

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**RESOLUTION NO. 6706**

**RECOMMENDING PRELIMINARY AND FINAL APPROVAL TO PORTLAND CITY COUNCIL FOR REFUNDING OF MULTIFAMILY HOUSING REVENUE BONDS (THE VILLAGE AT LOVEJOY FOUNTAIN PROJECT), THROUGH ISSUANCE OF BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$15,000,000 FOR THE PURPOSE OF REFINANCING THE ACQUISITION, DEVELOPMENT, AND CONSTRUCTION OF MULTIFAMILY HOUSING; AUTHORIZING AND RATIFYING THE EXECUTIVE DIRECTOR TO EXECUTE A LETTER OF INTENT AND INDEMNIFICATION AND COMPENSATION AGREEMENT AND RELATED MATTERS.**

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

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

**WHEREAS**, the City previously issued its City of Portland, Oregon, Multifamily Housing Revenue Bonds, Series 1997 (The Village at Lovejoy Fountain Project), in the original aggregate principal amount of \$15,000,000 (the “1997 Bonds”);

**WHEREAS**, the 1997 Bonds were issued for the purpose of financing the acquisition, development, and construction of multifamily housing units and related site improvements known as The Village at Lovejoy Fountain in Portland, Oregon (the “Project”);

**WHEREAS**, the Portland Development Commission (“PDC”) has received a request from VLF, LLC, an Oregon limited liability company (“Company”) for economic development revenue refunding bonds in an amount not to exceed \$15,000,000 (the “Proposed Bonds”) for the purpose of providing funds to refund the 1997 Bonds;

**WHEREAS**, the Company has requested the Proposed Bonds (a) be issued in an amount not to exceed \$15,000,000, (b) be issued as tax exempt bonds, (c) be payable solely from the revenues of the Project, the funds and accounts pledged under the financing documents and from amounts, if any, received pursuant to any credit facility that may be obtained by the Company at its expense, and (d) be secured by, among other things, a lien on the Company’s right, title and interest in and to the Project and the Project site;

**WHEREAS**, PDC reconfirms its finding under PDC Resolution No. 5026 and attached report that the Project does not conflict with any adopted plans or policies of the City and is an “economic development project” within the meaning of Chapter 5.72.020 of the City Code and ORS 280.410; and

**WHEREAS**, PDC 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”).

**NOW, THEREFORE, BE IT RESOLVED** that PDC determines that the Final Bond Documents comply with Chapter 5.72 of the City Code (including rent levels and non-discrimination policies) and recommends to the Portland City Council the preliminary and final approval by emergency ordinance of the issuance of the Proposed Bonds;

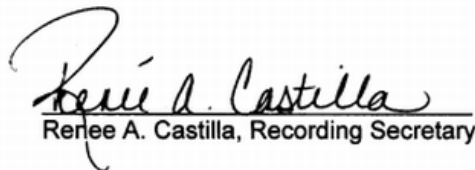
**BE IT FURTHER RESOLVED** that prior action by the PDC Executive Director to execute and deliver a Letter of Intent and Indemnification and Compensation Agreement attached hereto as Exhibit “A” with the Company and the City is hereby ratified;

**BE IT FURTHER RESOLVED** that, pursuant to Chapter 5.72.100(b)(1), the one-time issuance fee for the 1997 Bonds was paid and PDC determines that the refunding will not generate additional ongoing administration costs and, therefore, waives an equitable portion of the issuance fee for the Proposed Bonds as set forth in the Fee Letter attached hereto as Exhibit “B”;

**BE IT FURTHER RESOLVED** that the City’s bond counsel, K&L Gates LLP, is designated as Bond Counsel and U.S. Bank National Association as Trustee for the Proposed Bonds; and

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

**Adopted by the Portland Development Commission on May 27, 2009.**

  
Renee A. Castilla, Recording Secretary

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

among

CITY OF PORTLAND, OREGON

and

THE PORTLAND DEVELOPMENT COMMISSION

And

VLF, LLC

THIS LETTER OF INTENT AND INDEMNIFICATION AND COMPENSATION AGREEMENT (the "Letter and Agreement") is between the City of Portland, OREGON (the "City"), acting by and through its City Council, the Portland Development Commission, the duly designated urban renewal agency of the City (the "Commission"), the agency charged with the administration of the economic development and housing revenue bond programs of the City, and VLF, LLC (the "Borrower").

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

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

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

c) The City proposes to issue multifamily housing revenue bonds pursuant to the Act to refund bonds (the "refunded bonds") issued for the acquisition, construction, improvement and equipping of The Village at Lovejoy Fountain Project which constitutes an "eligible project" within the meaning of the Act and the Code (the "Project") and to loan the proceeds of such revenue bonds to the Borrower. The revenue bonds will be issued in an amount not exceeding \$ 15,000,000<sup>00</sup> and shall be payable solely from the revenues of the Borrower related to the Project, the funds and accounts described in the loan documents for the Project, and from amounts, if any, received pursuant to a credit facility. Revenue Bonds for the Project are referred to herein as the "revenue bonds."

d) The City deems it necessary and advisable that it take such action as may be required under the Act to authorize and issue revenue bonds on a tax-exempt basis, to refinance the cost of the Project, and costs of issuance of the revenue bonds, in a total amount not exceeding \$ 15,000,000.

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

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

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

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

a) The City will, upon satisfaction by the Borrower of all conditions stated herein and all other conditions imposed on the Borrower by the City prior to issuance of the revenue bonds, authorize and cause the issuance of revenue bonds to be payable solely out of the loan payments paid by the Borrower to the City pursuant to a loan agreement or other financing agreement between the Borrower and the City and from amounts, if any, received pursuant to a credit facility, which revenue bonds will be in an aggregate principal amount not to exceed \$ 15,000,000.

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

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

d) The City has appointed K&L Gates LLP, as the City's housing and conduit bond counsel ("Bond Counsel") to supervise the proceedings and to approve the legality of the actions of the

City, the Commission, the revenue bonds, and to assist in the preparation and review of the documents necessary for the sale and issuance of the revenue bonds.

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

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

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

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

b) The Borrower will cooperate with the City for the approval of all of the terms and conditions of the issuance of the revenue bonds, and in the sale of the revenue bonds in an aggregate principal amount not to exceed \$ 15,000,000.00, to be used to refinance the Project.

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

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

e) The loan agreement or other financing agreement shall contain a provision that the Borrower shall indemnify and hold the City and the Commission and their elected or appointed

officials, employees and agents harmless from all liabilities incurred in connection with the Project or the revenue bonds.

- f) The Borrower will cause its counsel to provide the City with legal opinions satisfactory to the City and Bond Counsel.
- g) The loan agreement shall also contain such other provisions as may be required or permitted by law and as are mutually acceptable to the parties.
- h) The Borrower agrees that the City's Office of Management and Finance shall approve a purchaser for the revenue bonds. The pricing of the revenue bonds shall be subject to the approval of the City's Office of Management and Finance.
- i) The Borrower agrees to comply with the requirements of the Act and the Code.
- j) The Borrower understands and agrees that preliminary and final approval, if any, of revenue bond financing does not imply or otherwise constitute approval of other City funds or subsidies.
- k) The Borrower will take such further action and adopt such further proceedings as may be required to implement these understandings.

4) General Provisions.

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

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

costs and fees of its counsel, letter of credit or credit enhancement fees, the placement agent and any other costs incurred in connection with the revenue bonds.

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

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

Notwithstanding the fact that it is the intention of the parties hereto that neither the City nor the Commission or their elected or appointed officials, employees or agents shall incur any pecuniary liability by reason of the terms of this Letter and Agreement or the undertakings required of the City or the Commission or their elected or appointed officials, employees or agents hereunder, by reason of the issuance of the revenue bonds or by reason of the execution of any financing documents relating thereto, or by reason of the performance of any act requested by the City or the Commission, their elected or appointed officials, employees or agents or by the Borrower, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulation pertaining to the foregoing; nevertheless, if the City or the Commission or their elected or appointed officials, employees or agents should reasonably incur any such pecuniary liability, then in such event the Borrower shall indemnify and hold the City or the Commission and their elected or appointed officials, employees or agents harmless against all claims, demands or causes of action whatsoever, by or on behalf of any person, firm or corporation or other legal entity arising out of the same or out of any offering statement or lack of

offering statement in connection with the sale or resale of the revenue bonds and all costs, fees and expenses, including without limitation, legal fees and expenses whether incurred at trial, on appeal, in bankruptcy proceedings or otherwise incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the City or the Commission or their elected or appointed officials, employees or agents, the Borrower shall defend the City and the Commission and their elected or appointed officials, employees or agents in any such action or proceeding.

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

In the event any claim is made against the City or the Commission, their elected or appointed officials, employees or agents (collectively, the "Indemnified Parties") for which indemnification may be sought from the Borrower under the foregoing provisions, the Indemnified Parties shall promptly give written notice thereof to the Borrower; *provided that* any failure to give or delay in giving such written notice shall not relieve the Borrower's indemnification obligations as set forth above except to the extent such failure or delay prejudices the Borrower's ability to defend or settle such claim. Upon receipt of such notice, the Borrower shall assume the defense thereof in all respects and may settle such claim in such manner as it deems appropriate so long as there is no liability, cost or expense to the Indemnified Party. The Borrower shall select legal counsel to represent each Indemnified Party and shall not be responsible for the legal fees and expenses of any legal counsel retained by any Indemnified Party without the written consent of the Borrower, unless the City or the Commission shall have reasonably concluded that there may be a conflict of interest between the City or the Commission and the Borrower in the conduct of the defense of such action (in which case the Borrower shall not have the right to direct the defense of such act on behalf of the City or the Commission and shall be responsible for the legal fees and expenses of the counsel retained by the Indemnified Party whether incurred at trial, on appeal, in bankruptcy proceedings or otherwise). Borrower agrees to pay, or cause to be paid, the deficiency.

The City, the Commission, and the Borrower have caused this Letter and Agreement to be authorized by their respective governing bodies and executed by their duly authorized officers as of the 17<sup>th</sup> day of April 2009.



CITY OF PORTLAND, OREGON

VLF, LLC

By: \_\_\_\_\_  
Debt Manager

By: Oregon Pacific Investment  
and Development Company,  
an Oregon Corporation

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

By: Julie J. Samoy  
Vice-President

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

By: \_\_\_\_\_  
Executive Director

1657

*Investing in  
Portland's Future*



April 28, 2009

Charles A. Wilhoite  
*Commission Chair*

J. Scott Andrews  
*Commissioner*

Bertha Ferrán  
*Commissioner*

John C. Mohlis  
*Commissioner*

Steven Straus  
*Commissioner*

Sam Adams  
*Mayor*

Bruce A. Warner  
*Executive Director*



[www.pdc.us](http://www.pdc.us)

222 Northwest  
Fifth Avenue  
Portland, OR  
97209-3859

tel: 503.823.3200  
fax: 503.823.3368  
TTY: 503.823.3366



Julie Leuvrey  
Oregon Pacific Capital Management  
1800 SW First Avenue Suite 600  
Portland OR 97204

Dear Julie:

Thank you for your April 17, 2009 email through Ron Lehr, requesting an administrative fee reduction for the Village at Lovejoy Fountain Apartments (project) bond refunding.

I am pleased to inform you that the Portland Development Commission has determined that it can support a 40% reduction in this fee. Accordingly, the bond refunding fee will be; \$7.00 X 60% or \$4.20 per thousand of the face amount of the bonds.

In processing your request, we relied on your representations about the nature of the refunding, referred to City Code Section 5.72.100 for guidance and authority to waive fees, and prepared the attached administrative functions summary table for further guidance.

This reduction in administrative fee is an accommodation based on the specific facts and circumstances of the bond refunding for this project. Any future request for an adjustment in the administrative fee for another project will require a separate evaluation and may result in a different determination.

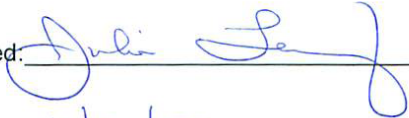
If this proposed administrative fee discount meets the needs of the project, please sign and return this letter in the next five business days. Please call me at 503.823.3213 or John Warner at 503.823.3240 if you need further assistance.

Sincerely

A handwritten signature in blue ink that reads "Komi P. Kalevor".

Komi P. Kalevor  
Interim Housing Director

Page 2 of 2

Agreed to and accepted:  \_\_\_\_\_

Date: 4/30/09

Cc: John Warner  
Eric Iverson  
Eric Johansen  
Ron Lehr

**Refunding bonds for the Village at Lovejoy Fountain**

The proposed reissue bonds are for the original principal amount (\$15.0M) and the remaining term (19 of 30 years) of the original issue bonds (Series 1997). The purpose for the refunding is to replace the existing credit enhancement ,in the form of a letter of credit from Key Bank, with credit enhancement from Freddie Mac.

<b>Task</b>	<b>Original Issue Bonds</b>	<b>Refunding Bonds</b>
Administrative Fees	One-time issuer fee of \$7 per \$1,000 of bonds	If the PDC determines the refunding will not generate additional ongoing administrative costs, the fee or an equitable portion thereof may be waived
Bond Application Review	Moderate PDC staff effort	Limited PDC staff effort
Volume Cap Volume Cap Request to State Treasurer Private Activity Bond Committee Meeting Extension Request	Required Required As necessary	Not Applicable Not Applicable Not Applicable
Preliminary Inducement PDC Report and Resolution City Council Resolution	Required Required	Not Applicable Not Applicable
TEFRA Notice and Hearing	Required	Not Applicable
PDC Loan Underwriting and Due Diligence	Required	Not Applicable
Participation in Structuring Discussions as part of Bond Financing Team	Substantial PDC staff effort	Limited PDC staff effort
Bond Documentation	Required	Required
Final Inducement PDC Report and Resolution City Council Resolution	Substantial PDC staff effort Limited PDC staff effort	Substantial PDC staff effort Limited PDC staff effort
On-Going Administration	Limited	No additional level of effort

# PDC

PORTLAND DEVELOPMENT COMMISSION

## Resolution Number 6706

Title:

RECOMMENDING PRELIMINARY AND FINAL APPROVAL TO PORTLAND CITY COUNCIL FOR REFUNDING OF MULTIFAMILY HOUSING REVENUE BONDS (THE VILLAGE AT LOVEJOY FOUNTAIN PROJECT), THROUGH ISSUANCE OF BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$15,000,000 FOR THE PURPOSE OF REFINANCING THE ACQUISITION, DEVELOPMENT, AND CONSTRUCTION OF MULTIFAMILY HOUSING; AUTHORIZING AND RATIFYING THE EXECUTIVE DIRECTOR TO EXECUTE A LETTER OF INTENT AND INDEMNIFICATION AND COMPENSATION AGREEMENT AND RELATED MATTERS.

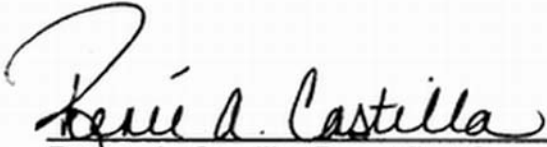
Adopted by the Portland Development Commission on May 27, 2009.

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 checked="" type="checkbox"/>	Steven Straus	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" 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: June 4, 2009