of trust, pledge, note, lease, loan, or installment sale agreement, contract, or other agreement or instrument to which the Issuer is a party or by which the Issuer or its properties are otherwise subject or bound, or, any license, judgment, decree, law, statute, order, writ, injunction, demand, rule, or regulation of any court or governmental agency or body having jurisdiction over the Issuer or any of its activities or properties, and (iii) have been duly authorized by all necessary corporate action on the part of the Issuer.

(d) *Governmental Consents.* Neither the nature of the Issuer nor any of its activities or properties, nor any relationship between the Issuer and any other Person, nor any circumstance in connection with the offer, issue, sale, or delivery of the Bonds is such as to require the consent, approval, permission, order, license, or authorization of, or the filing, registration, or qualification with, any governmental authority on the part of the Issuer in connection with the execution, delivery, and performance of this Agreement and the Indenture, the endorsement of the Notes to the order of the Trustee, the consummation of any transaction therein contemplated, or the issue, sale, or delivery of the Bonds, except for the approvals required by Section 147(f) of the Code or as shall have been obtained or made and as are in full force and effect, other than the recording of the Trust Deed and the filing of financing statements or instruments effective as financing statements perfecting the security interests created by the Trust Deed and the Security Agreement.

(e) *No Defaults.* To the knowledge of the Issuer, no event has occurred and no condition exists which would constitute an Event of Default or which, with the lapse of time or with the giving of notice or both, would become an Event of Default.

(f) *No Prior Pledge.* Neither this Agreement, the Notes, Trust Deed, Security Agreement, and Assignment of Contract Documents, nor any of the payments to be received by the Issuer under this Agreement, the Notes, Trust Deed, Security Agreement, or Assignment of Contract Documents, has been mortgaged, pledged, or hypothecated by the Issuer in any manner or for any purpose or has been the subject of a grant of a security interest by the Issuer other than as provided in the Indenture as security for the payment of the Bonds.

(g) *Disclosure.* The representations of the Issuer contained in this Agreement and any certificate, document, written statement, or other instrument furnished to the Trustee or the Underwriter by or on behalf of the Issuer in connection with the transactions contemplated hereby do not contain any untrue statement of a material fact relating to the Issuer and do not omit to state a material fact relating to the Issuer necessary in order to make the statements contained herein and therein relating to the Issuer not misleading.

(h) *Authorized Project.* The Project has been determined by the Issuer to constitute a “project” within the meaning of the Act.

(i) *Compliance with Conditions Precedent to the Issuance of the Bonds.* All acts, conditions, and things required to exist, happen, and be performed by the Issuer precedent to and in the execution and delivery by the Issuer of the Bonds do exist, have happened, and have been performed in due time, form, and manner as required by law; the issuance of the Bonds, together with all other obligations of the Issuer, do not exceed or violate any constitutional or statutory limitation.

(j) *Tax Compliance.* The Issuer hereby covenants and agrees to comply with all requirements of the Code, compliance with which subsequent to the issuance of the Series 2008A Bonds is necessary for the interest on the Series 2008A Bonds to be, and to remain, excluded from the gross income of the owners thereof for federal income tax purposes and not to take any actions that would adversely affect such exclusion under the provisions of the Code.

**Section 15.2 Representations by the Borrower.** The Borrower makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) *Organization and Power.* The Borrower is a single member limited liability company duly organized, validly existing, and on active status under the laws of the State and has all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as it is now being conducted and as it is currently proposed to be conducted.

(b) *Pending Litigation and Taxes.* There are no actions, suits, proceedings, inquiries, or investigations pending or, to the knowledge of the Borrower, threatened against the Borrower in any court or by or before any governmental authority or arbitration board or tribunal, which involve the likelihood of materially and adversely affecting the properties, business, prospects, profits, operations, or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to perform its obligations under this Agreement, Continuing Disclosure Agreement, the Notes, Trust Deed, Security Agreement, or Assignment of Contract Documents, to which the

Borrower is a party, or the transactions contemplated by this Agreement or which, in any way, would adversely affect the validity or enforceability of the Bond Documents or any agreement or instrument to which the Borrower is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby, nor is the Borrower aware of any facts or circumstances presently existing which would form the basis for any such actions, suits, or proceedings. The Borrower is not in default with respect to any judgment, order, writ, injunction, decree, demand, rule, or regulation of any court, governmental authority, or arbitration board or tribunal. All tax returns (federal, state, and local) required to be filed by or on behalf of the Borrower have been duly filed, and all taxes, assessments, and other governmental charges shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof.

(c) *Agreements Are Legal and Authorized.* The execution and delivery by the Borrower of this Agreement, the Continuing Disclosure Agreement, the Notes, Trust Deed, Security Agreement, and Assignment of Contract Documents, to which the Borrower is a party, the consummation of the transactions herein and therein contemplated, and the fulfillment of or the compliance with all of the provisions hereof and thereof (i) are within the power, legal right, and authority of the Borrower, (ii) following completion of the refunding of the 2003 Series Bonds, are legal and will not conflict with or constitute on the part of the Borrower a violation of or a breach of or a default under, or result in the creation or imposition of any lien, charge, restriction, or encumbrance (other than Permitted Encumbrances) upon any property of the Borrower under the provisions of any charter instrument, bylaw, indenture, mortgage, deed of trust, pledge, note, lease, loan, or installment sale agreement, contract, or other agreement or instrument to which the Borrower is a party or by which the Borrower or its properties are otherwise subject or bound, or any license, law, statute, rule, regulation, judgment, order, writ, injunction, decree, or demand of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities or properties, and (iii) have been duly authorized by all necessary and appropriate action on the part of the Borrower. This Agreement, the Continuing Disclosure Agreement, the Notes, Trust Deed, Security Agreement, and Assignment of Contract Documents, are the valid, legal, binding, and enforceable obligations of the Borrower, except to the extent enforceability thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors' rights, and (ii) the application of equitable principles and the exercise of judicial discretion in appropriate cases. The officers of the Borrower executing this Agreement, Continuing Disclosure Agreement, the Notes, Trust Deed, Security Agreement, and Assignment of Contract Documents, are duly and properly in office and are fully authorized and empowered to execute the same for and on behalf of the Borrower.

(d) *Governmental Consents.* Neither the Borrower nor any of its business or properties, nor any relationship between the Borrower and any other Person, nor any circumstance in connection with the execution, delivery, and performance by the Borrower of its obligations under this Agreement, Continuing Disclosure Agreement, the Notes, Trust Deed, Security Agreement, Assignment of Contract Documents, or the offer, issue, sale, or delivery by the Issuer of the Bonds, is such as to require the consent, approval, permission, order, license, or authorization of, or the filing, registration, or qualification with, any governmental authority on the part of the Borrower in connection with the execution, delivery, and performance of this Agreement, Continuing Disclosure Agreement, the Notes, Trust Deed, Security Agreement or Assignment of Contract Documents, consummation of any transaction therein contemplated, or

offer, issue, sale, or delivery of the Bonds, except as have been or shall be obtained or made and as are or will be in full force and effect, other than recording the Trust Deed and filing financing statements or instruments effective as financing statements perfecting the security interests created by the Trust Deed and the Security Agreement. To the knowledge of the Borrower, the Borrower will be able to obtain all such additional consents, approvals, permissions, orders, licenses, or authorizations of governmental authorities as may be required on or prior to the date the Borrower is legally required to obtain the same. Provided, however, that no representation is hereby made concerning laws relating to securities or Oregon laws relating to government finance.

(e) *No Defaults.* No event has occurred and no condition exists that would constitute an Event of Default or which, with the lapse of time or with the giving of notice or both, would become an Event of Default. The Borrower is not in default or violation in any material respect under any charter instrument, bylaw, or other material agreement or instrument to which it is a party or by which it may be bound.

(f) *Compliance with Law.* The Borrower is not in violation of any laws, ordinances, or governmental rules or regulations to which it is subject and has obtained or will obtain all licenses, permits, franchises, or other governmental authorizations necessary to the ownership of its properties or to the conduct of its business, which violation or failure to obtain might materially and adversely affect the properties, business, prospects, profits, and conditions (financial or otherwise) of the Borrower. Provided, however, that no representation is hereby made concerning laws relating to securities or Oregon laws relating to government finance.

(g) *Restrictions on the Borrower.* The Borrower is not a party to or bound by any contract, instrument, or agreement, or subject to any other restriction, that materially and adversely affects its business, properties, assets, operations, or condition (financial or otherwise). Except for the Borrower's Operating Agreement under which the limited liability company is managed and which prohibits certain extraordinary acts without member authorization, the Borrower is not a party to any contract or agreement that restricts the right or ability of the Borrower to incur indebtedness for borrowed money.

(h) *No Prior Pledge.* The property to be encumbered by the Trust Deed and the Security Agreement is not mortgaged, pledged, or hypothecated in any manner or for any purpose and has not been the subject of a grant of a security interest by the Borrower, in each case other than as provided in the Trust Deed and the Security Agreement as security for its obligations under this Agreement.

(i) *Tax-Exempt Organization.* As of the date of this Agreement, (i) the Borrower will be treated as a disregarded entity for federal income tax purposes, and a Tax-Exempt Organization, (ii) the Borrower's sole member has received a determination letter from the Internal Revenue Service to the effect that it is a Tax-Exempt Organization, (iii) the Borrower's sole member is in full compliance with all terms, conditions, and limitations, if any, required to maintain its status under Section 501(c)(3) of the Code, (iv) such status as a Tax-Exempt Organization has not been adversely modified, limited, or revoked, and (v) the facts and circumstances which formed the basis for the status of the Borrower's member either substantially exist for the Borrower or differ in a manner consistent with the requirements of Section 501(c)(3) of the Code.



(j) *Limited Private Use.* The Borrower shall not use (or permit the use of) property financed or refinanced with the proceeds of the Series 2008A Bonds (including income investment thereof) in any trade or business carried on by any Person which is not a Tax-Exempt Organization or in any unrelated trade or business, as defined in Section 513(a) of the Code, of any Tax-Exempt Organization, if such use would result in the aggregate cost of all property financed or refinanced with the proceeds of the Series 2008A Bonds and so used, when added to the costs of issuing the Series 2008A Bonds financed with the proceeds of the Series 2008A Bonds, to exceed 5% of the Net Proceeds (as defined in the Tax Compliance Agreement) of the Series 2008A Bonds.

(k) *Disclosure.* The representations of the Borrower contained in this Agreement and any certificate, document, written statement, or other instrument furnished by or on behalf of the Borrower to the Issuer or Underwriter in connection with the transactions contemplated hereby, do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein or therein not misleading. There is no fact that the Borrower has not disclosed to the Issuer or Underwriter in writing that materially and adversely affects or in the future may (so far as the Borrower can now reasonably foresee) materially and adversely affect the ownership or operation of the Project or the properties, business, operations, prospects, profits, or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to perform its obligations under this Agreement, the Notes, Trust Deed, Security Agreement, Assignment of Contract Documents, or any of the documents or transactions contemplated hereby or thereby or any other transactions contemplated by the Bond Documents.

(l) *Statutory Liens.* There are no mechanics' or materialmen's liens or other statutory liens on the Project prior to the recording of the Trust Deed and the perfection of the security interest created thereby, except as the Trustee shall be advised in writing, and in the event the Trustee is so advised in writing of any work or deliveries, the Borrower will provide the Trustee with waivers of all liens with respect to such work or deliveries in such form as may be satisfactory to the Trustee, to the extent such work or deliveries exceed \$50,000 in value. Provided, however, that tenant improvement work is anticipated to be undertaken in the commercial space previously occupied by GoodFood, Ltd., dba Quiznos, to accommodate a new subtenant.

(m) *Compliance.* The Project complies with all presently applicable building and zoning, health, environmental, and safety ordinances and laws and all other applicable laws, rules, and regulations of any and all governmental and quasi-governmental authorities having jurisdiction over any portion of the Project.

(n) *Authorized Project.* The Project constitutes an "eligible economic development project," within the meaning of the Act and the Project is located wholly within the corporate limits of Multnomah County, Oregon.

(o) *Utilities.* All utility services and facilities necessary for the operation of the Project for its intended purposes are available at the Premises.

(p) *Condemnation.* No condemnation or eminent domain proceeding has been commenced and is currently pending or, to the knowledge of the Borrower, threatened against the Project.

(q) *Borrower's Tax Compliance Agreement.* The representations and warranties of the Borrower set forth in the Borrower's Tax Compliance Agreement, dated the date of issuance and delivery of the Bonds, are hereby incorporated herein and made a part hereof by this reference thereto, as if fully set forth herein.

(r) *No Pension Plans.* The Borrower does not maintain and has not maintained and is not a party to and has not been a party to any employee pension or benefit plan.

(s) *Rebate Contract.* The Borrower will execute a rebate contract with a qualified rebate consultant prior to the Closing Date. For each Computation Date (as defined in the Tax Compliance Agreement), the Borrower will have a qualified rebate consultant compute any rebate payments required under Section 148(f) of the Code for such Computation Date and will submit such rebate payments to the Internal Revenue Service within 60 days after such Computation Date.

**Section 15.3 Continuing Disclosure.** The Borrower acknowledges and agrees that the Issuer is not an "obligated person" (as defined in the Continuing Disclosure Agreement) with respect to the Bonds and represents that the Borrower and PSU are the only obligated persons with respect to the Bonds. The Issuer hereby acknowledges the entry by the Borrower, PSU and the Trustee into the Continuing Disclosure Agreement under which the Trustee has assumed certain obligations, in addition to those assumed under the Indenture, on behalf of the holders and beneficial owners of the Bonds. The Borrower agrees to perform its obligations under the Continuing Disclosure Agreement, including without limitation, the payment of compensation to the Trustee, all in accordance with the provisions of the Continuing Disclosure Agreement, Notwithstanding any other provision of this Agreement, any failure by the Borrower or PSU to comply with any provisions of the Continuing Disclosure Agreement shall not be a failure or a default or an Event of Default, under this Loan Agreement or the Indenture.

## **ARTICLE XVI. LOAN TO THE BORROWER; SECURITY; TITLE**

### **Section 16.1 The Loan and the Notes.**

(a) The Issuer hereby agrees to lend to the Borrower, and the Borrower hereby agrees to borrow from the Issuer, the proceeds of the sale of the Bonds in accordance with the terms and conditions of this Agreement and the Indenture. The deposit of the proceeds of the sale of the Bonds as provided in Article VI of the Indenture shall constitute the loan of such proceeds from the Issuer to the Borrower. Such proceeds shall be applied as provided in Article VI of the Indenture. The Borrower hereby agrees, subject to Section 10.6, to repay the Loan as provided in Section 5.2 hereof. PSU has agreed in the Housing Services Agreement to deposit Available Funds with the Trustee to pay the amounts required by this Loan Agreement and the Indenture on the Borrower's behalf.

(b) The Borrower's obligation to repay the Loan, together with premium, if any, and interest thereon, which is more fully described in Section 5.2 hereof under the caption "Basic Loan Payments," shall be evidenced by the Notes, which the Borrower hereby agrees to execute and deliver to the Issuer.

**Section 16.2 Security for Payments Under this Agreement; Recording and Filing.** As security for the payments required to be made to the Issuer under this Agreement, the Borrower shall, prior to or contemporaneously with the execution and delivery of this Agreement execute and deliver the Trust Deed, the Security Agreement and the Assignment of Contract Documents.

The Trust Deed shall be recorded in all offices as may at the time be provided by law as the proper place for recordation thereof. The security interest of the Trustee, created by the Security Agreement in the Revenues, accounts, chattel paper, documents, instruments, and general intangibles arising in any manner from the Borrower's operation of the Project and in the Equipment and the security interest of the Trustee created by the Indenture in the Issuer's right, title, and interest in this Agreement, the Notes, and the Security Agreement, in the revenues and amounts to be received and held hereunder and thereunder, shall be perfected by the filing of financing statements or instruments effective as financing statements which fully comply with the State's Uniform Commercial Code - Secured Transactions or by the taking of possession of appropriate collateral. The Borrower further agrees that, at the request of the Issuer or the Trustee, where such request is made contemporaneous to the time a new filing is necessary or prudent, all necessary continuation statements shall be filed within the time prescribed by the State Uniform Commercial Code - Secured Transactions, and the appropriate parties shall maintain possession of appropriate collateral in order to continue the security interests identified in this Section 3.2, to the end that the rights of the owners of the Bonds, and Trustee in the Project and other collateral shall be fully preserved as against third party creditors of, or purchasers for value in good faith from, the Issuer or Borrower.

**Section 16.3 Security for Payments Under the Bonds.** Contemporaneously with the issuance of the Bonds, as security for the payment of the Bonds, the Issuer shall execute and deliver the Indenture, under the terms of which all of the right, title, interest, and remedies of the Issuer in this Agreement, except Unassigned Rights, and the Notes, together with all revenues and amounts to be received and all property to be held by the Issuer thereunder, shall be assigned and shall be the subject of a grant of a first priority security interest to the Trustee and shall be pledged as security for, among other things, the payment of the Bonds. The Borrower hereby consents to such assignment and grant of a first priority security interest and hereby agrees that, subject to Section 10.6, its obligations to make all payments under this Agreement shall be absolute and shall not be subject to any defense, except payment,

or to any right of setoff, counterclaim, or recoupment arising out of any breach by the Issuer of any obligation to the Borrower, whether hereunder or otherwise, or arising out of any indebtedness or liability at any time owing to the Borrower by the Issuer. The Borrower further agrees that all Basic Loan Payments required to be made under this Agreement shall be paid directly to the Trustee for the account of the Issuer. The Trustee shall have all rights and remedies herein accorded to the Issuer (except for Unassigned Rights), and any reference herein to the Issuer shall be deemed, with the necessary changes in detail, to include the Trustee, and the Trustee, and Bondholders are deemed to be and are third party beneficiaries of the representations, covenants, and agreements of the Borrower herein contained. Pursuant to the Indenture, the Trust Deed and the Security Agreement, the first mortgage lien in the real property included in the Project and the first priority security interest in the personal property included in the Project will be granted to the Trustee as security for the payment of the Bonds, and may be enforced by the Trustee on behalf of the Bondholders, as provided in Section 10.2 of this Agreement and Article X of the Indenture.

**Section 16.4 Warranty of Title.** The Borrower warrants that (a) it has acquired or will acquire good and marketable title to the Premises, (b) the Borrower is or will be the legal owner of all Equipment and the Building, and (c) upon completion of refunding the Series 2003 Bonds, the Project is and will be free from all adverse claims, security interests, and encumbrances, in each case other than Permitted Encumbrances.

**Section 16.5 Title Insurance.** The Borrower shall, prior to or simultaneously with the issuance of the Bonds, furnish title insurance in the form of an ALTA mortgagee's title binder or policy issued by a title insurance company acceptable to the Underwriter and Trustee in the face amount at least equal to the par amount of Bonds and shall furnish a copy of such binder or policy to the Trustee. The Borrower shall furnish within the time limit specified in any binder an original of a mortgagee's title policy issued by such title insurance company. The mortgagee's title policy shall insure that the Trustee has a valid first lien on the real property described in Exhibit A to this Agreement subject only to "Permitted Encumbrances" as defined in this Agreement. There shall be deleted from such policy the standard exceptions for discrepancies, encroachments, overlaps, conflicts in boundary lines, servitudes, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the Premises, for mechanics' and materialmen's liens, or for rights or claims of parties in possession and easements or claims of easements not shown by the public records. Such policy shall contain the standard zoning endorsement available in Oregon. In lieu of the standard zoning endorsement the Borrower may provide an opinion of Independent Counsel to the effect that the Project is properly zoned or evidence of proper zoning from appropriate government officials. Any Net Proceeds payable either to the Issuer or Borrower under such policy shall be subject to the lien of the Indenture, shall be paid to the Trustee and held by the Trustee in the Insurance Fund, and shall, at the Borrower's written direction, be either (a) used to acquire or construct replacement or substitute property within the limits of Multnomah County, Oregon for that to which title has been lost, or (b) used to redeem Bonds pursuant to Section 3.4(b) of the Indenture. Any proceeds of title insurance remaining after the Bonds are no longer outstanding shall be paid to the Borrower.

**Section 16.6 Borrower's Covenants Regarding Title.** The Borrower agrees to protect, preserve, and defend its interest in the Project and its title thereto, to appear and defend said interest and title in any action or proceeding affecting or purporting to affect the Project, the liens of the Trust Deed and the Security Agreement thereon, or any of the rights of the Trustee thereunder, and to pay on demand all costs and expenses incurred by the Trustee in or in connection with any such action or proceeding, including reasonable attorneys' fees, as defined in Section 10.4 hereof, whether any such action or proceeding progresses to judgment and whether brought by or against the Trustee. The Trustee shall be reimbursed for any such costs and expenses in accordance with the provisions of Section 6.8 hereof. If

the Borrower does not take the action contemplated herein, the Trustee or Issuer may, but shall not be under any obligation to, appear or intervene in any such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as it may be advised and may settle or compromise the same and, in that behalf and for any of such purposes, may expend and advance such sums of money as it may deem necessary, and such sums shall be an advance payable in accordance with Section 6.8 hereof.

**Section 16.7 Environmental Condition of Project and Indemnification.**

(a) The Borrower warrants, covenants and represents to the Issuer, and the Trustee that:

(1) while the Issuer, or the Trustee has any interest in or lien on the Project, the Project and all associated activities are and at all times hereafter, will continue to be in full compliance with all Environmental Laws as defined in Section 3.7(d) of this Agreement,,

(2) except as expressly disclosed in the Environmental Reports, as of the date hereof (x) there are no Hazardous Materials, as defined in Section 3.7(d) of this Agreement, that have been spilled, disposed of, or otherwise released at, on, under, or in the Project, that are or have been migrating to or from the Project, or otherwise are located at the Project, regardless of source, (y) there are no Hazardous Materials, that otherwise are related to or have affected the Project and have caused or threatened to cause any environmental contamination or otherwise have caused or threatened to cause any liability under any Environmental Law and (z) there are no portions of the Project that are currently affected by more than de minimis amounts of mold, mildew, mycotoxins, leaks or water damage,

(3) while the Issuer or the Trustee has any interest in or lien on the Project, notwithstanding any other provision in this document to the contrary, the Borrower will not treat, recycle, reclaim, dispose of, spill, or otherwise release any Hazardous Materials at, on, in, under, or from the Project and the Borrower will prevent all other persons from engaging in any such activity involving Hazardous Materials; provided, however, that the Borrower, PSU, any Manager, and building tenants and their respective agents shall be entitled to use such Hazardous Materials (including, without limitation, cleaning and maintenance chemicals) that are ancillary to and reasonably necessary for the otherwise permitted uses of the Premises and as are typical for properties so used, and to store only such amounts of those Hazardous Materials as is reasonable and appropriate for engaging in those uses, provided that such use and storage activities shall be in full compliance with all Environmental Laws and the prohibitions set forth above,

(4) except as expressly disclosed in the Environmental Reports, there are no, and to Borrower's knowledge, there are no and never have been any underground storage tanks, above ground storage tanks, wastewater impoundments, or areas used for waste treatment, storage, or disposal activities at, on, in, under, or otherwise associated with the Project,

(5) except as expressly disclosed in the Environmental Reports, there are no activities or conditions that exist, and to Borrower's knowledge, have ever existed and remain unresolved at, on, in, under, or otherwise associated with the Project that violate

any Environmental Law or could reasonably be expected to result in any claim or liability under any Environmental Law, and

(6) (A) except as expressly disclosed in the Environmental Reports, as of the date hereof there are no Hazardous Materials, located at, on, in or under the Project or used in connection therewith, or (B) the Borrower has obtained or will obtain and will maintain in full force and effect all licenses, permits, and approvals required with respect to the authorized storage and use of Hazardous Materials, the Borrower is or shall be upon issuance of the Bonds in full compliance with all of the terms, conditions, and requirements of such licenses, permits, and approvals, and the Borrower will confirm that the nature and quantity of such Hazardous Materials located at and/or used on-site is and shall be consistent with the activities reasonably appropriate for the Project as contemplated in this document. The Borrower further covenants, warrants, and represents that, other than conditions expressly disclosed in the Environmental Reports and conditions permitted herein, it will promptly notify the Issuer, PSU, and the Trustee in writing of the discovery of any areas of mold, mildew, mycotoxins, leaks or water damage affecting the Project, any new conditions involving Hazardous Materials and any change in the nature or extent of any Hazardous Materials, located at, on, in, or under the Project or used in connection therewith, and with respect to any such changes will satisfy all of the representations, warranties, and covenants set out above with respect to any Hazardous Materials located at, on, or under the Project or used in connection therewith and will transmit to the Issuer, PSU, and the Trustee copies of any citations, orders, notices, or other material governmental or other communications received with respect to any Hazardous Materials, or any other matter regulated under any Environmental Law and relating to or affecting the Project. The Borrower further covenants, represents, and warrants that it will promptly correct any instance of non-compliance with any Environmental Law and/or any licenses, permits, and approvals relating to the Project and will promptly respond to any disposal, spill, or other release of Hazardous Material, at, in, on, under, from, or otherwise relating to or affecting the Project or any mold, mildew, mycotoxins, leaks or water damage affecting the Project. The Borrower covenants, warrants, and represents that all work on the Project and all activities of contractors, sub-contractors, consultants, or any other agent of the Borrower will also be in full compliance with all Environmental Laws and any other applicable federal, state, and local laws, regulations, and ordinances, and further covenants, warrants, and represents that neither the Borrower nor its agents, contractors or consultants will engage in any activities involving the treatment, storage, disposal, spill, or other release of Hazardous Materials or solid wastes at the Project.

(7) Current and ongoing compliance regarding hazardous waste regulations shall include, if warranted, periodic inspections by independent consultants and/or Hazardous Material surveys if additional properties are added to the Project.

(b) Subject to Section 10.6 hereof, the Borrower shall indemnify, defend, and hold the Issuer, PDC and the Trustee harmless from and against any and all damages (including without limitation property damages, natural resource damages, and damages resulting from personal injuries or death), penalties, fines, losses, claims, (whether based on strict liability or otherwise), liens, suits, liabilities, costs (including clean-up, removal, response, or other remediation costs), judgments and expenses (including attorneys', consultants' and experts' fees and expenses of every kind and nature) (collectively "Liabilities") suffered by or asserted against any such indemnified party thereof as of a direct or indirect result of (x) a breach or default of any

covenant, warranty, or representation made by the Borrower in this Section or any such covenant, warranty or representation being false or untrue in any respect, (y) any requirement under any Environmental Law or any other law, regulation, or ordinance, local, state or federal relating to the activities of the Borrower, the Project, or any other matter related to this Loan Agreement (but excluding indemnity to the Issuer with respect to exercise of its governmental powers), or (z) any action mandated under any Environmental Law or otherwise related to an obligation arising from any Hazardous Materials associated with the Borrower's activities and/or the Project, including without limitation the elimination or removal of or any other response to any Hazardous Materials or any other environmentally regulated substances or wastes.

(c) The Borrower's obligations hereunder to the Issuer, PDC and the Trustee shall not be limited to any extent by the term of the Bonds, and, as to any act or occurrence prior to payment in full and satisfaction of the Bonds that gives rise to liability hereunder, shall continue, survive and remain in full force and effect notwithstanding payment in full and satisfaction of the Bonds and this Loan Agreement or foreclosure under the Trust Deed, or delivery of a deed-in-lieu of foreclosure.

(d) For purposes of this section, the term "Hazardous Materials" means asbestos, asbestos-containing materials, materials presumed by law to contain asbestos, polychlorinated biphenyls ("PCBs"), petroleum, petroleum byproducts (including but not limited to, crude, oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, and all other liquid hydrocarbons, regardless of specific gravity), natural or synthetic gas products, radioactive materials, and/or any hazardous or toxic substance, chemical or material, or any other environmentally regulated waste, material, pollutant, or contaminant, defined as such or regulated by any Environmental Laws. "Environmental Laws" means any federal, state or local statute, law, ordinance, code, common law, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning the protection of the environment, natural resources, health and safety, and/or activities involving any asbestos, asbestos-containing materials, materials presumed by law to contain asbestos, PCBs, petroleum, petroleum byproduct (including but not limited to, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, and all other liquid hydrocarbons, regardless of specific gravity) natural or synthetic gas products, radioactive materials and/or hazardous or toxic substances, chemicals or materials, or any other waste, materials, pollutant or contaminant that is regulated to protect the environment, as may now or at any time hereafter be in effect, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Emergency Planning and Community Right-To-Know Act, and the Occupational Safety and Health Act.

**Section 16.8 Contest of Liens.** Sections 6.1, and 6.3 of this Agreement permit the Borrower to contest certain taxes and liens. Borrower shall have the right to contest or object to the validity and extent of any tax, claim of lien or imposition of any kind or nature by appropriate legal proceeding, without first paying the same provided Borrower gives prior written notice to the Trustee. In the event of receipt of such notice, and provided the tax, claim or lien or imposition is for an amount in excess of \$500,000, the Trustee may require the Borrower to furnish the Trustee with a bond or cash deposit equal to at least the amount so contested or deposit such amount or lodge such bond into a court of competent jurisdiction, as Oregon law may allow. The proceeds of the bond or the cash deposit may be used by the Trustee to satisfy the lien if action is taken to enforce the lien and such action is not stayed, or if any bond or cash deposit provided to a court does not act to remove the lien from the real property. The bond or cash deposit shall be returned to the Borrower if the lien is successfully contested. If the Borrower is

unable or otherwise fails to obtain such a bond or provide such a cash deposit, the Borrower shall cause to be satisfied and discharged promptly all such items by payment thereof. If the Borrower is unable or otherwise fails to obtain such a bond or cash deposit, or to satisfy and discharge the lien, the Issuer or the Trustee may, but shall be under no obligation to, satisfy and discharge the lien by payment thereof or provide security which causes the claimant to release the lien against the Project, and all amounts so paid by the Issuer or Trustee shall be treated as an advance to the Borrower repayable in accordance with Section 6.8 hereof.



## ARTICLE XVII. ISSUANCE OF THE BONDS; INVESTMENT OF FUNDS

**Section 17.1 Agreement to Issue the Bonds; Application of Proceeds.** In order to provide funds to refund the Series 2003 Bonds including paying the termination payment, fund the Debt Service Reserve Fund, and pay Issuance Costs, the Issuer agrees that it shall issue, sell, and deliver to the Underwriter the Series 2008A Bonds in the aggregate principal amount of \$\_\_\_\_\_ and the Series 2008B Bonds in the aggregate principal amount of \$\_\_\_\_\_, and shall thereupon deposit the proceeds of the sale of the Bonds in accordance with the provisions of Article VI of the Indenture.

**Section 17.2 Authorized Borrower and Issuer Representatives and Successors.** The Borrower and Issuer, respectively, shall designate, in the manner prescribed in Section 1.1 hereof, an Authorized Borrower Representative and an Authorized Officer. In the event that any person so designated and his alternate or alternates, if any, should become unavailable or unable to take any action or make any certificate provided for or required in this Agreement, a successor shall be appointed in the same manner.

**Section 17.3 Investment of Funds and Accounts.** Subject to Article VII of the Indenture and Section 4.4 hereof, any moneys held as a part of the Bond Fund, Issuance Cost Fund, Debt Service Reserve Fund, Capital Replacement Fund, Operating Reserve Fund, Surplus Fund, Insurance Fund, Condemnation Fund, Rebate Fund, or as reserves in connection with contested liens or any other special trust funds shall be invested or reinvested by the Trustee at the written direction of an Authorized Borrower Representative in such Permitted Investments as may be designated by the Borrower, which designation shall not contain directions contrary to State law. If the Borrower fails to give such written instructions to the Trustee, the Trustee shall invest such moneys in the investment described in clause 7 of the definition of "Permitted Investments." The Trustee shall not be liable for any depreciation in the value of any obligations in which moneys of funds or accounts held under the Indenture shall be invested, as aforesaid, or for any loss arising from any investment. The Trustee may make any and all such investments through its own or any of its affiliates' bond or investment departments.

The investments so purchased shall be held by the Trustee and shall be deemed at all times a part of the Bond Fund, Issuance Cost Fund, Debt Service Reserve Fund, Capital Replacement Fund, Operating Reserve Fund, Surplus Fund, Insurance Fund, Condemnation Fund, Rebate Fund, or the trust account described in the preceding paragraph, as the case may be, and the interest accruing thereon and any profit realized therefrom shall be credited as provided in Section 7.2 of the Indenture, and any losses resulting from such investments shall be charged to such fund and paid by the Borrower.

**Section 17.4 Special Investment Covenants.** The Issuer and Borrower each covenant that it shall not directly or indirectly use or permit the use of any proceeds (as defined in the Regulations) of the Series 2008A Bonds, or any other funds of the Issuer or Borrower, or take or omit to take any action, or direct the Trustee to invest any funds held by it, in such manner as will, or allow any "related person" (as defined in Section 144(a)(3) of the Code) to enter into any arrangement, formal or informal, as will, cause the Series 2008A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or to be "federally guaranteed," as such term is used and defined in Section 149(b) of the Code. To that end, the Issuer and Borrower shall comply with all requirements of Section 148 of the Code to the extent applicable to the Series 2008A Bonds. In the event that at any time the Issuer or Borrower is of the opinion that for purposes of this Section 4.4 it is necessary to dispose of any investment or to restrict or limit the yield on any investment held under the Bond Documents or otherwise, the Issuer or Borrower, as the case may be, shall so instruct the Trustee in writing. The Trustee shall be entitled to assume that any investment, which at the time of purchase is a Permitted Investment, remains a Permitted Investment thereafter, absent receipt of written notice or information to the contrary.

**ARTICLE XVIII. AGREEMENT TERM: LOAN PAYMENTS AND OTHER AMOUNTS  
PAYABLE; NATURE OF OBLIGATIONS OF BORROWER**

**Section 18.1 Agreement Term.** This Agreement shall become effective upon its execution and delivery and shall be in full force and effect until all the Bonds shall have been fully paid or retired (or provision for such payment shall have been made as provided in the Indenture) and the obligations of the Borrower under the Bond Documents shall have been fully performed; provided, however, that the covenants and obligations expressed herein to so survive shall survive the termination of this Agreement.

**Section 18.2 Loan Payments and Other Amounts Payable.**

(a) *Basic Loan Payments:* Until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Borrower shall pay to the Trustee for the account of the Issuer as loan payments, the following amounts (in each case taking into account amounts then on deposit in the Bond Fund to be used for the applicable purpose):

(1) for deposit in the Interest Account of the Bond Fund on or before the third Business Day prior to the first Business Day of each month, a sum equal to one-sixth (1/6th) of the amount payable on the next succeeding Interest Payment Date as interest on the Series 2008A Bonds, as provided in the Indenture,

(2) for deposit in the Interest Account of the Bond Fund on or before the third Business Day prior to the first Business Day of each month, a sum equal to one-sixth (1/6th) of the amount payable on the next succeeding Interest Payment Date as interest on the Series 2008B Bonds, as provided in the Indenture,

(3) for deposit in the Principal Account of the Bond Fund on or before the third Business Day prior to the first Business Day of each month a sum equal to (a) one-sixth (1/6th) of the amount required to retire Series 2008A Bonds under the mandatory redemption requirements of the Indenture on the next succeeding redemption date, and

(4) for deposit in the Principal Account of the Bond Fund on or before the third Business Day prior to the first Business Day of each month a sum equal to (a) one-sixth (1/6th) of the amount required to retire Series 2008B Bonds under the mandatory redemption requirements of the Indenture on the next succeeding redemption date, and

(5) for deposit in the Series 2008A Principal Account and Interest Account or Series 2008B Principal Account and Interest Account of the Bond Fund in immediately available funds on the Business Day prior to any date on which the Series 2008A Bonds or Series 2008B Bonds are to be redeemed pursuant to the redemption provisions of the Indenture (other than mandatory sinking fund redemption pursuant to Section 3.5 of the Indenture), an amount equal to the principal amount of and premium, if any, and interest on, the Bonds to be redeemed.

Each payment of Basic Loan Payments under Section 5.2(a)(1) and (2) shall in all events be sufficient, after giving credit for funds held in the Bond Fund, and the Revenue Fund available for such purpose, to pay the total amount of interest payable on the Bonds on the immediately succeeding Interest Payment Date and each payment of Basic Loan Payments under Sections 5.2(a), (3) and (4) shall in all events be sufficient, after giving credit for funds held in the

Bond Fund available for such purpose, to pay the total amount of principal payable in respect of the Bonds on the immediately succeeding Bond Payment Date. Any Basic Loan Payments shall be reduced or need not be made to the extent that there are moneys on deposit in the Bond Fund in excess of scheduled payments of Basic Loan Payments plus the amount required for the payment of Bonds theretofore matured or called for redemption, the amount required for the payment of interest for which checks or drafts have been mailed by the Trustee, and past due interest in all cases where Bonds have not been presented for payment. Further, if the lien of the Indenture has been released pursuant to the Indenture the Borrower shall not be obligated to make any further payments of Basic Loan Payments under the provisions of this Section. There shall also be a credit against remaining Basic Loan Payments for Bonds purchased, redeemed, or canceled, as provided in Article III of the Indenture or in any supplemental indenture or indentures executed in connection with the issuance of Additional Bonds as provided therein.

(b) *Reserve Loan Payments:* The Debt Service Reserve Fund shall be funded in an amount equal to the Debt Service Reserve Requirement for the purpose of paying principal of, premium, if any, and interest on the Bonds as the same become due in the event there should be insufficient funds for said purpose in the Bond Fund, unless provision for their payment in full has been duly made, and for payment of fees, charges, and expenses of the Trustee upon the occurrence of an Event of Default under the Indenture. If the balance of the Debt Service Reserve Fund, after any transfers from the Surplus Fund, the Capital Replacement Fund and the Operating Reserve Fund pursuant to Section 5.5 of the Indenture, is less than the Debt Service Reserve Requirement as a result of any decrease in market value of the investments held in the Debt Service Reserve Fund or losses from the investment of amounts held in the Debt Service Reserve Fund, or as a result of the withdrawal of any funds from the Debt Service Reserve Fund, then beginning on the fifteenth (15th) day of the month following such decrease in market value, loss or withdrawal, and on the fifteenth (15th) day of each month thereafter, the Borrower shall pay to the Trustee one-twelfth (1/12th) of the amount of such deficiency as Reserve Loan Payments, provided, however, that such Reserve Loan Payments shall be required only until the balance of the Debt Service Reserve Fund is equal to the Debt Service Reserve Requirement.

(c) *Additional Loan Payments:* The Borrower agrees to pay to the Trustee until the principal of, premium, if any, and interest on the Bonds shall have been fully paid (a)(i) an amount equal to the annual fee of the Trustee for the Ordinary Services of the Trustee rendered and the Ordinary Expenses of the Trustee incurred under the Indenture, as and when the same become due, (ii) reasonable fees and charges of the Trustee, as bond registrar and paying agent, and of any other paying agents on the Bonds for acting as paying agents as provided in the Indenture, as and when the same become due, and (iii) the reasonable fees and charges of the Trustee for the necessary Extraordinary Services of the Trustee rendered by it and Extraordinary Expenses of the Trustee incurred by it under the Indenture, as and when the same become due; provided, that the Borrower may, without creating a default hereunder, contest in good faith the necessity and/or amount to be paid for any such Extraordinary Services of the Trustee and Extraordinary Expenses of the Trustee; (b) an amount sufficient to reimburse the Issuer for all expenses reasonably incurred by the Issuer hereunder in connection with the Project, including but not limited to the reasonable fees and expenses of counsel for the Issuer; (c) all reasonable fees and expenses of Bond Counsel in connection with rendering opinions after the issuance of the Bonds that are contemplated by this Agreement and the Indenture; (d) fees and expenses of the Independent Engineer and the Insurance Consultant; (e) if requested by the Trustee in writing, management fees and expenses of the Manager which would otherwise be paid directly by the Borrower; (f) any amounts necessary to be deposited into the Operating Reserve Fund in order to

make the balance therein equal to the Operating Reserve Requirement; and (h) on the third Business Day prior to the first Business Day of each month, the Capital Replacement Requirement.

Such Additional Loan Payments shall be billed to the Borrower by the Issuer or Trustee (or other party as applicable) from time to time. Amounts so billed shall be paid by the Borrower within thirty (30) days after receipt of the bill by the Borrower.

In the event the Borrower shall fail to make any of the payments required in this Section, the item or installment so in default shall, subject to Section 10.6, continue as an obligation of the Borrower until the amount in default shall have been fully paid and shall bear interest at the rate borne by advances pursuant to Section 6.8 hereof.

**Section 18.3 Place of Loan Payments.** The Basic Loan Payments provided for in Section 5.2(a) hereof shall be paid in lawful money of the United States of America directly to the Trustee for the account of the Issuer and shall be deposited in the Bond Fund. The payments of Reserve Loan Payments provided for in Section 5.2(b) hereof shall be paid directly to the Trustee for the account of the Issuer and shall be deposited in the Debt Service Reserve Fund. The payments of Additional Loan Payments to be made to the Trustee under Section 5.2(c)(a)(i), (ii), and (iii) hereof shall be paid directly to the Trustee for its own use or for disbursement to the paying agents, as the case may be. The payment of the reimbursable expenses incurred by the Issuer shall be paid directly to the Issuer for its own use.

**Section 18.4 Nature of Obligations of Borrower Hereunder.**

(a) Subject to Section 10.6, the obligations of the Borrower to make the payments required in Section 5.2 hereof and other sections hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be absolute and unconditional irrespective of any defense (other than payment) or any rights of setoff, recoupment, or counterclaim it may otherwise have against the Issuer. Subject to Section 10.6, the Borrower agrees that it shall not (i) suspend, abate, reduce, abrogate, diminish, postpone, modify, or discontinue any payments provided for in Section 5.2 hereof, (ii) fail to observe any of its other agreements contained in this Agreement, the Notes, Trust Deed, or Security Agreement, or (iii) except as provided in Sections 11.1 and 11.2 hereof, terminate its obligations under this Agreement, the Notes, Trust Deed, or Security Agreement for any contingency, act of God, event, or cause whatsoever, including, without limiting the generality of the foregoing, failure of the Borrower to occupy or to use the Project as contemplated in this Agreement or otherwise, any change or delay in the time of availability of the Project, any acts or circumstances which may impair or preclude the use of the Project, any defect in the title, design, operation, merchantability, fitness, or condition of the Project or in the suitability of the Project for the Borrower's purposes or needs, failure of consideration, any declaration or finding that any of the Bonds are unenforceable or invalid, the invalidity of any provision of this Agreement, any acts or circumstances that may constitute an eviction or constructive eviction, destruction of or damage to the Project, the taking by eminent domain of title to or the use of all or any part of the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof or in the rules or regulations of any governmental authority, or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement.

(b) Nothing contained in this Section shall be construed to release the Issuer from the performance of any of the agreements on its part herein contained. In the event the Issuer fails to perform any such agreement on its part, the Borrower may institute such action against the Issuer as the Borrower may deem necessary to compel performance so long as such action does not abrogate the Borrower's obligations hereunder. Furthermore, the Issuer hereby grants to the Borrower full authority on behalf of the Issuer to perform any covenant or obligation the nonperformance of which is alleged in any notice received by the Borrower to constitute a default under the Indenture, in the name and stead of the Issuer with full power to do and perform any and all things and acts to the same extent that the Issuer could do and perform such things and acts with power of substitution.

**Section 18.5 Agreement to Deposit Revenues and Available Funds.** The Borrower hereby agrees that on at least a weekly basis, it will deliver or cause to be delivered, to the Trustee for deposit in the Revenue Fund all Revenues. PSU has agreed in the Housing Services Agreement to deposit Available Funds with the Trustee to pay the amounts required by this Loan Agreement and the Indenture on the Borrower's behalf.

**Section 18.6 Capital Replacement Certification.** At least every five (5) years following the Closing Date, the Borrower shall file with the Trustee a certification accompanied by the written report of an Independent EngineerConsultant, relating to the adequacy of the deposits to the Capital Replacement Fund and the condition of the Project. The Capital Replacement Requirement shall be subject to increase if so recommended by the Consultant.

## ARTICLE XIX. MAINTENANCE, TAXES, AND INSURANCE

**Section 19.1 Maintenance and Modification of Project by the Borrower.** The Borrower agrees that during the Agreement Term it shall at the expense of the Project (including by application of funds in the Capital Replacement Fund) do, or cause to be done, the following: (i) keep the Building and all other improvements forming a part of the Project in good repair and in good operating condition, making from time to time, subject to the provisions of Section 6.2 hereof, all Additions or Alterations which are necessary and proper, or which the Borrower considers appropriate, including external and structural repairs, renewals, and replacements, and (ii) use the Equipment in the regular course of business only, within the normal capacity of the Equipment, without abuse, and in a manner contemplated by the manufacturer thereof, and cause the Equipment to be maintained in accordance with the manufacturer's then currently published standard maintenance contract and recommendations. The Borrower may, also at the expense of the Project (including by application of funds in the Capital Replacement Fund), from time to time make any Additions or Alterations to the Project it may deem desirable for its business purposes that do not adversely affect the operation or value of the Project. Additions or Alterations to the Project so made by the Borrower shall be on the Premises, shall become a part of the Project, and shall become subject to the lien of the Trust Deed.

The Borrower shall in connection with any Additions or Alterations which cost in excess of \$50,000 execute a conditional assignment directing the architect who has prepared any plans and specifications for any Additions or Alterations to make available to the Trustee a complete set of the plans and specifications, which assignment shall be effective only upon an Event of a Default hereunder by the Borrower. All construction contracts executed by the Borrower for construction of any Additions or Alterations shall contain a provision that, or by separate agreement such contractors shall agree that, upon an Event of Default by the Borrower hereunder, said contracts with the contractors and/or subcontractors shall be deemed assigned to the Trustee should the Trustee so direct and in which case the Trustee shall be responsible for the carrying out of all the terms and conditions thereof in place of the Borrower in said contracts. The Borrower covenants to include such conditional assignment language in all contracts and subcontracts executed for Additions or Alterations to be performed on the Premises.

The Borrower further agrees that at all times during the construction of Additions or Alterations which cost in excess of \$100,000 it shall maintain or cause to be maintained in full force and effect builder's risk insurance. The Borrower shall not permit any mechanics' or materialmen's or other statutory liens to be perfected or remain against the Project for labor or materials furnished in connection with any Additions or Alterations so made by it, provided that it shall not constitute an Event of Default hereunder upon such lien being filed, if the Borrower shall notify promptly the Trustee of any such liens, and the Borrower in good faith contests promptly such liens in accordance with Section 3.8 hereof; and in such event the Borrower may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

The Borrower shall not do or permit others under its control to do any work in or about the Project or related to any repair, rebuilding, restoration, replacement, alteration of, or addition to the Project, or any part thereof, unless the Borrower shall have first procured and paid for all requisite municipal and other governmental permits and authorizations. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning, and other laws, ordinances, governmental regulations, and requirements and in accordance with the requirements, rules, and regulations of all insurers under the policies required to be carried under the provisions of this Article VI.

**Section 19.2 Removal of Equipment.** In any instance where the Borrower in its discretion determines that any items of Equipment or parts thereof have become inadequate, obsolete, worn out,

unsuitable, undesirable, or unnecessary, the Borrower may remove such items of Equipment or parts thereof from the Premises and sell, trade in, exchange, or otherwise dispose of them (as a whole or in part) without any responsibility or accountability to the Issuer therefore, provided that the Borrower shall:

(a) Substitute and install anywhere in the Building or on the Premises items of replacement equipment or related property having equal or greater value or utility (but not necessarily having the same function) in the operation of the Project for the purpose for which it is intended, provided such removal and substitution shall not impair the nature of the Project, all of which replacement equipment or related property shall be free of all liens, security interests, and encumbrances (other than Permitted Encumbrances), shall become subject to the security interest of the Security Agreement, and shall be held by the Borrower on the same terms and conditions as the items originally constituting Equipment, or

(b) In the case of: (i) the sale of any such Equipment, (ii) the trade-in of such Equipment for other machinery, furnishings, equipment, or related property which shall not become part of the Equipment and subject to the security interest of the Security Agreement, or (iii) any other disposition thereof, the Borrower shall pay to the Trustee the proceeds of such sale or disposition or an amount equal to the credit received upon such trade-in for deposit into the Bond Fund. In the case of the sale, trade-in, or other disposition of any such Equipment to the Borrower, or an Affiliate, the Borrower shall pay to the Trustee an amount equal to the greater of the amounts and credits received therefore or the fair market value thereof at the time of such sale, trade-in, or other disposition for deposit into the Bond Fund.

Except to the extent that amounts are deposited into the Bond Fund as provided in the preceding subsection (b), the removal from the Project of any portion of the Equipment pursuant to the provisions of this Section shall not entitle the Borrower to any abatement or diminution of the Basic Loan Payments payable under Section 5.2 hereof.

In the event that prior to such removal and disposition of items of Equipment from the Building and the Premises or within a reasonable time thereafter, the Borrower acquires and installs machinery, furnishings, equipment, or related property with its own funds which become part of the Equipment and subject to the security interest of the Indenture and which have equal or greater utility, but not necessarily the same functions, as the Equipment to be removed, the Borrower may take credit to the extent of the amount so spent by it against the requirement that it either substitute and install other machinery and equipment having equal or greater value or that it make payment to the Trustee for deposit into the Bond Fund.

The Borrower shall report promptly to the Trustee each such removal, substitution, sale, or other disposition and shall pay to the Trustee such amounts as are required by the provisions of the preceding subsection (b) of this Section to be paid into the Bond Fund promptly after the sale, trade-in, or other disposition requiring such payment; provided, that no such report and payment need be made until the amount to be paid into the Bond Fund on account of all such sales, trade-ins, or other dispositions not previously reported in the aggregate has a value of at least \$50,000. All amounts in excess of \$50,000 deposited in the Bond Fund pursuant to this Section 6.2 shall be used to redeem Bonds pursuant to Section 3.4(b) of the Indenture. The Borrower shall not remove, or permit the removal of, any of the Equipment from the Building or the Premises except in accordance with the provisions of this Section 6.2.

**Section 19.3 Taxes, Other Governmental Charges, and Utility Charges.** The Borrower shall pay, or cause to be paid, as the same become due, (i) all taxes and governmental charges of any kind

whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any machinery, equipment, furnishings, or other property installed by the Borrower thereon which, if not paid, will become a lien on the Project prior to or on a parity with the lien and security interest of the Trust Deed and the Security Agreement or a charge on the revenues and receipts therefrom prior to or on a parity with the charge and security interest thereon and the pledge or assignment thereof to be created and made in the Security Agreement and including all ad valorem taxes or payments in lieu of such taxes lawfully assessed upon the Project, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy, and upkeep of the Project, and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as are required to be paid during the Agreement Term.

If the Borrower shall first notify the Trustee of its intention so to do, the Borrower may, at its own expense and in good faith, contest promptly any such taxes, assessments, and other charges in accordance with Section 3.8 hereof and, in the event of any such contest, may permit the taxes, assessments, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom.

**Section 19.4 Insurance Required.** Throughout the Agreement Term, the Borrower shall keep the Project or cause the same to be kept continuously insured, paying as the same become due all premiums in respect thereto, including but not limited to the following:

(a) *Operational Property Damage Insurance:* Property damage insurance on an “all risk” basis insuring the Borrower, Issuer, PSU Foundation and Trustee, as their interests may appear, including coverage against damage or loss caused by earth movement (including but not limited to earthquake, landslide, subsidence and volcanic eruption), flood, and boiler and machinery accidents.

(1) Property Insured: The property damage insurance shall provide coverage for (i) the buildings, structures, boilers, machinery, equipment, facilities, fixtures, supplies, fuel and other properties constituting a part of the Project, (ii) steam and electrical transmission lines along with related equipment for which the Borrower has an insurable interest, (iii) the cost of recreating plans, drawings or any other documents or computer system records, (iv) electronic equipment, and (v) foundations and other property below the surface of the ground.

(2) Additional Coverages: The property damage insurance shall insure (i) during initial construction, transit and off-site repair of the insured property including transit coverage, if applicable, with sub-limits sufficient to insure the full replacement value of the property or equipment prior to its being moved to or from the Project site and while located away from the Project site, (ii) attorney’s fees, engineering and other consulting costs, and permit fees directly incurred in order to repair or replace damaged insured property in a minimum amount of \$100,000, (iii) the cost of preventive measures to reduce or prevent a loss (sue & labor) in an amount not less than \$100,000, (iv) increased cost of construction and loss to undamaged property as the result of enforcement of building laws or ordinances with sub-limits not less than 10% of the “Full Insurable Value,” (v) debris removal with sub-limits not less than twenty (20%) of the loss or \$1,000,000, whichever is greater, and (vi) expediting expenses (defined as extraordinary expenses incurred after an insured loss to make temporary repairs and expedite the permanent repair of the damaged property in excess of the business interruption even if



such expense does not reduce the business interruption loss) in an amount not less than \$100,000.

(3) **Special Clauses:** The property damage policy shall include (i) a 72-hour flood, windstorm and earthquake clause, and (ii) a requirement that the insurer pay losses within 60 days after receipt of an acceptable proof of loss or partial proof of loss.

(4) **Sum Insured:** Losses shall be valued at their repair or replacement cost, without deductible for physical depreciation or obsolescence, including custom duties, taxes and fees. The property damage policy shall insure the Project in an amount not less than the "Full Insurable Value." For purposes of this Section 6.4.1, "Full Insurable Value" shall mean the full replacement value of the Project, including any improvements, equipment, spare parts, fuel and supplies, without deduction for physical depreciation and/or obsolescence. The earth movement and flood coverage may be insured with a sub-limit if coverage for the full insurance value is not reasonably available in the commercial insurance market and may contain deductibles of one percent (1%) as may be reasonably available in the commercial insurance market.

(5) **Deductibles:** The property damage insurance may have deductibles of not greater than \$250,000 per occurrence.

(6) **Prohibited Exclusions:** The property damage policy shall not contain any coinsurance provision or exclusion for loss or damage resulting from mechanical breakdown.

(b) *Business Interruption Insurance:* Interruption insurance (also referred to as "use and occupancy insurance" or "rental income insurance") insuring the Borrower, Issuer, and Trustee, as their interests may appear, covering loss of revenues and other income by the Borrower by reason of total or partial suspension of, or interruption in, the operation of the Project caused by damage or destruction of the Project in an amount not less than 120% of the Maximum Annual Debt Service requirements on all Bonds for each 12-month period of the indemnity period, arising from loss required to be insured by Section 6.4(a) above.

(1) If reasonably available in the commercial insurance market, such insurance shall (a) have a deductible no greater than 30 days per occurrence, (b) include for a period of 6 months that portion of fixed expenses and debt service not earned arising from a loss or occurrence, caused by an insured peril, at other University premises, (c) cover loss sustained when access to the Project is prevented due to an insured peril at premises in the vicinity of the Project, (d) cover loss sustained due to the action of a public authority preventing access to the Project due to imminent or actual loss or destruction arising from an insured peril at premises in the vicinity of the Project, (e) have an indemnity period of not less than 24 months, and (f) include a clause allowing interim payments on account pending finalization of the claim payment. Such insurance shall not contain any coinsurance clause or include a waiver of such clause.

(c) *Commercial General Liability Insurance:* Commercial general liability insurance on an occurrence basis for the Borrower's liability arising out of claims for personal injury (including bodily injury and death resulting therefrom) and property damage, including loss of use thereof, occurring on or in any way related to the Project or any part thereof or the operation

thereof. A maximum deductible or self-insured retention of \$5,000 per occurrence shall be allowed.

(d) *Automobile Liability Insurance:* Automobile liability insurance for the Borrower's liability for bodily injury, including death resulting therefrom, and for property damage arising from the use of any vehicle leased or owned by Borrower in conjunction with the Project, including loading and unloading, with a \$25,000/\$50,000 minimum limit of liability per accident for combined bodily injury and property damage and containing applicable no-fault insurance provisions wherever applicable. A maximum deductible or self-insured retention of \$1,000 per occurrence shall be allowed.

(e) *Flood Insurance:* Flood insurance under the Federal Flood Insurance Program shall be maintained at all times within the minimum requirements and amounts required for federally financed or assisted loans under the Flood Disaster Protection Act of 1973, as amended, if the Project is eligible under such program.

(f) *Boiler and Machinery Insurance:* Boiler and machinery explosion insurance on steam boilers, if any, pressure vessels, pressure piping and other objects which need a permit to operate in an amount not less than 100% of the then actual cost of replacement (including the costs of replacing excavations and foundations and without deduction for depreciation) of the Project (with deductible provisions not to exceed \$10,000 in any one occurrence) provided, that such insurance need not be taken out until steam boilers, pressure vessels, or pressure piping are installed in the Project. Coverage may be provided in conjunction with coverage required to be provided in Section 6.4(a) above.

(g) *Excess Liability Insurance:* Excess liability insurance on an occurrence basis covering claims (on at least a following form basis) in excess of the underlying insurance described in subsections 6.4(c) and 6.4(d) above, with a \$5,000,000 minimum limit per occurrence and in the aggregate, if any. The amounts of insurance required in the foregoing subsections 6.4(c) and 6.4(d) and this subsection 6.4(g) may be satisfied by Borrower purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

(h) *Endorsements:* All policies of liability insurance required to be maintained by the Borrower (or maintained by others for the Borrower) shall be endorsed as follows:

- (1) Name the Borrower as named insured and the Issuer, Trustee, and PSU Foundation as additional insureds; and
- (2) Provide a severability of interests and cross liability clause; and
- (3) That the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by the Trustee.

(i) *Waiver of Subrogation:* The Borrower hereby waives any and every claim for recovery from the Issuer or Trustee, for any and all loss or damage covered by any of the insurance policies to be maintained under this Agreement to the extent that such loss or damage is recovered under any such policy. If the foregoing waiver will preclude the assignment of any such claim to the extent of such recovery, by subrogation (or otherwise), to an insurance company (or other person), the Issuer shall give written notice of the terms of such waiver to each

insurance company which has issued, or which may issue in the future, any such policy of insurance (if such notice is required by the insurance policy) and shall cause each such insurance policy either to be properly endorsed by the issuer thereof to, or to otherwise contain one or more provisions that, prevent the invalidation of the insurance coverage provided thereby by reason of such waiver.

(j) [Reserved]

(k) **Amendment Due To Commercial Unfeasibility:** In the event any insurance (including the limits or deductibles thereof) hereby required to be maintained shall not be reasonably available and commercially feasible in the commercial insurance market, the Borrower shall be excused from providing such insurance to the extent the maintenance thereof is not so available; provided, however, that (i) the Borrower shall first notify the Trustee of such unavailability and provide to the Trustee a written report prepared by the Insurance Consultant, certifying that such insurance is “not reasonably available and commercially feasible” (and, in any case where the required amount is not so available, certifying as to the maximum amount which is so available) and explaining in detail the basis for such conclusions, (ii) at any time after the granting of such a waiver, but not more often than once a year, and the Trustee may request, and the Borrower shall furnish to the Trustee within thirty (30) days after such request, supplemental reports reasonably acceptable to the Trustee from the Insurance Consultant updating the prior report and reaffirming such conclusion, and (iii) any such waiver from providing such insurance shall be effective only so long as such insurance shall not be reasonably available and commercially feasible in the commercial insurance market, it being understood that the failure of the Borrower to timely furnish any such supplemental report shall be conclusive evidence that such waiver is no longer effective because such condition no longer exists, but that such failure is not the only way to establish such non-existence. The failure at any time to satisfy the condition to any waiver of an insurance requirement set forth in the proviso to the preceding sentence shall not impair or be construed as a relinquishment of the Borrower’s ability to be excused from maintaining an insurance requirement pursuant to the preceding sentence at any other time upon satisfaction of such conditions. For the purposes of this subsection, insurance will be considered “not reasonably available and commercially feasible” if it is obtainable only at excessive costs which are not justified in terms of the risk to be insured and is generally not being carried by or applicable to projects or operations similar to the Project because of such excessive costs.

(l) *Conditions:*

(1) **Loss Notification:** The Borrower shall promptly notify the Trustee of any single loss or event likely to give rise to a claim against an insurer covered by any insurance policies providing coverage required under Sections 4.1(a), 6.4(a), 6.4(b), 6.4(e) and 6.4(f).

(2) **Payment of Loss Proceeds:** The insurance policies providing the coverage required under Sections 6.4(a), 6.4(b), 6.4(e) and 6.4(f), shall specify that the proceeds of such policies shall be payable solely to the Trustee.

(3) **Loss Adjustment and Settlement:** A loss under the insurance policies providing coverage required under Sections 6.4(a), 6.4(b), 6.4(e) and 6.4(f), shall be adjusted with the insurance companies, including the filing in a timely manner of appropriate proceedings, by the Borrower, subject to the approval of the Trustee not to be

unreasonably withheld, if an Event of Default then exists or if the loss is greater than \$500,000.

(4) **Policy Cancellation, Non-Renewal and Change:** All policies of insurance required to be maintained pursuant to this Section 6.4 shall (i) require the insurer to deliver to the Trustee, Issuer, and PSU Foundation by certified mail written notice thirty (30) days in advance of any policy cancellation or non-renewal, and (ii) be endorsed so that if at any time they are canceled, or their coverage is reduced (by any party including the insured) such cancellation or reduction shall not be effective as to the Trustee for thirty (30) days, except for non-payment of premium which shall not be effective for ten (10) days, after receipt by the Trustee of written notice from such insurer of such cancellation or reduction.

(5) **Miscellaneous Policy Provisions:** All insurance policies providing coverage required under Sections 6.4(a), 6.4(b), 6.4(e) and 6.4(f) shall: (i) not include any annual or term aggregate limits of liability or any clause requiring the payment of additional premium to reinstate the limits after loss except for insurance covering the perils of flood and earth movement, (ii) include the Trustee and Issuer as an insured as its interest may appear, and (iii) include a clause requiring the insurer to make final payment on any claim within 60 days after the submission of proof of loss and its acceptance by the insurer.

(6) **Separation of Interests:** All insurance policies providing coverage required under Section 6.4(a), 6.4(b), 6.4(e) and 6.4(f) shall insure the interests of the Trustee regardless of any breach or violation by the Borrower, Issuer or any other party of warranties, declarations or conditions contained in such policies, or any action or inaction of the Borrower, Issuer or others, or any foreclosure relating to the Project or any change in ownership of all or any portion of the Project.

(7) **Waiver of Subrogation:** All policies of insurance to be maintained by the provisions of Section 6.4 shall provide for waivers of subrogation in favor of the Trustee and their respective officers and employees (and such other Persons as may be required by the Bond Documents).

(m) *Evidence of Insurance:* On an annual basis at least ten (10) days prior to each policy anniversary, the Borrower shall furnish Trustee and Issuer with (1) certificates of insurance or binders being renewed or replaced on such policy anniversary and (2) a schedule of the insurance policies held by or for the benefit of the Trustee and required to be in force by the provisions of Section 6.4. Such certificates of insurance/binders shall be executed by each insurer or by an authorized representative of each insurer where it is not practical for such insurer to execute the certificate itself. Such certificates of insurance/binders shall identify underwriters, the type of insurance, the insurance limits and the policy term and shall specifically list the special provisions enumerated for such insurance required by Section 6.4. Upon request, the Issuer will promptly furnish the Trustee with copies of all insurance policies, binders and cover notes or other evidence of such insurance relating to the insurance required to be maintained by the Borrower. The schedule of insurance shall include the name of the insurance company, policy number, type of insurance, major limits of liability and expiration date of the insurance policies.

(n) *Reports:* Concurrently with the furnishing of the certification referred to in Section 6.4, the Borrower shall furnish the Trustee with a report of the Insurance Consultant, signed by an officer of the broker, stating that in the opinion of such Insurance Consultant, the insurance then carried or to be renewed is in accordance with the terms of this Section 6.4(n) and attaching an updated copy of the schedule of insurance required by Section 6.4(m) above. In addition the Borrower will advise the Trustee in writing promptly of any default in the payment of any premium and of any other act or omission on the part of the Borrower which may invalidate or render unenforceable, in whole or in part, any insurance being maintained by the Borrower pursuant to this Section 6.4(m).

(o) *Failure to Maintain Insurance:* In the event the Borrower fails, or fails to cause the Manager to take out or maintain the full insurance coverage required by the Bond Documents, the Trustee, upon 30 days' prior notice (unless the aforementioned insurance would lapse within such period, in which event notice should be given as soon as reasonably possible) to the Borrower of any such failure, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same. All amounts so advanced thereof by the Trustee shall become an additional obligation of the Borrower to the Trustee, and the Borrower shall forthwith pay such amounts to the Trustee, together with interest thereon at a variable rate per annum equal to the prime rate as announced by Citibank, N.A. plus 2%, from the date so advanced. Oregon Revised Statutes (ORS) Section 746.201 provides for inclusion in loan agreements of the following notice:

#### WARNING

Unless you provide us with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract or loan balance. If the cost is added to your contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

For purposes of the above warning, "you" refers to the Borrower and "us" refers to Trustee, acting on behalf of the Issuer.

(p) *No Duty of Trustee to Verify or Review:* No provision of Section 6.4 or any provision of this Loan Agreement or any Bond Document shall impose on the Trustee any duty or obligation to verify the existence or adequacy of the insurance coverage maintained by the Borrower, nor shall the Trustee be responsible for any representations or warranties made by or on behalf of the Borrower to any insurance company or underwriter. Any failure on the part of the Trustee to pursue or obtain the evidence of insurance required by this Loan Agreement from

the Borrower and/or failure of the Trustee to notify Borrower of any non-compliance of such evidence of insurance shall not constitute a waiver of any of the insurance requirements in this Loan Agreement.

**Section 19.5 Application of Net Proceeds of Insurance.** The Net Proceeds of the insurance carried pursuant to the provisions of Sections 6.4(a), 6.4(e) and 6.4(f) hereof shall be paid and applied as provided in Section 7.1 hereof, and the Net Proceeds of insurance carried pursuant to the provisions of Sections 6.4(c), 6.4(d) and 6.4(g) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid.

**Section 19.6 Additional Provisions Respecting Insurance.** All insurance required by Section 6.4 hereof shall be taken out and maintained in generally recognized responsible insurance companies qualified to do business in the State with a minimum rating of A by Best Insurance Report. All policies evidencing such insurance shall provide for payment to the Issuer, Borrower, and Trustee as their respective interests may appear, the policies required by Section 6.4 shall name the Trustee as additional insured, and the policies required by Section 6.4(a), 6.4(b), 6.4(e) and 6.4(f) hereof shall name the Trustee and the Issuer as mortgagee and loss payee under the Standard New York Mortgage Endorsement providing that no act or omission by the named insured shall in any way prejudice the rights of the Trustee under such policies and shall require that all Net Proceeds of insurance if in excess of \$500,000 for loss or damage covered thereby be paid to the Trustee and shall be applied by the Trustee pursuant to Section 7.1 hereof; provided, however, that all claims regardless of amount may be adjusted by the Borrower with the insurers, subject to prior written approval of the Trustee as to any settlement of any claim in excess of \$500,000, which approval shall not be unreasonably withheld. A certificate or certificates of the insurers that such insurance is in force and effect shall be deposited with the Trustee, and prior to the expiration of any such policy the Borrower shall furnish the Trustee with evidence reasonably satisfactory to the Trustee that the policy has been renewed or replaced or is no longer required by this Agreement. In lieu of separate policies, the Borrower may maintain one or more blanket policies of insurance having the coverage required by Section 6.4 hereof. All such policies shall provide that the issuer thereof shall give at least thirty (30) days' written notice to the Borrower, Issuer, and Trustee before such insurance is modified adversely to the interests of the Issuer or Trustee or is canceled.

**Section 19.7 Review by Insurance Consultant.** On or before the execution and delivery of this Agreement, and at all times during the Agreement Term, an Insurance Consultant shall be designated by the Borrower. At or prior to the issuance of the Bonds, the Borrower shall provide a certificate from the Insurance Consultant to the effect that all insurance required by Sections 6.4, 6.5, and 6.6 hereof is in effect. The Borrower shall procure from the Insurance Consultant a review of its insurance requirements not less than triennially along with a written recommendation, if any, for increasing or decreasing any of the insurance or coverages hereinabove required, and shall furnish a copy of such review to the Trustee. If any such review by the Insurance Consultant contains recommendations for increasing any of such insurance or coverages, the Borrower shall increase promptly such insurance or coverages in accordance with the recommendations. Notwithstanding anything in Section 6.4 which may be to the contrary, if the Borrower in good faith determines that the insurance requirement of this Agreement is not commercially available at a reasonable cost with reasonable terms, the Borrower may (i) so certify to the Trustee, (ii) notify the Trustee that the Borrower proposes to obtain from the Insurance Consultant recommendations regarding the types, amounts, and provisions of any such insurance that should be purchased by the Borrower and/or alternate or supplementary programs to provide protection against the types of losses and liabilities covered by such insurance, and (iii) based upon the written recommendations of the Insurance Consultant, purchase an alternative insurance policy or adopt alternative or supplemental risk management programs which the Borrower determines to be reasonable and to not have a material adverse effect upon the Bondowners. Upon the filing by the Borrower with

the Trustee of any such written recommendations of the Insurance Consultant, and a copy of such alternative risk management program that has been so purchased or adopted by the Borrower, such alternative insurance or such alternative risk management program shall be substituted for the appropriate requirements of Section 6.4.

**Section 19.8 Advances by the Issuer or Trustee.** If the Borrower shall fail to maintain the insurance coverages required by this Agreement or shall fail to pay the taxes and other charges required to be paid by this Agreement or fails to keep the Building and the Equipment in good repair and good operating condition, the Issuer or Trustee may (but shall be under no obligation to), after notifying the Borrower of its intention to do so, take out the required policies of insurance and pay the premiums on the same or pay the taxes or other charges or make the required repairs, renewals, and replacements, and all amounts so advanced therefore by the Issuer or Trustee shall become an additional obligation of the Borrower to the one making the advancement, which amounts, together with interest thereon from the date of payment at the rate charged prime corporate borrowers per annum on demand loans by the commercial lending department of the Trustee, the Borrower agrees to pay on demand and payment of which shall be secured hereunder and by the Trust Deed and the Security Agreement. Any remedy herein vested in the Issuer or Trustee for the collection of loan payments shall also be available to the Issuer and Trustee for the collection of all such amounts so advanced. The Trustee shall be under no obligation to make any such payment unless it is requested to do so by the owners of at least twenty-five percent (25%) in the aggregate principal amount of all Bonds then Outstanding and is provided with adequate funds paid in cash to the Trustee (from a source or sources approved by the Trustee) for the purpose of such payment.

## ARTICLE XX. DAMAGE, DESTRUCTION, AND CONDEMNATION

### Section 20.1 Damage and Destruction.

(a) Unless the Project shall be damaged to the extent described by, and the Borrower shall elect to exercise its option to prepay loan payments pursuant to, the provisions of Section 11.2(a) hereof, if prior to full payment of the Bonds (or provision for payment thereof having been made in accordance with the Indenture), if the Project is destroyed or damaged (in whole or in part) by fire or other casualty to such extent that the Net Proceeds recovered under the insurance policies required to be carried pursuant to Sections 6.4(a), 6.4(b), 6.4(e) and 6.4(f) hereof resulting from such destruction or damage are not greater than \$500,000, the Borrower shall (i) repair, rebuild, restore, and re-equip promptly the Project to substantially the same condition thereof as existed prior to the event causing such damage or destruction with such changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Borrower and as will not impair the value or the character of the Project and (ii) apply for such purpose so much as may be necessary of any Net Proceeds of insurance resulting from such recovery. All such Net Proceeds of insurance which do not exceed \$500,000 shall be paid to the Borrower. If such Net Proceeds of insurance are in excess of \$500,000, all such insurance proceeds shall be paid to and held by the Trustee in the Insurance Fund, whereupon the Borrower shall proceed promptly, but only after the requirements of Section 7.1(b) hereof are met, to repair, rebuild, restore, and re-equip the Project to substantially the same condition thereof as existed prior to the event causing such damage or destruction with such changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Borrower and as will not impair the nature of the Project, and the Trustee shall apply so much as may be necessary of the Net Proceeds of such insurance to payment of the costs of such repair, rebuilding, or restoration as the work progresses substantially in accordance with the procedures set forth in Section 7.4 hereof.

(b) Before the Trustee applies any Net Proceeds of insurance pursuant to this Section 7.1(b) to pay the costs of repairing, rebuilding, restoring, and re-equipping the Project, the Borrower shall furnish to the Trustee (i) a certificate of an Independent Engineer (A) to the effect that the Project can reasonably be expected to be restored, within a period of twelve (12) consecutive months from the receipt of such Net Proceeds, to substantially the condition thereof immediately preceding such damage or destruction, (B) setting forth the estimated cost of the proposed repair, rebuilding, restoration, or re-equipping of the Project, including an allowance for contingencies, and the estimated date of completion of such repair, rebuilding, restoration, or re-equipping, and (C) to the effect that all amounts necessary to accomplish the proposed repair, rebuilding, restoration, and re-equipping are on deposit in the Insurance Fund, (ii) the forecasted financial statements of the Project for each Fiscal Year until such repair, rebuilding, restoration, and re-equipping is expected to be completed and for the Fiscal Year immediately following the Fiscal Year in which such repair, rebuilding, restoration, and re-equipping is expected to be completed, which give effect to the repair, rebuilding, restoration, and re-equipping, and which shall be accompanied by a certificate of the Management Committee of the Borrower to the effect that (A) the assumptions underlying such forecasted financial statements are reasonable, (B) such forecasted financial statements have been prepared in accordance with GAAP (insofar as GAAP is applicable to forecasted financial statements), and (C) (1) the forecasted Debt Service Coverage Ratio for the Fiscal Year immediately following the Fiscal Year in which such repair, rebuilding, restoration, and re-equipping is expected to be completed is not less than 1.0:1.0 and (2) the forecasted Revenue Available for Debt Service (including as Revenues any proceeds of business interruption insurance) for each Fiscal Year until such repair, rebuilding, restoration, and re-



equipping is expected to be completed is sufficient to pay the forecasted Debt Service for each Fiscal Year until such repair, rebuilding, restoration, and re-equipping is expected to be completed, and (iii) a certificate of the Borrower to the effect that all permits, licenses, accreditation, and other governmental approvals necessary for operation of the Project are in full force and effect.

(c) [Reserved]

(d) The Borrower shall not, by reason of the payment of such excess costs, be entitled to any reimbursement from the Issuer, the Trustee, or the owners of the Bonds or any abatement or diminution of the loan payments payable under Section 5.2 hereof.

(e) Any balance of such Net Proceeds of insurance remaining after application pursuant to subsection (a) of this Section 7.1 or remaining because of the failure of the Borrower to furnish to the Trustee the items required by subsection (b) of this Section 7.1 shall be paid into the Bond Fund and used to redeem Bonds pursuant to Section 3.4(a) of the Indenture. If the Bonds have been fully paid (or provision for payment thereof has been made in accordance with the Indenture), have been fully paid, any balance of such Net Proceeds remaining after application pursuant to subsection (a) of this Section 7.1 or remaining because of the failure of the Borrower to furnish to the Trustee the items required by subsection (b) of this Section 7.1 shall be paid to the Borrower.

**Section 20.2 Condemnation.** Unless title to all or substantially all, or any material portion, of the Project shall have been taken by condemnation and the Borrower shall be obligated to prepay, or shall elect to exercise its option to prepay, the Loan pursuant to the provisions of Section 11.2(b) hereof, if, prior to full payment of the Bonds (or provision for payment thereof having been made in accordance with the Indenture), title to the Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any Person acting under governmental authority, the Borrower shall be obligated to continue to make the loan payments and other amounts specified in Section 4.2 hereof. The Issuer, Borrower, and Trustee shall cause the Net Proceeds received by them or any of them from any award made in such eminent domain proceedings to be paid to and held by the Trustee in a separate trust account to be known as the "Condemnation Fund," to be applied in one or more of the following ways as shall be directed in writing by the Borrower within sixty (60) days from the date of entry of a final order in any eminent domain proceedings granting condemnation:

(a) If the requirements of Section 7.2(d) hereof are met, to the restoration of the Project to substantially the same condition thereof as existed prior to the exercise of the said power of eminent domain, substantially in accordance with the procedures set forth in Section 7.5 hereof.

(b) If the requirements of Section 7.2(d) hereof are met, to the acquisition of other suitable land and the acquisition, by construction or otherwise, to the extent permitted by applicable law, of improvements consisting of a building or buildings, facilities, furnishings, machinery, equipment, or other properties located within the limits of Multnomah County, Oregon, suitable for the Borrower's operations at the Project as conducted prior to such taking (which improvements shall be deemed a part of the Project and available for use and occupancy by the Borrower without the payment of any loan payments other than as herein provided to the same extent as if such improvements were specifically described herein); provided, that such improvements and properties shall be acquired by the Borrower subject to no liens, security interests, or encumbrances prior to or on a parity with the liens and security interest of the Trust

Deed and the Security Agreement, other than Permitted Encumbrances. The Borrower shall enter into amendments to the Trust Deed and the Security Agreement to identify such improvements and properties as part of the Project and to subject such improvements and properties to the liens and the security interests created by the Trust Deed and the Security Agreement.

(c) To the redemption of Bonds together with accrued interest thereon to the date of redemption, which shall be not more than one hundred eighty (180) days after said event.

(d) Before the Trustee applies any Net Proceeds of any condemnation award pursuant to Section 7.2(a) or (b) hereof to pay the costs of restoring or replacing the Project, the Borrower shall furnish to the Trustee (i) a certificate of an Independent Engineer (A) to the effect that the Project can reasonably be expected to be restored or replaced, within a period of twelve (12) consecutive months from the receipt of such Net Proceeds, to substantially the condition thereof immediately preceding such condemnation, (B) setting forth the estimated cost of the proposed restoration or replacement of the Project, including an allowance for contingencies, and the estimated date of the completion of such restoration or replacement, and (C) to the effect that all amounts necessary to accomplish the proposed restoration and replacement are on deposit in the Condemnation Fund held under the Indenture, (ii) the forecasted financial statements of the Project for each Fiscal Year until such restoration and replacement is expected to be completed and for the Fiscal Year immediately following the Fiscal Year in which such restoration and replacement is expected to be completed, which give effect to the restoration and replacement and which shall be accompanied by a certificate of the Management Committee of the Borrower to the effect that (A) the assumptions underlying such forecasted financial statements are reasonable, (B) such forecasted financial statements have been prepared in accordance with GAAP insofar as GAAP is applicable to forecasted financial statements, and (C) (1) the forecasted Debt Service Coverage Ratio for the Fiscal Year immediately following the Fiscal Year in which such restoration and replacement is expected to be completed is not less than 11.0:1.0 and (2) the forecasted Revenue Available for Debt Service (including as Revenues any proceeds of business interruption insurance) for each Fiscal Year until such restoration and replacement is expected to be completed is sufficient to pay the forecasted Debt Service for each Fiscal Year until such restoration and replacement is expected to be completed, and (iii) a certificate of the Borrower to the effect that all permits, licenses, accreditation, and other governmental approvals necessary for operation of the Project are in full force and effect.

(e) Any balance of Net Proceeds of the award in such eminent domain proceedings remaining after application pursuant to subsections (a), (b), and (c) of this Section 7.2 or remaining because of the failure of the Borrower to furnish to the Trustee the items required by subsection (d) of this Section 7.2 shall be paid into the Bond Fund to redeem Bonds pursuant to Section 3.4(a) of the Indenture or, if no Bonds then remain Outstanding, shall be paid to the Borrower.

### **Section 20.3 [Reserved]**

**Section 20.4 Investment of Net Proceeds.** Any moneys held by the Trustee in the Insurance Fund or Condemnation Fund under the provisions of Section 7.1 or 7.2 hereof, respectively, shall, at the written request of the Borrower, be invested or reinvested by the Trustee, as specified by an Authorized Borrower Representative in such request, in Permitted Investments at a yield which is not greater than the yield on the Series 2008A Bonds. Neither the Issuer nor the Trustee shall be liable or responsible for any loss resulting from any such investment. Such investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the Insurance Fund or Condemnation Fund, as the case

may be, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund, and any loss resulting therefrom shall be charged against such fund. The Trustee is directed to sell and convert to cash a sufficient amount of such investments whenever the cash held in the Insurance Fund or Condemnation Fund is insufficient to pay a requisition for payment from such fund when presented. Neither the Trustee nor Issuer shall be made liable or responsible for any loss resulting from any such investment or resulting from the redemption or sale of any such investment as herein authorized.

**Section 20.5 Disbursements of Net Proceeds.** Each payment from the Insurance Fund or the Condemnation Fund shall be made by the Trustee in lawful money of the United States by check or interbank transfer of funds, upon receipt by the Trustee of an application for payment, and the Trustee may act in reliance upon any instrument or signature reasonably believed by it to be genuine and authorized. The Borrower hereby covenants and agrees to indemnify and save harmless the Issuer and Trustee and their respective officers, members, agents, and employees from any liability incurred in connection with any application for payment.

## ARTICLE XXI. ADDITIONAL COVENANTS

**Section 21.1 No Warranty of Condition or Suitability by the Issuer.** THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE HABITABILITY, MERCHANTABILITY, CONDITION, OR WORKMANSHIP OF ANY PART OF THE PROJECT OR THAT IT WILL BE SUITABLE FOR THE BORROWER'S PURPOSES OR NEEDS.

**Section 21.2 Access to Premises and Records.** The Issuer, the Trustee, , and their duly authorized representatives and agents, reserve the right, upon reasonable prior notice and in accordance with any applicable laws, to enter the Project during business hours during the Agreement Term for the purpose of (i) examining and inspecting the same, including any reconstruction thereof, (ii) performing such work in and about the Project made necessary by reason of an Event of Default, and (iii) upon an Event of Default, exhibiting the Project to prospective purchasers, lessees, or mortgagees. The Trustee, and Issuer shall also have the right upon reasonable prior notice and during business hours to examine the books and records of the Borrower insofar as such books and records relate to the repair and maintenance of the Project or insofar as necessary to ascertain compliance with this Agreement.

**Section 21.3 Borrower to Maintain its Existence; Conditions Under Which Exceptions Permitted.** The Borrower agrees that while this Agreement is in effect it shall maintain its legal existence as an Oregon limited liability company, whose sole member is a Tax-Exempt Organization, shall fully support and assist PSU Foundation in maintaining its legal existence as a Tax-Exempt Organization, shall not consolidate with or merge into another corporation or limited liability company or permit another corporation or limited liability company to consolidate with or merge into it, and shall not dissolve or otherwise dispose of (other than pursuant to the leases entered into in the ordinary course of business) all or substantially all of its assets. The Borrower may, without violating the agreement contained in this Section, consolidate, merge, sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve, provided (i) the surviving, resulting, or transferee Person (a) is authorized to do business in the State, (b) assumes (subject to Section 10.6) in writing all of the obligations of the Borrower under the Bond Documents, and (c) obtains all licenses and permits required by law to operate the Project, (ii) the Issuer consents in writing, (iii) the Borrower delivers to the Trustee an opinion of Bond Counsel to the effect that the surviving, resulting or transferee Person will be treated as an organization described in Section 501(c)(3) of the Code; and (iv) the Borrower delivers to the Trustee an opinion of Bond Counsel or a ruling of the Internal Revenue Service to the effect that such consolidation, merger, sale, or transfer will not cause the interest on the Series 2008A Bonds to become includable therein for federal income tax purposes. The Issuer shall execute any documents and cause the Trustee to execute any documents reasonably necessary to effectuate a consolidation, merger, sale, or transfer permitted hereby.

**Section 21.4 Qualification in the State.** The Borrower warrants that it is and while this Agreement is in effect it will continue to be duly qualified to do business in the State.

**Section 21.5 Release of Certain Land and Subordination; Granting of Easements.** In addition to the rights granted by Section 11.5 hereof, the parties hereto reserve the right at any time and from time to time to (i) effect the release and removal from the Trust Deed of any part (or interest in such part) of the Premises which the Borrower proposes to convey to a public utility or public body in order that utility services or public services may be provided to the Project or to dedicate public highways, or for the purpose of effecting the subordination of the lien of the Trust Deed to rights granted to a public utility or public body in order that utility services or public services may be provided to the Project or to rights granted in connection with dedications of public highways, (ii) grant easements, licenses, rights of way, and other rights or privileges in the nature of easements with respect to any property included in the

Project, but solely in order that utility services or public services may be provided to the Project or to dedicate public highways, free from the lien of the Trust Deed and (iii) release existing easements, licenses, rights of way, and other rights and privileges in the nature of those described in clauses (i) and (ii) above, with or without consideration; provided that prior to any such release, removal, or grant being made, the Borrower shall deposit with the Trustee the following:

(a) a resolution of the Borrower (i) giving an adequate legal description of that portion of the Premises to be released or subordinated, (ii) stating the purpose for which the Borrower desires the release or subordination, (iii) requesting such release or subordination, and (iv) approving an appropriate amendment to the Trust Deed,

(b) a certificate of the Borrower to the effect that neither the Building nor any other improvements are located on a portion of the Premises with respect to which the release or subordination is to be granted, accompanied by a plat of survey of the Premises certified by a registered surveyor of the State depicting (i) the boundaries of the portion of the Premises with respect to which the release or subordination is to be granted, (ii) all improvements located on the property surveyed and the relation of the improvements by distances to the boundaries of the portion of such property with respect to which the release or subordination is to be granted, and (iii) all easements and rights of way with recording data and instruments establishing the same,

(c) a copy of the instrument conveying the title to or subordinating the lien of the Trust Deed in favor of a public utility or public body, and

(d) a certificate of an Independent Engineer, dated not more than sixty (60) days prior to the date of the release or subordination and stating that, in the opinion of the person signing such certificate, (i) the portion of the Premises so proposed to be released or with respect to which the subordination is proposed or with respect to which an easement, license or right of way is proposed to be granted is necessary or desirable in order to obtain utility services or public services to benefit the Project and (ii) the release or subordination so proposed to be made will not impair the usefulness of the Project and will not destroy the means of ingress thereto and egress therefrom.

If such release or subordination relates to a part of the Premises on which transportation or utility facilities are located, the Borrower shall retain an easement to use such transportation or utility facilities to the extent necessary for the efficient operation of the Project. Any money consideration received in connection with the release of any portion of the Premises or the subordination of the lien of the Trust Deed pursuant to this Section 8.5 shall be deposited in the Bond Fund and used to redeem Bonds pursuant to Section 3.4(b) of the Indenture.

If all of the conditions of this Section are met, the Trustee shall be authorized to release any such property from the lien of the Trust Deed or subordinate such lien or execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right of way, or other right or privilege.

No release or conveyance effected under the provisions of this Section shall entitle the Borrower to any abatement or diminution of the loan payments payable under Section 5.2 hereof; except as results from the redemption of Bonds effected with the proceeds thereof.

**Section 21.6 Indemnity.**

(a) Subject to Section 10.6 hereof, the Borrower shall and agrees to indemnify and save the Issuer, the Trustee, and PDC, their directors, officers, members, and employees harmless against and from all claims by or on behalf of any Person arising from the conduct or management of or from any work or thing done on the Project and against and from all claims arising from (i) any condition of or operation of the Project, (ii) any breach or default on the part of the Borrower in the performance of any of its obligations under this Agreement, the Notes, Trust Deed, Security Agreement or any other Bond Document, or (iii) any act, failure to act or negligence of the Borrower or of any of its agents, contractors, servants, employees, or licensees. The Borrower shall indemnify and save the Issuer, the Trustee, and PDC harmless from and against all costs and expenses incurred in or in connection with any such claim arising as described in the preceding sentence, or in connection with any action or proceeding brought thereon, including reasonable attorneys' fees as provided in Section 10.4 hereof, and upon notice from the Issuer, the Trustee or PDC as applicable, the Borrower shall defend them or any of them in any such action or proceeding.

(b) Subject to Section 10.6 hereof, the Borrower agrees that it will indemnify and hold the Trustee and its directors, officers, and employees harmless from any and all liability, cost, or expense incurred in the course of its duties, including any act, omission, delay, or refusal of the Trustee in reliance upon any signature, certificate, order, demand, instruction, request, notice, or other instrument or document believed by it to be valid, genuine, and sufficient.

(c) Subject to Section 10.6 hereof, notwithstanding the fact that it is the intention of the parties that the Issuer, the Trustee, PDC and their directors, officers, members, and employees shall not incur pecuniary liability by reason of the terms of the Bond Documents or the undertakings required thereunder or by reason of (i) the issuance of the Bonds, (ii) the execution of the Bond Documents, (iii) the performance of any act required by the Bond Documents, (iv) the performance of any act requested by the Borrower, or (v) any other costs, fees, or expenses incurred by the Issuer, PDC or the Trustee with respect to the Project or the financing thereof, including all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the Issuer, PDC or Trustee should incur any such pecuniary liability, then in such event the Borrower shall indemnify and hold harmless the Issuer, PDC and Trustee against all claims by or on behalf of any Person arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, including reasonable attorneys' fees as provided in Section 10.4 hereof, and upon notice from the Issuer, PDC or Trustee, the Borrower shall defend the Issuer, PDC and/or Trustee in any such action or proceeding.

(d) Notwithstanding anything to the contrary contained herein, the Borrower shall have no liability to indemnify the Issuer, PDC or the Trustee against claims or damages resulting from the negligence or willful misconduct of the directors, officers and employees of the Issuer PDC or Trustee, including claims or damages relating to false or untrue information of a material fact provided by such Persons for use in offering materials relating to the Bonds.

(e) Nothing contained in this Section 8.6 shall require the Borrower to indemnify the Issuer, PDC or Trustee or their officers, directors, members, or employees for any claim or liability which the Borrower was not given any opportunity to contest or for any settlement of any such action effected without the Borrower's consent (assuming such opportunity to contest or consent was available to the party seeking indemnification and was not waived in writing by the

Borrower). The indemnity of the Issuer, PDC and Trustee and their officers, directors, members, and employees contained in this Section 8.6 shall survive the termination of this Agreement.

**Section 21.7 Covenant Regarding Reports and Financial Statements.** While this Agreement is in effect, the Borrower shall provide or cause to be provided to the Trustee and any Bondholder owning more than \$1,000,000 principal amount of Bonds who requests a copy, (i) within one hundred twenty (120) days after the end of each Fiscal Year, the financial statements of the Project, including its balance sheet, statement of revenue, expenses, and changes in fund balance (deficit), and statement of cash flow, for the year then ended in comparative form for the preceding Fiscal Year, which financial statements shall be accompanied by an Audit Report, and (ii) quarterly, within sixty (60) days from the end of each of the first three fiscal quarters, the unaudited balance sheet, statement of revenue, expenses, and changes in fund balance (deficit), and statement of cash flow of the Project, prepared in accordance with GAAP, subject to the absence of footnotes and year-end adjustments. The financial statements to be furnished annually shall be accompanied by a certificate of the Borrower, which shall include the calculation of the Debt Service Coverage Ratio, as to whether or not, to the best of its knowledge after due inquiry, there existed during, or there exists as of the end of, the Fiscal Year covered by such financial statements any Event of Default or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default and, if the Borrower has knowledge of any such Event of Default or any such other event, specifying the nature thereof and what action the Borrower is taking or proposes to take with respect thereto, together with (a) a written comparison prepared by the Accountant of the actual financial results to the budgeted financial results of the preceding fiscal year; (b) a written report with respect to payment defaults by tenants of the student housing facilities included in the Project; and (c) a report concerning occupancy levels of the student housing facilities included in the Project. Copies of the annual financial statements of the Borrower shall also be furnished to the dissemination agent, if any.

**Section 21.8 Additional Covenants.** The Borrower further covenants as follows:

(a) The Borrower covenants to operate the Project or cause the Project to be operated as an “eligible economic development project” within the meaning of the City Code to the expiration or earlier termination of the term of this Loan Agreement as provided herein;

(b) The Borrower has reviewed and determined that the sections of the Preliminary Official Statement for the Bonds, and the Final Official Statement for the Bonds relating to the Borrower and the Project (as defined in the Official Statement) do not misstate any fact or omit to state any fact which is required to be stated therein in order that those disclosure documents do not misstate or omit any material fact;

(c) The Borrower shall be responsible for and shall provide any annual financial information, audited financial statements or notices of material events or other information to the appropriate depositories pursuant to Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. § 240.15c2-12), (the “Rule”) to the extent required by the Rule;

(d) The Project constitutes an “economic development project” within the meaning of Chapter 5.72.020(A) and (B) of the City Code and the financing of the Project will serve the purposes of the Act and City Code;

(e) The Borrower covenants and agrees that it will pay all fees in connection with this Loan Agreement;

(f) [Reserved]

(g) The Borrower represents, warrants and covenants that it (i) was organized solely for the purpose of owning and operating the Project; (ii) has not and will not engage in any business unrelated to the ownership of the Project, the leasing of the Project and the transactions contemplated by the Bond Documents and Financing Documents; (iii) has not and will not have any assets other than those related to the Project (including any cash proceeds thereof); and (iv) will maintain books, financial records and bank accounts in a manner so that it will not be difficult or costly to segregate, ascertain and otherwise identify the assets and liabilities of the Borrower;

(h) As soon as possible and in any event within five (5) Business Days after the Borrower knows of, or reasonably should have known of, the occurrence of any default or any Event of Default, the Borrower shall deliver to the Trustee a written statement setting forth details of each such default or Event of Default and the action which the Borrower proposes to take with respect thereto; and

(i) The Borrower covenants and agrees to perform each of its agreements and obligations set forth in the Indenture.

**Section 21.9 Permitted Indebtedness.** The Borrower covenants and agrees that, until all of its indebtedness and obligations under this Agreement and the other Bond Documents have been fully paid and discharged, the Borrower shall not, directly or indirectly, incur, assume, or guarantee any Indebtedness (secured or unsecured) in excess of \$\_\_\_\_\_ in any year ending on a June 30, or \$\_\_\_\_\_ on a cumulative basis, without having first obtained and provided to the Trustee written evidence from each Rating Agency that as a result of such action, that Rating Agency's rating on the Bonds will not be lowered, suspended or withdrawn, and in no event following such action will the Bonds be rated by that Rating Agency lower than investment grade.

**Section 21.10 Annual Budget.** At least forty five (45) days prior to the first day of each Fiscal Year, the Borrower shall prepare, or cause to be prepared, the Annual Budget for the next succeeding Fiscal Year. The Annual Budget shall specify those matters and items usually contained in budgets of a similar nature including, without limitation, the following matters and items:

(i) the categories of anticipated Revenues relating to the Project and the projected amounts of each category of such Revenues, including without limitation projected contributions to be made by PSU under the Housing Services Agreement;

(ii) the amounts to be deposited to the Capital Replacement Fund and other reserves or accounts required by the Indenture during such Fiscal Year, so as to maintain the Project in good order as suitable and desirable housing, academic and retail space for its intended residents and for its intended uses which is comparable to other housing, academic and retail space available at local area market rates, and the amounts contained therein as of the first day of such Fiscal Year;

(iii) all anticipated capital expenditures;

(iv) the projected reasonable amounts of all operating expenses;

(v) the anticipated occupancy and rent;



(vi) sufficient information to explain the basis for the budgeted Revenues, capital expenditures, and operating expenses;

(vii) the amount of Revenues sufficient to comply with the rate covenant in Section 8.16 of this Agreement; and

(viii) an Operating Plan reasonably.

**Section 21.11 Reports to PDC.** Beginning no later than 12 months following the Closing Date and continuing annually for a period as long as the Bonds are Outstanding, the Borrower shall submit a written report to the PDC which describes (a) the number of current employees by job category and (b) the total assessed value and property taxes paid during the most recent period for the Project Operation of Project and Safety Code. The Borrower warrants that throughout the Agreement Term it shall cause the Project to be operated as a housing, academic and retail facility for students, faculty and staff of PSU in accordance with Exhibit "E" attached hereto, and shall maintain the Project in compliance with all applicable life and safety codes and all applicable building and zoning, health, environmental, and safety ordinances and laws and all other applicable laws, rules, and regulations of the United States of America, the State, and any political subdivision or agency thereof having jurisdiction over the Project, provided however that the Borrower may contest the legality of such requirements as applicable to the Project if the Borrower contests such requirements by proceedings which serve as a matter of law to stay the enforcement thereof and if contesting such requirements does not have a material adverse effect on the financial condition or business of the Borrower, or the Borrower's ability to pay when due its obligations under the Bond Documents.

**Section 21.13 Related Party Transactions.** The Borrower shall not enter into any transaction, including, without limitation, the purchase, sale, lease, or exchange of property or the rendering of any service, with any Affiliate except in the ordinary course of business and pursuant to the reasonable requirements of the Borrower's business and upon terms found by the Management Committee of the Borrower to be fair and reasonable and no less favorable to the Borrower than would be obtained in a comparable arm's length transaction with a Person not an Affiliate.

**Section 21.14 Licenses and Qualifications.** The Borrower shall do, or cause to be done, all things necessary to obtain, maintain, and renew, from time to time, as necessary, all permits, licenses, accreditation, and other governmental approvals necessary for the operation of the Project. The Borrower hereby agrees to give prompt notice to the Issuer and Trustee of the loss of any permit, license, or other governmental approval, which notice shall set forth the reasons for such loss.

**Section 21.15 Covenant Regarding Manager.** (a) The Borrower agrees that during the Agreement Term, the Borrower will cause to be employed promptly and at all times thereafter an experienced Manager of the Project. Prior to the Borrower entering into a contract with any Manager with respect to all or a portion of the student housing or academic areas of the Project that are refinanced by the Series 2008A Bonds, unless the Manager is a governmental unit or an organization qualified under Code Section 501(c)(3), the Borrower shall first deliver to the Trustee an opinion of Bond Counsel to the effect that the terms of the proposed management contract will not cause interest on any of the Bonds, the interest on which is excludable from the gross income of the Owners thereof for federal income tax purposes, to become includable therein.

(b) The Borrower agrees that any management agreement relating to the Project shall include terms and provisions whereby (a) the Manager agrees that the management agreement and any and all liens, rights and interests owned, claimed or held, or to be owned, claimed or held, by the Manager in and

to the Project as the result of its management of the Project pursuant to the management agreement, are and shall be, and are made, in all respects subordinate and inferior in terms of priority to the Trust Deed, the Indenture and all other documents or instruments securing payment of the Bonds, as the same may be amended and/or supplemented from time to time, and the liens and security interests created thereby; (b) the Manager agrees that upon the occurrence of a default or event of default under the Bond Documents or upon any foreclosure of the Project or other instance in which the Trustee or its designee is entitled to possession of the Project, then at any time while such default or event of default continues or upon taking possession of the Project, the Trustee, or its applicable designee, successor or assign, may, at its option, elect to terminate the management agreement, without obligation to the Manager, upon thirty (30) days' written notice to the Manager; (c) if the Trustee, or its designee, successor or assign, should assume possession of the Project, the Manager shall, if requested, continue to manage the Project under the terms of the management agreement; (d) the Trustee or its designee, successor or assign shall not be liable for any fees, charges or other unperformed obligations of the Borrower accruing under the management agreement prior to taking of possession of the Project; (e) the Manager agrees that, upon request by the Trustee or any other future lender providing financing to the Borrower for the Project, the Manager shall enter into a separate subordination agreement subordinating the management agreement to such lender's mortgage and containing each of the preceding provisions of this paragraph; (f) the Manager agrees to cooperate in all other reasonable ways requested by the Borrower in connection with any financing by the Borrower of the Project; and (g) the Trustee and any other future lender providing financing to the Borrower for the Project shall be deemed a third party beneficiary of the provisions of this paragraph.

**Section 21.16 Rate Covenant.** With respect to the Bonds, the Borrower will do the following:

(a) On or before the commencement of the fall semester of each Fiscal Year, commencing with the fiscal year beginning July 1, 2009, the Borrower will fix, establish and maintain or cause to be fixed, established and maintained such rates, rentals and charges for the provision of services in the Project (together with funds provided by the Housing Services Agreement), and revise or cause to be revised the same, as necessary, as will produce, and will be required to maintain for each such Fiscal Year, a Debt Service Coverage Ratio of at least 1.0:1.0. The Borrower's compliance with this rate covenant will be based on an analysis by the Accountant of the audited annual financial statements of the Project to be prepared within 120 days after the end of each such Fiscal Year.

(b) The Borrower will, so long as Bonds are Outstanding, within 120 days after the end of each Fiscal Year deliver to the Trustee a certificate by the Accountant reflecting the Borrower's compliance with the Debt Service Coverage Ratio described in paragraph (a) above.

(c) If the Project fails to achieve a Debt Service Coverage Ratio of at least 1.0:1.0 for any Fiscal Year, commencing with the fiscal year beginning July 1, 2009, then the Borrower will, no later than 30 days after the earlier of the dates annual financial statements were due or were provided for the Fiscal Year for which such failure occurred, employ at the Borrower's expense, an independent consultant to submit a report within a 30-day period thereafter to the Trustee and the Issuer (each, a "Reporting Party") showing for the current and the next Fiscal Year the projected cash portion of Revenues (other than net proceeds of insurance or condemnation awards and other extraordinary items), debt service, operating expenses and capital expenses, and other contractual obligations relating to the Project and setting forth the recommendation of the consultant for the revision of rates, rentals and charges, if necessary, in order to achieve a Debt Service Coverage Ratio of at least 100%. With the consent of PSU, or without the consent of PSU if there is an Event of Default or an Event of Nonappropriation by PSU under the Housing Service Agreement, the Borrower covenants to implement the

recommendations of the consultant so long as implementation will not have an adverse effect on the tax-exempt status of any Series 2008A Bonds. The consultant shall be retained, at the Borrower's expense, by the Borrower to monitor the implementation of the recommendations of the consultant. The Borrower will within 90 days after the date of submission to the Trustee of the consultant's report described in the preceding sentence, cause the consultant to submit a follow-up report to the Trustee to determine the Borrower's compliance with the recommendation of the consultant's initial report.

(d) Notwithstanding anything herein to the contrary, the Borrower shall not be obligated to fix, establish, maintain or revise rates with respect to the Project to or above comparable rates if such revision would endanger the tax-exempt status of the Borrower or of the Series 2008A Bonds.

**ARTICLE XXII. ASSIGNMENT, LEASING, ENCUMBERING, AND SELLING;  
REDEMPTION; LOAN PREPAYMENTS AND ABATEMENT; INSTALLATION OF  
MACHINERY AND EQUIPMENT NOT SUBJECT TO THE LIEN OF THE SECURITY  
AGREEMENT**

**Section 22.1 Assignment and Leasing.** The rights and obligations of the Borrower under this Agreement may be assigned and delegated and the Project may be further leased or subleased by the Borrower, as a whole or in part, without the necessity of obtaining the consent of either the Issuer or the Trustee or any other party, subject, however, to each of the following conditions:

(a) No assignment (other than pursuant to Section 8.3 hereof), delegation or lease shall relieve the Borrower from primary liability for any of its obligations hereunder, and in the event of any such assignment or lease, the Borrower shall continue to remain primarily liable for payment of the loan payments and for the payment, performance, and observance of the other obligations and agreements on its part herein provided to be performed and observed by it.

(b) The Borrower shall furnish or cause to be furnished to the Issuer and Trustee assurances reasonably satisfactory to the Issuer and Trustee that the Project will continue to be operated as an “eligible economic development project” within the meaning of the Act.

(c) No assignment or lease (other than rental agreements and leases entered into in the ordinary course of business permitted by Exhibit “E” hereto) with any Person shall be entered into by the Borrower without first furnishing to the Trustee an opinion of Bond Counsel or a ruling from the Internal Revenue Service to the effect that such assignment or lease will not cause the interest on any Bonds which is excludable from the gross income of the owners thereof to become includable therein for federal income tax purposes.

(d) No such assignment or lease shall give rise to a novation, as set forth in an opinion of Independent Counsel delivered to the Trustee.

(e) The Borrower shall, within thirty (30) days after the execution thereof, furnish or cause to be furnished to the Issuer and Trustee a true and complete copy of each such assignment or lease, as the case may be (other than rental agreements and leases entered into in the ordinary course of business permitted by Exhibit “E” hereto). The Issuer and Trustee shall have the right, at any time and from time to time, to notify any assignee or lessee of the rights of the Issuer and Trustee, as provided by this paragraph. From time to time, upon the request of the Issuer or Trustee, the Borrower shall specifically assign and grant a security interest to the Trustee, as additional security for the Bonds by an amendment to the Security Agreement in writing and in the form approved by the Issuer and Trustee, all the right, title, and interest of the Borrower in and to any and all leases hereafter on or affecting the Premises or the Project, together with all security therefore and all moneys payable thereunder, subject to the conditional right of the Borrower to collect the rentals under any such leases. The Borrower and Issuer shall also execute and deliver to the Trustee any notification, financing statement, or other document reasonably required by the Trustee to perfect the foregoing assignment and security interest created as to any such leases and other properties.

(f) All leases (other than the student rental agreements and leases entered into in the ordinary course of business and permitted by Exhibit “E” hereto) shall contain an attornment clause providing in effect that if at any time during the term of the lease, the Trustee or the designee of the Trustee, or a subsequent purchaser at a foreclosure sale from the Trustee, shall

become the owner of the Project, such lessee agrees, at the election and upon demand of any owner of the Project, to attorn, from time to time, to any such owner upon the terms and conditions set forth in the lease. Such lessee shall agree, at the request of the party to whom it has attorned, to execute, acknowledge, and deliver, without charge, from time to time, instruments acknowledging such attornment. The attornment clause shall provide that upon such attornment, the lease shall continue in full force and effect as, or as if it were, a direct lease between the successor and the lessee, except that the successor landlord shall not (i) have any liability for any previous act or omission of a predecessor landlord under the lease, (ii) be bound by any previous modification of the lease or by any previous prepayment of more than two month's rent, unless such modification or prepayment shall have been expressly approved in writing by the Issuer and Trustee, or (iii) have any liability for refusal or failure to perform or complete landlord's work or otherwise prepare the demised premises for occupancy in accordance with the provisions of the lease.

The Issuer confirms and recognizes that the right of possession of lessees of the Borrower to the Premises and their other rights arising out of the leases shall not be affected or disturbed in any way by the Issuer or Trustee or by the exercise of any rights or remedies by the Issuer or Trustee for any reason other than one which would entitle the Borrower under the leases to dispossess the lessees from the Premises or which would constitute an event of default by the lessees under the leases. Further, in the event of a foreclosure or such other exercise of the Issuer's or Trustee's rights under this Agreement and the Indenture, the Issuer agrees that so long as any lessee is not in default under the terms of its lease, it shall recognize such lessee as the lessee under such lease.

**Section 22.2 Restrictions on Sale, Encumbrance, or Conveyance of the Project by the Borrower.** The Borrower agrees that, except as set forth in Section 8.3 and 9.1 hereof or other provisions of this Agreement or the Indenture, it shall not (1) directly, indirectly, or beneficially sell, convey, or otherwise dispose of any part of its interest in the Project during the Agreement Term, (2) permit any part of the Project or the Premises to become subject to any mortgage, lien, claim of title, encumbrance, security interest, conditional sale contract, title retention arrangement, finance lease, or other charge of any kind, except for Permitted Encumbrances or except as otherwise permitted under this Agreement, and (3) assign, transfer, or hypothecate (other than to the Trustee pursuant to the Trust Deed) any rent (or analogous payment) then due or to accrue in the future under any lease of the Project or the Premises, except for Permitted Encumbrances or except as otherwise permitted in Sections 8.3 and 9.1 hereof.

**Section 22.3 Redemption of Bonds.** The Issuer, at the written request of the Borrower at any time and if the Bonds are then callable or available for purchase, shall forthwith take all steps that may be necessary under the applicable redemption or purchase provisions of the Indenture to effect redemption or purchase of all or part of the then outstanding Bonds, as may be specified by the Borrower, on the earliest date on which such redemption or purchase may be made under such applicable provisions. In the circumstances set forth in Sections 6.2, 8.5, and 11.5 hereof, Bonds will be redeemed by the Issuer automatically without the request of the Borrower, however, in certain circumstances, the Borrower shall have the right to select the date of redemption pursuant to Section 3.4(b) of the Indenture.

### ARTICLE XXIII. EVENTS OF DEFAULT AND REMEDIES

**Section 23.1 Events of Default Defined.** The following shall be “Events of Default” under this Agreement, and the terms “Event of Default” or “Default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) The Borrower’s failure to pay any Basic Loan Payment, Additional Loan Payment or Reserve Loan Payment required to be paid under Section 5.2 hereof at the times specified therein and continuing for a period of three (3) days after notice by mail, facsimile transmission, or personal delivery in the manner provided in Section 12.1 hereof, given to the Borrower by either the Trustee or Issuer, that the payment referred to in such notice has not been received, or, without regard to notice, the Borrower’s failure to pay the amounts required to be paid under Section 5.2 hereof at the times specified therein and continuing for a period of five (5) days after any such amount becomes due under Section 5.2 hereof, whichever occurs first.

(b) The Borrower’s breach in any material respect of any representation or warranty contained in this Agreement or any other Bond Documents or any report, certificate, financial statement, or other instrument furnished pursuant hereto or thereto, or the Borrower’s failure to observe, perform, or comply with any covenant, condition, or agreement in this Agreement or any other Bond Document on the part of the Borrower to be observed or performed (other than as referred to in subsection (a) of this Section) for a period of thirty (30) days after written notice specifying such breach or failure and requesting that it be remedied, given to the Borrower by the Issuer or Trustee, provided, however, that in the case of any such breach or default (other than a payment default) which cannot with due diligence be cured within such thirty (30) day period, it shall not constitute an Event of Default if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the breach or default is cured in accordance with and subject to any directions or limitations of time established in writing by the Trustee.

(c) If for any Fiscal Year, the Debt Service Coverage Ratio is not at least 1.0:1.0.

(d) The Borrower shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of it or of all or a substantial part of its property or of the Project, (ii) fail to lift or bond (if legally permissible) promptly any execution, garnishment, or attachment of such consequence as will impair the ability of the Borrower to carry on its operations at the Project, (iii) enter into an agreement of composition with its creditors, (iv) admit in writing its inability to pay its debts as such debts become due, (v) make a general assignment for the benefit of its creditors, (vi) commence a voluntary case under the federal bankruptcy law or any similar law in effect in a foreign jurisdiction (as now or hereafter in effect), (vii) file a petition or answer seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (viii) fail to controvert in a timely or appropriate manner or acquiesce in writing to any petition filed against it in an involuntary case under such federal bankruptcy law or any similar law in effect in a foreign jurisdiction, or (ix) take any action for the purpose of effecting any of the foregoing.

(e) A proceeding or case shall be commenced, without the application of the Borrower, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts of the Borrower, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of the Borrower or of all or any substantial part of the assets of it, or (iii) similar relief in respect of the Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition and

adjustment of debts, and such proceeding or case shall continue undismissed or an order, judgment, or decree approving or ordering any of the foregoing shall be entered and shall continue unvacated and unstayed and in effect for a period of ninety (90) days, whether consecutive or not.

(f) The occurrence and continuance of any other default (subject to any applicable cure period) or "Event of Default" under any of the Bond Documents.

**Section 23.2 Remedies on Default.** Whenever any Event of Default referred to in Section 10.1 hereof shall have occurred and be continuing, the Trustee, to the extent permitted by law, may take any one or more of the following remedial steps:

(a) The Trustee, as assignee of the Issuer, may at its option, declare, all unpaid installments of Basic Loan Payments and other amounts payable under Section 5.2 hereof for the remainder of the Agreement Term to be immediately due and payable whereupon the same shall become immediately due and payable. Upon a declaration by the Trustee under Section 10.2 of the Indenture, all unpaid Basic Loan Payments payable hereunder shall become immediately due and payable; provided, however, that if acceleration of the Bonds has been rescinded and annulled pursuant to Section 10.2 of the Indenture, acceleration of the Basic Loan Payments and other amounts payable under Section 5.2 hereof required by this Section 10.2(a) shall similarly be rescinded and annulled and the Event of Default occasioning such acceleration shall be waived, but no such waiver, rescission, and annulment shall extend to or affect any subsequent default or impair or exhaust any right, power, or remedy consequent thereon.

(b) In the event any of the Bonds at the time shall be outstanding and unpaid, the Trustee may have access to and inspect, examine, and make copies of the books and records and any and all accounts, similar data, and income tax and other tax returns of the Borrower.

(c) The Trustee, as assignee of the Issuer, may, from time to time, take whatever action at law or in equity or under the terms of the Bond Documents may appear necessary or desirable to collect the loan payments and other amounts payable by the Borrower hereunder then due and/or thereafter to become due, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Agreement.

Amounts collected pursuant to action taken under this Section shall be applied in accordance with the provisions of the Indenture or, if the Bonds have been fully paid (or provision for payment thereof has been made in accordance with the provisions of the Indenture) and Borrower has paid all amounts due under Sections 5.2, 6.8, 8.6, and 10.4 hereof and each of the Bond Documents, then any amounts remaining shall be paid to the Borrower. If there is no Trustee serving under the Indenture, the Issuer shall have the right to exercise all remedies hereunder.

**Section 23.3 No Remedy Exclusive.** Subject to Section 10.6, no remedy herein conferred upon or reserved to the Trustee, as assignee of the Issuer, is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. Such rights and remedies as are given the

Issuer hereunder shall also extend to the Trustee, and Trustee and the owners of the Bonds shall be deemed third party beneficiaries of all covenants and agreements herein contained.

**Section 23.4 Agreement to Pay Attorneys' Fees and Expenses.** In the event the Borrower should default under any of the provisions of this Agreement and the Issuer or the Trustee should employ attorneys or incur other reasonable expenses for the collection of Basic Loan Payments hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower herein contained, the Borrower agrees that it shall on demand therefore pay to the Issuer or the Trustee the reasonable fees of such attorneys and such other expenses so incurred by the Issuer and/or the Trustee. Any attorneys' fees required to be paid by the Borrower under this Agreement shall include attorneys' fees through all proceedings, including, but not limited to, negotiations, administrative hearings, trials, and appeals.

**Section 23.5 Waiver of Events of Default.** The Trustee, on behalf of the Issuer, may waive any Event of Default hereunder and its consequences or rescind any declaration of acceleration of payments of the Basic Loan Payments due hereunder. In case of any such waiver or rescission, or in case any proceeding taken by the Issuer or Trustee on account of any such Event of Default shall be discontinued or abandoned or determined adversely to the Issuer or Trustee, then and in every such case the Issuer and Borrower shall be restored to their former position and rights hereunder, but no such waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

**Section 23.6 Exculpation.**

(a) ANY OTHER PROVISION OF THIS AGREEMENT NOTWITHSTANDING (EXCEPT SUBPARAGRAPH (B) BELOW), NO PERSON SHALL ENFORCE THE LIABILITY AND OBLIGATION OF THE BORROWER TO PERFORM AND OBSERVE THE OBLIGATIONS CONTAINED IN THIS AGREEMENT OR ANY OTHER BOND DOCUMENT IN ANY ACTION OR PROCEEDING WHEREIN A MONEY JUDGMENT OR AN EQUITABLE REMEDY OTHER THAN A LISTED REMEDY (AS HEREINAFTER DEFINED) SHALL BE SOUGHT AGAINST THE BORROWER (OR ANY MEMBER, MANAGER, DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF THE BORROWER OR OF ANY MEMBER OR MANAGER OF THE BORROWER), EXCEPT THAT THE ISSUER OR THE TRUSTEE MAY BRING A FORECLOSURE ACTION OR OTHER APPROPRIATE ACTION OR PROCEEDING TO ENABLE THE ISSUER OR THE TRUSTEE TO REALIZE UPON THE TRUST DEED AND THE SECURITY AGREEMENT, AND THE INTEREST IN THE SECURITY; PROVIDED, HOWEVER, THAT ANY JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE ENFORCEABLE AGAINST THE BORROWER ONLY TO THE EXTENT OF THE BORROWER'S INTEREST IN THE PROJECT AND THE OTHER SECURITY. EACH PERSON HAVING A CLAIM HEREUNDER, OR UNDER ANY OTHER BOND DOCUMENT, AGAINST THE BORROWER AGREES THAT IT WILL NOT SUE FOR, SEEK, OR DEMAND ANY DEFICIENCY OR EQUITABLE REMEDY OTHER THAN A LISTED REMEDY AGAINST THE BORROWER (OR ANY MANAGER, DIRECTOR, OFFICER, MEMBER, EMPLOYEE OR AGENT OF THE BORROWER OR OF ANY MEMBER OR MANAGER OF THE BORROWER) IN ANY ACTION OR PROCEEDING, UNDER OR BY REASON OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER BOND DOCUMENT. The provisions of this Section 10.6 shall not, however, (i) constitute a waiver, release, or impairment (except for the foregoing restriction on obtaining any money judgment or equitable remedy other than a Listed Remedy against the Borrower or any member, manager, director, officer, employee or agent of the



Borrower) of any obligation evidenced or secured by this Agreement or any other Bond Document, (ii) impair the right of the Issuer or Trustee to name the Borrower as a party defendant in any action or suit for foreclosure and sale under the Trust Deed or for enforcement of the other Security, (iii) impair the right of the Issuer or the Trustee to obtain the appointment of a receiver for the Project, (iv) impair the right of the Issuer or the Trustee to bring suit with respect to any fraud by the Borrower in connection with the Bonds, (v) impair the right of the Issuer or the Trustee to obtain the rents and other revenues of the Project received by the Borrower, or (vi) impair the right of the Issuer or the Trustee to bring suit to obtain insurance proceeds or condemnation awards with respect to the Project due to the Issuer or the Trustee. For purposes of this Agreement, a remedy is a "Listed Remedy" if and only if it is expressly described in (ii), (iii), (v) or (vi) of the preceding sentence.

(b) Notwithstanding the foregoing, the Borrower shall be liable for (i) any (A) fraud or intentional misrepresentation by the Borrower in connection with its representations contained in this Loan Agreement or the other Bond Documents, (B) intentional failure by the Borrower to disclose to the Underwriter a material fact with respect to the Borrower that is actually known by the Borrower in connection with the issuance and delivery of the Bonds, to the extent of losses or damages actually suffered by the Issuer, the Trustee, or the Owners of such Bonds as a result of such fraud, intentional misrepresentation, or intentional failure to state a material fact; and (ii) misapplication of (A) proceeds of any insurance covering any portion of the Security actually received by the Borrower, (B) proceeds from the sale or condemnation of any portion of the Security actually received by the Borrower, or (C) rentals or other proceeds from the lease of any portion of the Security actually received by the Borrower.

**Section 23.7 Advance Waiver and Release.** Issuer and Trustee acknowledge and agree that the PSU Foundation is not a party to this Agreement and assumes no duty and no liability as a result of the participation of the Borrower in this Agreement. Issuer and Trustee further agree that, in the event of any default, liability of or claim against the Borrower under this Agreement or otherwise, Issuer and Trustee shall have no recourse to the 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 the PSU Foundation from the same, except to the extent that the PSU Foundation shall have or obtain an interest (other than as a member of the Borrower) in the Project or the other Security; provided, however, that the Issuer's and Trustee's remedies shall be limited to pursuing a Listed Remedy, and Issuer and Trustee shall be entitled to enforce a Listed Remedy only to the extent of PSU Foundation's interest in the Project or the other security.

#### ARTICLE XXIV. OPTIONS AND OBLIGATIONS OF BORROWER

**Section 24.1 General Options to Terminate Agreement.** The Borrower shall have, and is hereby granted, the following options to terminate this Agreement at any time prior to full payment of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture). The Borrower may terminate the Agreement Term by (i) paying to the Trustee an amount which, when added to the amount on deposit in the Bond Fund, will be sufficient to pay, retire, and redeem all of the Outstanding Bonds in accordance with the provisions of the Indenture (including, without limiting the generality of the foregoing, principal, interest to maturity or earliest applicable redemption date, as the case may be, premium, if any, expenses of redemption, and Trustee's and paying agents' fees and expenses, including reasonable attorneys' fees), (ii) in the case of redemption, making arrangements satisfactory to the Trustee for the giving of the required notice of redemption, (iii) paying to the Issuer any and all sums then due to the Issuer under this Agreement, and (iv) otherwise complying with the provisions of Article IX of the Indenture.

**Section 24.2 Option and Obligation to Prepay Loan in Certain Events.** The Borrower shall have, and is hereby granted, the option to prepay the Loan prior to the full payment of all of the Bonds (or provision for payment thereof having been made in accordance with provisions of the Indenture), if either of the following shall have occurred:

(a) the Project shall have been damaged or destroyed by fire or other casualty to such extent that, in the opinion of an Independent Engineer expressed in a certificate filed with the Issuer and Trustee, (i) the Project cannot reasonably be expected to be restored within a period of twelve (12) consecutive months following receipt of the insurance proceeds to substantially the condition thereof immediately preceding such damage or destruction or (ii) the Project cannot reasonably be expected to be operated normally for a period of twelve (12) consecutive months or (iii) the estimated cost of reconstruction exceeds the total amount of Net Proceeds of insurance resulting therefrom; or

(b) title to a substantial portion of the Project shall have been taken under the exercise of the power of eminent domain by any governmental authority or person, firm, or corporation acting under governmental authority to such extent that, in the opinion of an Independent Engineer expressed in a certificate filed with the Issuer and Trustee, (i) the Project cannot reasonably be expected to be restored or replaced within a period of twelve (12) consecutive months following receipt of the condemnation proceeds to substantially the condition thereof immediately preceding such condemnation or (ii) the Project cannot reasonably be expected to be operated normally for a period of at least twelve (12) consecutive months or (iii) the estimated cost of restoration or replacement exceeds the total amount of compensation in favor of the Borrower for such taking.

(c) Notwithstanding the foregoing, the Borrower shall have the obligation to prepay the Loan prior to the full payment of all of the Bonds (or provision for payment thereof having been made in accordance with provisions of the Indenture), if the events stated in subsection (a) or (b) of this Section shall have occurred, unless the Borrower shall furnish to the Trustee the items required by Section 7.1(b) hereof or Section 7.2(d) hereof, whichever is applicable.

If the Borrower exercises its option to prepay the Loan in the events set forth in subsection (a) or (b) of this Section or if the Borrower is obligated to prepay the Loan in the event set forth in subsection (c) of this Section, the Borrower must prepay the Loan within one hundred eighty (180) days after such event.

To exercise such option, the Borrower shall, within sixty (60) days following the event authorizing the exercise of such option, give written notice of the exercise of such option to the Issuer and to the Trustee, if any of the Bonds shall then be unpaid or provision for payment shall not have been made in accordance with the provisions of the Indenture, and shall specify therein the date of tender of such prepayment, which date shall not be less than forty-five (45) nor more than one hundred twenty (120) days from the date such notice is mailed, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. The amount payable by the Borrower in the event it is obligated to prepay the Loan or in the event of its exercise of the option granted in the circumstances described in subsections (a) or (b) of this Section shall be the sum of the following:

(1) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to retire and redeem all the then Outstanding Bonds (or, if applicable, a portion of the Outstanding Bonds) on the applicable redemption date provided by the Indenture, including without limitation, principal, all interest to accrue to said redemption date, and redemption expense, but without premium, plus

(2) an amount of money equal to the Trustee's and paying agents' fees and expenses, including reasonable attorneys' fees, under the Indenture accrued and to accrue until such payment and redemption of Bonds, plus

(3) an amount of money equal to the Issuer's reimbursable expenses under this Agreement accrued and to accrue until such payment and redemption of Bonds.

**Section 24.3 Option to Prepay Loan and Redeem Bonds at Optional Redemption Dates.**

The Borrower shall have the option to prepay the Loan by prepaying Basic Loan Payments due under this Agreement in such manner and amounts as will enable the Issuer to redeem the Bonds prior to maturity in whole or in part on any date, as provided in Section 3.4(b) of the Indenture. Pursuant to the provisions of Sections 6.2, 8.5, and 11.5 hereof, Bonds may be automatically redeemed as provided in Section 3.4(b) of the Indenture. The Basic Loan Payments payable by the Borrower in the event of its exercise of the option granted under this Section shall be (i) in the case of partial redemption, the amount necessary to pay principal, all interest to accrue to the redemption date, the applicable redemption premium, as provided in Section 3.4(b) of the Indenture, and any redemption expense, and (ii) in the case of a total redemption, the amounts set forth in Article IX of the Indenture and the applicable redemption premium, as provided in Section 3.4(b) of the Indenture.

**Section 24.4 [Reserved]**

**Section 24.5 Option to Release Unimproved Land.** If no Event of Default shall have occurred and then be continuing, the Borrower shall have and is hereby granted the option to release from the lien of the Trust Deed any part of the Premises on which neither the Building nor any of the Equipment is situated (although transportation or utility facilities may be located thereon), at any time and from time to time, at and for a release price consisting of the fair market value of the subject property, as determined by an independent appraiser who is a member of the American Institute of Real Estate Appraisers selected by the Borrower in a report acceptable to the Trustee, provided that the Borrower furnishes the Trustee with the following:

(a) a notice in writing containing (i) an adequate legal description of that portion of the Premises with respect to which such option is to be exercised and (ii) a statement that the

Borrower intends to exercise its option to release such portion of the Premises on a date stated, which shall not be less than forty-five (45) days nor more than one hundred twenty (120) days from the date of such notice,

(b) a certificate of an Independent Engineer who is acceptable to the Trustee, acting reasonably, dated not more than ninety (90) days prior to the date of the release, stating that in the opinion of the person signing such certificate (i) the portion of the Premises with respect to which the option is to be exercised is not needed for the operation of the Project for its intended purposes and (ii) the release will not impair the usefulness of the Project and will not destroy the means of ingress thereto and egress therefrom,

(c) a certificate of the Borrower to the effect that neither the Building nor the Equipment are located on the portion of the Premises with respect to which the option is to be exercised, accompanied by a plat of survey of the Premises certified by a registered surveyor of the State, depicting (i) the boundaries of the portion of the Premises with respect to which the option is to be exercised, (ii) all improvements located on the property surveyed and the relation of the improvements by distances to the boundaries of the portion of such property with respect to which the option is to be exercised, and (iii) all easements and rights of way with recording data and instruments establishing the same, and

(d) an amount of money equal to the release price computed as provided in this Section, to be deposited in the Bond Fund and to be used to redeem Bonds pursuant to Section 3.4(b) of the Indenture.

The Issuer agrees that upon receipt by the Trustee of the notice, certificates, and money required in this Section to be furnished to the Trustee by the Borrower, the Issuer shall secure from the Trustee a release from the lien of the Trust Deed regarding such portion of the Premises with respect to which the Borrower shall have exercised the option granted to it in this Section. In the event the Borrower shall exercise the option granted to it under this Section, the Borrower shall not be entitled to an abatement or diminution of the loan payments payable under Section 5.2 hereof (except as results from the redemption of Bonds effected in connection with such exercise), and if such option relates to Premises on which transportation or utility facilities are located, the Borrower shall retain an easement to use such transportation or utility facilities to the extent necessary for the efficient operation of the Project. The Borrower hereby covenants that it will not construct or permit to be constructed on any such unimproved land any facility which would be competitive with the Project.

**ARTICLE XXV. MISCELLANEOUS**

**Section 25.1 Notices.** All notices and other communications hereunder shall be effective if and only if in writing and delivered personally, transmitted by facsimile which the sender's facsimile machine indicates has been sent (in the case of an addressee whose facsimile number is supplied), sent by Federal Express or similar courier, or mailed by registered or certified mail (return receipt requested), charges or postage prepaid, to the addressee at the address that shall most recently have been designated, by effective notice hereunder from the addressee to the sender, as the addressee's desired address for notices hereunder (or, prior to any such notice, at the address for the addressee set forth below):

- If to the Issuer: City of Portland, Oregon  
1221 S.W. Fourth Avenue, Room 120  
Portland, OR 97204  
Attention: Debt Manager  
Telephone: (503) 823-6851  
Facsimile: (503) 823-4209
- If to the Trustee: Wells Fargo Bank, National Association  
MAC P6101-114  
1300 SW 5<sup>th</sup> Avenue  
Portland, OR 97201  
Attention: Corporate Trust Services  
Telephone: (503) 886-1367  
Facsimile: (503) 886-3300
- If to the Borrower: Broadway Housing, LLC  
2125 SW Fourth Ave., Suite 510  
Portland, OR 97201  
Attention: Executive Director  
Telephone: (503) 725-5922  
Facsimile: (503) 725-5876
- With a copy to: Rick Baroway  
Garvey Schubert Barer  
11<sup>th</sup> Floor  
121 SW Morrison Street  
Portland, OR 97204  
Telephone: (503) 228-3030  
Facsimile: (503) 226-0259
- If to Moody's: Moody's Investors Services  
99 Church Street, 9<sup>th</sup> Floor  
New York, NY 10007  
Attention: Joann Hempel  
Telephone: 212-553-4743  
Facsimile: 212-553-4090

If to S&P: Standard & Poor's  
55 Water Street, 38<sup>th</sup> Floor  
New York, NY 10041-0001  
Attention: Public Finance  
Facsimile: 212-438-2157

Unless otherwise provided, written notices so delivered, transmitted, sent or mailed shall be effective on the earlier of (x) actual delivery, (y) the date of transmission, if by facsimile, or (z) as applicable, either (i) the first business day following the date of deposit with a qualified courier service or (ii) the third business day following the date of deposit with the United States Post Office or in a regularly maintained receptacle for the deposit of United States Mail. Any refusal to accept delivery of any such communication shall be considered successful delivery thereof.

**Section 25.2 Construction and Binding Effect.** This Agreement constitutes the entire agreement of the parties and supersedes any prior agreements. This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, and their respective successors and assigns subject, however, to the limitations contained in Sections 8.3, 9.1, and 9.2 hereof.

**Section 25.3 Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 25.4 Amendment, Changes, and Modifications.** This Agreement may be amended, changed and/or modified by, and only by, a writing signed by the Issuer, acting in compliance with the Indenture, and the Borrower.

**Section 25.5 Execution of Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 25.6 Law Governing Construction of this Agreement.** This Agreement is prepared and entered into with the intention that the law of the State, exclusive of such state's rules governing choice of law, shall govern its construction.

**Section 25.7 Payments Due on Saturdays, Sundays, and Holidays.** In any case where the date for any payment due under this Agreement shall be, in the location of the Principal Corporate Trust Office of the Trustee, a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized by law to close, then such payment need not be made on such date but may be made on the next succeeding business day not a Saturday, Sunday, legal holiday, or day upon which banking institutions are authorized by law to close with the same force and effect as if made on the date due.

**Section 25.8 Benefit of and Enforcement by Owners.** The Borrower acknowledges that this Agreement is executed in part to induce the purchase of the bonds and to secure the Bonds, and accordingly, the Borrower agrees that all covenants and agreements on the part of the Borrower contained in this Agreement (other than the Issuer's Unassigned Rights) are for the benefit of the Owners from time to time of the Bonds and may be enforced as provided in Section 10.2 of this Agreement and Article X of the Indenture on behalf of the Owners of the Bonds and by the Trustee.

**Section 25.9 Approval by Majority Bondholders.** If approval or consent by Majority Bondholders is required, the Borrower shall deliver to each Bondholder in the manner notice may be

given pursuant to Section 12.1 hereof, a description of the matter for which Majority Bondholder approval or consent is sought and a form on which the Bondholder may indicate its approval or consent or its disapproval or unwillingness to consent. Each Bondholder shall have thirty (30) calendar days from the date of receipt of the information described in the immediately preceding sentence within which to approve or consent or disapprove or not consent. Any Bondholder failing to respond within such thirty (30) day period shall be deemed to have approved or consented to the matter for which approval or consent is being sought.

**Section 25.10 Limited Obligation.** THE BONDS AND OTHER OBLIGATIONS OF THE ISSUER ARE NOT A DEBT OF THE CITY OF PORTLAND, OREGON, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE CITY OF PORTLAND, OREGON, NOR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE BONDS, INCLUDING THE PRINCIPAL AND REDEMPTION PRICE THEREOF AND THE INTEREST THEREON, AND ALL OTHER OBLIGATIONS OF THE ISSUER UNDER THE INDENTURE OR THE LOAN AGREEMENT, ARE PAYABLE SOLELY FROM THE TRUST ESTATE IN ACCORDANCE WITH THE PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT, NOT FROM INCOME OR REVENUES OF OTHER PROJECTS AND NOT FROM THE ISSUER'S REVENUES GENERALLY.

**Section 25.11 Reliance by Issuer.** Anything in this Agreement to the contrary notwithstanding it is expressly understood and agreed by the parties hereto that the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, representation or instrument made or provided by Borrower in order to establish the existence of any fact or statement of affairs within the knowledge of the Borrower, and which is required to be noticed, represented or certified by Issuer hereunder or required to be made in connection with the issuance or delivery of the Bonds.

**SIGNATURES**

IN WITNESS WHEREOF, the Issuer has executed this Agreement by causing its name to be hereunto subscribed by its Authorized Officer and the Borrower has executed this Agreement by causing its name to be hereunto subscribed by the Authorized Borrower Representative of Broadway Housing, LLC, all being done as of the day and year first above written.

**CITY OF PORTLAND, OREGON,  
Acting by and through the City Council  
on the recommendation of the  
Portland Development Commission**

By: \_\_\_\_\_  
Authorized Officer

**BROADWAY HOUSING, LLC,  
As Borrower**

By: \_\_\_\_\_  
Rebecca A. Hein  
Management Committee Chair



**EXHIBIT C**

**FORM OF HOUSING SERVICES AND FACILITIES AGREEMENT**

**HOUSING SERVICES AND  
FACILITIES AGREEMENT**

Broadway Housing, LLC,  
an Oregon limited liability company

The State of Oregon, acting by and through the State Board of Higher Education  
on behalf of Portland State University

Portland State University

Multnomah County, Oregon

## HOUSING SERVICES AND FACILITIES AGREEMENT

This Housing Services and Facilities Agreement (this “Agreement”) is made and effective as of the \_\_\_ day of September, 2008, by and between Broadway Housing, LLC, an Oregon limited liability company (“Broadway Housing”), The State of Oregon, acting by and through the State Board of Higher Education on behalf of Portland State University, and Portland State University (jointly “PSU”).

### RECITALS:

A. PSU has a continuing need for additional, reasonably-priced student and faculty housing facilities and for additional academic space.

B. Portland State University Foundation (the “Foundation”), an Oregon nonprofit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), is organized and operated exclusively to promote the mission of PSU. On January 14, 2003, the Foundation formed Broadway Housing, and is its sole member. Although not the case for general liability purposes, Broadway Housing is disregarded as an entity separate from its sole member for federal tax purposes. Broadway Housing is operated exclusively to own and operate the Project in furtherance of the charitable purposes of the Foundation.

C. Broadway Housing owns certain real property located in Multnomah County, Oregon more particularly described on Exhibit A attached hereto (the “Land”), on which it has constructed a building and other improvements (the “Improvements”). The Land, the Improvements and all appurtenances belonging thereto and personal property associated therewith (including capital equipment purchased by Broadway Housing and used primarily on the Land and/or in the Improvements) are referred to collectively herein as the “Premises.”

D. The Improvements include (i) a student housing facility consisting of approximately 383 units on eight floors (the “Housing Facility”), (ii) one floor of academic space (the “Academic Facility”), and (iii) one floor of retail space (the “Retail Facility”), all for the purpose of serving students and faculty of PSU.

E. In 2003, Broadway Housing obtained financing for the acquisition of the Land and development of the Housing and Academic Facilities through a loan to Broadway Housing of the proceeds of the sale of approximately \$42,975,000 City of Portland, Oregon Economic Development Revenue Bonds (Broadway Project) Series 2003A (Tax-Exempt) (the “Original Tax-Exempt Bonds”) issued by the City of Portland, Oregon (the “Issuer”). Broadway Housing obtained financing for the development of the Retail Facility through a loan to Broadway Housing of the proceeds of the sale of approximately \$4,525,000 City of Portland, Oregon Economic Development Revenue Bonds (Broadway Project) Series 2003B (Federally Taxable)

(the “Original Taxable Bonds” and together with the Original Tax-Exempt Bonds, the “Original Bonds”). The 2003 financing described in this Recital is referred to hereafter as “the Original Financing.”

F. At the time of the Original Financing, Broadway Housing entered into an agreement similar to this Housing Services Agreement, whereby Broadway Housing agreed to provide (i) housing to students and faculty of PSU in accordance with PSU’s housing requirements, (ii) academic facilities to be used by PSU in its academic programs, and (iii) supportive retail services (“the Original Housing Services Agreement”).

G. Due to changing economic conditions, Broadway Housing and PSU have determined that it is necessary and desirable for Broadway Housing to refinance the Premises. Specifically, Broadway Housing and PSU desire for the Issuer to issue for refunding purposes approximately \$52,000,000 City of Portland, Oregon, Economic Development Revenue Bonds (Broadway Project) Series 2008A (“Tax Exempt”) (the “Tax-Exempt Bonds”) and City of Portland, Oregon, Economic Development Revenue Bonds (Broadway Project) Series 2008B (Federally Taxable) (the “Taxable Bonds” and together with the Tax-Exempt Bonds, the “Bonds”). The proceeds from the Bonds shall be used to (redeem/repurchase) the Original Bonds.

H. In conjunction with the refinancing described in Recital G, Broadway Housing and PSU desire to enter into this new Housing Services Agreement, which terms are substantially similar to the Original Housing Services Agreement

#### AGREEMENT:

For and in consideration of the mutual covenants and considerations herein set forth, the receipt and sufficiency of which is hereby acknowledged, Broadway Housing and PSU do hereby agree to the following terms and conditions. Capitalized terms used in this Agreement shall have the meaning given to those terms in Exhibit B attached hereto, as elsewhere defined in this Agreement, or, to the extent such terms are not defined herein, in the Loan Agreement, unless the context or use clearly indicates a different meaning.

#### ARTICLE I ENGAGEMENT OF SERVICES

1.01 Engagement of Services - In General. Broadway Housing agrees to own and operate the Premises for the primary purpose of providing housing, academic and retail services to PSU and/or its faculty, staff and students in accordance with the terms of this Agreement and the Bond Documents. Broadway Housing and PSU agree to meet regularly for the purpose of discussing (i) the management and operation of the Improvements, (ii) the performance of the requirements of the Bond Documents, and (iii) the performance of the services described in

Sections 1.02, 1.03 and 1.04 below. The parties also agree to meet by April 15th of each year for the purpose of establishing and agreeing upon an Annual Budget for the Project, as required by the Bond Documents.

1.02 Engagement of Housing Facility Services. Broadway Housing shall make available approximately 169,900 square feet of space in the Premises for student and faculty housing. Broadway Housing shall provide housing to students and faculty in accordance with PSU's housing policies, as they may change from time to time, and pursuant to the terms and conditions set forth in Exhibit C attached hereto.

1.03 Engagement of Academic Facility Services. Broadway Housing shall lease to PSU approximately 20,800 square feet of space in the Premises to be used for classrooms or other academic support services upon the terms and conditions set forth in Exhibit D hereto. .

1.04 Engagement of Retail Facility Services. Broadway Housing shall make available approximately 21,135 square feet of space in the Premises to retail establishments. The Retail Facility services shall be provided pursuant to the terms and conditions set forth in Exhibit E attached hereto.

## ARTICLE II TERM

2.01 Term. The term (the "Term") of this Agreement shall commence on the date (the "Commencement Date") on which the Bonds are issued and closed ("the Bond Closing Date") and shall end on the earlier of (i) 11:59 p.m. on the 10th day of April, 2035 or (ii) the date on which the lien and security interest of the Indenture shall have been discharged pursuant to the term of the Indenture (the "Scheduled Expiration Date"), unless this Agreement is earlier terminated or extended in accordance with the provisions hereof.

## ARTICLE III PAYMENTS

3.01 PSU Payments. As consideration to Broadway Housing for providing the services described in Article I, PSU shall pay from Available Funds to Broadway Housing or to the Trustee on behalf of Broadway Housing as directed in the Bond Documents, the following amounts:

(a) The amounts specified in Section 5.1 of the Indenture for payment by PSU on the dates and in the manner required by such Section, and

(b) Any other amounts specified in the Indenture or the Loan Agreement for payment by PSU, and

(c) Any other amounts not covered by either of the foregoing clauses which are required to be paid by Broadway Housing under any of the Bond Documents, and

(d) A reasonable fee to Broadway Housing (the "Asset Management Fee") for providing the services described in Article I, as the parties to this Agreement may from time to time agree. At the commencement of this Agreement, and unless otherwise mutually agreed by the parties to this Agreement in writing, the Asset Management Fee shall be three percent (3%) of the Adjusted Gross Revenues.

If required by the terms of the Bond Documents, all or part of the payments required to be paid by PSU by Section 3.01 above shall be paid by PSU directly to the Trustee at the time such payments are due under the Bond Documents.

3.02. Net Expenses. The parties hereto acknowledge that in accordance with and subject to the provisions of the Indenture, amounts held by the Trustee and on deposit in the Revenue Fund and the Surplus Fund, to the extent such amounts are available for distribution, shall be used to satisfy each of the deposits or payments required by Section 5.1 of the Indenture prior to PSU being obligated to make any payments required by Sections 3.01(a) or 3.01(b).

3.03. Reimbursements to PSU. Any payment made by PSU pursuant to Section 3.01(a), (b) or (c) above shall be a "Reimbursable Payment" owing from Broadway Housing to PSU pursuant to the terms of this Section 3.03. The accumulated unpaid Reimbursable Payments shall bear interest at a per annum rate equal to the rate on the Oregon Short Term Fund for the preceding 12 month period. The interest rate shall be set on the commencement date of this Agreement, and shall be readjusted on July 1st of each year thereafter. The Reimbursable Payments shall be due and payable to PSU only at such time, and to the extent, that Surplus Funds exist and are permitted to be released by the Trustee pursuant to the terms of the Indenture. Broadway Housing's inability to repay PSU pursuant to this Section 3.03 due to the unavailability or insufficiency of Surplus Funds shall not be a default hereunder for the purpose of Section 10.01.

3.04 Independent Covenant.

(a) Subject to Article XVII, so long as any of Broadway Housing's obligations under the Bond Documents remain unpaid or unfulfilled:

(1) PSU's obligations to make Payments required in this Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be absolute and unconditional irrespective of any defense (other than payment) or any rights of setoff, recoupment, or counterclaim it may otherwise have against Broadway Housing or any other Person,

(2) PSU shall not (A) suspend, abate, reduce, abrogate, diminish, postpone, modify, or discontinue any payments provided for in Section 3.01 hereof, or (B) fail to observe any of its other obligations contained in this Agreement, and

(3) PSU shall not terminate its obligations under this Agreement for any contingency, act of God, event, or cause whatsoever, including, without limiting the generality of the foregoing, failure of PSU or Broadway Housing to occupy or use the Project as contemplated in this Agreement, the Bond Documents or otherwise, any acts or circumstances which may impair or preclude the use of the Project, any defect in the title, design, operation, merchantability, fitness, or condition of the Project or in the suitability of the Project for PSU's or Broadway Housing's purposes or needs, failure of consideration, any declaration or finding that any of the Bonds or the obligations of Broadway Housing under any of the Bond Documents are unenforceable or invalid, the invalidity of any provision of this Agreement, any acts or circumstances that may constitute an eviction or constructive eviction, destruction of or damage to the Project, the taking by eminent domain of title to or the use of all or any part of the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof or in the rules or regulations of any governmental authority, or any failure of Broadway Housing to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement or the Bond Documents.

(b) Nothing contained in this Section 3.04 shall be construed to release Broadway Housing from the performance of any of the agreements on its part herein contained. In the event Broadway Housing fails to perform any such agreement on its part, PSU may pursue any remedy permitted in this Agreement so long as such action does not abrogate, suspend or modify PSU's obligations hereunder. Furthermore, Broadway Housing hereby grants to PSU full authority to perform any covenant or obligation of Broadway Housing under any of the Bond Documents, the nonperformance of which is alleged in any notice received by Broadway Housing or PSU to constitute a default under the Indenture or any other Bond Document, with full power to do and perform any and all things and acts to the same extent that Broadway Housing could do and perform such things and acts. In the event PSU shall take any action under this Section 3.04(b), that action: (1) shall be taken by PSU as an independent party and not as an agent of Broadway Housing; and (2) shall not constitute an admission by Broadway Housing that any such action was necessary nor waive Broadway Housing's right to contest any claim that such action was necessary.

(c) PSU shall not be entitled to quit, terminate or surrender this Agreement, and shall not be relieved from its obligations to make the Payments by reason of any prohibition of the use of the Premises for any purpose by law, ordinance, governmental regulation, governmental action, or injunction; or (i) any taking (within the meaning of Section 8.02); or (ii) any damage to or destruction of any portion or all of the Premises.

3.05 Transfer of Surplus Funds. At any time that Surplus Funds are paid to, or withdrawn by, Broadway Housing pursuant to Section 5.9 of the Indenture, Broadway Housing shall consult with PSU regarding how such Surplus Funds shall be used or distributed by Broadway Housing.

#### ARTICLE IV PROPERTY TAXES AND ASSESSMENTS

4.01 Time of Payment. Broadway Housing shall pay or cause to be paid as an Operating Expense, all Taxes and assessments assessed against any portion of the Premises as they become due in a timely manner before any fine, penalty, interest or other cost is added for non-payment or late payment and otherwise in the manner required by the Bond Documents. In the event that Broadway Housing has not paid such Taxes or assessments, PSU shall be obligated to pay on behalf of Broadway Housing any such Taxes or assessments. Any such payment by PSU shall be a Reimbursable Payment under Section 3.03 above.

4.02 Proof of Payment. Upon written request by PSU, Broadway Housing shall furnish PSU with satisfactory evidence of payment for all Taxes paid or to be paid pursuant to Section 4.01 above that are Broadway Housing's obligation.

4.03 Contests. Subject to any contrary or inconsistent provisions of the Bond Documents, either Broadway Housing or PSU may contest the validity or amount of any Taxes by appropriate legal proceeding so long as such proceeding does not operate as a default in the payment of taxes or result in a tax lien against the Premises. If both Broadway Housing and PSU jointly agree to contest the validity or amount of any Taxes, all expenses of such contest, if paid by PSU, shall be a Reimbursable Payment pursuant to Section 3.03.

#### ARTICLE V USE, MAINTENANCE AND ALTERATIONS

5.01 Uses.

(a) So long as the Bonds are outstanding, Broadway Housing shall use the Premises only for housing, academic and retail uses in accordance with (i) the housing and academic facilities policies of PSU, (ii) the terms and provisions of the Bond Documents, and (iii) the provisions of this Agreement.

(b) Broadway Housing shall not use or permit the use of the Premises, in whole or in part: (i) in any manner that violates any Legal Requirements, (ii) in any manner or for any purpose that violates the Tax Constraints, (iii) in any manner that constitutes a public or private nuisance, (iv) for the use, generation, manufacture, refining, transporting, treating, storing, handling, disposal, transfer, production, processing, storage, discharge or release of Hazardous Materials on the Premises (excepting only uses of such chemicals or other products that are ancillary to uses of the Premises and typical for properties so used), or (v) in any manner that violates or results in a breach of any of the terms or conditions hereof or of any of the Bond Documents.

(c) Broadway Housing and PSU may in good faith contest the validity of any Legal Requirement, and, pending the determination of such contest, may postpone compliance therewith, except that Broadway Housing shall not so postpone compliance therewith as to subject (i) Broadway Housing to any claim for breach of any provision of the Bond Documents or to any fine or penalty or to prosecution for any misdemeanor, felony or other crime, or (ii) all or any part of the Premises to condemnation, foreclosure or similar proceedings or actions. If PSU contests the validity of any Legal Requirements, its costs shall be reimbursed pursuant to the provisions of Section 3.03.

5.02 Maintenance. Broadway Housing shall maintain the Premises, or cause the Premises to be maintained, in a safe condition and in good repair and otherwise in the condition required by the Bond Documents and the agreements described in Sections 1.02, 1.03 and 1.04 above.

5.03 No Waste. Broadway Housing and PSU will not do, permit, or suffer any waste, damages, disfigurement or injury to or upon the Premises.

5.04 Capital Improvements Generally. Subject to the terms of the Bond Documents, Broadway Housing shall be entitled to construct, restore, replace, remodel, renovate, reconstruct, add to, alter or demolish the Premises or any portion thereof (each particular instance of any of the foregoing being referred to herein as an "Alteration Project"), provided that any Alteration Project not required by the Bond Documents shall be effected (i) with, and only with, PSU's consent thereto, which consent shall not be unreasonably withheld; (ii) in accordance with the housing and academic facilities policies of PSU and the agreements described in Sections 1.02, 1.03 and 1.04; and (iii) in compliance with any applicable provisions of the Bond Documents and with all Legal Requirements.

5.05 Availability of Funds Held Under Indenture. Subject to the applicable terms of the Bond Documents and the then-applicable Annual Budget, PSU will be entitled to cause the payment of: (i) Operating Expenses of the Project to be made from that portion of funds, if any, on deposit in the operating account of Broadway Housing which is actually funded by the



Trustee from amounts in the Revenue Fund and Surplus Fund pursuant to Section 5.1 of the Indenture and (ii) Capital Expenditures relating to the Project to be made from such funds, if any, as are being held in the Capital Replacement Fund, provided that PSU shall remain obligated pursuant to Section 3.01 for the payment of Operating Expenses and/or the funding of Capital Expenditures not paid with funds held in such operating account or the Capital Replacement Fund, as applicable. In that connection, PSU shall, from time to time, forward to Broadway Housing for its approval, which shall not be unreasonably withheld or delayed, requisitions in the form required by the Indenture for requested disbursements from the operating account for the Project funded pursuant to Section 5.1 of the Indenture and/or the Capital Replacement Fund, and such other information as may reasonably be required by Broadway Housing. Following its approval thereof Broadway Housing shall promptly submit such requisitions to the Trustee.

#### ARTICLE VI DAMAGE OR DESTRUCTION

6.01 Damage or Destruction. In the event all or a portion of the Premises are damaged or destroyed by fire or other casualty, the following provisions shall apply:

(a) In the event of any casualty, Broadway Housing shall comply with any applicable provisions of the Bond Documents, and the provisions of the Bond Documents shall control over any inconsistent provision of this Agreement.

(b) Unless the provisions of Section 7.1 of the Loan Agreement otherwise require, in no event shall Broadway Housing exercise the option to prepay, pursuant to Section 11.2 of the Loan Agreement, without the prior written consent of PSU, except no prior written consent of PSU shall be required if PSU is in default under this Agreement or in the event there has been an Event of Nonappropriation.

(c) The parties acknowledge and agree that, without limiting the generality of the definition of Payments, all of Broadway Housing's costs and expenses incurred pursuant to this section (including, but not limited to, all amounts of principal, interest, and premiums payable in connection with any redemption of Bonds) shall, except to the extent paid by application of Broadway Housing's share of CC Proceeds and other available Revenues, and Surplus Funds available to Broadway Housing, be paid by PSU pursuant to Section 3.01 above.

ARTICLE VII  
INSURANCE

7.01 Broadway Housing's Insurance. Broadway Housing shall obtain and maintain any and all insurance required by the Bond Documents. To the extent not otherwise required by the Bond Documents, Broadway Housing shall obtain and maintain any additional insurance reasonably requested by PSU, the cost of which shall be an Operating Expense.

7.02 Policies. Subject to any contrary or inconsistent provisions of the Bond Documents, the policies of insurance required hereunder shall comply with the following requirements.

(a) Such insurance may be carried under blanket policies that include other properties and provide separate coverage for the Land constituting a portion of the Premises and for the Improvements, provided such blanket policies comply with the requirements set forth herein or in the Bond Documents and specify the portion of total insurance allocated to the Premises in an amount sufficient to satisfy the requirements herein or in the Bond Documents.

(b) Broadway Housing shall keep on file, and upon request deliver to PSU, certificates showing the insurance required by Section 7.01 to be in full force and effect.

(c) If commercially available, all policies must contain express waivers by the insurer of any right of subrogation against Broadway Housing and PSU, as the case may be.

(d) If otherwise available, any insurance to be provided shall name the State of Oregon, acting by and through the State Board of Higher Education on behalf of Portland State University as a named or additional insured.

(e) All policies required hereunder shall provide that the protection afforded thereby to Broadway Housing and PSU shall not be reduced or adversely affected by any other insurance carried by Broadway Housing or PSU if commercially available and expedient.

(f) All policies required hereunder shall satisfy all requirements imposed by any mortgagee holding a mortgage or deed of trust to secure debt on the Premises; moreover, in the event of a conflict between any such requirements and any other requirements imposed by this Agreement the mortgagee's requirements shall control and shall be satisfied (and failure to comply with such other requirements, to the extent of such conflict, shall be excused).

## ARTICLE VIII CONDEMNATION

8.01 Bond Documents Control. In the event of a condemnation or other taking, the Bond Documents shall control all aspects of the taking and award. Nonetheless, to the extent not otherwise prohibited by, or contrary to, the terms of the Bond Documents, the following provisions of this Article VIII shall apply.

8.02 Definition of Taking. The term “taking” as used herein shall mean a permanent or temporary taking of all or any portion of the Premises by way of condemnation or the exercise of eminent domain by any person or corporation, municipal, public, private or otherwise.

8.03 Condemnation Proceedings. PSU, Broadway Housing, the Trustee and Broadway Housing’s mortgagee shall each have the right to appear in any condemnation proceeding and to participate in any and all negotiations, hearings, trials and appeals therein.

8.04 Notice of Condemnation. In the event Broadway Housing or PSU shall receive notification of any proposed or pending condemnation proceeding affecting the Premises or any part thereof, the party receiving such notification shall promptly give notice to the other party.

8.05 Rights Under Bond Financing. Broadway Housing shall exercise its rights under the Bond Documents that relate to such taking, and unless the provisions of Section 7.2 of the Loan Agreement otherwise require, in no event shall Broadway Housing exercise the option to prepay pursuant to Section 11.2 of the Loan Agreement without the prior written consent of PSU, except no prior written consent of PSU shall be required if PSU is in default under this Agreement or an Event of Nonappropriation shall have occurred and be continuing.

8.06 Permanent Taking of Whole Premises. To the extent permitted by the Bond Documents, if a permanent taking of the whole Premises occurs, subject to the effects of actions taken pursuant to Section 8.05 and to the rights of the Trustee or a successor mortgagee of Broadway Housing, any such condemnation awards given to Broadway Housing and/or PSU, whether by separate awards or as a single award, shall first be applied in accordance with the provisions of the Bond Documents and then shall be applied to satisfy any and all outstanding Payments due, and the balance, if any, shall be paid to Broadway Housing. Any such permanent taking shall not release either party from or otherwise affect or alter in any way any obligations hereunder, including PSU’s obligations under Section 3.01.

8.07 Partial Taking. To the extent permitted by the Bond Documents, in the event of a permanent taking of less than the whole Premises or a temporary taking of all or any portion of the Premises, the following provisions shall apply.

(a) This Agreement shall continue in effect and the Term shall not be reduced or affected in any way.

(b) Broadway Housing shall promptly commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the condemnation award and for unavoidable delays) to repair, alter, raze, restore, remodel, renovate, rebuild or replace the Premises according to plans approved by Broadway Housing and PSU, and Broadway Housing shall take all reasonable steps necessary to maintain the Premises in a safe condition following such taking.

(c) Subject to the effects of actions taken pursuant to Section 8.05 and subsection (b) of this Section 8.07, and subject to the rights of the Trustee or a successor mortgagee of Broadway Housing, any and all condemnation awards for such partial taking given to Broadway Housing and/or PSU, whether by separate awards or as a single award, shall first be applied in accordance with the provisions of the Bond Documents and then shall be applied to satisfy any and all outstanding Payments, and the balance, if any, shall be paid to Broadway Housing.

(d) Such partial taking shall not release either party from or otherwise affect or alter in any way any obligations hereunder, including but not limited to PSU's obligation to make Payments.

(e) The provisions of this Article VIII are subject to any contrary or inconsistent provisions of the Bond Documents.

#### ARTICLE IX BOND DOCUMENTS

9.01 By the time of execution of this Agreement, PSU shall have reviewed and approved of the terms of the Bond Documents. The execution and delivery of this Agreement by PSU shall constitute PSU's acknowledgement and agreement that any conditions or requirements of PSU hereunder with regard to the Bond Documents, and the effectiveness of this Agreement, have been satisfied or waived. In particular, and as a material inducement for PSU to enter into this Agreement, the Bond Documents require:

(a) That Broadway Housing will deposit all rents and other revenues from the Premises into the Revenue Fund established pursuant to Section 5.1 of the Indenture, from which deposits the Trustee will timely release sufficient funds (if available) to pay debt service, Operating Expenses for the Premises, and any other amounts specified in the Indenture in accordance with the terms of the Indenture.

(b) That Broadway Housing establish and maintain reserve accounts as required by Article V of the Indenture.

It is not the intent of this Section to limit or alter the terms and conditions of the Bond Documents as they relate to this Agreement, and in the case of any inconsistency or discrepancy between the terms of the Bond Documents and the description of such Bond Documents contained herein, the description contained herein shall be disregarded.

#### ARTICLE X DEFAULT AND REMEDIES

10.01 Default. Each of the following shall be deemed a default under this Agreement: (a) any failure to make any payment due under this Agreement within ten (10) business days of written notice of such default from the nondefaulting party; (b) any other default of an obligation under this Agreement that continues for thirty (30) business days after written notice from the nondefaulting party of such failure and provided, however, that if any default referred to in this clause (b) be such that it cannot with due diligence be cured within such thirty (30) day period but can be wholly cured within a period of time not materially detrimental to the rights of the other party, the Trustee, or the Bondholders, it shall not be a default hereunder if corrective action is instituted within the applicable cure period and diligently pursued until the default is corrected; (c) the filing, at any time prior to or during the Term, by or against a party, in any court of competent jurisdiction, of a petition in bankruptcy, insolvency proceeding, proceedings for reorganization, for the appointment of a receiver or trustee of all or any portion of said party's property, which proceeding is not dismissed within sixty (60) days from the date of its filing; or (d) the execution of an assignment for the benefit of creditors, the consent to the appointment of a receiver or the taking advantage of any insolvency act, which assignment is not rescinded or revoked within sixty (60) days from the date of its filing.

Each of the following defaults shall be deemed a default under this Agreement with respect to PSU: (a) PSU disaffirms, disclaims, repudiates, or rejects in whole or in part, or challenges the validity of, this Agreement, or (b) due to the adoption of, or any change in, any applicable law after the date of execution of this Agreement, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful for PSU to perform any absolute or contingent obligation to make a payment under this Agreement or to comply with any other material provision of this Agreement.

10.02 Remedies. Subject to Section 3.04 above and Article XIII, upon the occurrence and continuance of a default specified in Section 10.01 above, the nondefaulting party shall have the right to take any action permitted by applicable law and to pursue all remedies available at law or in equity (including the right to demand and receive specific performance provided at law or in equity); provided, however, that neither party shall have the right to terminate this

Agreement prior to the Scheduled Expiration Date without the prior written consent of the Trustee.

10.03 Remedies Not Mutually Exclusive. No remedy herein shall be considered exclusive of any other remedy but shall be cumulative and in addition to every other remedy given hereunder or now or thereafter existing at law or in equity, and may be exercised contemporaneously or otherwise with every other remedy.

10.04 No Waiver. No waiver of any breach of any of the covenants of this Agreement shall be construed, taken or held to be a waiver of any other breach or acquiescence of consent to any further or succeeding breach of the same covenant.

#### ARTICLE XI PERMITTED ENCUMBRANCES

11.01 Encumbrance of Broadway Housing's Interest. Broadway Housing shall have the right to encumber Broadway Housing's interest in the Premises in connection with, and only in connection with, the Bond Financing and to assign Broadway Housing's rights under this Agreement to the Trustee and to any mortgagees or trustee in connection therewith. PSU hereby consents to such encumbrance (as used herein, the term "encumbrance" includes deeds of trust and collateral assignments), and agrees that this Agreement and PSU's rights hereunder shall be subject and subordinate thereto. PSU agrees to enter into such reasonable subordination and other agreements, including but not limited to estoppel certificates, as may be requested by any of such trustee, mortgagees or assignees to evidence such subordination and agreement by PSU. PSU agrees to recognize the Trustee or any assignee, successor, or transferee as "Broadway Housing" for the performance of all duties and obligations arising by reason of the interest of this Agreement being so assigned or transferred, so long as such assignee, successor or transferee performs all duties of Broadway Housing hereunder.

11.02 Additional Encumbrances. To the extent permitted by the Bond Documents, Broadway Housing may, with the written consent of PSU, grant other deeds of trust or other encumbrances to finance future capital improvements.

#### ARTICLE XII INSPECTIONS

12.01 Subject to the Oregon Residential Landlord Tenant Act (if applicable) and the applicable provisions of any leases, Broadway Housing agrees to permit PSU and its authorized representatives to enter the Premises at all times during reasonable business hours for the purpose of inspecting the same upon not less than five (5) business days' prior written notice, and provided PSU shall not unreasonably interfere with the use and occupancy of the Premises by Broadway Housing or any retail tenant of Broadway Housing.

ARTICLE XIII  
ADVANCE WAIVER/NON-RECOURSE

13.01 Advance Waiver and Release. Broadway Housing is an Oregon limited liability company, the sole member of which is the Foundation, an Oregon nonprofit corporation and public charity. PSU acknowledges and agrees that the Foundation is not a party to this Agreement and assumes no duty and no liability as a result of the participation of Broadway Housing in this Agreement. PSU further agrees that, in the event of any default, liability of or claim against Broadway Housing under this Agreement or otherwise, PSU shall have no recourse to the Foundation or its assets for any compensation, damages or other relief as a result of any such default, liability or claim, and hereby expressly waives and releases the Foundation from the same.

13.02 Exculpation. Any other provision of this Agreement notwithstanding, no person shall enforce the liability and obligations of Broadway Housing to perform and observe the obligations contained in this Agreement in any action or proceeding other than either (i) by specific performance, injunction or other non-monetary remedy or (ii) a money judgment executable only against the assets of the Premises and/or funds directly related to the Premises (e.g. bank accounts of Trustee or Broadway Housing holding Revenues, Reserve Accounts, condemnation and/or insurance awards or funds related to the Project, etc.). To the extent provided by the Bond Documents, PSU's remedies shall be subordinate to the Trustee and the holders of enforceable security interests under the Bond Documents. Notwithstanding the above, PSU remedies shall include any Listed Remedy of Trustee specified in Article X of the Loan Agreement, and shall be subject to all limitations of remedies contained in Article X of the Loan Agreement.

ARTICLE XIV  
[RESERVED]

ARTICLE XV  
ASSIGNMENTS

15.01 Consent Required. Except as allowed by Section 11.01 above, neither party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. It shall be deemed reasonable to withhold consent if the proposed transfer would violate any of the terms of the Bond Documents, the Tax Constraints or the Legal Requirements or would result in any Tax-Exempt Bonds becoming taxable.

ARTICLE XVI

NOTICES AND OTHER COMMUNICATIONS

16.01 All notices and other communications hereunder shall be effective if and only if in writing and delivered personally, transmitted by facsimile which the sender's facsimile machine indicates has been sent (in the case of an addressee whose facsimile number is supplied), sent by Federal Express or similar courier, or mailed by registered or certified mail (return receipt requested), charges or postage prepaid, to the addressee at the address that shall most recently have been designated, by effective notice hereunder from the addressee to the sender, as the addressee's desired address for notices hereunder (or, prior to any such notice, at the address for the addressee set forth below):

(a) if to PSU, to:

Lindsay Desrochers  
Vice President, Finance and Administration  
Portland State University  
1633 SW Park  
Portland, OR 97207

with a copy to:

Eric Iverson  
Assistant Attorney General  
Oregon Department of Justice  
General Counsel Division  
1162 Court Street NE  
Salem, OR 97310

(b) if to Broadway Housing, to:

Broadway Housing, LLC  
2125 SW Fourth Avenue, Suite 510  
PO Box 243  
Portland, OR 97207-0243  
Attn: Management Committee Chair  
Fax: (503) 725-5876



with a copy to:

Garvey Schubert Barer  
121 SW Morrison Street, 11th Floor  
Portland, OR 97204-3141  
Attn: Richard Baroway  
Fax: (503) 226-0259

Unless otherwise provided, written notices so delivered, transmitted, sent or mailed shall be effective on the earlier of (x) actual delivery, (y) the date of transmission, if by facsimile, or (z) as applicable, either (i) the first business day following the date of deposit with a qualified courier service or (ii) the third business day following the date of deposit with the United States Post Office or in a regularly maintained receptacle for the deposit of United States Mail. Any refusal to accept delivery of any such communication shall be considered successful delivery thereof.

#### ARTICLE XVII NON-APPROPRIATION PROVISIONS

17.01 Definition. "Available Funds" means (i) funds appropriated or otherwise made available by the Oregon Legislative Assembly including limited and non-limited funds, or allotments pursuant to ORS Chapter 291, sufficient to allow PSU, in the exercise of its reasonable administrative discretion, to pay amounts due under this Agreement for the fiscal period in which the amounts are due and (ii) all unrestricted funds of PSU not otherwise encumbered, or statutorily or contractually restricted, including but not limited to auxiliary housing services, auxiliary administration, vending machines, auxiliary copy service, auxiliary room rentals, unrestricted reserves and unrestricted funds being held by PSU.

17.02 Agreement Not Debt. Broadway Housing and PSU understand and intend that the obligation of PSU to make Payments is limited to Available Funds, and is subject (i) to appropriation or limitation of funds by the Oregon Legislative Assembly for the fiscal period in which payments are due or designation by the Oregon Legislative Assembly as non-limited funds or (ii) to the availability of unrestricted funds of PSU, and shall not in any way be construed to be a debt or obligation of PSU or the State in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by PSU.

17.03 Limitation on State Liability. THIS AGREEMENT AND OBLIGATIONS OF PSU HEREIN, ARE NOT GENERAL OBLIGATIONS OF THE STATE BUT ARE LIMITED OBLIGATIONS OF PSU AND ARE PAYABLE SOLELY FROM AVAILABLE FUNDS AS PROVIDED IN THIS AGREEMENT. BROADWAY HOUSING SHALL

HAVE A VALID CLAIM ONLY AGAINST THE AVAILABLE FUNDS AS PROVIDED IN THIS AGREEMENT. NEITHER BROADWAY HOUSING NOR ANY OTHER PARTY SHALL EVER HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE STATE TO PAY AMOUNTS DUE HEREUNDER. THE OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT CONSTITUTE A CHARGE, LIEN OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE STATE OF OREGON, EXCEPT AS GRANTED PURSUANT TO THIS AGREEMENT. THE OBLIGATIONS HEREUNDER SHALL NOT CONSTITUTE AN INDEBTEDNESS OF THE STATE OF OREGON OR A PLEDGE OR LENDING OF THE CREDIT THEREOF, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION AND DO NOT CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE OR A RIGHT TO ENFORCE PAYMENT AGAINST ANY PROPERTY OF THE STATE. THE OBLIGATION OF PSU TO MAKE PAYMENTS IS CONDITIONED UPON THERE BEING SUFFICIENT AVAILABLE FUNDS, AS DEFINED HEREIN.

17.04 Non-Appropriation. Notwithstanding any other provision of this Agreement, including Sections 3.04(c) and 10.01 above, in the event PSU does not (i) receive from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority, (ii) receive allotments pursuant to ORS Chapter 291, or (iii) have any unrestricted funds, sufficient to allow PSU, in the exercise of its reasonable administrative discretion, to pay the amounts due hereunder for any fiscal period or portion thereof in which amounts are due, the obligation of PSU to make Payments shall be suspended on the date on which funds are no longer available. While such suspension of Payments may constitute a default by Broadway Housing under one or more Bond Documents, such suspension of Payments shall not constitute an event of default hereunder. PSU shall have no obligation hereunder to later make payments due during the period of any such suspension, unless and until sufficient Available Funds later become available. PSU shall give to Broadway Housing written notice of such nonavailability of funds as soon as reasonably practicable, but in no event more than ten (10) business days after PSU determines or receives notice of such nonavailability.

17.05 Covenants of PSU Regarding Available Funds. PSU covenants and agrees to take all reasonable steps, and shall diligently and using its best efforts, seek to (i) obtain Available Funds and (ii) generate such Available Funds, in the following manner and in the following priority:

(a) PSU will allocate funds from available auxiliary enterprises revenues of PSU, including but not limited to student housing auxiliaries from all PSU housing facilities, food service, and conference services.

(b) In the event the funds available above are insufficient to make the Payments, the PSU Vice President, Finance and Administration (or any officer of PSU

that succeeds to the duties of such Vice President), through the appropriate rulemaking process, will seek to raise the fines and fees charged for various auxiliary services.

(c) In the event the funds available above are insufficient to make the Payments, the PSU Vice President, Finance and Administration (or any officer of PSU that succeeds to the duties of such Vice President) will make such Payments from any other unrestricted revenues (e.g., tuition) and unrestricted fund balances legally available to PSU to make such Payments.

(d) In the event the funds available in subsections (a) through (c) above are insufficient to make the Payments, the PSU Vice President of Finance and Administration will seek funds from other legally available sources.

(e) In the event the funds available in subsections (a) through (d) above are insufficient to make the Payments, PSU will use its best efforts to seek an additional appropriation or limitation from the Oregon Legislative Assembly or the Legislative Emergency Board.

(f) In order to be able to carry out the obligations set out above, PSU covenants that it shall:

(i) seek sufficient limitation for any anticipated Payments or additional fines or fees;

(ii) Upon request, provide the Oregon University System with an estimate of non-limited other funds sufficient to cover the Payments;

(iii) use its best efforts to promulgate new rules if fines or fees need to be increased under subsection (b) of this section; and

(iv) use its best efforts to accurately estimate the Payments that will be due and payable hereunder.

#### ARTICLE XVIII GENERAL PROVISIONS

18.01 Invalidity of Particular Provisions. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent provided by law.

18.02 Operations. Broadway Housing shall, at PSU's request from time to time, consult with PSU concerning operation of the Premises.

18.03 Construction/Applicable Law/Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. Any action brought under this Agreement shall be brought in Multnomah County, Oregon. This Agreement shall not be construed more strongly against either party, regardless of who or which may be deemed to have prepared it.

18.04 Covenants Binding. The covenants, agreements, terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto.

18.05 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

18.06 Interest Rates. In the event that the interest payable under the provisions of any portion of this Agreement are at a rate in excess of that lawfully allowed or which are deemed to be by law usurious, illegal or improper, then the rate payable shall be reduced to the rate which is the maximum permitted or allowed by law as being proper, non-usurious and lawful.

18.07 Signage. PSU shall have the right to install signage desired by PSU so long as such signage is in compliance with all applicable codes and maintain all applicable provisions hereof and of the Bond Documents and approved in advance by Broadway Housing. The cost of such signage shall be an Operating Expense.

18.08 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

18.09 Day. The word "day" when used in this Agreement shall refer to calendar days unless otherwise expressly stipulated.

18.10 Priority of Bond Documents.

(a) Notwithstanding any provision hereof to the contrary, PSU's rights under this Agreement shall not be exercisable by PSU except to the extent that such exercise may be and is effected without violating or conflicting with any provision of the Bond Documents. In the case of an exercise of a right under this Agreement that would be precluded by the previous sentence unless consented to by one or more third parties, Broadway Housing shall (at PSU's expense) seek the requisite consent(s) and assist PSU

in seeking such consent(s). PSU acknowledges that it is familiar with the terms, conditions and requirements of the Bond Documents and agrees to comply with the obligations and agreements of PSU specified therein to be performed by PSU, including without limitation Article V of the Indenture. Notwithstanding anything to the contrary, in the event of a conflict between this Agreement and any of the Bond Documents, the Bond Documents shall control.

(b) PSU shall take all reasonable steps to assist Broadway Housing in complying with Broadway Housing's obligations under the Bond Documents. In particular, without limiting the generality of the foregoing, PSU shall, at Broadway Housing's request, provide Broadway Housing with such reports and other data (including forecast and budgetary data) regarding PSU and/or the Premises as are required of Broadway Housing by the Bond Documents or otherwise reasonably requested by Broadway Housing. In addition, PSU shall provide the audited annual financial statements of Oregon University System to Broadway Housing within thirty days of the audited annual financial statements becoming publicly available.

(c) Broadway Housing shall keep PSU informed concerning the status of all arrangements provided by the Bond Documents. In particular, without limiting the generality of the foregoing, Broadway Housing shall furnish PSU with copies of all notices of default with respect to any of the Bond Documents given or received by Broadway Housing.

18.11 Execution in Counterparts/Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument. Original signatures delivered via facsimile shall be deemed originals. The party providing facsimile signatures shall, within a reasonable time thereafter, deliver the document with the original signatures to the other party.

18.12 Status of Parties. Nothing herein contained, whether express or implied, nor any acts by either party, nor any other circumstances, shall constitute or be deemed or construed to create: (i) a partnership or joint venture, a limited liability company membership interest, or any general agency relationship, between the parties; (ii) except as provided pursuant to Section 1.03 above and Exhibit D, a lease, or any lessor-lessee relationship between the parties; (iii) except as provided pursuant to Section 1.03 above and Exhibit D, any legal, equitable or possessory interest by PSU in the Premises; or (iv) any right in PSU as a licensee or purchaser of the Premises.

Neither party shall have any authority to bind or otherwise obligate the other, orally, in writing, or by any acts, unless specifically authorized by the other in writing. Each party shall take all reasonable steps in dealing with third parties to negate any inference that such party is a general agent or partner of the other party.

18.13 Attorneys' Fees. In the event of any action or proceeding at law or in equity between Broadway Housing and PSU or their successors or assigns to enforce any provision of this Agreement or to protect or establish any right or remedy of either Broadway Housing or PSU hereunder, the unsuccessful party to such action or proceeding and in any appeals in connection therewith shall pay the costs, expenses and reasonable attorneys' fees incurred in the action or proceeding by such prevailing party, and if such prevailing party shall recover judgment in any such action, proceeding, or appeals, such costs, expenses, and attorneys' fees shall be included in and as a part of such judgment. [PSU's obligation in this Section 18.13 is limited to the extent permitted by Article XI, section 7, of the Oregon Constitution.]

18.14 Performance. Except with respect to Reimbursable Payments, if either party (the "payor"), at its option, pays or performs any obligation of the other party (the "other") due to the other's failure or refusal to pay or perform any of its obligations hereunder, which failure or refusal extends beyond any applicable notice and cure period, reimbursement of such money expended by the payor shall be a demand obligation due to the payor with interest at the rate of eight percent (8.0%) per annum. Interest shall accrue from the date the payor demands payment of any such unpaid amount until the same is fully paid.

18.15 Single-Member/Federal Tax Covenant. Broadway Housing hereby represents, warrants and covenants to PSU that the Foundation is, and at all times shall be, the sole member of Broadway Housing, and shall be disregarded as an entity separate from the Foundation for federal tax purposes. Broadway Housing shall operate, and its assets shall be exclusively used, to further the charitable purposes of the Foundation in accordance with Section 501(c)(3) of the Code.

18.16 Single-Purpose Covenant. Broadway Housing hereby agrees that it shall engage in no activities other than ownership, leasing, operation, and, ultimately, disposition of the Premises, and activities related thereto.

18.17 Warranties. Each party, individually but not jointly, represents and warrants (a) it has full power, authority and legal right to enter into this transaction; (b) the execution and delivery of this Agreement (i) has been duly authorized and approved; (ii) is not in contravention of the terms of any statutory, regulatory or contractual restriction or provision; and (iii) does not require any governmental consent, registration or approval that has not previously been obtained; and (c) this Agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

18.18 Negative Pledge. PSU shall not grant, create, assume or permit to exist any lien, mortgage, deed of trust, pledge, security interest or other charge or encumbrance other than Permitted Liens on any assets of PSU now owned or hereafter acquired, including, without limitation, any auxiliary enterprises revenues, any unrestricted revenues or any unrestricted fund

balances or any part thereof (as each term is described in Section 17.05), or any Available Funds or any part thereof.

18.19 Additional Marketing and Operating Covenants. PSU agrees:

- (a) to include the Housing Facility in all information and marketing materials regarding student housing that it provides to students and prospective students of PSU and other potential occupants of the Housing Facility, and to advertise, and permit Broadway Housing, or any Manager of the Housing Facility to advertise, beds, units and parking access of the Housing Facility on PSU's campus;
- (b) in PSU's mail outs, catalogues, informational brochures, web site, and other literature, to identify the Housing Facility as PSU sponsored student housing and as residential housing on the same basis as other PSU housing;
- (c) to provide to students residing at the Housing Facility the same or equivalent services and access it provides to students in its own and other housing facilities from time to time, including access to PSU's telecommunications network;
- (d) to take into account the Housing Facility and its occupancy in any planning for future housing projects;
- (e) to implement procedures to assist students in applying for residence at the Housing Facility;
- (f) at the request of Broadway Housing, to facilitate informational meetings regarding the Housing Facility; and
- (g) to take such additional actions to ensure or facilitate the collection of rents as PSU may from time to time institute with regard to its other PSU owned and/or operated student housing facilities.

18.20 Additional Projects.

- (a) PSU covenants and agrees, for as long as the lien and security interest of the Indenture shall not have been discharged or any Bonds shall remain outstanding, that PSU will not operate, support, build, cause to be built, or assist, directly or indirectly, in the building of any additional housing facilities for students of PSU that is built, developed, and/or owned, or proposed to be built, developed, and/or owned by PSU or any affiliate of PSU, or a private entity, be it for-profit or not-for-profit entity (any such facility being referred to as an "Additional Project") on a preferential basis to that of the Housing Facility.
- (b) PSU covenants and agrees, for as long as the lien and security interest of the Indenture shall not have been discharged or any Bonds shall remain outstanding, that PSU will not operate, support, build, cause to be built, or assist, directly or indirectly, in the building of any Additional Project unless:

(1) PSU shall have delivered to Broadway Housing, and the Trustee the following: (A) a housing study acceptable to the Trustee delivered by a housing consultant acceptable to the Trustee demonstrating sufficient demand for the Housing Facility and the Additional Project, (B) evidence that the units of the student Housing Facility have been eighty-five percent (85%) leased in the prior and current Fiscal Year, and (C) evidence that the University Housing Debt Service Coverage Ratio for the Fiscal Year immediately preceding the Fiscal Year in which the construction of the Additional Project begins, was not less than 1.10:1.00. The study delivered pursuant to clause (A) of this paragraph shall demonstrate, based on reasonable assumptions, that for each of the two (2) Fiscal Years immediately succeeding the Fiscal Year in which the Additional Project is expected to be placed into service, the units of the student Housing Facility are expected to be at least eighty-five percent (85%) leased and the University Housing Debt Services Coverage Ratio is projected to be at least 1.10:1.00; and

(2) An Event of Default under the Indenture, Event of Nonappropriation, or a default hereunder or condition or event which, with the giving of notice or the passage of time or both would become such an Event of Default or default, shall not have occurred and be continuing.

18.21 Amendments. This Agreement may not be amended, supplemented or waived in any manner without the prior written consent of the Trustee, except that such consent shall not be required for an amendment or revision to Exhibits C, D and/or E, provided such revisions do not adversely affect the ability of PSU to perform its obligations hereunder.

18.22 Third Party Beneficiaries. The Trustee shall be and is hereby recognized by PSU and Broadway Housing as a third party beneficiary and party in interest of this Agreement, and, as such, may enforce PSU's and Broadway Housing's duties, obligations and agreements hereunder and any right, remedy, or claim conferred or granted hereunder.

18.23 Operation and Management of Project.

(a) Broadway Housing agrees that it shall perform, or cause to be performed, all of the obligations, covenants, duties and agreements of Broadway Housing under the Loan Agreement and the other Bond Documents with respect to the operation, maintenance and management of the Project. In the event that Broadway Housing does not perform the duties of the previous sentence, PSU shall have the right, upon reasonable advance notice except in an emergency, to enter the Premises and perform, or cause to be performed, any such obligation, and any costs incurred by PSU shall be deemed a Reimbursable Payment hereunder. In connection with the operation, maintenance and management of the Project, PSU further agrees that it shall not violate, or cause to be violated, any conditions, representations, warranties, covenants or restrictions in the Bond Documents.



(b) Notwithstanding any other provision of this Agreement, Broadway Housing agrees that it shall comply with Section 8.15 of the Loan Agreement with regard to management of the Premises, and both PSU and Broadway Housing agree and understand that any manager (including PSU) may be removed, and a successor manager appointed, pursuant to the terms of Section 8.15 of the Loan Agreement.

(c) Both parties shall take such actions as are necessary to ensure that the Project is operated, managed, maintained, and leased as a first class facility, in the same manner as is customary and usual in the operation, management, maintenance, and leasing of comparable student residential housing, classroom and/or retail facilities (including any PSU owned and/or managed facilities), and that the Project has such services as are customarily provided by operators of similar facilities of comparable class and standing as the facilities of the Project. Any manager (including without limitation PSU) shall act solely with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the management, operation, and leasing of student residential housing, classroom and/or retail facilities. With regards to the management, maintenance, operation, and leasing of the Project neither party shall make an adverse distinction between the Project on the one hand and PSU owned, supported and/or managed student residential housing, classroom and retail facilities that are comparable to the facilities of the Project on the other hand.

(d) PSU shall integrate the Housing Facility and any PSU owned or managed student housing facilities into a uniform housing system, giving no preference to any PSU owned or managed, or any privately owned housing facility, over the Housing Facility.

18.24 Prepayment of Loan. Broadway Housing shall not exercise its option to prepay the Loan, pursuant to Sections 11.2 and 11.3 of the Loan Agreement, without the prior written consent of PSU.

#### ARTICLE XIX PARKING

Broadway Housing and PSU acknowledge that parking for the Housing Facility and the Retail Facility will be provided by PSU or its affiliates outside of the Premises, at PSU's then applicable parking fee rates.

**IN WITNESS WHEREOF**, the parties have signed, sealed and delivered this Agreement on the dates indicated but as of the day and year first written above.

The State of Oregon acting by and through the State Board of Higher Education on behalf of the Portland State University

**BROADWAY HOUSING LLC:**

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

By

Name: Rebecca A. Hein

\_\_\_\_\_  
Title: President, State Board of Higher Education

Title: Management Committee Chair

Date:

Date: \_\_\_\_\_

\_\_\_\_\_

The State of Oregon acting by and through the State Board of Higher Education on behalf of the Portland State University

By

\_\_\_\_\_  
Title: Secretary, State Board of Higher Education

Date:

\_\_\_\_\_

The State of Oregon acting by and through the State Board of Higher Education on behalf of the Portland State University

By:

\_\_\_\_\_  
Name: Lindsay Desrochers  
Title: Vice President, Finance and Business Administration, Portland State University

Date:

\_\_\_\_\_

Approved as to Legal Sufficiency

Oregon Department of Justice

By:

---

Name: Eric Iverson

Title: Assistant Attorney General

Date:

**EXHIBIT A**

**LEGAL DESCRIPTION**

PARCEL 1: The West 66 feet of Lot 5, Block 193, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon.

PARCEL 2: The West 66 feet of Lot 6, Block 193, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon.

PARCEL 3: Lots 7 and 8, Block 193, EXCEPTING THEREFROM the North 5 feet of the Easterly 35 feet of Lot 7 and also EXCEPTING THEREFROM the Easterly 35 feet of Lot 8, Block 193, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon.

PARCEL 4: The North 5 feet of the Easterly 35 feet of Lot 7 and the Easterly 35 feet of Lot 8, Block 193, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon.

PARCEL 5: The East 34 feet of Lots 5 and 6, Block 193, CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

PARCEL 6: Lot 3, Block 193, CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

PARCEL 7: Lot 4, Block 193, CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

## **EXHIBIT B**

### **DEFINITIONS**

#### **[May need further updating]**

“Additional Project” shall have the meaning ascribed such term in Section 18.20 herein.

“Adjusted Gross Revenues” shall mean the sum of (i) all rents from the Housing Facility, (ii) all storage fees or rents, and (iii) the base rent for all Retail Facilities (but not including any additional rents owing such as the retail tenant’s share of utilities, taxes and operating expenses).

“Alteration Project” shall have the meaning ascribed to such term in Section 5.04.

“Asset Management Fee” shall have the meaning ascribed such term in Section 3.01(D).

“Available Funds” shall have the meaning set forth in Section 17.01.

“Bonds” shall have the meaning ascribed to such term in Recital E.

“Bond Documents” shall have the meaning ascribed to such term in Section 1.2 of the Loan Agreement.

“Bond Financing” shall mean the bond financing described in Recital G.

“CC Proceeds” shall mean proceeds of casualty insurance generated by a casualty affecting the Premises and proceeds of a permanent or temporary taking of all or any portion of the Premises by way of condemnation or the exercise of eminent domain powers.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commencement Date” shall have the meaning ascribed to such term in Section 2.01.

“Environmental Laws” shall have the meaning ascribed to such term in Section 3.7 of the Loan Agreement.

“Hazardous Materials” shall have the meaning ascribed to such term in Section 3.7 of the Loan Agreement.

“Housing Facility” shall have the meaning ascribed to such term in Recital D.

“Improvements” shall have the meaning ascribed to such term in Recital C.

“Indenture” shall mean the Trust Indenture between the Issuer and the Trustee dated as of \_\_\_\_\_, 2008.

“Issuer” shall mean the City of Portland, Oregon, acting by and through its City Council and the Portland Development Commission.

“Land” shall have the meaning ascribed to such term in Recital C and in Exhibit A.

“Legal Requirement(s)” means any present or future law, act, rule, requirement, order, direction, ordinance or regulation concerning the condition or use of the Premises, or any part thereof, of any Federal, State, municipal or other public department, bureau, office or authority or of the National Board of Fire Underwriters, or other body having similar functions, or of any liability, fire or other insurance company having policies outstanding with respect to the Premises, whether or not such law, act, rule, requirement, order, direction, ordinance or regulation requires the making of structural alterations or the use or application of portions of the Premises for compliance therewith or interferes with the use and enjoyment of the Premises.

”Loan Agreement” shall mean the Loan Agreement between Broadway Housing and the Issuer, dated as of \_\_\_\_\_, 2008.

“Operating Expenses” shall mean (i) all costs, expenditures and other payments incurred, paid or payable by Broadway Housing, acting in good faith, in connection with this Agreement, the Bond Documents or Broadway Housing’s use of the Premises during the Term, including, but not limited to, all costs, expenses and payments in connection with the Bond Financing (including, but not limited to, additions to Reserves, costs, expenses and other payments paid or made by application of amounts released from Reserves), Taxes, insurance costs, maintenance and repair costs, leasing costs, attorneys’ and accountants’ fees, property management fees and all impositions, costs, expenses, liabilities, obligations and other payments that Broadway Housing is obligated to pay as owner and operator of the Housing Facility, Retail Facility and other portions of the Premises; and (ii) costs (including attorney fees) incurred in challenging any of the Taxes, any of the Legal Requirements or any condemnation action, or in responding to or prosecuting any claim, suit or action relating to the Premises.

“Payments” shall mean the sum of all amounts due under Section 3.01 and all other amounts payable by PSU hereunder.

“Permitted Liens” shall mean i) any lien or restriction placed on the use of an account or asset that is a purchase money security interest or other lien granted to an entity financing the acquisition of the asset being liened; and (ii) any lien or restriction placed on the use of an account or asset that is imposed by statute (e.g. restrictions on uses of

parking auxiliaries), administrative rule (e.g. parking services fees and fines used for certain purposes, rules regarding the acceptance of gifts), or contract related to the use of the account or asset at the time granted or given to PSU (e.g. grant contract restrictions limiting use of grant funds for grant purposes).

“Premises” shall mean the Land and the Improvements.

“Reimbursable Payment” shall have the meaning ascribed to such term in Section 3.03.

“Reserves” shall mean the Debt Service Reserve Fund and the Operating Reserve Fund, and any similar reserve funds or accounts established and maintained under the Indenture.

“Retail Facility” shall have the meaning ascribed to such term in Section 1.04.

“Revenues” shall have the meaning ascribed to such term in Section 1.2 of the Loan Agreement.

“Scheduled Expiration Date” shall have the meaning ascribed to such term in Section 2.01.

“State” shall mean the State of Oregon.

“Surplus Fund” shall mean the funds held in the Surplus Fund which are permitted to be released there from pursuant to Section 5.9 of the Indenture.

“Tax Constraints” An act, activity or purpose shall be considered to violate the “Tax Constraints” if and only if it adversely impacts or jeopardizes (a) the Foundation’s status as an organization described in Section 501(c)(3) of the Code which is not a private foundation under Section 509(a) of the Code and is exempt from federal income taxation under Section 501(a) of the Code (except for unrelated business income subject to taxation under Section 511 of the Code), or (b) the treatment of Broadway Housing as a division of the Foundation for federal income tax purposes, or (c) the exclusion from gross income (within the meaning of the Code) of interest income on the Tax-Exempt Bonds or (d) the characterization of the gross income from the facilities financed with the proceeds of the Tax-Exempt Bonds as not constituting gross income derived from an unrelated trade or business within the meaning of Section 513 of the Code.

“Taxes” shall mean taxes, assessments, special assessments and other impositions levied on or assessed against the Premises or any portion thereof, the use thereof, the conduct of activities thereon, or the gross or net income or proceeds of such use or activities, including, but not limited to, the following items: (a) all real estate taxes; (b) all assessments and special assessments; (c) any tax pertaining to the occupancy, use or possession of the Premises or any part thereof, including but not limited to any state or federal tax on income derived from the Premises; (d) rent taxes, if any; (e) gross receipt

taxes, if applicable; (f) water, sewer and other utility rates and charges; and (g) license fees, permit fees, other authorization fees, or driveway permit fees.

“Term” shall have the meaning ascribed to such term in Section 2.01.

“Trustee” shall mean the Trustee with respect to the Bond Financing.

“University” shall mean Portland State University.

“University Housing Debt Service” shall mean, for any period, the sum of all cash outflows for interest on Indebtedness, scheduled payments of principal on Indebtedness (i) of Broadway Housing relating to the Project and (ii) of PSU relating to the student housing or dormitory facilities of PSU.

“University Housing Debt Service Coverage Ratio” shall mean for any period the ratio of University Housing Revenue Available for Debt Service to University Housing Debt Service.

“University Housing Expenses” means, for any period, the aggregate of (a) all operating expenses of Broadway Housing with respect to the Project and of PSU with respect to PSU’s student housing and dormitory facilities (including without limitation any payments of PSU hereunder), calculated under GAAP, excluding (i) extraordinary expenses (including without limitation losses on the sale of assets other than in the ordinary course of business and losses on the extinguishment of debt or termination of pension plans), (ii) any expenses resulting from a forgiveness of or the establishment of reserves against Indebtedness of an Affiliate of PSU which does not constitute extraordinary expense, (iii) losses resulting from any reappraisal, revaluation, or write-down of assets, and (iv) tenant improvements that are considered capital expenses and that are payable from capital improvement reserve funds.

“University Housing Revenue Available For Debt Service” means, for any period, the excess of: (a) the sum of (i) University Housing Revenues and (ii) to the extent included in University Housing Expenses, (w) interest on Indebtedness, (x) depreciation, (y) amortization and (z) required deposits and other additions to reserves, other than required deposits to any capital improvement reserve funds; over (b) the sum of (i) University Housing Expenses and (ii) to the extent not included in University Housing Expenses, required deposits to any capital improvement reserve funds.

“University Housing Revenues” means, for any period, the gross revenues of the Borrower with respect to the Project and of PSU with respect to PSU’s housing and dormitory facilities, less provisions for uncollectible accounts, and including earnings on reserves held with respect to the bonds, notes, securities and similar obligations relating to PSU’s housing and dormitory facilities; but excluding in any event (i) any gains on the sale or other disposition of investments or fixed or capital assets not in the ordinary course of business, (ii) earnings resulting from any reappraisal, revaluation, or write-up



of assets, (iii) refundable tenant security deposits until earned, and (iv) net proceeds of insurance and condemnation awards.

## **EXHIBIT C**

### **HOUSING SERVICES TERMS AND CONDITIONS**

At the commencement of this Agreement, and in addition to the obligations and duties to be undertaken pursuant to Section 1.01 of this Agreement, the parties agree that the following conditions shall apply to the management and operation of the Housing Facility. The parties may amend and/or alter the respective duties of the parties, provided that any such amendment shall comply with the terms and requirements of the Bond Documents.

1. The Housing Facility shall be managed and operated by either PSU or a third-party manager as is acceptable to Broadway Housing and PSU and approved as provided in the Bond Documents. PSU shall approve any management agreement with any third party. All costs, expenses and reasonable management fees for the operation of the Housing Facility shall be paid as provided in Section 5.1 of the Indenture. The Housing Facility shall be managed in compliance with the terms and provisions of the Bond Documents and generally in a manner similar to PSU's other student housing facilities.
2. Rents shall be approved by PSU, after consulting with Broadway Housing. Such rents shall be comparable to rents charged by PSU for other comparable student housing units.
3. All rental payments shall be deposited in the Revenue Fund held by the Trustee pursuant to the provisions of the Bond Documents.
4. All students who fit the criteria established by PSU for student housing are eligible to apply for residency in the Housing Facility.

**EXHIBIT D**

**STATE OF OREGON  
LEASE**

[ACTUAL, NOT TEMPLATE, LEASE TO BE PROVIDED BY RICK BAROWAY]

## **EXHIBIT E**

### **AGREEMENT REGARDING USE OF RETAIL FACILITIES**

At the commencement of this Agreement, and in addition to the obligations and duties to be undertaken pursuant to Section 1.01 of this Agreement, the parties agree that the following conditions shall apply to the management and operation of the Retail Facility. The parties may amend and/or alter the respective duties of the parties, provided that any such amendment shall comply with the terms and requirements of the Bond Documents.

1. Any proposed brokerage agreements, proposed selection of retail tenants, proposed rental rates to be charged, and proposed form and terms of all lease agreements, shall be presented to PSU for approval, which approval shall not be unreasonably withheld.
2. Broadway Housing shall sign all retail leases as owner of the property.
3. All rents shall be payable to Broadway Housing and deposited in the Revenue Fund in accordance with the terms of the Bond Documents.
4. The Retail Facility and the retail leases, shall be managed by PSU, or a property management company reasonably acceptable to PSU in accordance with the Housing Services and Facilities Agreement. All costs of managing the Retail Facility, including brokerage fees, legal fees and management fees, shall be paid as provided in Section 5.1 of the Indenture.

This Preliminary Official Statement and certain of the information contained herein is in a form deemed final for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (except for the omission of certain information permitted to be omitted under Rule 15c2-12(b)(1)). The information herein is subject to revision, completion or amendment in a final Official Statement. The Bonds may not be sold, nor may an offer to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

**EXHIBIT D**

**FORM OF PRELIMINARY OFFICIAL STATEMENT**

**PRELIMINARY OFFICIAL STATEMENT DATED OCTOBER \_\_, 2008**

**REFUNDING - BOOK ENTRY ONLY**

**Ratings: Moody's: "\_\_\_\_"**  
**Standard & Poor's: "\_\_\_\_"**  
**(See "RATINGS" herein)**

*In the opinion of K&L Gates LLP, Bond Counsel, assuming compliance with certain covenants of the Issuer, the Borrower, and the University Foundation, interest on the Series 2008A Bonds is excludable from gross income for federal income tax purposes under existing law. Interest on the Series 2008A Bonds is not an item of tax preference for purposes of either individual or corporate alternative minimum tax. Interest on the Series 2008A Bonds may be indirectly subject to corporate alternative minimum tax and certain other taxes imposed on certain corporations.*

*In the opinion of Bond Counsel, interest on the Series 2008B Bonds is includable in gross income subject to federal income taxation.*

*In the opinion of Bond Counsel, interest on the 2008 Bonds is exempt from Oregon personal income tax under existing law. See "Tax Matters" herein for a discussion of the opinion of Bond Counsel.*

<p><b>[\$[Series A Amount]* City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project) Series 2008A (Tax-Exempt)</b></p>	<p><b>[\$[Series B Amount]* City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project) Series 2008B (Federally Taxable)</b></p>
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**Dated: Date of Delivery**

**Due: As shown on inside cover**

The City of Portland, Oregon (the "Issuer") proposes to issue its Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008A (Tax-Exempt) (the "Series 2008A Bonds" or "Tax-Exempt Bonds") and its Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008B (Federally Taxable) (the "Series 2008B Bonds" or the "Taxable Bonds" and together with the Tax-Exempt Bonds, the "Bonds").

The Bonds are authorized by an ordinance adopted by the Issuer on the basis of recommendations provided by the Portland Development Commission through resolution of its governing body. The Bonds shall be issued under and secured by a Trust Indenture dated as of October 1, 2008 (the "Indenture"), between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"), all pursuant to the laws of the State of Oregon, particularly Section 280.410 through 280.485 of the Oregon Revised Statutes, as amended (the "Act"), for the purpose of providing funds to fund a loan (the "Loan") to Broadway Housing, LLC, an Oregon limited liability company (the "Borrower") to (i) refund the Issuer's Economic Development Revenue Bonds (Broadway Project), Series 2003A (Tax-Exempt) and its Economic Development Revenue Bonds (Broadway Project), Series 2003B (Federally Taxable) (collectively, the "2003 Bonds"), the proceeds of which were used to acquire, construct and equip a student housing complex of approximately 211,835 square feet, containing 383 units, approximately 21,135 square feet of retail space and approximately 20,800 square feet of academic space, known as the Broadway Project (the "Project"), (ii) pay the termination fee for one of the swaps relating to the 2003 Bonds, (iii) fund a Debt Service Reserve Fund for the Bonds, and (iv) pay certain costs associated with the issuance of the Bonds, as described herein under "ESTIMATED SOURCES AND USES OF FUNDS" and "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS - Flow of Funds."

THE BONDS ARE NOT A DEBT OF THE CITY OF PORTLAND, OREGON, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE CITY OF PORTLAND, OREGON, NOR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE BONDS, INCLUDING THE PRINCIPAL AND REDEMPTION PRICE THEREOF AND THE INTEREST THEREON, AND ALL OTHER OBLIGATIONS OF THE ISSUER UNDER THE INDENTURE OR THE LOAN AGREEMENT, ARE PAYABLE SOLELY FROM THE TRUST ESTATE IN ACCORDANCE WITH THE PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT.

The Bonds will be issued as fully registered bonds without coupons in denominations of \$5,000 or any integral multiple thereof and initially be issued in book-entry form and held by a nominee of The Depository Trust Company ("DTC") as the registered holder. Payments of principal and premium, if any, with respect to the Bonds, will be payable directly to the DTC nominee as registered owner, with disbursement to Beneficial Owners. Interest is payable semiannually on April 1 and October 1 of each year, commencing April 1, 2009.

**The Bonds are subject to optional and extraordinary redemption prior to maturity as described herein. See "DESCRIPTION OF THE BONDS" herein.**

The information set forth herein has been obtained from sources that are believed to be reliable, but it is not guaranteed as to accuracy and completeness, and is not to be construed as a representation by the Underwriter or by the Issuer (except for information furnished by the Issuer under the captions "THE ISSUER" and "LITIGATION," as it relates to the Issuer). The information and expressions of opinion herein are subject to change without notice and neither the delivery of the Official Statement nor any sale made hereunder shall, under any circumstances, create the implication that there has been no change in any of the information set forth herein since the date hereof.

\* Preliminary; subject to change.

This cover page of the Official Statement contains certain information for quick reference only. It is not a complete summary of the Bonds. Investors should read the entire Official Statement, including the Exhibits hereto, to obtain information essential to the making of an informed investment decision.

The Bonds are offered when, as and if issued and received by the Underwriter subject to prior sale, withdrawal or modification of the offer without notice and subject to the opinion of K&L Gates LLP, Portland, Oregon, Bond Counsel. Certain legal matters will be passed upon for the Underwriter by Eichner & Norris PLLC, Washington, D.C. and for the Borrower by Garvey Schubert Barer, Portland, Oregon. It is expected that the Bonds will be available for delivery through DTC in New York, New York on or about October 22, 2008.

**Citi**

The date of this Official Statement is October \_\_, 2008.

**MATURITY SCHEDULE**

\$[Series A Amount]* City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project) Series 2008A (Tax-Exempt)	\$[Series B Amount]* City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project) Series 2008B (Federally Taxable)
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**Series 2008A Serial Bonds**

<b>Due Date</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>
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**Series 2008A Term Bonds**

\$ \_\_\_\_\_ % Term Bonds due April 1, 2035; Price: \_\_\_\_%

**Series 2008B Serial Bonds**

<b>Due Date</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>
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**Series 2008B Term Bonds**

\$ \_\_\_\_\_ % Term Bonds due \_\_\_\_\_, 20\_\_; Price: \_\_\_\_%


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\* Preliminary; subject to change.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

No dealer, broker, salesperson or other person has been authorized by the Issuer, the Borrower or the Underwriter to give any information or to make any representation with respect to the Bonds other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth or included in this Official Statement has been provided by the Borrower and from other sources believed by the Borrower to be reliable. While the Underwriter has performed a review sufficient to form a reasonable basis for its belief in the accuracy and completeness of this Official Statement, the Underwriter does not guarantee the accuracy or completeness of the Official Statement. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale hereunder shall create any implication that there has been no change in the financial condition or operations of the Borrower or of the Project described herein since the date hereof. This Official Statement contains, in part, estimates and matters of opinion that are not intended as statements of fact, and no representations or warranty is made as to the correctness of such estimates and opinions or that they will be realized.

The explanations of provisions of laws and descriptions of the documents in the Official Statement are summaries thereof and reference is made to the actual laws and documents for a complete understanding of the contents of such documents.

The Trustee has not reviewed or participated in the preparation of this Official Statement and assumes no responsibility for the nature, contents, accuracy or completeness of the information set forth in this Official Statement or for the recitals contained in the Indenture or the Bonds, or for the validity, sufficiency, or legal effect of any of such documents. The Trustee has no oversight responsibility, and is not accountable, for the use or application by the Issuer of any of the Bonds authenticated or delivered pursuant to the Indenture or for the use or application of the proceeds of such Bonds by the Issuer. The Trustee has not evaluated the risks, benefits, or propriety of any investment in the Bonds and makes no representation, and has reached no conclusions, regarding the value or condition of any assets pledged or assigned as security for the Bonds, the technical or financial feasibility of the Project, or the investment quality of the Bonds, about all of which the Trustee expresses no opinion and expressly disclaims the expertise to evaluate.

THE ORDER AND PLACEMENT OF MATERIALS IN THIS OFFICIAL STATEMENT INCLUDING THE EXHIBITS, ARE NOT TO BE DEEMED TO BE A DETERMINATION OF RELEVANCE, MATERIALITY OR IMPORTANCE, AND THIS OFFICIAL STATEMENT, INCLUDING THE EXHIBITS, MUST BE CONSIDERED IN ITS ENTIRETY. THE OFFERING OF THE BONDS IS MADE ONLY BY MEANS OF THIS ENTIRE OFFICIAL STATEMENT.

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER, THE BORROWER, THE HOUSING SERVICES AGREEMENT, THE PROJECT AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE BONDS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES



COMMISSION PASSED UPON THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

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<b>[\$[Series A Amount]* City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project) Series 2008A (Tax-Exempt)</b>	<b>[\$[Series B Amount]* City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project) Series 2008B (Federally Taxable)</b>
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## INTRODUCTION

This Official Statement, including the cover page and the Exhibits hereto, is furnished in connection with the offering by the City of Portland, Oregon (the “Issuer”), a public body corporate and politic, created under the laws of the State of Oregon (the “State”), of its Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008A (Tax-Exempt) (the “Series 2008A Bonds” or “Tax-Exempt Bonds”) in the aggregate principal amount of \$[Series A Amount]\* and its Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008B (Federally Taxable) (the “Series 2008B Bonds” or the “Taxable Bonds” and, collectively with the Tax-Exempt Bonds, the “Bonds”) in the aggregate principal amount of \$[Series B Amount]\*. The Bonds are being issued pursuant to Sections 280.410 through 280.485 of the Oregon Revised Statutes, as amended (the “Act”), Chapter 5.72 of the Code of the City of Portland, Oregon, a resolution of the Portland Development Commission recommending final approval of the Bonds, adopted on September 24, 2008 (the “Resolution”) and a Bond Ordinance of the Issuer adopted on October 1, 2008. The Bonds will be equally and ratably secured by, and issued pursuant to, a Trust Indenture, dated as of October 1, 2008 (the “Indenture”), by and between the Issuer and Wells Fargo Bank, National Association, as trustee (the “Trustee”). Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture and the Loan Agreement (as defined below) and as summarized in Exhibit A hereto. Summaries of the principal legal documents, which include the Indenture, the Loan Agreement, the Trust Deed, the Security Agreement and the Assignment of Contract Documents (as each such document is defined herein), are attached as Exhibit C hereto. A copy of the Housing Services Agreement (as defined herein), is attached as Exhibit D hereto.

The proceeds of the Bonds will be loaned to Broadway Housing, LLC, an Oregon limited liability company (the “Borrower”), having the Portland State University Foundation, an Oregon nonprofit corporation (the “University Foundation”) as its sole member. The loan will be made pursuant to a Loan Agreement, dated as of October 1, 2008 (the “Loan Agreement”) between the Borrower and the Issuer, evidenced by two promissory notes (the “Series 2008A Note,” evidencing the loan of the Series 2008A Bond proceeds and the “Series 2008B Note,” evidencing the loan of the Series 2008B Bond proceeds and collectively, the “Notes”) dated as of October 1, 2008. The Borrower will use the proceeds of the Bonds to (i) refund the Issuer’s Economic Development Revenue Bonds (Broadway Project), Series 2003A (Tax-Exempt) and its Economic Development Revenue Bonds (Broadway Project), Series 2003B (Federally Taxable) (collectively, the “2003 Bonds”), the proceeds of which were used to acquire, construct and equip a student housing complex of approximately 211,835 square feet, containing 383 units, approximately 21,135 square feet of retail space and approximately 20,800 square feet of academic space, known as the Broadway Project (the “Project”), (ii) pay the termination fee for one of the swaps relating to the 2003 Bonds, (iii) fund a Debt Service Reserve Fund for the Bonds, and (iv) pay certain costs associated with the issuance of the Bonds.

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\* Preliminary; subject to change.

*The obligations of the Borrower under the Loan Agreement and the Notes are nonrecourse in nature and payable only from the Project and the Revenues of the Project (including payments by PSU under the Housing Services Agreement, as described below). See “SECURITY AND SOURCES OF PAYMENT OF THE BONDS – Nonrecourse Nature of Borrower’s Obligations” herein.*

The State, acting by and through the State Board of Higher Education (the “Oregon State Board of Higher Education”) on behalf of Portland State University (the “University” or “PSU”), and the Borrower entered into a Housing Services and Facilities Agreement, dated September \_\_, 2008 (the “Housing Services Agreement”). The Housing Services Agreement provides, among other things, that the Borrower will own and operate the Project for the sole purpose of providing (i) student housing and academic facilities to PSU and/or its faculty and students, in accordance with PSU housing and academic facilities policies and the terms and conditions set forth therein, and (ii) retail services for the PSU community and the public.

Pursuant to the provisions of the Loan Agreement, the Borrower is required to deliver all Revenues from the operation of the Project to the Trustee for deposit to the Revenue Fund, and the Trustee is required under the Indenture to use such Revenues to satisfy the financial obligations of the Borrower under the Bond Documents (including without limitation any operating expenses and other amounts necessary to maintain reasonable and prudent reserves for repair and maintenance of the Project and for debt service) (collectively, the “Bond Obligations”). See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Flow of Funds” herein. To the extent that the Revenues from the operation of the Project are insufficient to satisfy any of the Bond Obligations, PSU will be obligated under the Housing Services Agreement to pay to the Trustee all amounts necessary to satisfy the Bond Obligations. PSU’s payment obligations under the Housing Services Agreement will be subject to the availability of “Available Funds,” which generally consist of unrestricted funds of PSU, as well as funds appropriated or otherwise made available by the Oregon Legislative Assembly. Pursuant to the terms of the Housing Services Agreement, PSU has entered into a negative pledge with respect to PSU funds that constitute or may constitute “Available Funds” within the limitations and pursuant to the terms thereof. A copy of the Housing Services Agreement is attached hereto as Exhibit D. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Housing Services Agreement,” “RISK FACTORS—Performance of Project; Draws on Housing Services Agreement” and “THE PROJECT—Revenue Generation” herein. Attached hereto as Exhibit B are the audited financial statements of the Oregon University System (the “System”), of which PSU is a component part, for the years ended June 30, 2005, 2006 and 2007. **The Bonds are not obligations of the System.** Furthermore, funds to which PSU will have recourse to meet its obligations under the Housing Services Agreement will not include funds of the System aside from those funds that are attributable to PSU and constitute “Available Funds” under the Housing Services Agreement.

Pursuant to a Trust Deed (Including Fixture Filing and Assignment of Rents and Leases) dated as of October 1, 2008 (the “Trust Deed”), and a Security Agreement dated as of October 1, 2008 (the “Security Agreement” and together with the Trust Deed, the “Security Instruments”), the Borrower will grant to the Trustee liens on and security interests in and to real property and certain rights and other personal property related to the Project, subject to certain Permitted Encumbrances (as defined in the Loan Agreement) (collectively, the “Security”) to secure the obligations of the Borrower under the Notes and the Loan Agreement. See “EXHIBIT C – SUMMARIES OF PRINCIPAL LEGAL DOCUMENTS.”

Pursuant to an Assignment of Contract Documents, dated as of October 1, 2008 (the “Assignment of Contract Documents”), between the Borrower and the Trustee, the Borrower will unconditionally grant, transfer, pledge, and assign to the Trustee, for the benefit of the Bondholders, all of the right, title, interest, and remedies of the Borrower in and to various contracts associated with the operation of the

Project, including the Housing Services Agreement, for the purpose of providing additional security for the Borrower's obligations under the Loan Agreement and the Notes.

THE BONDS ARE NOT A DEBT OF THE CITY OF PORTLAND, OREGON, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE CITY OF PORTLAND, OREGON, NOR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE BONDS, INCLUDING THE PRINCIPAL AND REDEMPTION PRICE THEREOF AND THE INTEREST THEREON, AND ALL OTHER OBLIGATIONS OF THE ISSUER UNDER THE INDENTURE OR THE LOAN AGREEMENT, ARE PAYABLE SOLELY FROM THE TRUST ESTATE IN ACCORDANCE WITH THE PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT.

The Borrower anticipates that it will invest amounts to be deposited in the Debt Service Reserve Fund pursuant to one or more guaranteed investment contracts, flexible repurchase agreements or other investment agreements that provide a fixed rate of interest or a combination of the foregoing. It is expected that the investment agreements will contain appropriate collateral provisions acceptable to the Borrower. Any such investment agreement will be selected through a competitive process in accordance with the Regulations at approximately the same time as the award of the Bonds to the Underwriter. Entering into an investment agreement provides for a fixed rate of return for the invested funds with the ability to access the funds when necessary.

Brief descriptions of various documents set forth in this Official Statement do not purport to be comprehensive or definitive, and reference is made to each document for complete details of all terms and conditions. All statements herein are qualified in their entirety by the terms of each such document.

Copies of the Indenture, the Loan Agreement, the Trust Deed, the Security Agreement, the Assignment of Contract Documents and the Housing Services Agreement will be available during the initial offering of the Bonds from the Underwriter and after issuance of the Bonds for inspection at the office of the Trustee.

### **THE ISSUER**

The City of Portland (the "City") is acting by and through the City Council. The City is located in northwestern Oregon, astride the Willamette River at its confluence with the Columbia River. The City was incorporated in 1851 and has operated under a modified commission form of government since 1913. The State Constitution and Oregon Revised Statutes provide the City with its basic authorities and powers including substantial home rule powers. The 1967 charter of the City further extends the authority of the City, though Charter and City Code authorizations must not conflict with State laws, or the State Constitution. The nonpartisan City Council is composed of the Mayor and four Commissioners elected to four-year overlapping terms. Each performs both legislative and administrative functions.

The Portland Development Commission ("Commission") is the agency charged by the City with the responsibility of receiving, reviewing and processing applications requesting the issuance by the City of its economic development revenue bonds pursuant to Chapter 5.72 of the Portland City Code. The Commission was created as a City agency in 1958 by Portland voters to deliver projects and programs that achieve the City's housing, economic development and redevelopment priorities and link citizens to jobs.

The Commission is the City agency that helps provide sustained livability for the City and region. The mission is to bring together resources to achieve Portland's vision of a diverse, sustainable community with healthy neighborhoods, a vibrant urban core, a strong regional economy, and quality jobs for all citizens. While its focus is on urban renewal and redevelopment, it also administers the City's economic development revenue program under which the Bonds are being issued.

The City of Portland comprises an area of approximately 135 square miles. The City is the center of commerce, industry, transportation, finance and services for an immediate metropolitan area with a population of more than a million.

THE RESPONSIBILITIES OF THE CITY AS ISSUER IN THIS BOND TRANSACTION ARE LIMITED TO ADOPTING THE ORDINANCE, AUTHORIZING THE ISSUANCE OF THE BONDS, EXECUTING THE BONDS AND THE BOND DOCUMENTS TO WHICH IT IS A PARTY, ISSUING AND DELIVERING THE BONDS, ASSIGNING CERTAIN OF ITS RIGHTS TO THE TRUSTEE AS PROVIDED IN THE INDENTURE, AND APPLYING MONEY THE CITY RECEIVES FROM THE BORROWER PURSUANT TO THE LOAN AGREEMENT TO PAY THE BONDS IN ACCORDANCE WITH THE INDENTURE. THE CITY HAS NO OTHER OBLIGATION TO TAKE ANY OTHER ACTION RELATING TO THE BONDS.

THE CITY HAS NOT INDEPENDENTLY VERIFIED THE ACCURACY OF ANY STATEMENTS IN THIS OFFICIAL STATEMENT EXCEPT THOSE APPEARING IN THIS SECTION AND UNDER THE HEADING "LITIGATION" WITH RESPECT TO THE CITY. THE CITY HAS RECEIVED REPRESENTATIONS THAT THIS OFFICIAL STATEMENT DOES NOT CONTAIN A MATERIAL MISSTATEMENT OR A MATERIAL OMISSION, AND HAS RELIED ON THOSE REPRESENTATIONS IN AUTHORIZING DISTRIBUTION OF THIS OFFICIAL STATEMENT. THE CITY WILL NOT BE LIABLE TO ANY PURCHASER OF THE BONDS IN THE EVENT THAT THIS OFFICIAL STATEMENT CONTAINS A MATERIAL MISSTATEMENT OR OMISSION OF MATERIAL FACT OTHER THAN INFORMATION PROVIDED BY THE CITY IN THIS SECTION AND UNDER THE HEADING "LITIGATION" WITH RESPECT TO THE CITY.

### **THE BORROWER**

*The information under this heading has been provided by the Borrower for use herein. While the information is believed to be reliable, neither the Issuer, the Underwriter nor any of their respective counsel, members, directors, officers or employees has made any inquiry or review with respect thereto, has provided any of such information or makes any representations as to the accuracy or sufficiency of such information.*

#### **The Borrower**

Broadway Housing, LLC (the "Borrower") is an Oregon limited liability company formed by the Portland State University Foundation, an Oregon nonprofit corporation (the "University Foundation"), its sole member, exclusively for the purpose of furthering the charitable purposes of the University Foundation, including but not limited to promoting and furthering the development of PSU. The Borrower is organized and will operate in accordance with the requirements of Section 501(c)(3) of the Code (defined below), applicable to the University Foundation as an organization exempt from federal income tax as described below. The Borrower does not employ any staff to carry out any functions; its actions are carried out by staff contracted from the University Foundation. The Borrower is managed by a committee

composed of the Executive Director of the University Foundation, the Chief Financial Officer of the University Foundation and three of the University Foundation's directors. See "The University Foundation" below. The University Foundation, as the sole member of the Borrower, has entered into an operating agreement which is intended to, among other things, provide that the Borrower shall remain a single asset entity that operates solely and exclusively to operate and manage the Project. The Loan Agreement covenants include the restrictions that the sole principal asset of the Borrower shall be the Project and the activities of the Borrower shall be limited to the ownership and operation of the Project and related matters.

The Borrower has no significant assets other than the Project and no significant liabilities other than the Bonds or those liabilities associated with the Project. The Borrower is wholly dependent upon the successful operation of the Project and payments by PSU under the Housing Services Agreement in order to meet its obligations under the Loan Agreement and the Notes.

### **The University Foundation**

The Borrower's sole member is the University Foundation. The University Foundation was incorporated on March 19, 1963 as Portland State College Development Foundation and received the currently effective determination letter from the Internal Revenue Service in January of 1964, as reconfirmed by letters dated July 27, 1984, January 18, 2003 and September \_\_, 2008, recognizing the University Foundation as exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1954, as amended (the "1954 Code"), because it is an organization described in Section 501(c)(3) of the 1954 Code. Although not the case for general liability purposes, for federal tax purposes, pursuant to 26 C.F.R. (Treas. Reg.) Sections 301.7701-2(c)(2)(i) and 301.7701-3(b)(1)(ii), a business entity (other than a corporation) such as the Borrower, which has a single member, is disregarded as a separate entity and is treated as a division of the single member, unless it elects to be treated as a corporation. The Borrower will not file such an election, and therefore, will be treated as a division of the University Foundation for federal tax purposes. The University Foundation's mission is to support PSU, and it serves as the principal recipient of private support for PSU. The University Foundation's finances are audited annually by independent auditors. However, the financial statements of the University Foundation are not included in this Official Statement, since the Borrower's obligations in connection with the Bonds are nonrecourse in nature to the University Foundation and several of the Bond Documents expressly waive and release claims against the University Foundation. See "No Recourse" below.

### **No Recourse**

*The Bonds are nonrecourse in nature as further described herein; therefore, none of the assets of the Borrower (other than the Project and certain funds held under the Indenture), the University Foundation or any affiliate thereof have been pledged or are available to the holders of the Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" and "RISK FACTORS" herein.*

## **THE UNIVERSITY AND THE OREGON UNIVERSITY SYSTEM**

*The information under this heading has been provided by PSU for use herein. While the information is believed to be reliable, neither the Issuer, the Underwriter nor any of their respective counsel, members, directors, officers or employees has made any inquiry or review with respect thereto, has provided any of such information or makes any representations as to the accuracy or sufficiency of such information.*

### **Portland State University**

*General.* The University, located in downtown Portland, is Oregon's urban public university. The University was established in 1946 as the Vanport Extension Center and was moved to downtown Portland in 1952. In 1955, the Vanport Extension Center became Portland State College, a four-year, degree-granting institution. Graduate studies were added in 1961, doctoral programs began in 1968, and the institution was granted university status in 1969. PSU currently operates on the quarter system, September to June, plus a Summer Session. The Carnegie Foundation currently classifies PSU as a Doctoral-Granting University II. PSU is accredited by the Northwest Association of Schools and Colleges. It is a member of the National Association of State Universities and Land Grant Colleges (NASULGC), the American Association of State Colleges and Universities (AASCU), the Association of American Colleges and Universities (AACU) and the Association of Urban Universities. In athletics, PSU is a Division I member of the Big Sky Conference. PSU's 36-acre campus adjoins the central business district of Portland, a city of 503,000. The Portland metropolitan area has a population of approximately 1.7 million.

The mission of PSU is to enhance the intellectual, social, cultural and economic qualities of urban life by providing access throughout the life span to a quality liberal arts education for undergraduates and an appropriate array of professional and graduate programs especially relevant to metropolitan areas. The University conducts research and community service that supports a high quality educational environment and reflects issues important to the region. It actively promotes the development of a network of educational institutions to serve the community.

*Academic Programs; Enrollment.* The University's position in the heart of Oregon's economic and cultural center enables PSU students and faculty to apply scholarly theory to the real-world problems of business and community organizations. PSU offers over 100 undergraduate, master's, and doctoral degrees, as well as graduate certificates and continuing education programs. PSU serves more students and confers more graduate degrees annually than any other Oregon university. During the 2006-2007 academic year 3,143 bachelor's degrees, 1,640 master's degrees, and 36 doctoral degrees were awarded. Fall 2007 headcount enrollment, including extension students, was 24,999, including 18,938 undergraduate students and 6,061 graduate students.

*University Housing.* Including the Project, housing at the University consists of 10 on-campus University-owned/operated housing facilities offering a diverse mix of unit sizes including sleepers, which have shared bathrooms and kitchens, studios, one and two-bedroom apartments. PSU owns/operates a total of 1,389 units and expects to house a total of 2,026 students in the fall of 2008. Second to the Project, The Ondine is the University's next largest residence building at 15 stories with 287 units planned to accommodate 499 students in the fall of 2008. The Ondine is also the most traditional residence building with the majority of units being double occupancy rooms with shared bathroom facilities.

University housing rates are charged per student per term, and for the 2008-09 academic year rates range from \$515 to \$3,380 per term per student. Rental rates for the Project will be between \$1,410 and \$2,855 per term per student for fall of 2008. Occupancy for the mid-year census in University-owned/operated residence halls was 96% during the 2007-08 academic year.

The University does not require any of its students to live in on-campus housing. However, the University does encourage all of its students to live on-campus. Currently no housing exists on campus for fraternities or sororities.



To the extent that the Revenues from the operation of the Project are insufficient to satisfy any of the Borrower's obligations under the Bond Documents (the "Bond Obligations"), PSU will be obligated under the Housing Services Agreement to pay to the Trustee all amounts necessary to satisfy such Bond Obligations. PSU's payment obligations under the Housing Services Agreement will be subject to the availability of "Available Funds," as described therein. A copy of the Housing Services Agreement is attached hereto as Exhibit D. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Housing Services Agreement," "RISK FACTORS—Performance of Project; Draws on Housing Services Agreement" and "THE PROJECT—Revenue Generation" herein.

With the opening of the Project in Fall of 2004, the University's total on-campus student residential population increased from 1,045 to 1,428. The Project opened at full capacity. Since that time, unit use of the Project has moved from single occupancy to double occupancy resulting in contracts for beds increasing 65%. For the fall of 2008, accommodations are being planned for an estimated 632 students to be housed in the Project.

*Restrictions on Additional University Housing.* Pursuant to the Housing Services Agreement, PSU will covenant and agree to certain restrictions on its involvement with additional housing for students of PSU, including restrictions that, among other things, PSU will not operate, support, build, cause to be built, or assist, directly or indirectly, in the building of any additional housing facilities for students of PSU on a "preferential" basis to that of the Project and, in any event, not unless PSU meets certain criteria, including the delivery to the Trustee of (i) a housing study demonstrating sufficient demand for additional housing for students of PSU, (ii) evidence that 85% of the units in the Project have been leased in the prior and current academic year, and (iii) evidence that the University Housing Debt Service Coverage Ratio, relating to the indebtedness carried by PSU with respect to all of its housing facilities, as further defined in the Housing Services Agreement, for the fiscal year immediately prior to the fiscal year in which construction of the additional housing would begin is not less than 1.10:1.00. See "EXHIBIT D—HOUSING SERVICES AGREEMENT" hereto.

### **The Oregon University System**

A national model for public higher education, the Oregon University System (the "System") was established as the Oregon State System of Higher Education by the State Legislature on March 1, 1929. The Oregon State System of Higher Education was renamed the Oregon University System in 1998. The System is governed by the Oregon State Board of Higher Education, which is comprised of eleven members appointed by the Governor of Oregon with the advice and consent of the Oregon Senate. Nine members are appointed for four-year terms and two members are students, who are appointed for two-year terms. The System, which awards over 19,000 degrees and certificates annually, is comprised of seven four-year public universities with a total headcount of more than 80,000 students and near 2,600 full-time instructional faculty. Aside from PSU, the component institutions of the System include Eastern Oregon University, Oregon Institute of Technology, Oregon State University, Southern Oregon University, The University of Oregon and Western Oregon University. The System's performance-based productivity model, shaped by the Oregon State Board of Higher Education in 1997, is nationally recognized for transforming higher education and making it more accessible and accountable to citizens of the State.

The System's total all source operating budget for the fiscal year 2008 was \$2.026 billion. The System's total appropriation from the State for fiscal year 2008 was \$439 million.

The System administrative staff, which is based throughout the System and provides support to all of the System component universities, includes the following persons:

George Pernsteiner	Chancellor of the System
Jay Kenton	Vice Chancellor for Finance and Administration
Susan Weeks	Vice Chancellor for Strategic Programs and Planning
Ryan J. Hagemann	Deputy Chancellor for Legal Affairs
Diane 'Di' Saunders	Director of Communications

**The Bonds are not obligations of the System. Furthermore, notwithstanding the foregoing description of the System, the funds to which PSU will have recourse to meet its obligations under the Housing Services Agreement will not include funds of the System, aside from those funds that are attributable to PSU and constitute “Available Funds” under the Housing Services Agreement. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Housing Services Agreement” and Exhibit D hereto.**

### THE PROJECT

*The information under this heading has been provided by the Borrower. While the information is believed to be reliable, neither the Issuer nor the Underwriter nor any of their respective counsel, members, directors, officers or employees has made any inquiry or review with respect thereto, has provided any of such information or makes any representations as to the accuracy or sufficiency of such information.*

#### **The Project Facilities**

The proceeds of the 2003 Bonds were used by the Borrower to finance the acquisition, development and construction of the Project including, among other things, capitalized interest. The Project is a 10-story, approximately 211,835 square foot high-rise apartment-style student housing facility which contains 1 one bedroom unit and 382 studio units which house up to two students each. The Project is situated on 0.69 acres of land located at 1948 SW Broadway Street in Portland, Oregon, which is within PSU's University District. With a streetcar terminus located 2 blocks to the north, a light rail station located approximately 6 blocks to the north, and abutted on the north and south by major transit streets that are serviced by multiple bus lines, the Project offers good access to primary commercial corridors. In addition, the Project contains approximately 21,135 square feet of service retail space on the ground level and approximately 20,800 rentable square feet of academic space on the second floor, which is leased to PSU. The Project provides a supportive housing program for students that is contemporary, convenient and complemented by data connections with the PSU computer network to facilitate undergraduate programs and graduate student research capabilities.

Except for the one bedroom unit, each of the units in the Project averages approximately 350 square feet and contains a living area, a kitchen area, and a bathroom. More specifically, each unit contains pre-manufactured kitchen and vanity cabinetry and plastic laminate countertops in the kitchen and baths.

Kitchen appliances include an electric range and frost-free refrigerator. All bathrooms have a commode, a fiberglass tub/shower and lavatory. Bathrooms have privacy locks and unit doors have deadbolt locks. Shared common areas include lounge areas, lobbies, laundry facilities, and storage rooms and bicycle parking within the building for the primary use of the residents. The Project is also appropriately wired to provide high-speed data access as well as cable television and telephone service in each unit. A security card system operates the locked entrances to the student housing center providing greater security to the residents.

Construction of the Project was completed in September of 2004 and the Project was opened in the Fall term of 2004.

### **Revenue Generation**

Below is a table showing historical, unaudited financial information with respect to the operation of the Project, the support of the Project by PSU pursuant to the Housing Services Agreement and the funds generally available to PSU for payments due under the Housing Services Agreement for the fiscal years ending June 30, 2005, 2006 and 2007. The table shows i) that revenues from the operation of the Project have been sufficient to cover the synthetic fixed interest rates on the 2003 Bonds (swapped from variable to fixed) and principal payments due on the 2003 Bonds, ii) that revenues from the operation of the Project have covered an increasing percentage of Operating Expenses of the Project, and that PSU has made payments under the Housing Services Agreement from Available Funds during 2006 and 2007 to cover the shortfalls in such years, and iii) the cumulative amount of Available Funds of PSU during such years.

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Fiscal Year	Note Number	As of June 30, 2005 FY05	As of June 30, 2006 FY06	As of June 30, 2007 FY07
<b>BROADWAY HOUSING PROJECT ACTIVITY</b>				
<u>Revenue</u>		\$ 2,399,577	\$ 3,388,815	\$ 4,290,565
<u>Operating Expenses (Less Depreciation)</u>		1,686,908	1,710,810	2,097,436
<u>Interest Payments on Bonds &amp; Swap Calculation</u>		1,891,158	2,236,441	2,246,797
<u>Principal Payment on Bonds</u>		-	<u>735,000</u>	<u>770,000</u>
<u>Net Activity</u>	1	\$ (1,178,489)	\$ (1,293,437)	\$ (823,668)
<u>University Support under the Housing Services Agreement</u>	2	\$ -	\$ 1,033,975	\$ 832,692
<b>RESOURCES AVAILABLE TO THE UNIVERSITY FOR PAYMENTS UNDER THE HOUSING SERVICES AGREEMENT</b>				
<b><u>Other Housing Auxiliary Activity &amp; Cash Status</u></b>				
	3			
<u>Revenue</u>		\$ 6,346,148	\$ 7,609,943	\$ 8,274,824
<u>Expenses (Including Debt, Less Depreciation)</u>		<u>6,797,504</u>	<u>7,135,149</u>	<u>7,320,700</u>
<u>Net Activity</u>		\$ (451,356)	\$ 474,794	\$ 954,124
<u>Other Housing Auxiliary Unrestricted Cash on Hand</u>	4, 5	72,115	1,036,262	2,110,609
<b><u>Other Auxiliary System Activity &amp; Cash Status</u></b>				
	6			
<u>Revenue</u>		\$ 24,274,673	\$ 26,339,304	\$ 30,852,250
<u>Expenses (Including Debt, Less Depreciation)</u>		<u>22,545,930</u>	<u>27,185,639</u>	<u>30,650,126</u>
<u>Net Activity</u>		\$ 1,728,743	\$ (846,335)	\$ 202,124
<u>Other Auxiliary System Unrestricted Cash on Hand</u>	7	\$ 8,552,242	\$ 7,031,041	\$ 7,918,861
<b><u>University Tuition &amp; Status of Cash &amp; Cash Equivalents</u></b>				
	8			
<u>Portland State University Tuition &amp; Fees</u>		\$ 110,793,000	\$ 112,831,000	\$ 117,634,000
<u>Portland State University Cash &amp; Cash Equivalents</u>		\$ 46,152,000	\$ 31,600,000	\$ 61,594,000

**Notes:**

- 1.) Negative activity realized in Fiscal Year 2005 (nine months of activity) was covered through the capitalization of interest and not University support under the Housing Services Agreement.
- 2.) Net Activity and cash provided through University Support differ due to postings of Accrual and Cash items on the General Ledger/Balance Sheet (GL) and the Operating Ledger (OL), e.g., Reserves, Receivables, Prepaids, Unearned Income.
- 3.) Other Housing Auxiliary And Cash Status comprises the activity of the University Housing Administration and the nine (9) other housing facilities owned/operated by the University--and excludes the activity and status of the Project.
- 4.) Annual Net Activity and the change in Unrestricted Cash on Hand differ due to postings of Accrual and Cash items on the GL and OL, e.g., Reserves, Receivables, Prepaids, Unearned Income.
- 5.) Unrestricted Cash on Hand Balance for the Other Housing Auxiliary is reflected prior to support of the Project.
- 6.) Other Auxiliary System Activity and Cash Status excludes the activity and cash status of all Other Housing Auxiliaries and the Project.
- 7.) Annual Net Activity and the change in Unrestricted Cash on Hand differ due to postings of Accrual and Cash items on the GL and OL, e.g., Reserves, Receivables, Prepaids, Unearned Income.
- 8.) Portland State University Tuition & Fees and Cash & Cash Equivalents can be referenced in the Oregon University

System Financial Statements, Supplementary Schedules, Consolidating Statement of Cash Flows.

**Project Management**

The Borrower has appointed PSU as the initial manager of the residential and academic facilities and general building operations of the Project. A commercial property manager manages the retail component of the Project under a current management agreement. Including the Project, PSU is responsible for the management of ten student housing facilities.

See also “EXHIBIT C – SUMMARIES OF PRINCIPAL LEGAL DOCUMENTS – The Loan Agreement – Covenant Regarding Manager” hereto.

**Leasing**

Generally, PSU is responsible for, among other things, recruiting new students to live in the Project and processing rental applications for managing the residential portion of the Project. The leases that the Borrower offers for units in the Project generally run school term to school term, payable quarterly in advance. The Loan Agreement requires that, except for a small amount of retail space and academic space, the Project be leased only to students attending school at, or faculty employed by, PSU, unless the Borrower has provided to the Issuer and the Trustee an opinion of Bond Counsel to the effect that leasing to persons other than such tenants will not adversely affect the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes.

**Budgets**

The Borrower is required by the Loan Agreement to prepare, or cause to be prepared, an annual operating budget for the Project (the “Annual Budget”). See “EXHIBIT C – SUMMARIES OF PRINCIPAL LEGAL DOCUMENTS – Loan Agreement – Annual Budget” hereto.

**ESTIMATED SOURCES AND USES OF FUNDS**

<b>Sources of Funds</b>	
Par Amount of the Bonds	\$
<b>Total</b>	<b>\$</b>
<b>Uses of Funds</b>	
Deposit to Defeasance Escrow for 2003 Bonds	\$
Cost of Issuance	
Deposit to Debt Service Reserve Fund	
Swap Termination Payment for 2003 Bonds	
<b>Total</b>	<b>\$</b>

## DESCRIPTION OF THE BONDS

The Series 2008A Bonds will be issued in the aggregate principal amount of \$[Series A Amount], will be dated the Closing Date, and will mature on the dates set forth on the inside front cover page of this Official Statement, subject to the redemption provisions described below, and the Series 2008B Bonds will be issued in the aggregate principal amount of \$[Series B Amount], will be dated the Closing Date, and will mature on the dates set forth on the inside front cover page of this Official Statement, subject to the redemption provisions described below. The Bonds will bear interest at the rates shown on the inside front cover page of this Official Statement, payable on April 1, 2009 and semi-annually thereafter on October 1 and April 1 (the "Interest Payment Dates") until paid, in an amount equal to the interest accrued from the date of first authentication and delivery of the Bonds under the Indenture. The Bonds, when issued, will be registered in the name of Cede & Co., as nominee for DTC. Payment of the principal of and interest on the Bonds will be made directly to DTC or its nominee, Cede & Co., by the Trustee. The Bonds will be issued on a parity basis and, except as to tax-exempt status, principal amounts and maturities, have substantially the same terms.

Interest on the Bonds will be computed on the basis of a 360-day year consisting of twelve 30-day months, The Bonds will be issued as fully registered bonds without coupons in the denominations of \$5,000 or any integral multiple thereof.

The Bonds are subject to optional and extraordinary redemption under certain circumstances as described below.

### **Bonds Not General Obligations**

THE BONDS ARE NOT A DEBT OF THE CITY OF PORTLAND, OREGON, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE CITY OF PORTLAND, OREGON, NOR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE BONDS, INCLUDING THE PRINCIPAL AND REDEMPTION PRICE THEREOF AND THE INTEREST THEREON, AND ALL OTHER OBLIGATIONS OF THE ISSUER UNDER THE INDENTURE OR THE LOAN AGREEMENT, ARE PAYABLE SOLELY FROM THE TRUST ESTATE IN ACCORDANCE WITH THE PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT.

### **Redemption**

*Issuer's Election to Redeem.* At the written request of the Borrower, the Issuer shall give written notice to the Trustee of its election to redeem, of the redemption date, and of the principal amount of each maturity of each series of Bonds to be redeemed, which notice is required to be given at least sixty (60) days prior to the redemption date or such shorter period not less than thirty (30) days as is acceptable to the Trustee. If notice of redemption shall have been given pursuant to the Indenture (as described below), the Issuer shall, prior to the redemption date, pay to the Trustee, solely from funds provided by the Borrower, an amount in cash which, in addition to other moneys, if any, available therefore held by the Trustee, will be sufficient to redeem at the redemption price thereof, plus interest accrued to the redemption date, all of the Bonds to be redeemed.

*Optional Redemption.* The Bonds are subject to redemption prior to maturity, in whole or in part on any date, upon the written request of the Borrower, from Available Moneys paid by the Borrower pursuant to the Loan Agreement, Available Moneys on deposit in the Bond Fund, and any other Available Moneys

held by the Trustee to be applied to the redemption of Bonds, on any date on or after October 1, 2018, at a price of one hundred percent (100%) of the principal amount thereof plus accrued interest to the redemption date.

*Extraordinary Redemption.* The Bonds may be called for redemption at the direction of the Borrower, in the event of: (i) damage to or destruction of the Project or any part thereof to the extent permitted in the Loan Agreement or (ii) condemnation of all or a portion of the Project to the extent permitted in the Loan Agreement. Notwithstanding the foregoing, the Bonds shall be called for redemption in the event of: (i) damage to or destruction of the Project or any part thereof to the extent required by the Loan Agreement or (ii) condemnation of all or a portion of the Project to the extent required by the Loan Agreement, unless the Borrower shall furnish to the Trustee the items required by the Loan Agreement.

If the Bonds are called for redemption in the events described in the first sentence of the immediately preceding paragraph, the Bonds shall be subject to redemption at any time within 180 days of such event in whole or (in the case of partial redemption as a result of condemnation of a portion of the Project) in part at a redemption price of 100% of the principal amount thereof plus accrued interest to the redemption date. If the Bonds are called for redemption in the events described in the second sentence of the immediately preceding paragraph, the Bonds shall be redeemed by the Issuer at any time within 180 days of such event in whole and not in part at a redemption price of 100% of the principal amount thereof plus accrued interest to the redemption date.

*Mandatory Redemption.* The Bonds are subject to mandatory redemption prior to maturity, in part, at a price of 100% of the principal amount thereof plus interest accrued to the redemption date, in the following principal amounts and on the dates set forth below:

As and for the retirement of Series 2008A Bonds maturing \_\_\_\_\_, the Basic Loan Payments specified in the Loan Agreement which are to be deposited in the Bond Fund beginning on \_\_\_\_\_, 20\_\_ and on the \_\_\_\_\_ (\_\_) day of each month thereafter, to and including \_\_\_\_\_, 20\_\_, shall include an amount sufficient to redeem in part, by lot (after credit as provided below), the following principal amounts (which include the principal amount which will be outstanding on the date of maturity) of such Series 2008A Bonds:

**Tax-Exempt Bonds**

<b>Redemption Date</b>	<b>Principal Amount</b>	<b>Redemption Date</b>	<b>Principal Amount</b>

\* Maturity.

As and for the retirement of Series 2008B Bonds, the Basic Loan Payments specified in the Loan Agreement which are to be deposited in the Bond Fund shall include an amount

sufficient to redeem in part, by lot (after credit as provided below), the following principal amounts (which include the principal amount which will be outstanding on the date of maturity) of such Series 2008B Bonds:

**Taxable Bonds**

<b>Redemption Date</b>	<b>Principal Amount</b>	<b>Redemption Date</b>	<b>Principal Amount</b>

\* Maturity.

The Issuer will be entitled to receive a credit in respect of its mandatory redemption obligations described in this section for Bonds delivered, purchased, or redeemed, if the Borrower at its option purchases in the open market and delivers to the Trustee for cancellation Bonds or redeems Bonds (other than through mandatory redemption) and such Bonds have not theretofore been applied as a credit against any mandatory redemption obligation. Each such Bond so purchased or redeemed shall be credited by the Trustee at 100% of the principal amount thereof on the obligation of the Issuer on such mandatory redemption payment date, and any excess shall be credited on future mandatory redemption obligations in chronological order, and the principal amount of such Bonds to be redeemed by operation of mandatory redemption and the Basic Loan Payments specified in the Loan Agreement for mandatory redemption will be accordingly reduced.

*Notice of Redemption.* If any of the Bonds are called for redemption, notice identifying the Bonds or portions thereof to be redeemed is required to be given by the Trustee by mailing a copy of the redemption notice by first-class mail (postage prepaid) not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption to the registered Owner of each Bond to be redeemed in whole or in part at the address shown on the registration books at the close of business on the fifth (5th) day preceding the date of mailing; provided, however, that failure to give such notice by mailing to any Owner of Bonds, or any defect therein, will not affect the validity of any proceedings for the redemption of any other Bonds. Each notice is required to specify the CUSIP numbers of the Bonds being called, the numbers of the Bonds of each series being called if less than all of the Bonds of any series are being called, redemption date, redemption price, and place or places where amounts due upon such redemption will be payable. Such notice shall further state that payment of the applicable redemption price plus accrued interest to the date fixed for redemption, if any, will be made upon presentation and surrender of the Bonds to be redeemed and that on the redemption date, the redemption price will become due and payable upon each Bond to be redeemed and that interest thereon will cease to accrue on and after such date, provided collected funds for the redemption of the Bonds to be redeemed are on deposit at the place of payment at that time. Any notice mailed as described in this paragraph will be conclusively presumed to have been duly given, whether or not the Owner of such Bonds actually receives the notice. Notwithstanding the foregoing, upon the written direction of the Borrower, the notice of redemption for optional redemption pursuant to the provisions of the Indenture described above is required to contain a statement to the effect that the redemption of the Bonds is conditioned upon the receipt by the Trustee, prior to the date fixed for such redemption, of amounts equal to the redemption price of the Bonds to be redeemed, and that if such moneys shall not have been so received, the notice will be of no force and



effect and the Issuer shall not be required to redeem such Bonds and such Bonds shall not become due and payable.

*Partial Redemption.* If less than all of the Bonds of any series are called for redemption in any of the circumstances set forth above, Bonds having a maturity or maturities selected by the Borrower shall be redeemed and if less than all of the Bonds of a maturity are to be redeemed, the particular Bonds or portions thereof of such series to be redeemed within a maturity shall be selected by lot in such manner as the Trustee shall determine. Bonds shall be redeemed in the principal amount of \$5,000 or any integral multiple thereof. Upon surrender of any Bond for redemption in part, the Issuer shall execute and the Trustee shall authenticate and deliver to the Owner thereof a new Bond or Bonds of the same series, interest rate, and maturity and of authorized denominations in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered.

*Payment Upon Redemption.* On or prior to each redemption date, the Trustee shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust, an amount of available funds from the Bond Fund sufficient to pay the (a) principal of and interest on such Bonds, and (b) premium, if any, on such Bonds. Upon presentation and surrender of any such Bond at the Principal Corporate Trust Office of the Trustee on or after the date fixed for redemption, the Trustee shall pay the principal of and premium, if any, on such Bond from the moneys set aside for such purpose.

*Effect of Redemption.* Notice of redemption having been given as provided in the Indenture, the Bonds or portions thereof designated for redemption shall become and be due and payable on the date fixed for redemption at the redemption price provided for in the Indenture, provided immediately available funds for their redemption are on deposit at the place of payment at that time, and, unless the Issuer defaults in the payment of the principal thereof and premium, if any, and interest thereon, such Bonds or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date. If any Bond or portion thereof called for redemption is not so paid upon presentation and surrender thereof for redemption, such Bond or portion thereof shall continue to bear interest at the rate set forth therein until paid or until due provision is made for the payment of the same.

*Purchase of Bonds.* At the direction of the Borrower in writing, the Trustee shall apply moneys in the Bond Fund held for redemption or payment of Bonds, in excess of any amount set aside for payment of Bonds theretofore matured or called for redemption and unpaid interest in all cases where such Bonds have not been presented for payment, to the purchase on the open market of Outstanding Bonds subject to redemption or payment from such moneys as provided for in the Indenture, and upon such purchase such Bonds shall be canceled and the amount of such redemption or principal payment shall thereupon be reduced by the principal amount of such Bonds so purchased and canceled, provided that no credit shall be given for such Bonds so purchased within the forty-five (45) days next preceding the redemption or payment date. Subject to the above limitations, the Trustee shall, if directed by the Borrower in writing, purchase Bonds on the open market for cancellation at such times, for such prices (not to exceed the redemption price to redeem such bonds pursuant to the Indenture), in such amounts, and in such manner (whether after advertisement for tenders or otherwise) as so directed by the Borrower and as may be possible with the amount of money available in the Bond Fund. The expenses of such purchase shall be deemed an Ordinary Expense of the Trustee.

*Cancellation.* All Bonds which have been purchased, redeemed, paid, or retired, or received by the Trustee for exchange, shall not be reissued but shall be canceled and destroyed by the Trustee, in accordance with the Indenture.

**Registration Provisions; Exchange; Replacement**

The Bonds shall be and shall have all the qualities and incidents of negotiable instruments under the laws of the State, and the Bondholders, in accepting any of the Bonds, shall be conclusively deemed to have agreed that the Bonds shall be and have all of said qualities and incidents of negotiable instruments.

The Issuer shall cause books for the registration of the Bonds and for the registration of transfer of the Bonds as provided in the Indenture to be kept by the Trustee which is appointed the Issuer's bond registrar and agent for the transfer and exchange of the Bonds and as such shall maintain the books of the Issuer for the registration of ownership of each Bond as provided in the Indenture. The Trustee, for and on behalf of the Issuer, shall keep the Bond registration record, in which shall be recorded any and all transfers of ownership of Bonds. No Bonds shall be registered to bearer. The registration records kept by the Trustee shall at all times comply with all requirements of Section 149(a) of the Code and all Regulations from time to time promulgated thereunder as such apply to the Bonds and as may be applicable to such registration records and the Bonds. Any Bond may be transferred upon the registration books upon surrender thereof by the registered Bondholder in person or by his attorney-in-fact or legal representative duly authorized in writing together with a written instrument of transfer in form and with guarantee of signature satisfactory to the Trustee duly executed by the registered Bondholder or his attorney-in-fact or legal representative duly authorized in writing and upon payment by such registered Bondholder of a sum sufficient to cover any governmental tax, fee, or charge required to be paid as provided in the Indenture. Upon any such registration of transfer, the Issuer shall cause to be executed and the Trustee shall authenticate and deliver in the name of the transferee a new fully registered Bond or Bonds of authorized denominations and of the same series, maturity or maturities, and interest rate(s) and in the same aggregate principal amount(s), and the Trustee shall enter the transfer of ownership in the registration books. No transfer of any Bond shall be effective until entered on the registration books.

Any Bonds, upon surrender thereof at the Principal Corporate Trust Office of the Trustee with a written instrument of transfer in form and with guarantee of signature satisfactory to the Trustee, duly executed by the registered Owner or his attorney-in-fact or legal representative duly authorized in writing, may be exchanged, at the option of the registered Owner thereof, and upon payment by such registered Owner of a sum sufficient to cover any governmental tax, fee, or charge required to be paid as provided in the Indenture, when not prohibited by law, for an equal aggregate principal amount of Bonds of the same series, interest rate, and maturity or maturities and of any other authorized denominations and registered in the name of the same registered Owner. When Bonds are presented for exchange in accordance with the Indenture, the Issuer shall cause to be executed and the Trustee shall authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not then outstanding, and the Trustee, as bond registrar, shall enter the exchange in the registration books.

Except as provided in the Indenture with respect to exchanges for certain temporary Bonds, the cost of printing, lithographing, and engraving of all Bonds shall be deemed to be an Ordinary Expense of the Trustee, and there shall be no charge to any Bondholder for the registration, exchange, or transfer of Bonds, although in each case the Trustee may require the payment by the Bondholder requesting exchange or transfer of any tax, fee, or other governmental charge required to be paid with respect thereto and may require that such amount be paid before any such new Bond shall be delivered.

The Issuer and Trustee may deem and treat the registered Bondholder of any Bond as the absolute Owner of such Bond for the purpose of receiving any payment on such Bond and for all other purposes of the Indenture and the Loan Agreement, whether such Bond shall be overdue or not, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. Payment of, or on account of, the principal of and interest and redemption premium, if any, on any Bond shall be made to or upon the written order of

such registered Bondholder or his attorney-in-fact or legal representative duly authorized in writing. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

The execution and attestation by the manual or facsimile signature of the Mayor and Auditor of the Issuer of any Bond of any authorized denomination shall constitute full and due authorization of such denomination, and the Trustee shall thereby be authorized to authenticate and deliver such Bond. New Bonds delivered upon any transfer or exchange shall be valid limited obligations of the Issuer, evidencing the same obligation as the Bonds surrendered, shall be secured by the Indenture, and shall be entitled to all of the security and benefits thereof to the same extent as the Bonds surrendered. The Trustee shall not be required to transfer or exchange any Bond (a) after the notice calling such Bond for redemption has been given as provided in the Indenture or (b) during a period beginning at the opening of business on the fifteenth (15th) day (regardless of whether such day is a Business Day) next preceding either any Interest Payment Date or any date of selection of Bonds to be redeemed and ending at the close of business on the Interest Payment Date or day on which the applicable notice of redemption is given.

### **Book-Entry Only System**

The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the Bonds (the “Securities”). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for the Securities, in the aggregate principal amount of such issue, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17 A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC’s records. The ownership interest of each actual purchaser of each Security (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial

Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Beneficial Owner shall give notice to elect to have its Securities purchased or tendered, through its Participant, to the tender agent or the remarketing agent, as applicable, and shall effect delivery of such Securities by causing the Direct Participant to transfer the Participant's interest in the Securities, on DTC's records, to the tender agent or the remarketing agent, as applicable. The requirement for physical delivery of Securities in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Securities are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Securities to the DTC account of the tender agent or the remarketing agent, as applicable.

DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

THE ISSUER AND THE TRUSTEE WILL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO THE DIRECT PARTICIPANTS, TO THE INDIRECT PARTICIPANTS OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (I) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT; (II) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OR ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS; (III) ANY NOTICE WHICH IS PERMITTED OR REQUIRED TO BE GIVEN TO BONDHOLDERS BY DTC UNDER THE RESOLUTIONS; (IV) THE SELECTION BY DTC OR ANY DIRECT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE BONDS; OR (V) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS BONDOWNER.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

## **SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**

### **Limited Obligations**

THE BONDS ARE NOT A DEBT OF THE CITY OF PORTLAND, OREGON, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE CITY OF PORTLAND, OREGON, NOR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE BONDS, INCLUDING THE PRINCIPAL AND REDEMPTION PRICE THEREOF AND THE INTEREST THEREON, AND ALL OTHER OBLIGATIONS OF THE ISSUER UNDER THE INDENTURE OR THE LOAN AGREEMENT, ARE PAYABLE SOLELY FROM THE TRUST ESTATE IN ACCORDANCE WITH THE PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT.

### **Nonrecourse Nature of Borrower's Obligations**

THE OBLIGATIONS OF THE BORROWER UNDER THE LOAN AGREEMENT AND THE NOTES ARE NONRECOURSE IN NATURE AND PAYABLE SOLELY FROM THE PROJECT AND THE REVENUES OF THE PROJECT (INCLUDING PAYMENTS BY PSU UNDER THE HOUSING SERVICES AGREEMENT). NO OTHER ASSETS OF THE BORROWER OR THE UNIVERSITY FOUNDATION ARE PLEDGED TO THE PAYMENT OF THE BONDS.

### **Pledge and Assignment of Trust Estate**

Pursuant to the Indenture, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of the covenants expressed in the Indenture and in the Bonds, the Issuer will assign and grant a security interest to the Trustee in and to the Trust Estate which consists of:

(i) All the right, title, and interest of the Issuer in and to (a) the Loan Agreement, dated as of October 1, 2008, between the Issuer and Borrower (except for Unassigned Rights, as defined in the Loan Agreement) and (b) the Notes, and all extensions and renewals of the terms thereof, if any, and all amounts encumbered thereby, including, but without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive, and make receipt for payments and other sums of money payable, receivable, or to be held thereunder, to bring any actions and proceedings thereunder or for the enforcement thereof, and to do any and all other things which the Issuer is or may become entitled to do under the foregoing, provided that the assignment made by this clause shall not impair or diminish any obligation of the Issuer under the provisions of the foregoing or impair or diminish the right of the Issuer to enforce compliance with the obligations of the Borrower under the foregoing, as long as no Event of Default has occurred and is continuing under the Indenture.

(ii) All the right, title, and interest of the Issuer in and to all cash proceeds and receipts arising out of or in connection with the sale of the Bonds and all other moneys, investments, and instruments held by the Trustee in the funds created under the Indenture (except the Rebate Fund), including the Revenue Fund, Bond Fund, Capital Replacement Fund, Debt Service Reserve Fund, Issuance Cost Fund, Operating Reserve Fund, Surplus Fund, Insurance Fund, and Condemnation Fund created under the Indenture, or held by the Trustee as special trust funds derived from any other source.

(iii) All the right, title, and interest of the Issuer in and to all moneys and securities and interest earnings thereon from time to time delivered to and held by the Trustee under the terms of the Indenture (except the Rebate Fund) and all other rights of every name and nature and any and all other property from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned, or transferred as and for additional security under the Indenture by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

(iv) All the right, title, and interest of the Issuer in and to all proceeds (cash and noncash) of any or all of the foregoing, including, without limiting the generality of the foregoing, all inventory, accounts, chattel paper, documents, equipment, instruments, farm products, consumer goods, and general intangibles constituting proceeds acquired with cash proceeds of any or all of the foregoing.

**Upon an Event of Default under the Bond Documents, moneys received by the Trustee are to be applied to the fees and expenses of the Trustee, including attorneys' fees, prior to payments of interest on and principal of the Bonds.**

Unless an Event of Default occurs and continues, the Borrower is permitted to possess and use the hereinafter defined Security (except cash, securities, and other personal property deposited with the Trustee) and receive and use the revenues, issues, profits, and other income of the Security (except cash, securities, and other personal property required to be deposited with the Trustee).

Because of certain risks associated with pledging and granting a security interest in collateral of the nature described above, potential investors should not rely solely upon such collateral as providing security for the Bonds. See "RISK FACTORS – Assignment, Pledge and Grant of Security Interest in Future Revenues of the Project" herein.

### **Pledge of Revenues**

As security for its obligations under the Loan Agreement and the Notes, the Borrower has assigned and pledged to the Trustee its interest in the leases, rents, issues, profits, revenues, income, receipts, moneys, royalties, rights, and benefits of and from the Project and granted a security interest to the Trustee in the accounts, documents, chattel paper, instruments, and general intangibles arising in any manner from the Borrower's operation of the Project pursuant to the Security Agreement.

Certain interests and claims of others may be on a parity with or prior to the pledge, assignment, and grant of a security interest made in the Security Agreement and in the Indenture and certain statutes and other provisions may limit the Borrower's right to make such pledges, assignments, and grants of security interests. Examples of such claims, interests, and provisions are:

- (1) statutory liens,
- (2) the Oregon Uniform Commercial Code may not recognize a security interest in future revenues derived from the Project,
- (3) constructive trusts, equitable liens, or other rights impressed or conferred by any state or Federal Court in the exercise of its equitable jurisdiction,
- (4) federal bankruptcy laws as they affect amounts earned with respect to the Project after any effectual institution of bankruptcy proceedings by or against the Borrower,
- (5) as to those items in which a security interest can be perfected only by possession, including items converted to cash, the rights of third parties in such items not in the possession of the Trustee,
- (6) items not in possession of the Trustee, the records to which are located or moved outside the State of Oregon, which are thereby not subject to or are removed from the operation of Oregon law, and
- (7) the requirement that appropriate continuation statements be filed in accordance with the Oregon Uniform Commercial Code as from time to time in effect.

See "SUMMARIES OF PRINCIPAL LEGAL DOCUMENTS --The Loan Agreement -- Loan Payments and Other Amounts Payable" and "Nature of the Obligations of the Borrower" in Exhibit C hereto.

### **Flow of Funds**

In the Loan Agreement, the Borrower has agreed that on at least a weekly basis, it will deliver Revenues to the Trustee for deposit to the Revenue Fund. PSU has agreed in the Housing Services Agreement to

deliver Available Funds to the Trustee in the amounts required to be paid by the Indenture. On the fifteenth (15th) day (or if such day is not a Business Day, the immediately following Business Day) of each month (the "Determination Date"), the Borrower is required to determine the amount required to be on deposit in the Revenue Fund in order to ensure that each of the following payments and deposits will be made on the immediately following Transfer Date (hereinafter defined). If the amounts on deposit in the Revenue Fund and the Surplus Fund on the Determination Date will be insufficient to make any of the following payments or transfers on the Transfer Date, the Borrower is required to immediately notify PSU and PSU is required to transfer from Available Funds the amount of such deficiency to the Trustee by the twenty-fifth (25th) day (or if such day is not a Business Day, the immediately following Business Day) of each month, and the Trustee shall deposit such amounts paid by PSU into the Revenue Fund. Three (3) Business Days prior to the first Business Day of each month (the "Transfer Date") the Trustee is required to make the following transfers and payments from the Revenue Fund in the following order, provided that in the event funds on deposit in the Revenue Fund and the Surplus Fund on any Transfer Date shall be insufficient to make any one or more of such transfers, the Trustee shall immediately notify PSU, and PSU is required to pay to the Trustee the amount of such deficiency. Any and all of such deficiencies shall be remedied prior to making any subordinated payments or transfers to any subordinated funds (based on the following order of priority) in any future month:

FIRST, to the Rebate Fund, any amounts required to be paid to the Rebate Fund as directed by the Borrower in accordance with the terms of the Tax Compliance Agreement;

SECOND, to the Principal Account and Interest Account of the Bond Fund, amounts representing the Basic Loan Payment payable and to be applied as provided under the Loan Agreement;

THIRD, to the Debt Service Reserve Fund, any amount required to cause the balance of the Debt Service Reserve Fund to equal the Debt Service Reserve Requirement, or to the provider of a DSR Surety Bond (as defined in the Indenture) interest or fees for such DSR Surety Bond due or to become due within 30 days;

FOURTH, to the operating account for the Project, designated and held by the Borrower, an amount that will bring said operating account to a balance equal to the budgeted operating expenses (other than management fees) for the Project through the end of the next calendar month, as shown on a certificate provided to the Trustee by the Borrower, or (if authorized by the Borrower) by the Borrower's designee, and the fees and expenses then due, if any, of the Trustee, the Issuer, the Independent Engineer and the Insurance Consultant;

FIFTH, to the Operating Reserve Fund any amount required to cause the balance of the Operating Reserve Fund to equal the Operating Reserve Requirement;

SIXTH, to the Capital Replacement Fund, the Capital Replacement Requirement;

SEVENTH, to the Manager any management fees owed as Additional Loan Payments pursuant to the Loan Agreement; and

EIGHTH, to the Surplus Fund, the balance of the amounts in the Revenue Fund.

### **Housing Services Agreement**

In addition to the other security provided under the Indenture, commencing on the Closing Date and ending no earlier than the date on which the lien and security interest of the Indenture shall have been



discharged pursuant to the terms of the Indenture, the Housing Services Agreement will be in effect. Pursuant to the Housing Services Agreement, to the extent that Revenues from the operation of the Project are insufficient to satisfy the debt service requirements of the Bonds and other financial obligations of the Borrower contained in the Bond Documents (including without limitation any operating expenses and other amounts necessary to maintain reasonable and prudent reserves for repair and maintenance of the Project and for debt service) (the "Bond Obligations"), PSU will be obligated, among other things, to pay all amounts necessary to satisfy such Bond Obligations.

PSU's payment obligations under the Housing Services Agreement will be subject to there being sufficient "Available Funds" (as defined in the Housing Services Agreement) from which it can satisfy such obligations. Under the Housing Services Agreement, "Available Funds" means (i) funds appropriated or otherwise made available by the Oregon Legislative Assembly including limited and non-limited funds, or allotments pursuant to ORS Chapter 291, sufficient to allow PSU, in the exercise of its reasonable administrative discretion, to pay amounts due under the Housing Services Agreement for the fiscal period in which the amounts are due and (ii) all unrestricted funds of PSU not otherwise encumbered, or statutorily or contractually restricted, including but not limited to auxiliary housing services, auxiliary administration, vending machines, auxiliary copy service, auxiliary room rentals, unrestricted reserves and unrestricted funds being held by PSU. More specifically, under the Housing Services Agreement, PSU covenants and agrees to take all reasonable steps and diligently use its best efforts to seek to (i) obtain Available Funds and (ii) generate Available Funds, in the following manner and in the following priority: (a) PSU will allocate funds from available auxiliary enterprises revenues of PSU, including but not limited to student housing auxiliaries from all PSU housing facilities, food service, and conference services; (b) In the event the funds described in clause (a) are insufficient to make the payments due under the Housing Services Agreement (the "Payments"), the PSU Vice President of Finance and Administration (or any officer of PSU that succeeds to the duties of such Vice President), through the appropriate rulemaking process, is required to seek to raise the fines and fees charged for various auxiliary services; (c) In the event the funds described in clauses (a) and (b) are insufficient to make the Payments, the PSU Vice President of Finance and Administration (or any officer of PSU that succeeds to the duties of such Vice President) is required to make such Payments from any other unrestricted revenues (e.g., tuition) and unrestricted fund balances legally available to PSU to make such Payments; (d) In the event the funds described in clauses (a) through (c) above are insufficient to make the Payments, the PSU Vice President of Finance and Administration is required to seek funds from other legally available sources; (e) In the event the funds described in clauses (a) through (d) above are insufficient to make the Payments, PSU will use its best efforts to seek an additional appropriation or limitation from the Oregon Legislative Assembly or the Legislative Emergency Board.

Under the Housing Services Agreement, PSU has covenanted that it will not grant, create, assume or permit to exist any lien, mortgage, deed of trust, pledge, security interest or other charge or encumbrance other than Permitted Liens on any assets of PSU owned at the time the Housing Services Agreement is made effective or thereafter acquired, including, without limitation, any auxiliary enterprises revenues, any unrestricted revenues or any unrestricted fund balances or any part thereof (as each term is described in the Housing Services Agreement), or any Available Funds or any part thereof.

A copy of the Housing Services Agreement is attached hereto as Exhibit D. Also, attached hereto as Exhibit B are the audited financial statements of the Oregon University System (the "System"), of which PSU is a component part, for the years ended June 30, 2005, 2006 and 2007. **The Bonds are not obligations of the System.** Furthermore, funds to which PSU will have recourse to meet its obligations under the Housing Services Agreement will not include funds of the System aside from those funds that are attributable to PSU and constitute "Available Funds" under the Housing Services Agreement.

Information regarding PSU is contained herein under the caption “THE UNIVERSITY AND THE OREGON UNIVERSITY SYSTEM – Portland State University.”

Since the opening of the Project in September of 2004, revenues from the Project have had to be supplemented by draws on the Housing Services Agreement in order to enable the Borrower to satisfy the Bond Obligations. See “THE PROJECT—Revenue Generation” and “RISKS – Sources of Payment for the Bonds” and “—Performance of Project; Draws on Housing Services Agreement” herein.

### **Debt Service Reserve Fund**

Under the Indenture, a Debt Service Reserve Fund has been created. Proceeds of the Bonds in the amount of \$\_\_\_\_\_ will be deposited in the Debt Service Reserve Fund. The Trustee is authorized to transfer funds from the Debt Service Reserve Fund to the Bond Fund, if on any Interest Payment Date there are insufficient funds in the Bond Fund with which to pay interest on and principal of the Bonds. See “SUMMARIES OF PRINCIPAL LEGAL DOCUMENTS -- The Indenture -- The Debt Service Reserve Fund” in Exhibit C hereto.

### **Enforceability of Remedies**

The realization of value from the real and personal property comprising the Project and from the other security for the Bonds upon any default will depend upon the exercise of various remedies specified by the Bond Documents. These and other remedies may require judicial actions, which are often subject to discretion and delay and which may be difficult to pursue. See “RISK FACTORS – Enforceability of Remedies” and “RISK FACTORS – Assignment, Pledge and Grant of Security Interest in Future Revenues of the Project” herein.

## **RISK FACTORS**

THIS DISCUSSION OF RISK FACTORS IS NOT, AND IS NOT INTENDED TO BE, EXHAUSTIVE.

### **Sources of Payment for the Bonds**

The Borrower has an operating history of four years, with no material earnings other than revenues from the operation of the Project and no appreciable assets other than its interest in the Project. The obligations of the Borrower under the Loan Agreement and the Notes are nonrecourse in nature and payable solely from the Project, the revenues from the operation of the Project and supplemental payments made by PSU under the Housing Services Agreement. Therefore, the revenues from the operation of the Project, as supplemented by payments by PSU under the Housing Services Agreement, must generate sufficient cash flow to pay amounts due on the Bonds. During the first three years of the operation of the Project, revenues from the operation of the Project have been sufficient to cover the synthetic fixed interest rates on the 2003 Bonds (swapped from variable to fixed) and principal payments due on the 2003 Bonds, but supplemental payments by PSU under the Housing services Agreement have been necessary to cover additional payment obligations of the Borrower under the Bond Documents. See “THE PROJECT—Revenue Generation” herein. While the Borrower believes, based on the operating history of the Project and projections by PSU regarding future operating results, that the revenues from the operation of the Project will in the future be sufficient to cover all obligations of the Borrower under the Bond Documents, future events may affect the assumptions regarding future operations upon which these expectations are based. Thus, no assurance can be given that revenues from operation of the Project will be realized by the

Borrower in an amount sufficient to pay the principal of and interest on the Bonds as they become due and the other obligations of the Borrower under the Bond Documents (the “Bond Obligations”) without continued dependence on supplemental payments from PSU under the Housing Services Agreement.

Furthermore, if revenues available to the Borrower from the operation of the Project are insufficient to pay the Bond Obligations, no assurances can be given that PSU will have a sufficient amount of funds available to it to meet its obligations under the Housing Services Agreement to pay for any Bond Obligations not otherwise paid from revenues from the Project. PSU’s obligations under the Housing Services Agreement are subject to the availability of “Available Funds,” which generally include its auxiliary funds balance, its unrestricted funds balance and funds obtained through the Oregon Legislative Assembly appropriation and limitation process. PSU will not assume any liability for payments under the Notes other than as specially designated under the Housing Services Agreement. See “EXHIBIT D — HOUSING SERVICES AGREEMENT” attached hereto and “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS — Housing Services Agreement” herein.

### **Limited Security**

The Bonds are not a debt of the City of Portland, Oregon, the State, or any political subdivision thereof and neither the City of Portland, Oregon, nor the State or any political subdivision thereof shall be liable thereon. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. The Bonds, including the principal and redemption price thereof and the interest thereon, and all other obligations of the Issuer under the Indenture, the Tax Agreement or the Loan Agreement, are payable solely from the Trust Estate in accordance with the provisions of the Indenture, the Tax Agreement and the Loan Agreement.

In addition, the Borrower’s liability under the Loan Agreement, the Trust Deed, the Security Agreement and all other documents executed in connection with the issuance of the Bonds is nonrecourse. Accordingly, any recovery against the Borrower under the Loan Agreement, Trust Deed, the Security Agreement and all other documents executed in connection with the issuance of the Bonds is limited to the Borrower’s interest in the Project. No recourse may be obtained against other assets of the Borrower. No assurance can be made that the proceeds of any foreclosure or liquidation of the security for the Bonds would be sufficient to pay all amounts owed with respect thereto.

No recourse shall be had for the payment of the principal of or premium, if any, or interest on the Bonds against any past, present, or future officer, director, counsel, advisor, or agent of the Issuer, or of any successor to the Issuer, as such, either directly or through the Issuer or any successor to the Issuer, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment of penalty or otherwise, and all such liability of any such officers, directors, counsel, advisors, or agents, as such, is expressly waived and released as a condition of and in consideration for the execution and issuance of the Bonds.

### **Tax-Exempt Status of the Series 2008A Bonds**

The Code imposes a number of requirements that must be satisfied for interest on state and local obligations, such as the Series 2008A Bonds, to be excludable from gross income for federal income tax purposes. These requirements include limitations on the use of proceeds, limitations on the investment of proceeds prior to expenditure, a requirement that certain arbitrage earned on investment of proceeds be paid periodically to the United States, and a requirement that the issuers file an information report with the Internal Revenue Service. The Issuer, the University Foundation and the Borrower have each covenanted that they will comply with such requirements. Failure by the Issuer, the University

Foundation or the Borrower to comply with any of these covenants may result in the treatment of the interest received on the Tax-Exempt Bonds as included in federal gross income, retroactive to the date of delivery. See “Tax-Exempt Status of the University Foundation and the Borrower” below and “TAX MATTERS” herein.

### **Insurance**

In recent years the number of lawsuits and the dollar amount of recoveries have increased nationwide, resulting in increases of insurance premiums. In some areas of the country, insurance may not continue to be available, or it may only be available at such great cost as to render such insurance economically unavailable.

### **Tax-Exempt Status of the University Foundation and the Borrower**

***Maintenance of the Tax-Exempt Status of the University Foundation.*** The tax-exempt status of the Series 2008A Bonds presently depends, in part, upon maintenance, by the University Foundation, of its status as an organization exempt from federal income tax described in section 501(c)(3) of the Code and the continued use by the Borrower and the University Foundation of the assets refinanced by the Series 2008A Bonds in a manner that does not constitute an unrelated trade or business of the University Foundation under Code Section 513(a). In this regard, under applicable law, as described further herein under the caption “THE BORROWER,” the existence of the Borrower will be disregarded for federal tax purposes, and the operations of the Borrower will be treated as operations of the University Foundation. The maintenance of such status is contingent on compliance with general rules promulgated in the Code and related regulations regarding the organization and operation of tax-exempt entities, including their operation for charitable, educational and other permissible purposes and their avoidance of transactions that may cause their earnings or assets to inure to the benefit of private individuals.

The University Foundation and the Borrower participate in a variety of transactions. The University Foundation’s management and the Borrower’s management, respectively, believe that the transactions to which the University Foundation and the Borrower are a party are consistent with the requirements of the Code as to the tax-exempt status of the University Foundation.

The IRS has issued Revenue Rulings and non-precedential administrative guidance dealing specifically with the manner in which an organization providing residential services to university students as one of its principal purposes must operate in order to maintain its federal income tax exemption under Section 501(c)(3) of the Code. The determination of tax-exempt status under Code Section 501(c)(3) depends upon all of the facts and circumstances. Revenue Ruling 76-336, as subsequently interpreted by the Internal Revenue Service, holds that, if otherwise qualified, an organization providing residential services to students of a single university advances education and is thereby exempt under Code Section 501(c)(3) if the organization (1) is formed by community leaders to provide such housing to students at a particular university in response to studies showing that the university lacks suitable housing to meet the need, (2) consults with the university to assure that the needs and policies of the university with regard to student housing are served by the housing provided, (3) commits to providing housing at rates that approximate costs, and therefore are below fair market value for comparable housing in the area, and (4) its governing board, which is composed of community leaders, does not include individuals that provide professional services to the organization with respect to the development of the student housing or individuals that are appointed to the governing board by such service providers. In Revenue Ruling 67-217, the IRS granted tax-exempt status to a nonprofit organization formed to provide housing and food service exclusively for students and faculty of a specific university that lacked adequate student and faculty housing. The facility was managed by a commercial firm in accordance with university policies. Rental rates were comparable

to those charged by the university for similar facilities. Certain educational services were provided at the facility to supplement the university's activities. Any surplus revenue was donated, annually to the university, and the university had an option to purchase the facility at any time for any amount equal to the outstanding debt. The University Foundation and the Borrower believe that they are organized and operated in such a manner as to fit within the parameters of these Revenue Rulings. The University Foundation's mission is to support and promote PSU. The Borrower was formed exclusively to develop, own and manage the Project in accordance with the requirements of Section 501(c)(3) of the Code, in furtherance of the charitable purposes of the University Foundation. PSU has a critical need for additional student housing based upon studies conducted. See "THE PROJECT – Project Facilities" above. The Borrower has agreed to operate the Project in accordance with PSU policies, that the rental rates will not exceed those charged by PSU at comparable facilities, and that the management committee of the Borrower will not include representatives of service providers to the Project.

In recent years, the IRS has increased the frequency and scope of its audit and other enforcement activity regarding tax-exempt organizations. If the IRS were to find that the University Foundation or the Borrower has participated in activities in violation of certain regulations or rulings, the tax-exempt status of the University Foundation could be in jeopardy. Although the IRS has not frequently revoked the 501(c)(3) tax-exempt status of organizations providing housing to students of a particular university, it could do so in the future. Loss of tax-exempt status by the University Foundation potentially could result in loss of tax exemption of the Series 2008A Bonds, and defaults in covenants regarding the Bonds and, possibly, other obligations of the University Foundation, likely would be triggered. Loss of tax-exempt status by the University Foundation also could result in substantial tax liabilities on the income of the University Foundation. For these reasons, loss of tax-exempt status of the University Foundation could have a material adverse effect on the financial condition of the University Foundation, the Borrower and the Project.

In lieu of revocation of exempt status, the IRS may impose penalty excise taxes on certain "excess benefit transactions" involving 501(c)(3) organizations, such as the University Foundation, and "disqualified persons." An excess benefit transaction is one in which a disqualified person or entity receives more than fair market value from the exempt organization or pays the exempt organization less than fair market value for property or services, or shares the net revenues of the tax-exempt entity. Generally, a disqualified person is a person (or an entity) who is in a position to exercise substantial influence over the affairs of the exempt organization during the five years preceding an excess benefit transaction. The statute imposes excise taxes on the disqualified person and any "organization manager" who knowingly participates in an excess benefit transaction. The intermediate sanctions rules do not penalize the exempt organization itself, so there would be no impact on the tax-exempt status of the University Foundation or on the tax status of the Series 2008A Bonds if an excess benefit transaction were subject to IRS enforcement.

***No Redemption Upon Loss of Tax Exemption.*** The occurrence of an event which results in the interest payable on the Series 2008A Bonds being includable for federal income tax purposes in the gross income of the Owners of the Series 2008A Bonds is not an event of default under the Series 2008 Bonds and does not give rise to a redemption of the Bonds or to the payment to the Owners of the Series 2008A Bonds of any amount denoted as supplemental interest, additional interest, penalty interest, liquidated damages or otherwise, in addition to the amounts payable to the Owners of the Series 2008A Bonds prior to the occurrence of such event. Consequently, interest on the Series 2008A Bonds may become includable in gross income for purposes of federal income taxation retroactive to the date of issuance of the Bonds by reason of the University Foundation's failure to comply with the requirements of federal tax law, and the City and the Trustee will not have remedies available to them to mitigate the adverse economic effects to

the Owners of the Series 2008A Bonds of such inclusion by reason of the University Foundation's noncompliance.

### **Assignment, Pledge and Grant of Security Interest in Future Revenues of the Project**

Pursuant to the Security Instruments, the Borrower will assign and pledge to the Trustee for the benefit of the Owners of the Bonds, the Borrower's interest in the real property and certain rights and other personal property related to the Project. Certain interests and claims of others may be on a parity with or prior to the assignment, pledge and grant of a security interest to be made in the Security Instruments, and certain statutes and other provisions may limit the Borrower's right to make such pledges, assignments and grants of security interests.

### **Enforceability of Remedies; Bankruptcy**

The remedies available to the Trustee and the Bondholders upon an Event of Default are in many respects dependent upon regulatory and judicial actions that are often subject to discretion and delay. Under existing law and judicial decisions, the remedies provided for may not be easily available or may be limited. A court may decide not to order the specific performances of the covenants contained in the documents related to the financing of the Project. The various legal opinions to be delivered concurrently with the initial delivery of the Bonds will be qualified as to enforceability of the various legal instruments by limitations imposed by bankruptcy, moratorium, insolvency or other laws affecting the rights of creditors, and equitable remedies and proceedings, generally.

The rights and remedies of the Bondholders are subject to various provisions of the United States Bankruptcy Code. If the Borrower were to file a petition for relief (or if a petition were to be filed against the Borrower) under the United States Bankruptcy Code, the filing would operate as an automatic stay of the commencement or continuation of any judicial or other proceeding or certain other actions against the Borrower and its property, including the commencement of a foreclosure proceeding under the Trust Deed and/or the Security Agreement. If the Bankruptcy Court so ordered, the Borrower's property, including its accounts receivable and proceeds thereof, could be used for the benefit of the Bondholder despite the claims of the Borrower or the Borrower's other creditors.

The Borrower could file a reorganization plan providing for the adjustment of its debts in a proceeding under the United States Bankruptcy Code which could include provisions modifying or altering the rights of creditors, including the Bondholders, generally, or any class of them, secured or unsecured. The plan, when confirmed by the bankruptcy court would bind all creditors who have notice or knowledge of the plan and may provide for the discharge all claims against the debtor provided for in the plan. No plan may be confirmed unless certain conditions are met, among which are that the plan is in the best interests of creditors, is feasible and has been accepted by at least one class of claims impaired thereunder. Each class of claims has accepted the plan if at least two-thirds in dollar amount and more than one-half in number of the allowed claims of the class that are voted with respect to the plan are cast in its favor. If the plan is not so accepted by all impaired classes of creditors, it may be confirmed if the court finds that the plan satisfies all of the conditions contained in the Bankruptcy Code, including that the plan does not discriminate unfairly and is fair and equitable with respect to each class of non-accepting creditors impaired thereunder. Any such plan could adversely affect the Bondholders.

### **Liquidation in the Event of a Default**

In the event the revenues from the Project are insufficient to pay the amounts due under the Indenture and the Bonds, following exhaustion of the other security for the Bonds, the Bondholders will have no person

or entity to pursue for any deficiency which may exist. The practical use of the Project is limited to its use as described herein and it is not generally suitable for industrial or commercial use. Consequently, it may be difficult to find a buyer or lessee for the Project if it were necessary to foreclose on the Project. Furthermore, in order to operate the Project for the uses described herein, a purchaser of the Project at a foreclosure sale would have to obtain appropriate operating licenses and governmental approvals. If it were necessary to foreclose the lien of the Trust Deed and/or Security Agreement on the Project, net proceeds received may be less than the amount of the principal of, and accrued interest on, the aggregate principal amount of the Bonds then Outstanding.

### **Other Risks of Real Estate Investment**

The business of investing in real estate is subject to numerous risks, some or all of which may affect the Borrower's ability to meet its payment and performance obligations. These risks include, without limitation, the failure of the Borrower to satisfy legal and contractual obligations with respect to the Project, as well as changes in general or local economic conditions, zoning, property values and real estate tax rates, as well as adverse use of adjoining lands, the possibility of a competitive oversupply of commercial real estate properties, condemnation and other governmental risks and fiscal policies, acts of God and other factors which are beyond the control of the Borrower.

### **Rental Housing Restrictions**

The Project is subject to certain federal, state and local restrictions on the use and occupancy of the Project, including limitations restricting rentals generally to students and faculty of Portland State University and related universities in the Oregon University System only. Compliance with these limitations is required in order to preserve the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes, and accordingly the Borrower has covenanted to comply with those limitations throughout the term of the Bonds. Effects of those limitations will be both to limit the market of tenants eligible to occupy the Project, and to limit the capacity of those tenants to pay rental increases. A consequence of the limitations described above may be to artificially suppress the operating income available from the Project, which may have an adverse effect on the ability of the Borrower to pay debt service on the Bonds.

### **Competing Facilities**

Other facilities may be developed, constructed and operated which could compete with the Project for tenants, and some such facilities already exist in the Project's market area. Any competing facilities could adversely affect occupancy and revenues of the Project. Further, the competitive rental market and/or other factors may lead to a substantial increase in the vacancy rate of the Project, which could substantially lower the revenue levels of the Project, resulting in an inability to make timely payments on the Notes. The Housing Services Agreement requires that certain conditions be satisfied before the University could build any additional housing facilities. See "THE UNIVERSITY AND THE OREGON UNIVERSITY SYSTEM – Portland State University – Restrictions on Additional University Housing" herein.

### **Performance of Project; Draws on Housing Services Agreement**

Since the opening of the Project in September of 2004, revenues generated by the Project have been insufficient to pay both debt service on the Bonds and all operating expenses associated with the Project. As a result, since the opening of the Project, the Borrower has been dependent upon payments that have been made by PSU pursuant to the Housing Services Agreement in order to satisfy its

obligations under the Bond Documents. The Borrower cannot provide any assurance that its dependence upon payments under the Housing Services Agreement will not continue. PSU's obligation to make payments under the Housing Services Agreement are subject to the availability of unrestricted and auxiliary funds, as well as appropriations and limitations from the Oregon Legislative Assembly. A copy of the Housing Services Agreement is attached hereto as Exhibit D. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Housing Services Agreement" and "THE PROJECT—Revenue Generation" herein.

Attached hereto as Exhibit B are the audited financial statements of the Oregon University System (the "System"), of which PSU is a component part, for the years ended June 30, 2005, 2006 and 2007. THE BONDS ARE NOT OBLIGATIONS OF THE SYSTEM. Furthermore, funds to which PSU will have recourse to meet its obligations under the Housing Services Agreement will not include funds of the System aside from those funds that are attributable to PSU and constitute "Available Funds" under the Housing Services Agreement.

### **Environmental Risks**

The Borrower is not aware of any enforcement actions currently in process with respect to any releases of pollutants or contaminants at the site of the Project. However, there can be no assurance that an enforcement action, which could result in a lien on the Security and/or foreclosure of the Project, or actions will not be instituted under such statutes at a future date.

Although the Bonds are secured by the Security Instruments, if upon the occurrence of an Event of Default the site of the Project is subject to potential environmental liability, neither the Issuer nor the Trustee will be under any obligation to institute or conduct proceedings to take control of, foreclose on, or otherwise assume ownership of the site of the Project.

The Development Manager engaged GeoDesign, Inc., an Oregon corporation ("GeoDesign"), to review existing environmental reports and to compile new environmental reports for each of the six tax lots located on the Project site. Such environmental reports include a Phase II Environmental Site Assessment ("ESA") dated April 25, 2000, prepared by Farallon Consulting, a Phase I ESA dated November 6, 2001, prepared by ATC Associates, Inc., a Limited Phase II Investigation dated August 15, 2002, prepared by GeoDesign, a Limited Phase II Investigation dated August 16, 2002, prepared by GeoDesign, an Underground Storage Tank Removal Report for Tax Lots 3800 and 3900, SW Jackson Street and SW Broadway Avenue dated September 6, 2002, prepared by GeoDesign, a Heating Oil Tank Decommissioning and Risk-Based Cleanup Report dated September 17, 2002, prepared by Cascade Environmental Services Inc., a Site Closure Letter from Department of Environmental Quality dated September 17, 2002, a Phase I ESA dated January 24, 2003, prepared by GeoDesign, a Phase II ESA dated January 27, 2003, prepared by GeoDesign, a Summary of Environmental Services dated February 5, 2003, prepared by GeoDesign, a Phase I ESA Update, Asbestos-Containing Materials Survey, Geophysical Survey, and Phase II ESA dated February 10, 2003 (Tax Lot 4000 only), a Phase I ESA Update, Asbestos-Containing Materials Survey, Geophysical Survey, and Phase II ESA dated February 10, 2003 (Tax Lot 4100 only), and a Risk-Based Analysis of Benzene in Subsurface, dated March 12, 2003, prepared by GeoDesign (Tax Lot 3800 only) (collectively, the "Environmental Reports"). No assurance can be given that the Environmental Reports revealed all potential environmental concerns, that no environmental liabilities have developed since the Environmental Reports were prepared, that future laws or regulations will not impose material environmental requirements or liability or that a material adverse environment condition does not otherwise exist.



## **TAX MATTERS**

### **FEDERAL INCOME TAX**

#### ***Series 2008A Bonds***

In the opinion of Bond Counsel, interest on the Series 2008A Bonds is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, interest on the Bonds is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations.

Federal income tax law contains a number of requirements that apply to the Series 2008A Bonds, including investment restrictions, periodic payments of arbitrage profits to the United States, requirements regarding the use of proceeds of the Series 2008A Bonds and the facilities refinanced with proceeds of the Series 2008A Bonds and certain other matters. The Issuer, the Borrower, and the University Foundation have covenanted to comply with all applicable requirements.

Bond Counsel's opinion is subject to the condition that the Issuer, the Borrower, and the University Foundation comply with the above-referenced covenants and, in addition, will rely on representations by the Issuer, the Borrower, and the University Foundation and their advisors with respect to matters solely within the knowledge of the Issuer, the Borrower, and the University Foundation and their advisors, respectively, which Bond Counsel has not independently verified. If the Issuer, the Borrower or the University Foundation fails to comply with such covenants or if the foregoing representations are determined to be inaccurate or incomplete, interest on the Series 2008A Bonds could be included in gross income for federal income tax purposes retroactively to the date of issuance of the Series 2008A Bonds, regardless of the date on which the event causing taxability occurs. Bond Counsel has further relied on the opinion of Garvey Schubert Barer, counsel to the Borrower and the University Foundation, to the effect that the Borrower is a limited liability company that is disregarded for federal income tax purposes, that the sole member of the Borrower is the University Foundation, that the University Foundation is exempt from federal income tax pursuant to Section 501(a) of the Code by virtue of being an organization described in Section 501(c)(3) of the Code, and that the facilities refinanced with the proceeds of the Series 2008A Bonds are not being used in an unrelated trade or business of the University Foundation the within the meaning of Section 513(a) of the Code.

Except as expressly stated in this Tax Matters section, Bond Counsel expresses no opinion regarding any other federal or state income tax consequences of acquiring, carrying, owning or disposing of the Series 2008A Bonds. Owners of the Series 2008A Bonds should consult their tax advisors regarding the applicability of any collateral tax consequences of owning the Series 2008A Bonds, which may include original issue discount, original issue premium, purchase at a market discount or at a premium, taxation upon sale, redemption or other disposition, and various withholding requirements.

Prospective purchasers of the Series 2008A Bonds should be aware that ownership of the Series 2008A Bonds may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations with "excess net passive income," foreign corporations subject to the branch profits tax, life insurance companies and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry or have paid or incurred certain expenses allocable to the Series 2008A Bonds. Bond Counsel expresses no opinion regarding any

collateral tax consequences. Prospective purchasers of the Series 2008A Bonds should consult their tax advisors regarding collateral federal income tax consequences.

Payments of interest on tax-exempt obligations such as the Series 2008A Bonds, are in many cases required to be reported to the Internal Revenue Service (the "IRS"). Additionally, backup withholding may apply to any such payments made to any owner who is not an "exempt recipient" and who fails to provide certain identifying information. Individuals generally are not exempt recipients, whereas corporations and certain other entities generally are exempt recipients.

Bond Counsel's opinion is not a guarantee of result and is not binding on the IRS; rather, the opinion represents Bond Counsel's legal judgment based on its review of existing law and in reliance on the representations made to Bond Counsel and compliance with covenants of the Issuer, Borrower, and the University Foundation. The IRS has established an ongoing program to audit tax-exempt obligations to determine whether interest on such obligations is includable in gross income for federal income tax purposes. Bond Counsel cannot predict whether the IRS will commence an audit of the Series 2008A Bonds. Owners of the Series 2008A Bonds are advised that, if the IRS does audit the Series 2008A Bonds, under current IRS procedures, at least during the early stages of an audit, the IRS will treat the Issuer as the taxpayer, and the owners of the Series 2008A Bonds may have limited rights to participate in the audit. The commencement of an audit could adversely affect the market value and liquidity of the Series 2008A Bonds until the audit is concluded, regardless of the ultimate outcome.

#### *Series 2008B Bonds*

**This advice was written to support the promotion or marketing of the Series 2008B Bonds. This advice is not intended or written by K&L Gates LLP to be used, and may not be used, by any person or entity for the purpose of avoiding any penalties that may be imposed on any person or entity under the U.S. Internal Revenue Code. Prospective purchasers of the Series 2008B Bonds should seek advice based on their particular circumstances from an independent tax advisor.**

The following discussion describes aspects of the principal U.S. federal tax treatment of U.S. persons that are beneficial owners ("Owners") of Series 2008B Bonds. This summary is based on the Internal Revenue Code of 1986, as amended to the date hereof (the "Code"), published revenue rulings, administrative and judicial decisions, and existing and proposed Treasury regulations (all as of the date hereof and all of which are subject to change, possibly with retroactive effect).

This summary discusses only Series 2008B Bonds held as capital assets within the meaning of Section 1221 of the Code. It does not discuss all of the tax consequences that may be relevant to an Owner in light of its particular circumstances or to Owners subject to special rules, such as certain financial institutions, insurance companies, tax-exempt organizations, foreign taxpayers, taxpayers who may be subject to the alternative minimum tax or personal holding company provisions of the Code, dealers in securities or foreign currencies, Owners holding the Series 2008B Bonds as part of a hedging transaction, "straddle," conversion transaction, or other integrated transaction, or Owners whose functional currency (as defined in Section 985 of the Code) is not the U.S. dollar. Except as stated herein, this summary describes no federal, state or local tax consequences resulting from the ownership of, receipt of interest on, or disposition of, the Series 2008B Bonds. ACCORDINGLY, INVESTORS WHO ARE OR MAY BE DESCRIBED IN THIS PARAGRAPH SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES TO SUCH INVESTORS, AS WELL AS TAX CONSEQUENCES ARISING UNDER THE LAWS OF ANY STATE, LOCAL, OR FOREIGN TAXING JURISDICTION OR UNDER ANY APPLICABLE TAX TREATY.

For purposes of this discussion, a “U.S. person” means an individual who, for U.S. federal income tax purposes, is (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof, (iii) an estate, the income of which is subject to U.S. federal income taxation regardless of its source of income, or (iv) a trust, if either: (A) a United States court is able to exercise primary supervision over the administration of the trust, and one or more United States persons have the authority to control all substantial decisions of the trust or (B) a trust has a valid election in effect to be treated as a United States person under the applicable treasury regulations. The term also includes nonresident alien individuals, foreign corporations, foreign partnerships, and foreign estates and trusts (“Foreign Owners”) to the extent that their ownership of the Series 2008B Bonds is effectively connected with the conduct of a trade or business within the United States, as well as certain former citizens and residents of the United States who, under certain circumstances, are taxed on income from U.S. sources as if they were citizens or residents. It should also be noted that certain “single member entities” are disregarded for U.S. federal income tax purposes. Such Foreign Owners and Owners who are single member non-corporate entities, should consult with their own tax advisors to determine the U.S. federal, state, local, and other tax consequences that may be relevant to them.

***In General.*** Interest derived from a Series 2008B Bond by an Owner is subject to U.S. federal income taxation. In addition, a Series 2008B Bond held by an individual who, at the time of death, is a U.S. person is subject to U.S. federal estate tax.

***Payments of Interest.*** Interest, including additional amounts of cash and interest, if any, paid on the Series 2008B Bonds will generally be taxable to Owners as ordinary interest income at the time it accrues or is received, in accordance with the Owner’s method of accounting for U.S. federal income tax purposes. Owners who are cash-method taxpayers will be required to include interest in income upon receipt of such interest income; whereas Owners who are accrual-method taxpayers will be required to include interest as it accrues, without regard to when interest payments are actually received.

***Disposition or Retirement.*** Upon the sale, exchange or other disposition of a Series 2008B Bond, or upon the retirement of a Series 2008B Bond (including by redemption), an Owner will recognize capital gain or loss equal to the difference, if any, between the amount realized upon the disposition or retirement (reduced by any amounts attributable to accrued but unpaid interest, which will be taxable as such) and the Owner’s adjusted tax basis in the Series 2008B Bond. Any such gain or loss will be United States source gain or loss for foreign tax credit purposes. Under the Indenture, certain of the Series 2008B Bonds are subject to optional redemption. See “DESCRIPTION OF THE BONDS—Redemption—Optional Redemption.” The Series 2008B Bonds are subject to defeasance at any time prior to their stated maturities. If the Issuer defeases any Series 2008B Bonds, such Series 2008B Bonds may be deemed to be retired and “reissued” for federal income tax purposes as a result of the defeasance. In such event, the Owner of a Series 2008B Bond would recognize a gain or loss on the Series 2008B Bond at the time of defeasance.]

***Information Reporting and Backup Withholding.*** Payments of interest on Series 2008B Bonds held of record by U.S. persons other than corporations and other exempt Owners must be reported to the IRS. Such information will be filed each year with the IRS on Form 1099, which will reflect the name, address, and taxpayer identification number of the Owner. A copy of Form 1099 will be sent to each Owner of a Series 2008B Bond for federal income tax reporting purposes.

Interest paid to an Owner of a Series 2008B Bond ordinarily will not be subject to withholding of federal income tax if such Owner is a U.S. person. Backup withholding of federal income tax may apply, however, to payments made in respect of the Series 2008B Bonds, as well as payments of proceeds from

the sale of Series 2008B Bonds, to Owners who are not “exempt recipients” and who fail to provide certain identifying information. This withholding generally applies if the Owner of a Series 2008B Bond (who is not an exempt recipient) (i) fails to furnish such Owner’s social security number or other taxpayer identification number (“TIN”), (ii) furnishes an incorrect TIN, (iii) fails to properly report interest, dividends or other “reportable payments” as defined in the Code, or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is correct and that such Owner is not subject to backup withholding. Individuals generally are not exempt recipients, whereas corporations and certain other entities generally are exempt recipients. To prevent backup withholding, each prospective Owner will be requested to complete an appropriate form.

Any amounts withheld under the backup withholding rules from a payment to a person would be allowed as a refund or a credit against such person’s U.S. federal income tax, provided that the required information is furnished to the IRS. Furthermore, certain penalties may be imposed by the IRS on an Owner who is required to supply information but who does not do so in the proper manner.

The federal tax discussion set forth above is included for general information only and may not be applicable depending upon an owner’s particular situation. Investors should consult their own tax advisors concerning the tax implications of holding and disposing of the Series 2008B Bonds under applicable state or local laws. Foreign investors should also consult their own tax advisors regarding the tax consequences unique to investors who are not U.S. persons.

#### **STATE OF OREGON TAX EXEMPTION**

In the opinion of Bond Counsel, interest on the 2008 Bonds is exempt from Oregon personal income tax under existing law.

#### **ERISA CONSIDERATIONS**

The Employee Retirement Income Security Act of 1974, as amended (“ERISA”), imposes certain requirements on employee plans subject to Title 1 of ERISA (“ERISA Plans”), and on those persons who are fiduciaries with respect to ERISA Plans. Investments by ERISA Plans are subject to ERISA’s general fiduciary requirements, including, but not limited to, the requirements of investment prudence and diversification and the requirement that an ERISA Plan’s investments be made in accordance with the documents governing the Plan.

Section 406 of ERISA and Section 4975 of the Code prohibit certain transactions involving the assets of an ERISA Plan (as well as those plans that are not subject to Title 1 of ERISA but are subject to Section 4975 of the Code, such as individual retirement accounts (together with ERISA Plans, “Plans”)) and certain persons (referred to as “parties in interest” or “disqualified persons” (each a “Party in Interest”)) having certain relationships to such Plans, unless a statutory or administrative exemption is applicable to the transaction. A Party in Interest who engages in a prohibited transaction may be subject to excise taxes and other penalties and liabilities under ERISA and the Code.

The fiduciary of a Plan that proposes to purchase and hold any Series 2008B Bonds should consider, among other things, whether such purchase and holding may involve (i) the direct or indirect extension of credit to a Party in Interest, (ii) the sale or exchange of any property between a Plan and a Party in Interest and (iii) the transfer to, or use by or for the benefit of, a Party in Interest, of any Plan assets. Depending on the identity of the Plan fiduciary making the decision to acquire or hold Series 2008B Bonds on behalf of a Plan and other factors, U.S. Department of Labor Prohibited Transaction Class Exemption (“PTCE”) 75-1 (relating to certain broker-dealer transactions), PTCE 84-14 (relating to transactions effected by

independent “qualified professional asset managers”), PTCE 90-1 (relating to investments by insurance company pooled separate accounts), PTCE 91-38 (relating to investments by bank collective investment funds), PTCE 95-60 (relating to investments by an insurance company general account), or PTCE 96-23 (relating to transactions directed by certain “in-house asset managers”) (collectively, the “Class Exemptions”) could provide an exemption from the prohibited transaction provisions of ERISA and Section 4975 of the Code. In addition, Section 408(b)(7) of ERISA and Section 4975(d)(20) of the Code generally provide for a statutory exemption from the prohibitions of Section 406(a) of ERISA and Section 4975 of the Code for certain transactions between Plans and persons who are Parties in Interest solely by reason of providing services to such Plans or that are affiliated with such service providers, provided generally that such persons are not fiduciaries with respect to the “plan assets” of any Plan involved in the transaction and that certain other conditions are satisfied.

By its acceptance of a Series 2008B Bond, each Purchaser will be deemed to have represented and warranted that either (i) no “plan assets” of any Plan have been used to purchase such Series 2008B Bond, or (ii) the Underwriter is not a Party in Interest with respect to the “plan assets” of any Plan used to purchase such Series 2008B Bond, or (iii) the purchase and holding of such Series 2008B Bond is exempt from the prohibited transaction restrictions of ERISA and Section 4975 of the Code pursuant to a statutory exemption or an administrative class exemption.

Each Plan fiduciary (and each fiduciary for a governmental or church plan subject to the rules similar to those imposed on Plans under ERISA) should consult with its legal advisor concerning an investment in any of the Series 2008B Bonds.

### **RATINGS**

The Bonds will be assigned a rating of “\_\_\_\_\_” by Moody’s Investors Service, Inc. (“Moody’s”) and a rating of “\_\_\_\_\_” by Standard & Poor’s Credit Market Services, a Division of the McGraw-Hill Companies, Inc. (“S&P”). No application was made to any other rating agency for a rating on the Bonds. Such ratings reflect only the respective views of Moody’s and S&P at the time such ratings were given, and the Issuer makes no representation as to the appropriateness of the ratings. Any explanation of the significance of the ratings may be obtained only from Moody’s or S&P, respectively. There has been furnished to Moody’s and S&P information and materials relating to the Bonds and the Project, certain of which information and materials have not been included in this Official Statement. Generally, rating agencies base their ratings on such information and materials and on investigations, studies and assumptions by the rating agencies. There is no assurance that the ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by Moody’s or S&P, if in the judgment of Moody’s or S&P, circumstances so warrant. Any such downward revision or withdrawal of one or both of the ratings can be expected to have an adverse effect on the market price and marketability of the Bonds.

### **INDEPENDENT AUDITORS**

The financial statements of the Oregon University System for the fiscal years ended June 30, 2005, 2006 and 2007, included as Appendix B to this Official Statement, have been audited by Moss Adams LLP, independent auditors under contract with the Oregon Secretary of State as official auditor for agencies of the State of Oregon, as stated in their report appearing therein.

## **UNDERWRITING**

The Bonds are being purchased by Citigroup Global Markets Inc. (the “Underwriter”) pursuant to a Bond Purchase Agreement among the Underwriter, the Borrower and the Issuer (the “Purchase Contract”) at the prices shown on the inside cover page hereof. For its services as underwriter, the Underwriter will be paid an aggregate fee equal to \$\_\_\_\_\_ (the “Underwriting Fee”) from which it will pay certain expenses. The obligation of the Underwriter to accept delivery of the Bonds is subject to various conditions contained in the Purchase Contract. The Purchase Contract provides that the Underwriter will purchase all of the Bonds if any are purchased, and requires the Borrower to indemnify the Underwriter and the Issuer against certain losses, claims, damages and liabilities arising out of certain incorrect statements or information contained in this Official Statement. The Bonds may be offered and sold to certain dealers, banks and others at prices lower than the initial offering price, and such initial offering price may be changed from time to time by the Underwriter.

## **LEGAL MATTERS**

All legal matters incident to the authorization, issuance, sale and delivery of the Bonds by the Issuer are subject to the unqualified approving opinion of K&L Gates LLP, Portland, Oregon, as Bond Counsel, whose approving opinion will be delivered with the Bonds, and the proposed form of which is set forth in Exhibit E hereto. The legal opinion delivered by Bond Counsel may vary from that form if necessary to reflect facts and law on the date of delivery.

Certain legal matters will be passed upon for the Underwriter by Eichner & Norris PLLC, Washington, D.C. and for the Borrower by Garvey Schubert Barer, Portland, Oregon.

The legal opinions express the professional judgment of counsel rendering them, but are not binding on any court or other governmental agency and are not guarantees of a particular result.

## **LITIGATION**

As of the date hereof, there is no litigation of any nature pending or threatened against the Issuer or the Borrower to restrain or enjoin the issuance, sale, execution, or delivery of the Bonds or the application of the proceeds thereof toward the costs of the Project, or in any way contesting or affecting the validity of the Bonds or any proceedings or authority of the Issuer or the Borrower taken with respect to the issuance or sale thereof, or the pledge or application of any monies or security for the Bonds, or the existence or powers of the Issuer.

There is no litigation pending or, to the knowledge of the Borrower threatened against the Borrower wherein an unfavorable decision would adversely affect the ability of the Borrower to operate the Project or to carry out its obligations under the Indenture, the Loan Agreement and related documents or would have a material adverse impact on the financial position of the Borrower.

There is no litigation pending or, to the knowledge of the Issuer, threatened against the Issuer wherein an unfavorable decision would adversely affect the ability of the Issuer to issue the Bonds or to carry out its

obligations under the Indenture, the Loan Agreement and related documents or would have a material adverse impact on the financial position of the Issuer.

### **CONTINUING DISCLOSURE**

The Borrower acknowledges and agrees in the Loan Agreement that the Issuer is not an "obligated person" within the meaning of S.E.C. Rule 15c2-12 and represents that the Borrower and PSU are the only obligated persons with respect to the Bonds. The Borrower and PSU have covenanted for the benefit of the Bondholders to provide certain financial information and operating data relating to the Borrower, the Project and the Oregon University System by not later than six months following the end of each of the Borrower's fiscal years (the "Annual Reports"), and to provide notices of the occurrence of certain enumerated events, if material. The Borrower and PSU will file the Annual Reports with each Nationally Recognized Municipal Securities Information Repository and with any State Repository. The notices of material events will be filed with the Municipal Securities Rulemaking Board and with any State Repository. See "EXHIBIT F — FORM OF CONTINUING DISCLOSURE AGREEMENT." These covenants have been made in order to assist the Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

### **MISCELLANEOUS**

All quotations from, and summaries and explanations of, the Act, the Indenture, the Loan Agreement, the Trust Deed, the Security Agreement, the Housing Services Agreement and other documents referred to herein do not purport to be complete, and reference is made to said law and documents for full and complete statements of their provisions. Such documents are on file and available for inspection at the office of the Trustee. All references herein to the Bonds are qualified by the definitive forms thereof and the information with respect thereto contained in the Indenture. This Official Statement shall not be construed as constituting an agreement with any purchaser of any Bond(s). The cover page, introductory statement and the Exhibits attached hereto are part of this Official Statement.

ANY STATEMENTS MADE IN THIS OFFICIAL STATEMENT INVOLVING MATTERS OF OPINION OR OF ESTIMATES, PROJECTIONS OR FORECASTS WHETHER OR NOT SO EXPRESSLY STATED, ARE SET FORTH AS SUCH AND NOT AS REPRESENTATIONS OF FACT AND NO REPRESENTATION IS MADE THAT ANY OF THE ESTIMATES WILL BE REALIZED.

OTHER THAN WITH RESPECT TO INFORMATION CONCERNING THE ISSUER CONTAINED UNDER THE CAPTIONS "THE ISSUER" AND "LITIGATION," AS IT RELATES TO THE ISSUER, NONE OF THE INFORMATION IN THIS OFFICIAL STATEMENT HAS BEEN SUPPLIED OR VERIFIED BY THE ISSUER, AND THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO (i) THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION; (ii) THE VALIDITY OF THE BONDS; OR (iii) THE TAX STATUS OF THE INTEREST ON THE BONDS.

The Issuer and the Borrower have approved this Official Statement and authorized its use.

**CITY OF PORTLAND, OREGON,**  
acting by and through the City Council, on the  
recommendation of the Portland Development Commission

By: \_\_\_\_\_  
Its: Debt Manager

**BROADWAY HOUSING, LLC,**  
as Borrower

By: \_\_\_\_\_  
Rebecca A. Hein  
Management Committee Chair



## EXHIBIT A

### CERTAIN DEFINITIONS

*Certain words and terms used in this Official Statement are defined herein. In addition to the words and terms defined elsewhere herein, the following words and terms are defined terms in this Official Statement.*

“Accountant” means an independent certified public accountant or firm of independent certified public accountants (which may be the accountant or firm of accountants retained by the Borrower).

“Act” means Oregon Revised Statutes Sections 280.410 to 280.485, inclusive, which authorizes the Issuer to issue revenue bonds to finance economic development projects.

“Additional Loan Payments” means the payments, fees and expenses as described in the Loan Agreement.

“Additions or Alterations” means modifications, repairs, renewals, improvements, replacements, alterations, additions, enlargements, or expansions in, on, or to the Project, including any and all machinery, furnishings, and equipment therefore.

“Affiliate” of a Person means any Person (a) directly or indirectly controlling, controlled by, or under common control with such Person; or (b) a majority of the members of the Directing Body of which are members of the Directing Body of such Person. For purposes of this definition, control means with respect to: (a) a corporation having stock, the ownership, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the directors of such corporation; (b) a not for profit corporation not having stock, having the power to elect or appoint, directly or indirectly, a majority of the members of the Directing Body of such corporation; or (c) any other entity, the power to direct the management of such entity through the ownership of at least a majority of its voting securities or interest or the right to designate or elect at least a majority of the members of its Directing Body, by contract or otherwise. For the purposes of this definition, “Directing Body” means with respect to: (a) a corporation having stock, such corporation’s board of directors and owners, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the directors of such corporation (both of which groups shall be considered a Directing Body); (b) a not for profit corporation not having stock, such corporation’s members if the members have complete discretion to elect the corporation’s directors, or the corporation’s directors if the corporation’s members do not have such discretion; or (c) any other entity, its governing entity, body or board. For the purposes of this definition, all references to directors and members shall be deemed to include all entities performing the function of directors or members however denominated.

“Agreement” or “Loan Agreement” means the Loan Agreement between the Issuer and Borrower, as the same may be amended or supplemented from time to time in accordance with the provisions of the Indenture.

“Agreement Term” means the duration of the Loan Agreement as specified in the Loan Agreement.

“Annual Budget” means the annual budget for the Project required by the Loan Agreement.

“Annual Debt Service” means, with respect to the Bonds, the debt service payments with respect to Outstanding Bonds for the Fiscal Year of calculation.

“Assignment of Contract Documents” means the Assignment of Contract Documents, dated as of October 1, 2008, from the Borrower to the Trustee, as the same may be amended or supplemented from time to time as permitted by the Indenture.

“Audit Report” means an audit report resulting from an audit conducted by an Accountant in conformity with generally accepted auditing standards prepared in accordance with GAAP.

“Authorized Borrower Representative” means any person or persons at the time designated to act on behalf of the Borrower by written certificate furnished to the Issuer and Trustee, containing the specimen signature of such person and signed on behalf of the Borrower by or on behalf of any authorized managing member of the Borrower. Such certificate or any subsequent or supplemental certificate so executed may designate an alternate or alternates.

“Authorized Denominations” means denominations of Five Thousand Dollars (\$5,000) and any integral multiple in excess thereof.

“Authorized Officer” means the Debt Manager, the Director of the Bureau of Financial Management of the City, the Chief Administrative Officer of the Office of Management and Finance, or the person designated by the Chief Administrative Officer of the Office of Management and Finance, to act on behalf of the City by a written certificate furnished to the Trustee (a copy of which shall be forwarded by the Trustee to the Borrower), which certificate is signed by the Chief Administrative Officer of the Office of Management and Finance and contains the specimen signature of such other officer or employee of the Issuer.

“Available Funds” means (i) funds appropriated or otherwise made available by the Oregon Legislative Assembly including limited and non-limited funds, or allotments pursuant to ORS Chapter 291, sufficient to allow PSU, in the exercise of its reasonable administrative discretion, to pay amounts due under the Housing Services Agreement for the fiscal period in which the amounts are due, and (ii) all unrestricted funds of PSU not otherwise encumbered, or statutorily or contractually restricted, including but not limited to auxiliary housing services, auxiliary administration, vending machines, auxiliary copy service, auxiliary room rentals, unrestricted reserves and unrestricted funds being held by PSU. A copy of the Housing Services Agreement is attached as Exhibit D hereto.

“Available Moneys” means, as of any date (a) funds which (i) have been paid to the Trustee by the Borrower or any Affiliate of the Borrower, and deposited into and held in a separate and segregated subaccount or subaccounts in the Bond Fund, or the Debt Service Reserve Fund in which no moneys not deposited on the same date were at any time held, and (ii) have been on deposit with the Trustee in such subaccount or subaccounts in the Bond Fund, or the Debt Service Reserve Fund for a period of at least three hundred sixty-six (366) consecutive days prior to such date, during and prior to which period no Event of Bankruptcy has occurred and (iii) are represented by cash or investments described in clause (A)(2) of the definition of Permitted Investments; (b) proceeds from investment of the foregoing, provided such proceeds are retained in the Fund in which they were earned; and (c) any other funds so long as, in the opinion of nationally recognized Independent Counsel experienced in bankruptcy matters, payments therefrom will not constitute an avoidable preference under the Bankruptcy Code.

“Basic Loan Payments” means the loan payments payable by the Borrower to the Issuer, described under the subheading “Basic Loan Payments” in the Loan Agreement.

“Beneficial Owner” has the meaning given to that term in the Indenture.

“Bond” or “Bonds” means, collectively, the Series 2008A Bonds and the Series 2008B Bonds.

“Bond Counsel” means Independent Counsel nationally recognized as experienced in matters relating to the exclusion from gross income for federal tax purposes of interest on obligations of states and political subdivisions and which is reasonably acceptable to the Issuer, Trustee.

“Bond Documents” means, collectively, the Loan Agreement, the Notes, Indenture, Trust Deed, Security Agreement, Housing Services and Facilities Agreement, Assignment of Contract Documents, Bond Purchase Agreement, Tax Certificate, Tax Compliance Agreement and any management agreement entered into between the Borrower and the Manager.

“Bond Fund” means the fund by that name created under the Indenture.

“Bondholders” or “Bondowners” or “Owners” means the Persons in whose names any of the Bonds are registered on the books kept and maintained by the Trustee as bond registrar.

“Bond Ordinance” means the ordinance or ordinances enacted by the Issuer authorizing and approving the issuance and sale of the Bonds and the security therefore.

“Bond Payment Date” means each Interest Payment Date and each date on which principal or interest or premium, if any, or a sinking fund payment, shall be payable on the Bonds according to their terms and the terms of the Indenture, including without limitation, scheduled mandatory redemption dates, unscheduled mandatory redemption dates, dates of acceleration of the Bonds pursuant to the Indenture, optional redemption dates and the maturity date of the Bonds, so long as any Bonds shall be Outstanding.

“Bond Purchase Agreement,” with respect to the Bonds, means the Bond Purchase Agreement among the Issuer, the Borrower, and the Underwriter dated \_\_\_\_\_, 2008.

“Bond Year” has the meaning given to that term in the Tax Certificate.

“Borrower” means Broadway Housing, LLC, a limited liability company duly organized and existing under of the laws of the State of Oregon, and its successors and assigns.

“Building” means those certain buildings and all other facilities and improvements constituting part of the Project and not constituting part of the Equipment which are or will be located on the Premises.

“Business Day” means any day other than a day on which (a) banks located in the city in which the Principal Corporate Trust Office of the Trustee is located are authorized or required by law to close and (b) The New York Stock Exchange is closed.

“Capital Expenditures” means capital repair, replacement, or upgrade costs and extraordinary maintenance expenses to the extent considered capital in nature under GAAP.

“Capital Replacement Fund” means the fund by that name created under the Indenture.

“Capital Replacement Requirement” means commencing with the Closing Date, a monthly amount to be deposited into the Capital Replacement Fund equal to the number of residential units at the Project (383) times \$\_\_\_ times one-twelfth (1/12<sup>th</sup>). The amount per unit to be used in the foregoing calculation in any

year shall be adjusted by the increase in the Customer Price Index per Fiscal Year over the amount in effect in the immediately preceding Fiscal Year. For purposes of the Loan Agreement, the term “Consumer Price Index” means the Consumer Price Index (All Urban Consumers: U.S. city average, all items published by the Bureau of Labor Statistics of the United States Department of Labor, or any equivalent successor or substitute index published by the Bureau of Labor Statistics or a successor governmental agency.

“City Code” means the code of the City of Portland, Oregon as it may be revised from time to time.

“Closing Date” means the date upon which the Bonds are issued in exchange for payment by the Underwriter.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable and binding Regulations, including Regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds under the Code and under the statutory predecessor of the Code and any successor provisions to the relevant provisions of the Code or Regulations.

“Condemnation Fund” means the fund created under the Indenture.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement, dated as of October 1, 2008, among State of Oregon, acting by and through the State Board of Higher Education on behalf of Portland State University, the Borrower and the Trustee.

“Debt Service” means, for any period, the sum of all cash outflows of the Borrower for (i) interest on Indebtedness, and (ii) scheduled payments of principal on Indebtedness.

“Debt Service Coverage Ratio” means, for any period, the ratio of Revenue Available for Debt Service to Debt Service.

“Debt Service Reserve Fund” means the fund created under the Indenture.

“Debt Service Reserve Requirement” means, with respect to the Bonds, an amount equal to the lesser of (a) the Tax Maximum for the Bonds (\$\_\_\_\_\_) or (b) Maximum Annual Debt Service on the Bonds recalculated as of each date the Debt Service Reserve Fund is valued pursuant to the Indenture.

“Defaulted Interest” means any interest on any Bond which is due and payable, but which is not punctually paid or duly provided for on any Interest Payment Date.

“Defeasance Obligations” means (i) Cash (insured at all times by the Federal Deposit Insurance Corporation), and (ii) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America.

“Environmental Reports” means the environmental reports provided in connection with the issuance of the Series 2003 Bonds.

“Equipment” means the equipment, machinery, furnishings, and other tangible personal property (other than the furnishings and tangible personal property owned by the tenants of the Project) constituting a part of the Project, and all replacements, substitutions, and additions thereto.

“Event of Default” means any of the events specified in the Loan Agreement.

“Event of Nonappropriation” means the event whereby PSU does not (i) receive from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority, (ii) receive allotments pursuant to ORS Chapter 291, or (iii) have any unrestricted funds, sufficient to allow PSU, in the exercise of its reasonable administrative discretion, to pay the amounts due under the Housing Services Agreement for any fiscal period or portion thereof in which amounts are due. A copy of the Housing Services Agreement is attached as Exhibit D hereto.

“Examination Report” means an examination report resulting from an examination conducted by an Accountant in conformity with generally accepted standards for accountants’ services on prospective financial information prepared in accordance with GAAP.

“Expenses” means, for any period, the aggregate of all operating expenses of the Borrower with respect to the Project, calculated under GAAP, excluding (i) extraordinary expenses (including without limitation losses on the sale of assets other than in the ordinary course of business and losses on the extinguishment of debt or termination of pension plans), (ii) any expenses resulting from a forgiveness of or the establishment of reserves against Indebtedness of an Affiliate of the Borrower which does not constitute extraordinary expense, (iii) losses resulting from any reappraisal, revaluation, or write-down of assets, and (iv) tenant improvements that are considered capital expenses and that are payable from the Capital Replacement Fund.

“Extraordinary Services of the Trustee” and “Extraordinary Expenses of the Trustee” mean all reasonably necessary services rendered and all reasonably necessary expenses incurred by the Trustee under the Indenture, including reasonable counsel fees, other than Ordinary Services of the Trustee and Ordinary Expenses of the Trustee.

“Favorable Opinion of Bond Counsel” means an opinion of Bond Counsel, addressed to the Issuer, PDC, the Borrower, and the Trustee to the effect that the action proposed to be taken is authorized or permitted by the laws of the State and the Bond Documents and will not adversely affect any exclusion from gross income for federal income tax purposes or any exemption from State income taxes, of interest on any Series 2008A Bond.

“Financing Documents” means the Indenture, the Loan Agreement, the Trust Deed, the Security Agreement, the Housing Services Agreement, the Assignment of Contract Documents, the Tax Certificate, Tax Compliance Agreement, Continuing Disclosure Agreement and any management agreement entered into between the Borrower and the Manager .

“Fiscal Year” means any period of twelve consecutive months adopted by the Borrower as its fiscal year for financial reporting purposes and shall initially mean the year ending June 30, 2009.

“GAAP” means generally accepted accounting principles promulgated by the American Institute of Certified Public Accountants.

“Housing Services Agreement” means the Housing Services and Facilities Agreement dated as of \_\_\_\_\_, 2008 by and between the Borrower and the State, acting by and through the State Board of Higher Education on behalf of Portland State University, as the same may be amended or supplemented from time to time.

“Indebtedness” means (i) all indebtedness, whether or not represented by bonds, debentures, notes, or other securities, for the repayment of money borrowed, (ii) all deferred indebtedness for the payment of the purchase price of properties or assets purchased (but not to include trade payables or similar accounts incurred in the ordinary course of business), (iii) all guaranties, endorsements (other than endorsements in the ordinary course of business), assumptions, and other contingent obligations in respect of, or to purchase or to otherwise acquire, indebtedness of others, (iv) all indebtedness secured by mortgage, pledge, security interest, or lien existing on property owned which is subject to such mortgage, pledge, security interest, or lien, whether or not the indebtedness secured thereby shall have been assumed, and (v) all capitalized lease obligations; provided, however, that for the purpose of computing Indebtedness, there shall be excluded any particular Indebtedness if, upon or prior to the maturity thereof, there shall have been deposited with the proper depository in trust the necessary funds (or direct obligations of the United States of America not redeemable by the issuer) for the payment, redemption, or satisfaction of such Indebtedness, and thereafter such funds and such direct obligations of the United States of America so deposited shall not be included in any computation of the assets of the Borrower and the income derived from such funds and such direct obligations of the United States of America so deposited shall not be included in any computation of the income of the Borrower.

“Indenture” means the Trust Indenture, dated as of October 1, 2008, between the Issuer and Trustee, as the same may be amended or supplemented from time to time in accordance with the provisions of the Indenture.

“Independent Counsel” means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state of the United States and not in the full-time employment of the Issuer or Borrower.

“Independent Engineer” means any architect, engineer or firm of architects or engineers which is independent of the Borrower and PSU and which is appointed by the Borrower, at the cost of the Borrower, to report and be accountable solely to the Trustee for the benefit of the Bondholders and who has all licenses and certifications necessary for the performance of the project monitoring services and has a favorable reputation for skill and experience in performing similar services in respect of facilities of a comparable size and nature.

“Insurance Consultant” means Northrup Corporation and subsequently any person, who is not the Borrower or an Affiliate of the Issuer or Borrower, appointed by the Borrower who is qualified to survey risks and to recommend insurance coverage for a student housing facility and organizations engaged in like operations as that of the Borrower in the State and who has a favorable reputation for skill and experience in such surveys and such recommendations and who may be a broker or agent with whom the Borrower or Issuer transacts business.

“Insurance Fund” means the fund created and so designated under the Indenture.

“Interest Payment Date” means each April 1 and October 1, beginning April 1, 2009.

“Issuance Cost Fund” means the fund created under the Indenture.

“Issuance Costs” means:

- (a) the initial or acceptance fee of the Trustee, the fees and taxes for recording and filing the Trust Deed, Security Agreement, financing statements, and any title curative documents that either the Trustee or Independent Counsel may reasonably deem desirable to file for record in

order to perfect or protect the lien or security interest created or granted by the Trust Deed or Security Agreement, and the reasonable fees and expenses in connection with any actions or proceedings that either the Trustee or Independent Counsel may reasonably deem desirable to bring in order to perfect or protect the lien or security interest created or granted by the Trust Deed or Security Agreement;

(b) the costs of legal fees and expenses, underwriter's spread, underwriting fees, financing costs, Issuer's fees, Issuer's counsel's fees and expenses, financial advisor's fees, accounting fees and expenses, consulting fees, escrow agent fees, Trustee's fees, paying agent and certifying and authenticating agent fees, reasonable fees of counsel to the Trustee, publication costs, title insurance premiums, and printing and engraving costs incurred in connection with the authorization, sale and issuance of the Bonds, the accomplishment of the refunding and preparation of the Bond Documents; and

(c) other costs in connection with the issuance of the Bonds permitted by the Act to be paid or reimbursed from Bond proceeds.

"Issuer" means City of Portland, Oregon, a public body corporate and politic, created under the laws of the State, and its successors and assigns.

"Listed Remedy" shall have the meaning given to that term in the Loan Agreement.

"Loan" means the loan made by the Issuer to the Borrower pursuant to the Loan Agreement for the purpose of providing funds to the Borrower to refund the Series 2003 Bonds, including paying the swap termination payments, funding a Debt Service Reserve Requirement and paying issuance costs.

"Loan Payments" means the loan payments payable by the Borrower described in the Loan Agreement.

"Majority Bondholders" means, at the time of determination, those Persons owning more than 50% of the aggregate principal amount of all Bonds Outstanding.

"Manager" means the Person appointed pursuant to the Loan Agreement to manage and operate the Project. The initial manager shall be Portland State University pursuant to \_\_\_\_\_ dated \_\_\_\_\_ 2008.

"Maximum Annual Debt Service" means the maximum Annual Debt Service that will come due in any Bond Year or Fiscal Year, as the case may be.

"Moody's" means Moody's Investors Service, Inc.

"Net Proceeds," when used with respect to any insurance or condemnation award or with respect to any other recovery on a contractual claim or claim for damage to or for taking of property, means the gross proceeds from the insurance or condemnation award or recovery remaining after payment of all expenses (including attorneys' fees and any Extraordinary Expenses of the Trustee) incurred in the collection of such gross proceeds.

"Notes" means, collectively, the Series 2008A Note and the Series 2008B Note.

"NRMSIR" means each Person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

“Official Statement” means \_\_\_\_\_.

“Operating Reserve Fund” means the fund created under the Indenture.

“Operating Reserve Requirement” means the reserve for operating expenses initially equal to \$229,275. The Operating Reserve Requirement shall be equal to two (24) months average operating expenses for the ensuing Fiscal Year as shown in the Annual Budget or, if such Annual Budget has not been approved for such Fiscal Year, as shown in the current Fiscal Year’s Annual Budget.

“Ordinary Services of the Trustee” and “Ordinary Expenses of the Trustee” mean those reasonable services rendered and those reasonable expenses incurred by the Trustee in the performance of its duties under the Indenture of the type ordinarily performed by corporate trustees under like indentures, including reasonable counsel fees.

“Outstanding Bonds” or “Bonds Outstanding” or “Outstanding” means all Bonds which have been duly authenticated and delivered by the Trustee under the Indenture, except:

- (a) Bonds theretofore canceled or required to be canceled by the Trustee,
- (b) Bonds which are deemed to have been paid in accordance with Article IX of the Indenture, and
- (c) Bonds in substitution for which other Bonds have been authenticated and delivered under the Indenture.

“Owner” or “Owners” means the Persons in whose names any of the Bonds are registered on the books kept and maintained by the Trustee as bond registrar.

“PDC” means the Portland Development Commission.

“Permitted Encumbrances” means, as of any particular time, (i) liens for ad valorem taxes, special assessments, and other charges not then delinquent or for taxes, assessments, and other charges being contested in accordance with the Loan Agreement, (ii) the Bond Documents, (iii) presently existing utility, access, and other easements and rights of way, restrictions, and exceptions described in the title policy required by the Loan Agreement, (iv) inchoate mechanics’ and materialmen’s liens which arise by operation of law, but which have not been perfected by the required filing of record, for work done or materials delivered after the date of recording the Trust Deed in connection with Additions or Alterations, (v) the mechanics’ and materialmen’s liens contested by the Borrower pursuant to the Loan Agreement, (vi) the subordination and the easements permitted under the Loan Agreement, and (vii) liens or encumbrances securing the Bonds permitted by the Indenture; and (viii) a pending and presently inchoate City of Portland lien for street improvements (Street LID - Lien No. 00136227).

“Permitted Investments” means , to the extent permitted by applicable law, any of the following: (1) cash (insured at all times by the Federal Deposit Insurance Corporation); (2) direct obligations of (including obligations issued or held in book entry form on the books of the Department of Treasury) the United States of America; (3) direct obligations of the following federal agencies, which obligations represent the full faith and credit of the United States of America: Export-Import Bank, the Farm Credit System Financial Assistance Corporation, the Rural Economic Community Development Administration (formerly the Farmers Home Administration), the United States Maritime Administration, the Small Business Administration, the United States Department of Housing and Urban Development (PHA's), the



Federal Housing Administration and the Federal Financing Bank; (4) direct obligations of the following federal agencies, which obligations are not fully guaranteed by the full faith and credit of the United States of America: senior debt obligations rated “Aaa” by Moody's and “AAA” by S&P issued by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC), obligations of the Resolution Funding Corporation (REFCORP), senior debt obligations of the Federal Home Loan Bank System; (5) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks, including the Trustee or its affiliates, which have a rating on their short term certificates of deposit on the date of purchase of “P-1” by Moody's and “A-1” or “A-1+” by S&P and maturing no more than 360 days after the date of purchase (ratings on holding companies are not considered as the rating of the bank); (6) commercial paper which is rated at the time of purchase in the single highest classification, “P-1” by Moody's and “A-1+” by S&P and which matures not more than 270 days after the date of purchase; (7) investments in a money market fund rated “AAAm” or “AAAm-G” or better by S&P and/or “Aaa” by Moody's; (8) Pre-Refunded Municipal Obligations; (9) municipal obligations rated “Aaa/AAA” or general obligations of states with a rating of at least “A2/A” or higher by both Moody's and S&P; (10) investment agreements rated Aa2/AA or better by S&P and/or Moody's (supported by appropriate opinions of counsel). Permitted Investments shall be valued monthly as provided in the Indenture.

“Person” means natural persons, firms, associations, trusts, partnerships, corporations, limited liability companies and public bodies.

“Premises” means the real estate described in the Loan Agreement.

“Prerefunded Municipal Obligations” means any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

(A) which are rated, based on an irrevocable escrow account or fund (the “escrow”), in the highest rating category of Moody's or S&P or any successors thereto; or

(B)(i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in clause (2) of the definition of Permitted Investment, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate.

“Principal Corporate Trust Office” means the office of the Trustee at Wells Fargo Bank, National Association, 1300 SW 5th Avenue, Portland, Oregon 97201 or such other or additional offices as may be specified to the Issuer and the Borrower by the Trustee; provided, however, that for the purposes of maintenance of the Bond registration books and presentation of Bonds for transfer, exchange, or payment, such term shall mean in care of the corporate trust office of Wells Fargo Bank, National Association, \_\_\_\_\_, or such other or additional offices as may be specified by the Trustee in writing to the Issuer and the Borrower.

“Project” means the student and faculty housing, academic and commercial facilities that were acquired, constructed, furnished, and equipped with proceeds of the Series 2003 Bonds and refinanced with the Series 2008 Bonds and consists consisting of the Premises, the Building and the Equipment more fully described in the Loan Agreement.

“PSU” means the State of Oregon, acting by and through the State Board of Higher Education on behalf of Portland State University.

“PSU Foundation” or “University Foundation” means the Portland State University Foundation, an Oregon nonprofit corporation, the sole member of the Borrower.

“Rebate Fund” means the fund created under the Indenture.

“Record Date” means the fifteenth (15th) day of the month (whether or not a Business Day) next preceding each Interest Payment Date.

“Regulations” means the Treasury Regulations promulgated under and pursuant to the Code.

“Reserve Loan Payments” means the loan payments payable by the Borrower to the Trustee, described in the last sentence under the subheading “Reserve Loan Payments” in the Loan Agreement.

“Revenue Available For Debt Service” means, for any period, the excess of: (a) the sum of (i) Revenues and (ii) to the extent included in Expenses, (w) interest on Indebtedness, (x) depreciation, (y) amortization and (z) required deposits and other additions to reserves, other than required deposits to the Capital Replacement Fund; over (b) the sum of (i) Expenses and (ii) to the extent not included in Expenses, required deposits to the Capital Replacement Fund.

“Revenue Fund” means the fund created under the Indenture.

“Revenues” means, for any period, the gross revenues of the Borrower with respect to the Project, less provisions for uncollectible accounts, and including earnings on reserves held with respect to the Bonds or the Project and amounts deposited by PSU into the Revenue Fund pursuant to the Housing Services Agreement; but excluding in any event (i) any gains on the sale or other disposition of investments or fixed or capital assets not in the ordinary course of business, (ii) earnings resulting from any reappraisal, revaluation, or write-up of assets, (iii) refundable tenant security deposits until earned, and (iv) net proceeds of insurance (other than business interruption insurance) and condemnation awards.

“Rule” means the SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

“Security” means any of the property subject to the operation of the granting clauses contained in the Trust Deed, the Security Agreement, the Assignment of Contract Documents and the Indenture that is part of the Trust Estate and that serves as collateral for the Bonds.

“Security Agreement” means the Security Agreement, dated as of October 1, 2008, from the Borrower to the Trustee, as the same may be amended or supplemented from time to time as permitted by the Indenture.

“Security Documents” means, collectively, the Indenture, the Trust Deed, the Security Agreement and the Assignment of Contract Documents.

“Series 2003 Bonds” means collectively the City of Portland, Oregon Economic Development Revenue Bonds (Broadway Project) \$42,725,000 Series 2003A (Tax-Exempt) and \$4,700,000 Series 2003B (Federally Taxable).

“Series 2008A Bonds” means the revenue bonds designated “City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008A (Tax-Exempt),” in the aggregate principal amount of \$[Series A Amount]\*, to be issued pursuant to the Indenture.

“Series 2008B Bonds” means the revenue bonds designated “City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008B (Federally Taxable),” in the aggregate principal amount of \$[Series B Amount]\*, to be issued pursuant to the Indenture.

“Series 2008A Note” means the Series 2008A Promissory Note of the Borrower, in the original principal amount of \$[Series A Amount]\*, payable to the Issuer, given to evidence the obligation to pay Loan Payments to repay the portion of the Loan relating to the Series 2008A Bonds, in substantially the form attached to the Loan Agreement.

“Series 2008B Note” means the Series 2008B Promissory Note of the Borrower, in the original principal amount of \$[Series B Amount]\*, payable to the Issuer, given to evidence the obligation to pay Loan Payments to repay the portion of the Loan relating to the Series 2008B Bonds, in substantially the form attached to the Loan Agreement.

“SID” means any Person designated by the State or an authorized department, officer, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

“State” means the State of Oregon.

“Surplus Fund” means the fund created under the Indenture.

“Tax Certificate” means the Tax Certificate of the Issuer dated as of October \_\_, 2008.

“Tax Compliance Agreement” means the Tax Compliance Agreement of the Borrower dated as of October \_\_\_\_, 2008.

“Tax-Exempt Organization” means a Person organized under the laws of the United States of America or any state thereof which is an organization described in Section 501(c)(3) of the Code, which is exempt from federal income taxation under Section 501(a) of the Code, or corresponding provisions of federal income tax laws from time to time in effect (except for unrelated business taxable income subject to taxation under Section 511 of the Code).

“Tax Maximum” means the least of: the greatest amount of principal and interest required to be paid in any Fiscal Year on the Bonds; 125% of the average amount of principal and interest required to be paid on the Bonds during all Fiscal Years or portions thereof in which the Bonds will be Outstanding, calculated as of the date of issuance of the Bonds; or, ten percent of the principal amount of the Bonds

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\* Preliminary; subject to change.

(provided, however, that if the Bonds have more than a de minimis amount of original issue discount or premium, the issue price of the Bonds will be used to measure this ten percent limitation).

“Title Company” means Ticor Title Insurance Company, or any other title insurance company issuing a title insurance policy on the Project and naming the Trustee as insured.

“Title Policy” means the ALTA lender’s title insurance policy issued by the Title Company in favor of the Trustee.

“Trustee” means the trustee and/or the co-trustee at the time serving as such under the Indenture. Wells Fargo Bank, National Association is the initial Trustee.

“Trust Deed” means the Trust Deed dated as of October 1, 2008, from the Borrower to the Trustee, which includes an assignment of rents and leases, as the same may be amended or supplemented from time to time in accordance with the provisions of the Indenture.

“Trust Estate” means any and all property subject to the operation of the granting clauses of the Indenture, the Trust Deed, the Security Agreement and the Assignment of Contract Documents.

“Unassigned Rights” means all of the rights of the Issuer to receive reimbursements and payments pursuant to the Loan Agreement, and to be held harmless and indemnified pursuant to the Loan Agreement.

“Underwriter” means Citigroup Global Markets Inc. and its successors and assigns.

**EXHIBIT B**

**AUDITED FINANCIAL STATEMENTS OF THE OREGON UNIVERSITY SYSTEM AS  
OF JUNE 30, 2005, 2006 AND 2007**

**The Bonds are not obligations of the Oregon University System. Furthermore, funds to which PSU will have recourse to meet its obligations under the Housing Services Agreement will not include funds of the Oregon University System aside from those funds that are attributable to PSU and constitute “Available Funds” under the Housing Services Agreement.**

**EXHIBIT C**

**SUMMARIES OF PRINCIPAL LEGAL DOCUMENTS**

[Summaries of Indenture, Loan Agreement, Promissory Notes, Trust Deed, Assignment of Contract Documents and Security Agreement to be included at later date]

**EXHIBIT D**  
**HOUSING SERVICES AGREEMENT**

**EXHIBIT E**

**PROPOSED FORM OF OPINION OF BOND COUNSEL**

October 22, 2008

City of Portland, Oregon  
1120 S.W. Fifth Avenue, Suite 1250  
Portland, Oregon 97204

Portland Development Commission  
222 NW 5<sup>th</sup> Avenue  
Portland, Oregon 97209

Re: \$ \_\_\_\_\_ City of Portland, Oregon Economic  
Development Revenue Refunding Bonds (Broadway Project), Series  
2008A (Tax-Exempt), and \$ \_\_\_\_\_ City of Portland, Oregon  
Economic Development Revenue Refunding Bonds (Broadway  
Project), Series 2008B (Federally Taxable)

Ladies and Gentlemen:

We have acted as Bond Counsel to the City of Portland, Oregon, acting by and through its City Council on the recommendation of the Portland Development Commission (herein called the "Issuer") in connection with the authorization, sale, issuance and delivery by the Issuer of its \$ \_\_\_\_\_ Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008A (Tax Exempt) (the "Series 2008A Bonds") and its \$ \_\_\_\_\_ Economic Development Revenue Refunding Bonds, Series 2008B (Broadway Project) (Federally Taxable) (the "Series 2008B Bonds"), dated October 22, 2008 (collectively, the "Bonds"). The Bonds are issued pursuant to the laws of the State of Oregon, and particularly Sections 280.410 through 280.485 of the Oregon Revised Statutes, as amended (the "Act"), and Chapter 5.72 of the Code of the City of Portland, Oregon (the "City Code"), Ordinance No. \_\_\_\_\_ of the City Council (the "Council") of the City of Portland, Oregon granting, among other things, the final approval of the Series 2008A Bonds and the Series 2008B Bonds, enacted on October 1, 2008 (the "Ordinance"), Resolution No. \_\_\_\_\_ of the Portland Development Commission recommending final approval of the Series 2008A Bonds and the Series 2008B Bonds, adopted on September 24, 2008 (the "Resolution"), and a Trust Indenture by and between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"), dated as of October 1, 2008 (the "Indenture").

The proceeds of the Bonds will be loaned by the Issuer to Broadway Housing, LLC, an Oregon limited liability company (the "Borrower") pursuant to a Loan Agreement between the Borrower and the Issuer dated as of October 1, 2008 (the "Loan Agreement") to provide funds for the purposes set forth in the Ordinance. The Bonds bear interest at the rates, mature on the



dates and in the principal amounts, and are subject to mandatory and optional redemption prior to maturity on the terms and conditions and at the prices all as set forth in the Indenture.

Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

Certain requirements and procedures contained or referred to in the Indenture may be changed and certain actions may be taken under the circumstances and subject to the terms and conditions set forth in such documents. No opinion is expressed herein about the effect of any such change on any Bond or the interest thereon if any such change occurs or action is taken upon the advice or approval of bond counsel other than ourselves.

Except as provided in a supplemental opinion dated as of the date hereof, we have not been engaged or undertaken to review the accuracy, completeness, or sufficiency of the Official Statement pertaining to the Bonds or other offering material relating to the Bonds, and we express no opinion herein relating thereto.

We have examined originals or copies identified to our satisfaction as being true copies of such records of the Issuer, certificates, other assurances from public officials and officers of the Issuer and the Borrower and other documents as we consider necessary for the purposes of this opinion.

We have also relied on the opinion of Garvey Schubert Barer, counsel to the Borrower and to Portland State University Foundation (the "Foundation"), the sole member of the Borrower, to the effect that the Foundation is exempt from tax pursuant to Section 501(a) of the Code by virtue of being an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and that the facilities refinanced with the proceeds of the Series 2008A Bonds are not being used in an unrelated trade or business of the Foundation within the meaning of Section 513(a) of the Code.

On the basis of the foregoing examination, and in reliance thereon, and on the basis of our examination of such other matters of fact and questions of law as we deem relevant under the circumstances, and subject to the limitations expressed herein, we are of the opinion that:

1. The Issuer is a municipal corporation validly existing under the laws of the State of Oregon with the power and authority under the laws of the State of Oregon, including the Act and the City Code, to enter into, execute and deliver the Indenture, the Loan Agreement and to issue the Bonds.
2. The Ordinance has been duly enacted by the City Council of the City of Portland, Oregon and the Resolution has been duly adopted by the Portland Development Commission.
3. The Indenture, the Loan Agreement and the Bonds have been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery of such documents by the other parties thereto, as applicable, are legal, valid and binding limited

obligations of the Issuer, enforceable against the Issuer in accordance with their terms subject to: (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights and remedies generally (whether now or hereafter in existence); (ii) the application of equitable principles and the exercise of judicial discretion in appropriate cases; (iii) common law and statutes affecting the enforceability of contractual obligations generally; and (iv) principles of public policy concerning, affecting or limiting the enforcement of rights or remedies against governmental entities such as the Issuer.

4. Interest on the Series 2008A Bonds is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, for the purpose of computing the alternative minimum tax imposed on certain corporations, such interest is taken into account in determining adjusted current earnings. The opinion set forth in this paragraph is subject to the condition that the Issuer, the Borrower, and the Foundation comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Series 2008A Bonds in order that the interest thereon be, and continue to be, excludable from gross income for federal income tax purposes. The Issuer, the Borrower, and the Foundation have each covenanted to comply with all such requirements. Failure to comply with certain of such requirements may cause interest on the Series 2008A Bonds to be included in gross income for federal income tax purposes retroactively to the date of issuance of the Series 2008A Bonds.

5. Interest on the Series 2008A Bonds is exempt from present State of Oregon personal income taxes.

6. Interest on the Series 2008B Bonds is included in the gross income of the owners thereof for federal income tax purposes

7. Interest on the Series 2008B Bonds is exempt from present State of Oregon personal income taxes.

Except as expressly stated above, we express no opinion regarding any other federal or state income tax consequences of acquiring, carrying, owning or disposing of the Bonds. Owners of the Bonds should consult their tax advisors regarding the applicability of any collateral tax consequences of owning the Bonds, which may include original issue discount, original issue premium, purchase at a market discount or at a premium, taxation upon sale, redemption or other disposition, and various withholding requirements.

Our opinion is limited to matters of Oregon law and applicable federal law, and we assume no responsibility for the applicability of laws of other jurisdictions.

This opinion is provided to you as a legal opinion only, and not as a guaranty or warranty of the matters discussed herein. No opinions may be inferred or implied beyond the matters expressly stated herein. No qualification, limitation or exception contained herein shall be construed in any way to limit the scope of the other qualifications, limitations and exceptions. For purposes of this opinion, the terms "law" and "laws" do not include unpublished judicial

decisions, and we disclaim the effect of any such decision on the opinions expressed. This opinion speaks as of its date only, and we disclaim any undertaking or obligation to advise you of any changes that hereafter may be brought to your attention.

The opinions expressed herein are solely for your benefit in connection with the above referenced bond financing and may not be relied on in any manner or for any purpose by any person or entity other than the addressees listed above and the owners of the Bonds, nor may copies be furnished to any other person or entity, without the prior written consent of this firm.

Respectfully submitted,

K&L GATES LLP

**EXHIBIT F**

**FORM OF CONTINUING DISCLOSURE AGREEMENT**

**EXHIBIT E**

**FORM OF BOND PURCHASE AGREEMENT**

**City of Portland, Oregon  
Economic Development Revenue Refunding Bonds  
(Broadway Project)  
Series 2008A (Tax-Exempt)  
Series 2008B (Federally Taxable)**

**BOND PURCHASE AGREEMENT**

October \_\_, 2008

City of Portland, Oregon  
1120 S.W. Fifth Avenue, Suite 1250  
Portland, OR 97204  
Attention: Debt Manager

Broadway Housing, LLC  
c/o Portland State University Foundation, Inc.  
2125 SW Fourth Avenue, Suite 510  
Portland, OR 97201-0243  
Attention: Management Committee

Dear Ladies and Gentlemen:

Citigroup Global Markets Inc. (the "Underwriter") offers to enter into this Bond Purchase Agreement with the City of Portland, Oregon (the "Issuer") and Broadway Housing, LLC, an Oregon limited liability company (the "Borrower"), the sole member of which is the Portland State University Foundation, Inc., an Oregon nonprofit corporation (the "University Foundation"), subject to acceptance on the date hereof.

1. Introductory. The Issuer is authorized to issue \$[Series A Amount] principal amount of its Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008A (Tax-Exempt) (the "Series 2008A Bonds") and \$[Series B Amount] principal amount of its Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008B (Federally Taxable) (the "Series 2008B Bonds" and together with the Series 2008A Bonds, the "Bonds"), pursuant to and in accordance with Oregon Revised Statutes Sections 280.410 to 280.485, inclusive, as amended (the "Act"). The Bonds will be issued pursuant to a Trust Indenture dated as of October 1, 2008 (the "Indenture"), by and between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"), and will mature on the dates and in the amounts, will have series designations and will bear interest at the rates shown on Schedule I hereto. Interest on the Series 2008A Bonds is to be excludable from federal gross income of the holders thereof. The proceeds of the Bonds will be used to provide money for the funding of a mortgage loan (the "Loan") to the Borrower to (i) refund the Issuer's Economic Development Revenue Bonds (Broadway Project), Series 2003A (Tax-Exempt) and its Economic Development Revenue Bonds (Broadway Project), Series 2003B (Federally Taxable) (collectively, the "2003 Bonds"), the proceeds of

which were used to acquire, construct and equip a student housing complex of approximately 211,835 square feet, containing 383 units, approximately 21,135 square feet of retail space and approximately 20,800 square feet of academic space, known as the Broadway Project (the "Project"), (ii) pay the termination fee for one of the swaps relating to the 2003 Bonds, (iii) fund a Debt Service Reserve Fund for the Bonds, and (iv) pay certain costs associated with the issuance of the Bonds.

Pursuant to a Trust Deed (Including Fixture Filing and Assignment of Rents and Leases) dated as of October 1, 2008 (the "Trust Deed"), and a Security Agreement dated as of October 1, 2008 (the "Security Agreement"), the Borrower will grant to the Trustee liens on and security interests in and to real property and certain rights and other personal property related to the Project, subject to certain Permitted Encumbrances (as defined in the Loan Agreement) (collectively, the "Security") to secure the obligations of the Borrower under the Notes and the Loan Agreement (as such terms are defined below).

Pursuant to an Assignment of Contract Documents, dated as of October 1, 2008 (the "Assignment of Contract Documents"), between the Borrower and the Trustee, the Borrower will unconditionally grant, transfer, pledge, and assign to the Trustee, for the benefit of the Bondholders, all of the right, title, interest, and remedies of the Borrower in and to various contracts associated with the operation of the Project, including the Housing Services Agreement, for the purpose of providing additional security for the Borrower's obligations under the Loan Agreement and the Notes.

Pursuant to the provisions of the Loan Agreement, the Borrower is required to deliver all revenues from the operation of the Project to the Trustee for deposit to the Revenue Fund, and the Trustee is required under the Indenture to use such revenues to satisfy the financial obligations of the Borrower under the Bond Documents. To the extent that the revenues from the operation of the Project are insufficient to satisfy any of the Borrower's obligations under the Bond Documents, PSU will be obligated to pay to the Trustee all amounts necessary to satisfy such obligations pursuant the Housing Services and Facilities Agreement, dated September \_\_, 2008 (the "Housing Services Agreement"), by and between the Borrower and the State of Oregon, acting by and through the State Board of Higher Education on behalf of Portland State University ("PSU" or the "University").

2. Purchase, Sale and Delivery of Bonds. On the basis of the representations, warranties and agreements contained herein, but subject to the terms and conditions herein set forth, the Underwriter hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell to the Underwriter, the Bonds at the reoffering prices shown on Schedule I hereto. For its services in connection with the underwriting of the Bonds, the Underwriter shall receive a fee of \$ \_\_\_\_\_.

The Issuer will deliver the Bonds to the Underwriter for the account of the Underwriter against payment of the purchase price therefore by wire transfer or checks payable in immediately available funds at the office of the Trustee at 8:30 a.m., Oregon Time, on October 22, 2008, or at such other time and place as the Underwriter, the Issuer and the Borrower shall agree (the "Closing Date").

Notwithstanding anything in this Section 2 to the contrary, the Underwriter may elect to take delivery of the Bonds in temporary form. In such event, Bonds in definitive form shall be delivered to the Underwriter within 10 days after the Closing Date.

3. Closing Documents. At or prior to the Closing Date, the Underwriter shall have received the following:

- (a) The Official Statement (as defined below).

- (b) The Continuing Disclosure Agreement, dated as of October 1, 2008 (“Continuing Disclosure Agreement”), among the Borrower, the University and the Trustee.
- (c) The Indenture, duly executed by the Issuer and the Trustee.
- (d) The Loan Agreement (the “Loan Agreement”), duly executed by the Issuer and the Borrower.
- (e) Tax Certificate dated as of October \_\_, 2008 (the “Tax Certificate”), duly executed by the Issuer.
- (f) Tax Compliance Agreement dated as of October \_\_, 2008 (the “Tax Agreement”), duly executed by the Borrower.
- (g) Copies of the executed Promissory Notes for each series of Bonds (together, the “Notes”) from the Borrower to the Issuer duly executed by the Borrower.
- (h) The Trust Deed.
- (i) The Security Agreement.
- (j) The Assignment of Contract Documents.
- (k) The Housing Services Agreement.
- (l) A certified copy or copies of an ordinance of the City Council of the Issuer, as supplemented and amended (the “Bond Ordinance”), authorizing the issuance of the Bonds, and the execution and delivery of the Indenture, the Loan Agreement, the Tax Certificate and this Bond Purchase Agreement (the “Issuer Documents”).

The Issuer and the Borrower confirm that they have each approved the distribution of a Preliminary Official Statement dated October \_\_, 2008 relating to the Bonds (the “Preliminary Official Statement”) to prospective investors. The Borrower hereby represents to the Underwriter that the Preliminary Official Statement is “final” within the meaning of Rule 15c2-12(b) under the Securities Exchange Act of 1934 (i.e., it omits no material information other than the following: the offering prices, the interest rates, selling compensation, amount of proceeds and the delivery date of the Bonds and other terms depending on such factors). The Issuer and Borrower each hereby consents to the Underwriter’s use of the Preliminary Official Statement in connection with the offer, sale, and distribution of the Bonds. The Borrower hereby approves the form of, and the Borrower and the Issuer each consents to and ratifies the Underwriter’s lawful use of, the Preliminary Official Statement and the Official Statement (as defined below) in connection with the offering and sale of the Bonds and in connection with the “Blue Sky” qualifications described in Section 4 of this Bond Purchase Agreement.

On or before the Closing Date, the Issuer shall have delivered to the Underwriter the Official Statement, dated October \_\_, 2008 (the “Official Statement”) duly completed with the information permitted to be omitted therefrom by Rule 15c2-12(b) under the Securities Exchange Act of 1934 and such other amendments and supplements as shall have been approved by the Issuer, the Borrower and the Underwriter.

The Issuer agrees to provide the Underwriter with a reasonable number of additional copies of all of the foregoing documents, at the expense of the Borrower, as the Underwriter shall request and the Issuer authorizes the use thereof in connection with the offer, sale and distribution of the Bonds.

4. Representations and Warranties of the Issuer. The Issuer represents and warrants to the parties hereto:

(a) The Issuer is a public body corporate and politic, created in conformance with the provisions of applicable constitutional and statutory provisions of the State of Oregon, acting by and through its City Council, on the recommendation of the Portland Development Commission.

(b) The Issuer has adopted the Bond Ordinance pursuant to the laws of the State. The Bond Ordinance will be in full force and effect, and no portion thereof has been amended, repealed, rescinded or revoked at the time of Closing.

(c) The Issuer has full right, power and authority (i) to adopt the Bond Ordinance, (ii) to issue the Bonds for the purposes set forth in the Preliminary Official Statement; (iii) to secure the Bonds in the manner contemplated by the Indenture and the Loan Agreement; (iv) to enter into, execute and deliver the Issuer Documents and to perform its obligations thereunder; and (v) to execute and deliver the Official Statement.

(d) The Issuer's Authorized Officers, as defined in the Bond Ordinance, are authorized for and in the name of the Issuer to execute, deliver and enter into, on behalf of the Issuer, the Issuer Documents, to execute the Official Statement and to execute, deliver, file or record such other incidental papers, documents and instruments as shall be necessary to carry out the intention and purposes of the Issuer Documents.

(e) The execution, delivery and performance by the Issuer of the Issuer Documents will not conflict with or constitute a breach of or default under any commitment, agreement or instrument to which the Issuer is a party, or by which it is bound or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Issuer or any of its activities or properties, which would have a material adverse effect upon the Bonds.

(f) There is no litigation, administrative proceeding or investigation pending or, to the knowledge of the Issuer, threatened (nor, to the knowledge of the Issuer, is there any basis therefore), any such action which in any way affects in a material adverse way, contests, questions or seeks to restrain or enjoin any of the following: (i) the Act or the Bond Ordinance; (ii) any of the proceedings had or actions taken leading up to the issuance of the Bonds or the execution, delivery or performance of the Issuer Documents; (iii) the delivery, validity or enforceability of the Bonds, or any of the Issuer Documents; (iv) the right of the Issuer's Authorized Officers to hold their respective offices (and, which is reasonably likely to have a material adverse effect upon the Issuer); (v) the corporate existence of the Issuer (and, which is reasonably likely to have a material adverse effect upon the Issuer); (vi) the transactions contemplated herein or in the Preliminary Official Statement; (vii) the Preliminary Official Statement and the Official Statement; or (viii) the federal or state tax-exempt status of the interest on the Series 2008A Bonds.

(g) When delivered to and paid for by the Underwriter on the Closing Date in accordance with the provisions of this Bond Purchase Agreement, the Bonds will have been duly authorized, executed (manually or in facsimile) by the Issuer's Authorized Officers, authenticated, issued and delivered and, subject to (i) bankruptcy, insolvency, fraudulent conveyance, reorganization,



moratorium and other similar laws affecting creditors' rights generally; (ii) the application of equitable principles and the exercise of judicial discretion in appropriate cases; (iii) common law and statutes affecting the enforceability of contractual obligations generally; and (iv) principles of public policy concerning, affecting or limiting the enforcement of rights or remedies against governmental entities such as the Issuer, will constitute valid and binding limited obligations of the Issuer of the character referred to in the Indenture, in conformity with, and entitled to the benefit and security of, the Indenture.

(h) No consent, approval, authorization or order of any governmental or regulatory authority not obtained by the Closing Date is required to be obtained by the Issuer as a condition precedent to the issuance of the Bonds or the execution and delivery of the Issuer Documents or the performance by the Issuer of its obligations hereunder or thereunder.

(i) As soon as practicable after the date hereof, and in any event within seven (7) business days following the date hereof, the Issuer, assuming compliance by the Borrower with the applicable requirements of Section 5 of this Bond Purchase Agreement, shall deliver to the Underwriter executed copies of the Official Statement substantially in the form of the Preliminary Official Statement, with only such changes therein as shall have been approved by the Issuer, the Borrower and the Underwriter. The Official Statement shall be provided for distribution, at the expense of the Borrower, in such quantities as shall be reasonably requested by the Underwriter in order to permit the Underwriter to comply with the applicable rules of the Municipal Securities Rulemaking Board with respect to distribution of a copy of the Official Statement to each potential customer upon request and, in any event, to each actual customer.

(j) The Issuer ratifies the use of the Preliminary Official Statement. The Issuer authorizes the use of the Official Statement in connection with the offering of the Bonds.

(k) If, after the date of this Bond Purchase Agreement and until 90 days after the end of the Underwriting Period (defined below) an event occurs, which is actually known to the Issuer, which would cause the information (the "Issuer Information") in the Official Statement under the headings "THE ISSUER" and "LITIGATION" (insofar as such information relates to the Issuer) to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading, it shall notify the Underwriter, and if in the opinion of the Underwriter such fact or event requires the preparation and publication of a supplement or amendment to the Official Statement, the Issuer shall cooperate with the Borrower to supplement or amend the Official Statement in a form and in a manner approved by the Underwriter and furnish to the Underwriter, at the expense of the Borrower, (i) a reasonable number of copies of the supplement or amendment, and (ii) if such notification shall be subsequent to the Closing Date, such legal opinions, certificates, instruments, and other documents as the Underwriter may deem necessary to evidence the truth, accuracy and completeness of such supplement or amendment to the Official Statement. The obligations of the Issuer set forth in this paragraph shall not require the Issuer to monitor the business affairs or financial condition of the Borrower or PSU.

(l) The Issuer Information in the Preliminary Official Statement and the Official Statement is and will be, on the dates thereof, and is on the date hereof, true and correct in all material respects and does not and will not, on the dates thereof, and does not, on the date hereof, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(m) The Issuer will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request to qualify the Bonds for offer and sale under the Blue Sky or other securities laws or regulations of such states and other jurisdictions of the United States as the Underwriter may designate and to provide for the continuance of such qualification; provided, however, that the Issuer will not be required to pay any expenses or costs (including but not limited to legal fees) incurred in connection with such qualification or qualify as a foreign corporation or to file any general or special consent to service of process under the laws of any state or other jurisdictions of the United States.

(n) Any closing certificate signed by any of the Issuer's Authorized Officers or representatives and delivered to the Underwriter shall be deemed a representation by the Issuer to the Underwriter as to the statements made therein.

(o) Any information supplied by the Issuer regarding the Issuer for inclusion in any amendments or supplements to the Preliminary Official Statement or the Official Statement will not contain any untrue or misleading statement of a material fact relating to the Issuer or omit to state any material fact relating to the Issuer necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(p) The Issuer is not in breach of or default under any existing law, court order or administrative regulation, decree or order, which breach or default would have a material adverse effect on the Issuer, and the Issuer is not in payment default on any of its outstanding bonds, notes or other evidences of indebtedness which default materially and adversely affects the transaction contemplated hereby; and to the best of the knowledge of the Issuer no event has occurred which, with the passing of time or the giving of notice, or both, would constitute a material breach or a default by the Issuer thereunder.

(q) The Issuer, as a conduit issuer, issues its bonds as limited obligations of the Issuer payable solely from payments made to it from the respective entities which own and/or use the facilities financed by such bonds. The Issuer has not been in default at any time as to any debt obligations relating to the Borrower or the University.

Unless otherwise notified in writing by the Underwriter by the Closing Date, the Issuer and the Borrower can assume that the "End of the Underwriting Period" for purposes of Rule 15c2-12 shall be the Closing Date. If such notice is so given in writing by the Underwriter, the Underwriter agrees to notify the Issuer and the Borrower in writing following the occurrence of the "End of the Underwriting Period" as defined in Rule 15c2-12.

5. Representations and Warranties of Borrower. The Borrower represents and warrants to the parties hereto:

(a) The Borrower is a single member limited liability company, organized under the laws of the State of Oregon, and is registered as an active limited liability company under the laws of the State of Oregon.

(b) The Borrower is licensed or qualified to do business in the State of Oregon.

(c) The Borrower has full right, power and authority to enter into, execute, deliver and consummate the transactions contemplated by the Loan Agreement, the Tax Agreement, the Notes, the Trust Deed, the Security Agreement, the Assignment of Contract Documents, the Housing Services

Agreement, the Continuing Disclosure Agreement and this Bond Purchase Agreement (the “Borrower Documents”) and to perform its obligations thereunder and the Borrower has full right, power and authority to execute the Official Statement. Each of the Borrower Documents will be, upon their execution and delivery by the parties thereto, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower, in accordance with their respective terms except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors’ rights generally and except as rights of acceleration and the availability of equitable remedies may be limited by equitable principles of general applicability.

(d) A resolution of the Borrower approving and authorizing the execution and delivery of the Borrower Documents and the Official Statement were fully adopted (i) at a meeting of the Management Committee of the Borrower, called and held pursuant to its organizational documents and all applicable law and at which a quorum was present and acting throughout; or (ii) pursuant to a unanimous written consent of the Management Committee in accordance with its organizational documents and all applicable law.

(e) The execution, delivery and performance of the obligations by the Borrower under the Borrower Documents; the compliance by the Borrower with the applicable provisions hereof and of any and all of the Borrower Documents, as applicable; the application by the Borrower of the proceeds of the Bonds for the purposes described in the Preliminary Official Statement and the Official Statement; and the consummation by the Borrower of the transactions contemplated herein or as described in the Preliminary Official Statement and the Official Statement do not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents or any agreement, indenture, mortgage, lease or instrument to which the Borrower is a party or by which the Borrower or any of its property is or may be bound or any existing law or court or administrative regulation, decree or order which is applicable to the Borrower or any of its property, in any material respect.

(f) No default, completed default, event of default or event which, with notice or lapse of time or both, would constitute a default, a completed default or an event of default under the Indenture or any of the other Borrower Documents has occurred and is continuing, other than as disclosed in the Preliminary Official Statement and the Official Statement.

(g) The Borrower has duly authorized all necessary action to be taken by it for: (i) the issuance and sale of the Bonds upon the terms and conditions set forth herein, in the Preliminary Official Statement, in the Official Statement, in the Loan Agreement and in the Indenture, (ii) the approval of the Preliminary Official Statement, the Official Statement and the Bonds; (iii) the approval of the Borrower Documents; and (iv) the execution, delivery or receipt of and performance of the obligations under the Borrower Documents and any and all such other agreements and documents as may be required to be executed, delivered or received by the Borrower in order to carry out, effectuate and consummate the transactions contemplated herein and therein.

(h) The individuals executing, delivering and performing the obligations of the Borrower under the Borrower Documents and executing, delivering, filing or recording such other incidental papers, documents and instruments as shall be necessary to carry out the intention and purposes of this Bond Purchase Agreement are authorized for and in the name of the Borrower to do so.

(i) As soon as practicable after the date hereof, and in any event within seven (7) business days of the date hereof, the Borrower, assuming compliance by the Issuer with the applicable requirements of Section 4 of this Bond Purchase Agreement, shall deliver to the Underwriter executed

copies of the Official Statement substantially in the form of the Preliminary Official Statement, with only such changes therein as shall have been approved by the Issuer, the Borrower and the Underwriter. The Official Statement shall be provided for distribution, at the expense of the Borrower, in such quantities as shall be required by the Underwriter in order to permit the Underwriter to comply with the applicable rules of the Municipal Securities Rulemaking Board with respect to distribution of a copy of the Official Statement to each potential customer upon request and, in any event, to each actual customer.

(j) The information in the Preliminary Official Statement and the Official Statement under the headings “THE BORROWER,” “THE PROJECT,” “ESTIMATED SOURCES AND USES OF FUNDS,” “RISK FACTORS” (insofar as such information relates to the Project or the Borrower) and “LITIGATION” (insofar as information under the heading “LITIGATION” relates to the Borrower) and the information in the Preliminary Official Statement and the Official Statement regarding the Housing Services Agreement (collectively, the “Borrower Information”) is and will be, on the dates thereof, and is, on the date hereof, true and correct and does not or will not, on the dates thereof, and does not, on the date hereof, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein or herein, in light of the circumstances under which they were made, not misleading.

(k) If after the date of the Bond Purchase Agreement and until 90 days after the End of the Underwriting Period an event occurs, which is actually known by the Borrower, which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading, the Borrower shall notify the Underwriter, and if in the opinion of the Underwriter such fact or event requires the preparation and publication of a supplement or amendment to the Official Statement, the Borrower shall supplement or amend the Official Statement in a form and in a manner approved by the Underwriter and furnish to the Underwriter, at the expense of the Borrower, (i) a reasonable number of copies of the supplement or amendment, and (ii) if such notification shall be subsequent to the Closing Date, such legal opinions, certificates, instruments, and other documents as the Underwriter may deem necessary to evidence the truth, accuracy and completeness of such supplement or amendment to the Official Statement.

(l) The Borrower will not take or omit to take any action which will in any way cause or result in the proceeds of the sale of the Bonds being applied in a manner other than as provided in the Indenture, or that would adversely affect the federal or state tax-exempt status of the Series 2008A Bonds.

(m) Except as may be described in the Preliminary Official Statement and the Official Statement, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any public board or body pending or, to the knowledge of the Borrower, threatened against or affecting the Project (and, to the knowledge of the Borrower, there is no meritorious basis therefore) wherein an unfavorable decision, ruling or finding would have a material adverse effect on (i) the financial condition of the Project or the operation of the Project by the Borrower, (ii) the transactions contemplated in this Bond Purchase Agreement and as described in the Preliminary Official Statement and the Official Statement, (iii) the tax-exempt status of the Borrower, (iv) the legal existence or organizational status of the Borrower, or (v) the validity or enforceability in accordance with their respective terms of the Borrower Documents, or would in any way contest the corporate existence or powers of the Borrower.

(n) The sole member of the Borrower, the University Foundation, has been determined to be and is exempt from the payment of federal income taxes under Section 501(a) of the

Code by virtue of being an organization described in Section 501(c)(3) of the Code (except with respect to unrelated business income subject to taxation under Section 511 of the Code), is not a “private foundation” as defined in Section 509(a) of the Code and the use of the portion of the Project financed with the proceeds of the Series 2008A Bonds by the Borrower as described in the Loan Agreement will not result in that portion of the Project being used in an unrelated trade or business of the University Foundation within the meaning of Section 513 of the Code. The University Foundation (i) is in compliance with the provisions of the Code and any applicable regulations thereunder necessary to maintain its status as an organization exempt from federal income taxes under the Code, (ii) is not acting in a manner which is substantially inconsistent with its application for 501(c)(3) status under the Code, (iii) is organized and operated exclusively for charitable purposes; and (iv) is organized and operated such that no part of the net earnings of the University Foundation will inure to the benefit of any private shareholder or individual.

(o) For federal income tax purposes, pursuant to 26 C.F.R. (Treas. Reg.) Section 301.7701-2(c)(2)(i), the Borrower will be disregarded as an entity separate and distinct from its sole member, the University Foundation.

(p) Any certificate signed by an authorized officer or representative of the Borrower delivered to the Underwriter shall be deemed a representation and warranty by the Borrower to the Underwriter as to the statements made therein.

(q) The Borrower is not aware of any fact which has not been disclosed to the Underwriter which materially adversely affects or, so far as the Borrower can now foresee, will materially adversely affect the operations or condition of the Project, the Borrower’s tax exempt status, its ability to own and operate its property or the ability of the Borrower to make the payments upon the Notes and under the Loan Agreement when and as the same become due and payable.

(r) All authorizations, approvals, consents and licenses of any governmental body or authority required for the valid and lawful execution and delivery by the Borrower of the Borrower Documents and the performance of the obligations of the Borrower thereunder have been obtained or will be obtained by the time required.

(s) The Borrower will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request to qualify the Bonds for offer and sale under the Blue Sky or other securities laws or regulations of such states and other jurisdictions of the United States as the Underwriter may designate and to provide for the continuance of such qualification; provided, however, that the Borrower will not be required to qualify as a foreign corporation or to file any general or special consents to service of process under the laws of any state.

6. Representations of Underwriter. The Underwriter represents to the Issuer and the Borrower that:

(a) It will make a public offering of the Bonds in compliance with all applicable State and Federal laws and regulations application to such public offerings.

(b) It has the corporate power and authority to enter into this Bond Purchase Agreement and perform its covenants and obligations hereunder.

(c) When executed and delivered by the other parties hereto, this Bond Purchase Agreement will constitute a valid, binding and enforceable obligation of Underwriter in accordance with all terms, except as such enforceability may be limited by bankruptcy, insolvency and the laws affecting creditors' rights generally or by availability of equitable remedies.

7. Conditions to Obligations of Underwriter. The obligation of the Underwriter to purchase and pay for the Bonds will be subject to (i) the accuracy of the representations and warranties of the Issuer and the Borrower herein, (ii) the accuracy of the representations and warranties made by the Issuer in the Issuer Documents and by the Borrower in the Borrower Documents, (iii) the performance by the Issuer and the Borrower of their obligations hereunder, (iv) the receipt of the documents specified in Section 3 hereof, and (v) the following additional conditions precedent:

(a) Except as may have been agreed to by the Underwriter, at the Closing Date, the Issuer Documents and the Borrower Documents, and all respective official action of the Issuer or the Borrower relating thereto shall be in full force and effect and shall not have been amended, modified or supplemented, and the Official Statement shall not have been amended or supplemented.

(b) The Issuer shall have received the approving opinion of K&L Gates, Bond Counsel, substantially in the form attached to the Official Statement as Exhibit E dated the Closing Date and addressed to, or with a reliance letter to the Underwriter, a supplemental opinion of Bond Counsel dated the Closing Date and addressed to the Underwriter substantially in the form of Exhibit A hereto.

(c) The Underwriter shall have received a certificate of the Issuer, dated the Closing Date and signed on behalf of the Issuer, in the form and substance acceptable to Bond Counsel and the Underwriter.

(d) The Underwriter and the Issuer shall have received written evidence that Moody's Investors Service, Inc. ("Moody's") has issued a rating of "\_\_\_\_\_" on the Bonds and Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc. ("S&P") has issued a rating of "\_\_\_\_\_" and the documents delivered at the Closing Date shall satisfy the conditions to the continuance of such ratings; and as of the Closing Date, the ratings shall not have been suspended or withdrawn.

(e) The Underwriter and the Issuer shall have received (i) a certificate dated the Closing Date and signed by an authorized officer of the Borrower in a form acceptable to the Issuer, Bond Counsel and the Underwriter, and (ii) the opinion of Garvey Schubert Barer, Portland, Oregon, as counsel to the Borrower, substantially in the form of Exhibit B hereto.

(f) The Underwriter and the Issuer shall have received an opinion of counsel to the University Foundation and in a form acceptable to the Bond Counsel and the Underwriter that the University Foundation is an organization described in Section 501(c)(3) of the Code and is not a private foundation as described in Section 509(a) of the Code.

(g) The Underwriter shall have received an opinion of Underwriter's counsel, dated the Closing Date, to the effect that the Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is not subject to the qualification requirements of the Trust Indenture Act of 1939, as amended.

(h) The Underwriter and the Issuer shall have received a certificate dated the Closing Date and signed by an authorized officer of the University or the Oregon State Board of Higher Education, acting on behalf of the University, to the effect that (i) the information contained in the Preliminary

Official Statement and the Official Statement under the heading “THE UNIVERSITY AND THE OREGON UNIVERSITY SYSTEM,” the audited financial statements of the Oregon University System included in Appendix \_\_\_ to the Preliminary Official Statement and Official Statement, the information in the Preliminary Official Statement and Official Statement regarding “Available Funds” of the University, as defined in the Housing Services Agreement, and the information contained in the Preliminary Official Statement and the Official Statement regarding the Housing Services Agreement (collectively, the “University Information”) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading, (ii) since the date hereof, there has not been any material adverse change in the business, properties, financial position, or results of operations of the University, whether or not arising from transactions in the ordinary course of business, other than as previously disclosed in writing to the Underwriter, and except in the ordinary course of business, nor has the University suffered or incurred any material liability, other than as previously disclosed in writing to the Underwriter, (iii) there is no action, suit, proceeding, or, to the best of the officer’s knowledge, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to his or her knowledge, threatened against or affecting the University or any affiliate or its property or, to his or her knowledge after making due inquiry with respect thereto, any basis therefore, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or the validity or enforceability of the Bonds, Indenture, or the Housing Services Agreement which have not been previously disclosed in writing to the Underwriter and which is not disclosed in the Official Statement, (iv) the University has duly authorized, by all necessary action, the execution, delivery, receipt, and due performance of the Housing Services Agreement, and (v) with respect to other matters reasonably requested by Bond Counsel or the Underwriter.

(i) The University shall have received the opinion of the Oregon Department of Justice, counsel to the Oregon State Board of Higher Education, in the form and substance satisfactory to the Underwriter.

(j) The Underwriter and the Issuer shall have received such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriter or Bond Counsel may reasonably request.

All the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Bond Purchase Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Underwriter, the Issuer and Bond Counsel. The Issuer’s obligation to issue the Bonds shall be conditioned upon all opinions and certificates required under this Section 7 or otherwise required by Moody’s or S&P or any other agency providing a rating on the Bonds including the Issuer as an addressee or expressly allowed for reliance thereon by the Issuer.

8. Termination. The Underwriter may terminate its obligations hereunder by written notice to the other parties hereto if, at any time subsequent to the date hereof and at or prior to the Closing Date:

(k) (i) Legislation shall have been enacted by the Congress, or recommended to the Congress for passage by the President of the United States or the U.S. Department of the Treasury or the Internal Revenue Service or any member of the United States Congress, or favorably reported for passage to either House of the Congress by any Committee of such House to which such legislation has been referred for consideration, or (ii) a decision shall have been rendered by a court established under Article III of the Constitution of the United States, or the United States Tax Court, or (iii) an order, ruling, regulation or communication (including a press release) shall have been issued by the Department of the Treasury of the United States or the Internal Revenue Service, in each case referred to in clauses (i), (ii) and (iii), with

the purpose or effect, and reasonable likelihood, directly or indirectly, of imposing federal income taxation upon interest to be received by any holders of the Series 2008A Bonds.

(l) Legislation shall have been enacted or any action taken by the Securities and Exchange Commission which, in the reasonable opinion of counsel to the terminating party, has the effect of requiring the offer or sale of the Bonds to be registered under the Securities Act of 1933 or the Indenture to be qualified as an indenture under the Trust Indenture Act of 1939 or any event shall have occurred which, in its reasonable judgment, makes untrue or incorrect in any material respect any statement or information contained in the Preliminary Official Statement or the Official Statement or which, in its reasonable judgment, should be reflected therein in order to make the statements contained therein not misleading in any material respect.

(m) (i) In the Underwriter's reasonable judgment, the market price of the Bonds is adversely affected because: (a) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange; (b) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Bonds or similar obligations, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, underwriters; (c) a general banking moratorium shall have been established by Federal, New York or Oregon authorities having jurisdiction shall be in force; or (d) a war involving the United States of America shall have been declared, or any other national or international calamity shall have occurred, or any conflict involving the armed forces of the United States of America shall have escalated to such a magnitude as to materially affect the Underwriter's ability to market the Bonds; (ii) any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance or sale of the Bonds or in any way contesting or affecting any authority or security for or the validity of the Bonds, or the existence or powers of the Issuer; (iii) legislation shall have been enacted by the Legislative Assembly of the State with the purpose or effect, directly or indirectly, of imposing Oregon income taxation upon interest to be received by any holders of the Bonds; or (iv) any action has been taken by any agency of the United States Government with the purpose or effect, directly or indirectly, of imposing federal income taxation upon interest to be received by any holders of the Series 2008A Bonds or which would, in the Underwriter's reasonable judgment, adversely affect the security for the Bonds.

(n) There shall have occurred any change which, in the reasonable judgment of the Underwriter, makes unreasonable or unreliable any of the assumptions upon which (i) yield for purposes of Section 103 of the Code, (ii) payment of debt service on the Bonds or (iii) the basis for the exemption of interest on the Series 2008A Bonds from federal income taxation, is predicated.

9. Indemnification.

(o) The Borrower agrees to indemnify and hold harmless the Issuer and the Underwriter, the directors, officers, employees and agents of the Issuer and the Underwriter and each person who controls any of the foregoing within the meaning of either the Securities Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Borrower Information or the University Information in the Preliminary Official Statement, the Official Statement (or in any supplement or amendment thereto), or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made,



not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Borrower will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made in the Preliminary Official Statement or the Official Statement, or in any amendment thereof or supplement thereto, in reliance upon and in conformity with written information furnished by or on behalf of the Underwriter specifically for inclusion therein. This indemnity agreement will be in addition to any liability which the Borrower may otherwise have.

(p) The Underwriter severally and not jointly agrees to indemnify and hold harmless the Issuer and the Borrower, and each of their respective officials, directors, officers and employees, and each person who controls the Issuer or the Borrower within the meaning of either the Securities Act or the Exchange Act, to the same extent as the foregoing indemnity from the Borrower to the Issuer and the Underwriter, but only with reference to written information relating to the Underwriter furnished to the Issuer by or on behalf of the Underwriter specifically for inclusion in the Preliminary Official Statement or the Official Statement (or in any amendment or supplement thereto). This indemnity agreement will be in addition to any liability which any Underwriter may otherwise have. The Issuer and the Borrower each acknowledge that the statements set forth under the caption "UNDERWRITING" in the Preliminary Official Statement and the Official Statement, constitute the only information furnished in writing by or on behalf of the Underwriter for inclusion in the Preliminary Official Statement or the Official Statement (or in any amendment or supplement thereto).

(q) Promptly after receipt by the Indemnified Party under this Section 9 of notice of the commencement of any action, such Indemnified Party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 9, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure result in the forfeiture by the indemnifying party of substantial rights and defenses; and (ii) will not, in any event, relieve the indemnifying party from any obligations to any Indemnified Party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the Indemnified Party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the Indemnified Party or Parties except as set forth below); provided, however, that such counsel shall be satisfactory to the Indemnified Party. Notwithstanding the indemnifying party's election to appoint counsel to represent the Indemnified Party in an action, the Indemnified Party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the Indemnified Party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the Indemnified Party and the indemnifying party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the indemnifying party; (iii) the indemnifying party shall not have employed counsel satisfactory to the Indemnified Party to represent the Indemnified Party within a reasonable time after notice of the institution of such action; or (iv) the indemnifying party shall authorize the Indemnified Party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the Indemnified Parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim,

action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the Indemnified Parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liability arising out of such claim, action, suite or proceeding.

(r) In the event that the indemnity provided in paragraph (a) or (b) of this Section 9 is unavailable or insufficient to hold harmless an Indemnified Party for any reason, the Borrower and the Underwriter agree to contribute to the aggregate losses, claims, damages, liabilities (including legal or other expenses reasonably incurred in connection with the investigating or defending same) (collectively "Losses") to which the Borrower and the Underwriter may be subject in such proportion as is appropriate to reflect the relative benefits received by the Borrower on the one hand and by the Underwriter on the other from the offering of the Bonds. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Borrower and the Underwriter shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Borrower on the one hand and of the Underwriter on the other in connection with the statements or omissions which resulted in such Losses, as well as any other relevant equitable considerations. In no case shall the Underwriter (except as may be provided in any agreement among the Underwriter relating to the offering of the Bonds) be responsible for any amount in excess of the purchase discount or commission applicable to the Bonds purchased by the Underwriter hereunder. Benefits received by the Borrower shall be deemed to be equal to the total net proceeds from the offering (before deducting expenses) received by it, and benefits received by the Underwriter shall be deemed to be equal to the total purchase discounts and commissions in each case set forth on the cover of the Official Statement. Relative fault shall be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by the Borrower on the one hand or the Underwriter on the other, the intent of the parties and their relative knowledge, information and opportunity to correct or prevent such untrue statement or omission. The Borrower and the Underwriter each agree that it would not be just and equitable if contribution were determined by pro rate allocation or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 9(d), each person who controls the Underwriter within the meaning of either the Securities Act or the Exchange Act and each director, officer, employee and agent of the Underwriter shall have the same rights to contribution as the Underwriter, and each person who controls the Borrower within the meaning of either the Securities Act or the Exchange Act and each official, director, officer and employee of the Borrower shall have the same rights to contribution as the Borrower, subject in each case to the applicable terms and conditions of this paragraph (d).

10. Expenses.

To the extent permitted by law, the Underwriter shall pay its own expenses relating to the offering, sale and purchase of the Bonds as well as the costs of printing and distributing the Preliminary Official Statement and the Official Statement. All other expenses relating to the issuance of the Bonds, including, but not limited to, the Underwriter's fee, blue sky fees and expenses, the rating agency fee, the financial advisor's fee, the Trustee's authentication and set-up fee, the Issuer's fee and the fees and expenses of Bond Counsel, Issuer's counsel, counsel to the Underwriter, counsel to the Borrower, counsel to the University and counsel to the University Foundation shall be paid by the Borrower.

The Issuer shall not be responsible for the payment of any expenses relating to the issuance, sale and delivery of the Bonds.

11. Notices. Any notice or other communication to be given to the Borrower or the Issuer under this Bond Purchase Agreement may be given by delivering the same in writing to the Borrower or the Issuer, as applicable, at their addresses set forth above, and any notice or other communication to be given to the Underwriter under this Bond Purchase Agreement may be given by delivering the same in writing to Citigroup Global Markets Inc., c/o Citi Community Capital, 601 Union Street, Suite 5130, Seattle, Washington 98101, Attention: Mark W. Dean.

12. Successors. This Bond Purchase Agreement is made solely for the benefit of the Issuer, the Indemnified Parties, the Underwriter and the Borrower (including their successors or assigns) and no other person shall acquire or have any right hereunder or by virtue hereof. The representations, warranties, and agreements contained herein shall remain operative and in full force and effect and shall survive delivery of and payment for the Bonds hereunder, regardless of any investigation made by or on behalf of the Underwriter.

13. Governing Law. This Bond Purchase Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State of Oregon, but excluding its conflicts of law principles, except as such laws may be preempted by any federal rules, regulations, and laws applicable to the Issuer.

14. Counterparts. This Bond Purchase Agreement may be executed in one or more counterparts, each of which shall be deemed to be one and the same document.

15. Effectiveness. This Bond Purchase Agreement shall become effective upon the execution of the acceptance hereof by the Issuer and the Borrower.

Very truly yours,

**CITIGROUP GLOBAL MARKETS INC.**

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

[Signatures continued on the next page]

[Bond Purchase Agreement signatures continued from the previous page]

The foregoing is confirmed and accepted as of the date first above written.

**CITY OF PORTLAND, OREGON,**  
acting by and through its City Council  
on the recommendation of the  
Portland Development Commission

By: \_\_\_\_\_  
Its: Debt Manager

[Signatures continued on the next page]

[Bond Purchase Agreement signatures continued from the previous page]

**BROADWAY HOUSING, LLC,**  
an Oregon limited liability company, as Borrower

By: \_\_\_\_\_  
Rebecca A. Hein  
Management Committee Chair

**SCHEDULE I**

**MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES**

**Series 2008A Serial Bonds**

<b>Due Date</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>
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**Series 2008A Term Bonds**

\$ \_\_\_\_\_ % Term Bonds due April 1, 2035; Price: \_\_\_\_%

**Series 2008B Serial Bonds**

<b>Due Date</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>
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**Series 2008B Term Bonds**

\$ \_\_\_\_\_ % Term Bonds due \_\_\_\_\_, 20\_\_; Price: \_\_\_\_%

**EXHIBIT A**

**SUPPLEMENTAL LEGAL OPINION OF BOND COUNSEL**

October 22, 2008

Citigroup Global Markets Inc.

**Re:***[\$[Series A Amount] City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008A (Tax-Exempt), and \$[Series B Amount] City of Portland, Oregon Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008B (Federally Taxable)*

Ladies and Gentlemen:

We have acted as Bond Counsel to the City of Portland, Oregon, acting by and through its City Council on the recommendation of the Portland Development Commission (herein called the "Issuer") in connection with the authorization, sale, issuance and delivery by the Issuer of its \$[Series A Amount] Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008A (Tax-Exempt) (the "Series 2008A Bonds") and its \$[Series B Amount] Economic Development Revenue Refunding Bonds, Series 2008B (Broadway Project) (Federally Taxable) (the "Series 2008B Bonds"), dated October 22, 2008 (collectively, the "Bonds"). The Bonds are issued pursuant to the laws of the State of Oregon, and particularly Sections 280.410 through 280.485 of the Oregon Revised Statutes, as amended (the "Act"), and Chapter 5.72 of the Code of the City of Portland, Oregon (the "City Code"), Ordinance No. \_\_\_\_ of the City Council (the "Council") of the City of Portland, Oregon granting, among other things, the final approval of the Series 2008A Bonds and the Series 2008B Bonds, enacted on October 1, 2008 (the "Ordinance"), Resolution No. \_\_\_\_ of the Portland Development Commission recommending final approval of the Series 2008A Bonds and the Series 2008B Bonds, adopted on September 24, 2008 (the "Resolution"), and a Trust Indenture by and between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"), dated as of October 1, 2008 (the "Indenture").

Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Bond Purchase Agreement, dated October \_\_, 2008 (the "Purchase Agreement"), by and among the Issuer, Citigroup Global Markets Inc. (the "Underwriter") and Broadway Housing, LLC (the "Borrower").

In rendering the opinions set forth herein, we have reviewed the following:

- A.     An executed counterpart of the Purchase Agreement,
- B.     The Official Statement dated October \_\_, 2008 relating to the Bonds (the "Official Statement"), and



- C. Such other documents, instruments, certificates and agreements as we have deemed necessary or appropriate for purposes of rendering the opinions set forth herein.

On the basis of the foregoing examination, and in reliance thereon, and on the basis of our examination of such other matters of fact and questions of law as we deem relevant under the circumstances, and subject to the limitations expressed herein, we are of the opinion, under existing law, as follows:

1. The statements contained in the final Official Statement on the cover and under the headings “DESCRIPTION OF THE BONDS” (except under the heading “Book-Entry Only System”), “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS,” “TAX MATTERS,” “RISK FACTORS—Tax-Exempt Status of the Series 2008A Bonds” and “—No Redemption Upon Loss of Tax Exemption,” Exhibit A entitled “CERTAIN DEFINITIONS,” Exhibit C entitled “SUMMARIES OF PRINCIPAL LEGAL DOCUMENTS,” and Exhibit E entitled “PROPOSED FORM OF OPINION OF BOND COUNSEL,” insofar as such statements contained under such captions purport to summarize, with respect to the Bonds, certain provisions of the Indenture, the Bonds, the Loan Agreement, the Trust Deed, the Security Agreement, the Assignment of Contract Documents, or the law, including the Internal Revenue Code of 1986, as amended, present a fair and accurate summary of such provisions.

We express no opinion about creditworthiness of the Issuer, the investment quality of the Bonds or the adequacy of the security for the Bonds. We are furnishing this letter to you pursuant to the Bond Purchase Agreement solely for your benefit. This letter is not to be used, circulated, quoted or otherwise referred to in connection with the marketing of the Bonds nor is it to be relied upon by any person without prior written permission; provided that reference may be made to it in any list or transcript of closing documents pertaining to the Bonds.

This opinion is provided to you as a legal opinion only, and not as a guaranty or warranty of the matters discussed herein. No opinions may be inferred or implied beyond the matters expressly stated herein. No qualification, limitation or exception contained herein shall be construed in any way to limit the scope of the other qualifications, limitations and exceptions. Our opinion is limited to matters of Oregon law and applicable federal law, and we assume no responsibility for the applicability of other jurisdictions. For purposes of this opinion, the terms “law” and “laws” do not include unpublished judicial decisions, and we disclaim the effect of any such decision on the opinions expressed.

This opinion speaks as of its date only, and we expressly disclaim any undertaking or obligation to advise you of any matters arising after the date hereof.

We have served only as bond counsel to the Issuer in connection with the Bonds and have not represented any other party in connection with the Bonds. Therefore, no attorney/client relationship shall arise by virtue of our addressing this opinion to persons other than the Issuer.

Respectfully submitted,

**EXHIBIT B**

**Opinion of Borrower's Counsel**

October 22, 2008

Addressees: Issuer  
Underwriter  
Trustee  
University  
Bond Counsel

Re: \$[Series A Amount] principal amount of Economic Development Revenue Refunding Bonds (Broadway Project) Series 2008A (Tax-Exempt) and \$[Series B Amount] principal amount of Economic Development Revenue Refunding Bonds (Broadway Project), Series 2008B (Federally Taxable)

Ladies and Gentlemen:

The undersigned has acted as counsel to Broadway Housing, LLC (the "Borrower") in connection with the issuance and sale of \$[Series A Amount] principal amount of Economic Development Revenue Refunding Bonds (Broadway Project) Series 2008A (Tax-Exempt) and \$[Series B Amount] principal amount of Economic Development Revenue Refunding Bonds (Broadway Project) Series 2008B (Federally Taxable) (the "Bonds"), which are being issued under a Trust Indenture, dated as of October 1, 2008 (the "Indenture"), between the City of Portland, Oregon (the "Issuer") and Wells Fargo Bank, National Association, as trustee (the "Trustee"). Capitalized terms not defined herein shall have the meanings set forth in the Loan Agreement.

For the purpose of rendering this opinion, we have reviewed the Loan Agreement, the Tax Agreement, the Promissory Notes, the Security Agreement, the Deed of Trust, the Assignment of Contract Documents, the Housing Services Agreement and the Bond Purchase Agreement (collectively, the "Borrower Documents"). We have also examined the Articles of Organization, the Operating Agreement and an authorizing resolution of the Borrower. On the basis of such review and examination subject to the limitations stated herein, we are of the opinion that:

1. The Borrower is an Oregon limited liability company duly organized, validly existing and registered as an active limited liability company under the laws of the State of Oregon. The Borrower has all requisite power and authority as a limited liability company to own its properties and to conduct its business and affairs as contemplated by the Borrower Documents. The Borrower has all requisite power and authority as a limited liability company to authorize the execution and delivery of the Borrower Documents and to perform its obligations

under, and carry out and consummate the transactions described in or contemplated by the Borrower Documents.

2. The Borrower Documents have been duly authorized, executed, and delivered by the Borrower, and each of them is the legal, valid, and binding agreement of the Borrower, enforceable in accordance within their respective terms.

3. All approvals and consents of federal and State of Oregon authorities required in connection with the execution and delivery by the Borrower of the Borrower Documents have been obtained (except such approvals as may be required by any state securities laws).

4. Neither the issuance and sale of the Bonds, the consummation of any other of the transactions contemplated in the Borrower Documents nor the fulfillment of the terms thereof will violate, result in a breach of, or constitute a default under (i) the terms of the Articles of Organization, Operating Agreement or other organizational documents of the Borrower, (ii) any indenture or other material agreement or instrument known to us to which the Borrower or any of its property is a party or by which it may be bound or affected, or (iii) to our knowledge, any law, rule or regulation applicable to the Borrower (other than securities laws) or any judgment, writ, decree, or order of any court, applicable to Borrower or by which its property is bound. Additionally, neither the issuance nor sale of the Bonds, will result in the creation of any lien, pledge, charge or encumbrance upon any of the assets or property of the Borrower other than those expressly contemplated or permitted by such documents.

5. Except as described in the Official Statement, there are no judicial, regulatory or arbitral proceedings pending or, to our knowledge, threatened at law or in equity against the Borrower which, if decided adversely to the Borrower, would have a material adverse effect on the validity or enforceability of the Borrower Documents or the transactions contemplated therein.

6. The Deed of Trust, when recorded in the real property records of Multnomah County ("County Recorder's Office) will create a valid lien on the **[Mortgaged Property]** for the benefit of the Trustee, and the County Recorder's Office is the only office in which the Deed of Trust needs to be recorded in order to create such valid lien on the **[Mortgaged Property]** for the benefit of the Trustee. The recording and indexing of the Deed of Trust in the County Recorder's Office is the only filing or recording necessary to give constructive notice to third parties of the Trustee's lien on the **[Mortgaged Property]**.

7. The Security Agreement creates in favor of the Trustee a valid security interest in the "Collateral" (as defined in the Loan Agreement) **[add Assignment of Documents]** to the extent that a security interest therein may be created under Article 9 of the UCC (the "Article 9 Collateral"). Assuming that there is no agreement among the parties to postpone the time of attachment, such security interest has attached to the Article 9 Collateral. The Financing Statements are in proper form for filing with (the "Filing Office"). The Trustee is authorized to file the Financing Statements in the Filing Office. Upon the filing of the Financing Statements in the Filing Office, the security interest created under the Security Agreement and the Assignment

of Documents will be perfected in that portion of the Article 9 Collateral as to which a security interest may be perfected under Article 9 of the UCC by the filing of a financing statement in Oregon.

8. In the course of our representation of the Borrower in connection with the issuance of the Bonds, we have made inquiries of certain managers of the Borrower as to certain matters, and have advised the Borrower as to certain aspects relating to the disclosures contained in the Official Statement, which we do not represent to be complete or comprehensive as to the Borrower's business. In reliance on the results thereof and the other matters referred to herein as relied upon, and without having undertaken to independently verify the accuracy, completeness or fairness of the statements contained in said Preliminary Official Statement and the Official Statement, we advise you that:

Nothing has come to our attention that would lead us to believe that the information contained under the headings "THE BORROWER," "THE PROJECT," "ESTIMATED SOURCES AND USES OF FUNDS," "RISK FACTORS" (insofar as such information relates to the Borrower or the Project) and "LITIGATION" (insofar as information under the heading "LITIGATION" relates to the Borrower) of the Preliminary Official Statement and the Official Statement contains any untrue statement of a material fact, or, taken collectively, omits to state any material fact with respect to the Borrower, or that is required to be stated therein or that is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading in any material respect; it being understood that we express no opinion with respect to information contained or referred to therein concerning the persons other than the Borrower and that we express no opinion as to any financial, demographic, statistical data, forecasts or projections contained in the Preliminary Official Statement or Official Statement.

We have assumed for the purposes of this opinion the genuineness of all documents, and the genuineness of all signatures thereon, the authenticity of all documents submitted to us as originals, the conformity with originals of all documents submitted to us as copies or duplicates, and that all documents are accurate and complete. We have also assumed that the Borrower Documents are or will be executed by all other parties thereto and are valid, binding, and enforceable against such other parties.

The opinions expressed above are qualified to the extent that the enforceability of any provision in the Borrower Documents may be subject and affected by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the rights of creditors generally. The opinions expressed above are further qualified to the extent that enforceability may be subject to and affected by the potential exercise of judicial discretion in accordance with principles of equity and by the rights of the United States under the Federal Tax Lien Act of 1966, as amended.

The opinions expressed above are further subject to the qualification that the enforceability of certain of the remedial, waiver, and other provisions may be limited by applicable laws; however, such limitations do not, in our opinion, materially interfere with the practical realization of the benefits to Issuer of the transaction contemplated in the Borrower Documents, although there may be economic consequences of procedural delay which may result from such laws.

The opinions expressed above are additionally subject the qualification that applicable law may (i) limit the availability of a remedy under certain circumstances where another remedy has been elected; (ii) limit the right of a creditor to use force or cause a breach of the peace in enforcing rights; (iii) relate to the sale or disposition of collateral or the requirements of a commercially reasonable sale; (iv) govern and afford judicial discretion regarding the determination of damages and entitlement to attorney's fees and other costs; (v) impose limits on attorney's or trustee's fees; and (vi) limit the enforceability of indemnity obligations for a party's own fault or negligence.

We have made no examination of title to the Mortgaged Property and we express no opinion with respect to (i) the state of title to or value of any property, assets or collateral described in the Borrower Documents; or (ii) the rank or priority of liens or security interests created or to be created by the Borrower Documents. We understand you are relying upon title insurance and UCC searches for assurances of this nature. We express no opinion with respect to the perfection of any security interest in (i) any collateral that includes items or types of personal property in which a security interest cannot be created under the UCC, or (ii) any collateral that includes items or types of personal property in which a security interest cannot be created under the UCC except upon the taking of possession thereof by the secured party. The term "UCC" as used herein means Article 9 of the Uniform Commercial Code now in effect in the State of Oregon.

We express no opinion with respect to the environmental or ecological condition of the Mortgaged Property and the effect, if any, of applicable environmental or ecological laws or regulations on the transactions contemplated by the Borrower Documents, or with respect to whether or not the Project or the Mortgaged Property is in compliance with the provisions and requirements of applicable health and safety, building, zoning, land use or planning rules, regulations, ordinances, statutes, and laws. No opinion is given or expressed, nor should any opinion be inferred or implied, as to (i) the financial status of Borrower or the Project or the financial ability of Borrower under or pursuant to the Borrower Documents to meet or satisfy its obligations thereunder; (ii) the truthfulness, completeness, or accuracy of any applications, reports, documents, financial statements, forecasts, projections, if any, or other matters furnished by Borrower to Issuer or Trustee or their agents or representatives under the Borrower Documents, or by any other party acting by, for, or at the direction of Borrower or in conjunction with the Loan as evidenced by the Borrower Documents; (iii) the truthfulness, completeness or accuracy of any representation, warranty, certification, or statement by Borrower in the Borrower Documents, and have assumed the accuracy of such, unless acts actually known to us clearly indicated further inquiry was necessary, (iv) the adequacy or accuracy of descriptions of real or personal property; or (v) compliance with securities or "blue sky" laws or rules or regulations.

We express no opinion as to the laws of any jurisdiction other than the State of Oregon and the United States of America. We express no opinion as to matters covered by opinion letters from Bond Counsel or other counsel or not expressly stated herein. We undertake no obligation to advise the addressees of facts or changes in law occurring after the date of this opinion which might affect the opinions expressed herein. The foregoing opinions have been expressed solely for the benefit of the parties above-referenced and not otherwise, and no other person shall, in the absence of the written consent thereto by the undersigned, be entitled to rely thereon in any respect.

We have assumed each of the parties to an agreement addressed by this opinion will exercise their rights and remedies in good faith with fair dealing and in a commercially reasonable manner.

As used in this opinion “our knowledge” or “known to us” shall mean the current, actual knowledge of the undersigned from a certificate of the Borrower, or as a result of discussions with authorized representatives of Borrower or with lawyers currently with our firm we have determined are likely in the ordinary course of their duties to have knowledge of the transactions contemplated and matters covered thereby.

With respect to opinions concerning security interests, it may be necessary to file continuation statements in the future.

Notwithstanding any provisions in the Borrower Documents to the effect that they reflect the entire understanding of the parties with respect to the matters described therein, the courts of the State of Oregon may consider extrinsic evidence of circumstances surrounding the negotiation or execution of the Borrower Documents to ascertain the intent of the parties in using language employed in the Borrower Documents, regardless of whether or not the meaning of the language in the Borrower Documents is plain and unambiguous on its face and may determine that additional terms can be incorporated into the Borrower Documents.

# PDC

PORTLAND DEVELOPMENT COMMISSION

## Resolution Number 6636

Title: RESOLUTION RECOMMENDING FINAL APPROVAL TO CITY COUNCIL FOR ECONOMIC DEVELOPMENT REVENUE REFUNDING BONDS (BROADWAY PROJECT), SERIES 2008A (TAX-EXEMPT) AND ECONOMIC DEVELOPMENT REVENUE REFUNDING BONDS (BROADWAY PROJECT), SERIES 2008B (FEDERALLY TAXABLE), WHICH TOGETHER IN AN AGGREGATE PRINCIPAL AMOUNT WILL NOT EXCEED \$52,000,000, FOR THE PURPOSE OF PROVIDING FUNDS FOR THE REFINANCING OF THE ACQUISITION, DEVELOPMENT AND CONSTRUCTION OF STUDENT HOUSING UNITS AND RELATED COMMERCIAL AND ACADEMIC SPACE.

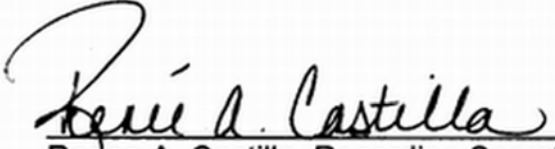
Adopted by the Portland Development Commission on September 24, 2008.

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: September 24, 2008