

ORDINANCE NO. 3 - 1980

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF PORT OF NEWPORT, OREGON, INSTALLMENT REVENUE BONDS (SOUTH BEACH MARINA PROJECT, SERIES B) IN THE SUM OF \$500,000 TO FARMERS HOME ADMINISTRATION FOR THE PURPOSE OF PROVIDING A PORTION OF THE COSTS OF ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MARINA FACILITY FOR USE BY SPORTS FISHERMEN AND BOATERS WITHIN AND WITHOUT THE BOUNDARIES OF THE PORT OF NEWPORT, OREGON; PROVIDING FOR THE FORM AND TERMS OF SAID BONDS, AUTHORIZING THE PAYMENT OF SAME, APPOINTING A TRUSTEE, AND DECLARING AN EMERGENCY.

WHEREAS, the Port of Newport, Lincoln County, Oregon, (the "Port") is authorized by ORS Chapter 777 to issue one or more additional Installment Revenue Bonds in an amount not to exceed the sum of \$1,450,000, in excess of any existing bond issue, for the construction, acquisition, reconstruction, repair, extension and improvement of a part of a Port Marina facility for use by sports fishermen and boaters within and without the Port of Newport, Oregon, such part being hereinafter called "Facility", and

WHEREAS, the Port has commenced negotiations with the Farmers Home Administration of the United States Department of Agriculture, hereinafter called "Government", for financial assistance to construct said Facility, and

WHEREAS, the Farmers Home Administration has indicated a willingness to provide such financial assistance and as a result, it is necessary to cause the execution and delivery of

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an installment bond to secure loans made by the Government and to comply with any requirements, terms and conditions prescribed by the Government or by Government regulations and to execute contracts or enter into agreements and, without limitation, to take any and all other action as may be necessary, incidental or appropriate to finance, construct, complete, equip and extend the Facility for and on behalf of the Port, and

WHEREAS, the said United States Department of Agriculture, by and through the said Farmers Home Administration, has previously purchased \$1,250,000 of said Series A Bonds pursuant to Ordinance No. 1-1980 of the Port of Newport, will purchase contemporaneously herewith the remaining \$950,000 of said Series A Bonds, and is now willing to purchase the Series B Bonds in the amount of \$500,000, all as authorized by said Ordinance No. 1-1980, now therefore,

THE PORT OF NEWPORT, OREGON ORDAINS AS FOLLOWS:

Section 1. (DETERMINATION OF PORT COMMISSION). It is necessary to defray a portion of the costs of acquiring, constructing and equipping the Facility by obtaining a loan made by the Government in accordance with applicable provisions of the Consolidated Farmers Home Administration Act of 1972, it being determined by the Government that the Port is unable to

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obtain sufficient credit elsewhere to finance the Facility taking into consideration prevailing private and cooperative rates and terms currently available.

Section 2. (TERMS OF LOAN). As provided in Ordinance 1-1980, and Ordinance 2-1980, the Port has borrowed or contemporaneously shall borrow an aggregate of \$2,200,000 and issue as evidence thereof its Installment Revenue Bonds (South Beach Marina Project, Series A) ("Bonds") for the full principal amount of the loan. In addition, the Port shall borrow the amount of \$500,000, and issue as evidence thereof its Installment Revenue Bond (South Beach Marina Project, Series B) for the full principal amount of said additional loan. The first bond of Series A in the amount of \$1,250,000 has been dated and delivered May 12, 1980. The second bond of Series A in the amount of \$950,000 representing the remaining amount to be borrowed pursuant to the said Series A Revenue Bonds, shall be dated the date of delivery thereof, or within 30 days of November 7, 1980. The first and only Series B Bond shall be dated the date of delivery thereof, or within 30 days of the proposed issue and delivery date shown below, and shall be in the principal installment as follows:

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<u>PROPOSED ISSUE AND DELIVERY DATE</u>	<u>PROPOSED MATURITY DATE</u>	<u>PRINCIPAL AMOUNT</u>
November 7, 1980	November 7, 2010	\$500,000

The Bond shall be in substantially the following form and the terms therein are hereby adopted, approved and incorporated as part of this Ordinance:

NO. 1 UNITED STATES OF AMERICA
 STATE OF OREGON
 COUNTY OF LINCOLN
 PORT OF NEWPORT, OREGON
 INSTALLMENT REVENUE BOND
 (SOUTH BEACH MARINA PROJECT, SERIES B)

The Port of Newport, Lincoln County, Oregon, hereinafter called the "Borrower" hereby acknowledges itself indebted and for value received, promises to pay to the order of the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, hereinafter called the "Government", the principal sum of Five Hundred Thousand Dollars (\$500,000.00), plus interest on the unpaid principal balance at the rate of 7.21% per annum. The principal of and interest on the Bond shall be payable in the following installments on or before the following dates:

Interest only on the 7th days of November in the years 1981, 1982 and 1983, and the sum of \$42,545 annually thereafter on the 7th day of November until the principal and said interest are fully paid, except that the final installment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable thirty (30) years from the date of this Bond. In lieu of coupons evidencing semiannual interest, unpaid accrued interest shall be paid on the 7th day of May of each year and the amount of interest so paid shall be deducted from the next succeeding installment of \$42,545 due the next succeeding 7th day of November.

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All or a part of the outstanding bond installments may be paid in inverse order on any interest payment date, without premium, upon publication, at least 30 days before the redemption date, of one notice of the intended redemption in one issue of a newspaper specializing in financial matters published in the City and State of New York, and one issue of a newspaper of general circulation in Lincoln County, Oregon.

This Bond shall be registered as to principal and interest in the name of the United States of America in an appropriate book in the Office of the Secretary of the Borrower, each registration to be noted on the back hereof by said Secretary and no transfer hereof shall be valid unless made on said book and similarly noted on the back hereof.

Both the principal and interest shall be paid to the United States of America as such registered holder at the office of the Farmers Home Administration serving Lincoln County, Oregon.

Default hereunder may constitute default under any other instrument evidencing a debt of Borrower owing to or insured by the Government or securing or otherwise relating to such debt, and default under any other such instrument shall constitute default hereunder. Upon default, Government, at its option, may declare all or any part of said indebtedness immediately due and payable, may incur expenses on behalf of the Port to cure the cause of default and/or may take possession of the Facility and repair, maintain, operate or rent it.

This Bond is given as evidence of a loan to Borrower made by the Government pursuant to the Consolidated Farmers Home Administration Act of 1972, as amended, and shall be subject to the present regulations of the Farmers Home Administration and to its future regulations not inconsistent with the express provisions hereof.

This Bond is authorized and issued by virtue of the majority vote of the Port Commissioners of the Port of Newport, Oregon, voting at a special meeting called and held on the 6th day of November, 1980, and by virtue of Ordinance No. 3-71980 of the Port of Newport, Oregon, duly adopted by the Port Commission, and pursuant to the Constitution and laws of the State of Oregon, as amended.

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This Bond is not a general obligation of the Port of Newport, Oregon. The principal of and interest on this Bond are payable on a parity with the Series A Bond issued contemporaneously herewith and other bonds of Series A as issued May 12, 1980, solely from the following sources, as provided by the said Ordinances No. ~~2-1980~~ 3-1980 of the Port of Newport and by Ordinance No. 1-1980 of the Port of Newport:

(a) Revenues of the Port from the sports boat marina project, after payment of all operating and maintenance costs, subject to a prior pledge of all such revenues to the payment of the Port of Newport, Oregon General Obligation Installment Bonds, Nos. 1 to 5, inclusive;

(b) Lease and rental revenues of the Port from the marine motel/convention facilities and allied commercial shops, less payment of administrative costs, subject to a prior pledge of all such revenues to the payment of the Port of Newport, Oregon General Obligation Bonds, Nos. 1 to 5, inclusive;

(c) Lease and rental revenues of the Port from the Island Village commercial area, less payment of administrative costs;

(d) Lease and rental revenues of the Port from its marine repair and sales facilities to be located on real property described in Exhibit A to Ordinance No. 1-1980, less payment of administrative costs;

(e) Lease and rental revenues of the Port from its dry moorage facilities consisting of up to 200 storage berths and to be located within the South Beach Marina Project, less payment of administrative costs.

This bond is authorized by Ordinance No. 1-1980 and 3-1980, pursuant to which an aggregate total of \$2,200,000 of Series A Bonds and \$500,000 of Series B Bonds were authorized. This Bond represents the entire Series B authorization, and is payable on a parity with the bonds of Series A out of the revenues as above described pledged by the Port for the payment of principal of and interest on the said Installment Revenue Bonds.

This Bond is exchangeable at the sole expense of the Borrower, at any time, upon ninety (90) days written notice, at the request of the registered owner hereof and upon surrender of this Bond to

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Borrower at the office of the Secretary of the Borrower, for negotiable coupon bonds payable to bearer in the denomination of \$5,000 each, in the aggregate principal amount equal to the unpaid principal amount of the Bond, and bearing interest on the unpaid principal balance at the rate of ~~5%~~ ^{7.21% mth} per annum.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all obligations of the Borrower, does not exceed any limits prescribed by the Constitution and statutes of the State of Oregon and the Ordinances of the Port of Newport, Oregon.

IN WITNESS WHEREOF, the Port of Newport, Oregon, has caused this Bond to be signed by the President and Secretary of its Board of Port Commissioners and its corporate seal to be affixed hereto by the Secretary of the Board, all as of the 7th day of November, 1980.

PORT OF NEWPORT
LINCOLN COUNTY, OREGON

By Bill Herson
President, Board of Port
Commissioners

ATTEST:

Paul W. Shumot
Secretary, Board of
Port Commissioners

Section 3. (ADOPTION OF PROVISIONS OF ORDINANCE 1-1980).

The United States National Bank of Oregon, a national banking association, is hereby appointed as trustee to administer the

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special trust funds as established by Ordinance No. 1-1980 of the Port of Newport, as said ordinance was previously adopted in the issuance of the first bond of these Port of Newport, Oregon Installment Revenue Bonds, South Beach Marina Project, Series A, as said ordinance is amended by Ordinance 2-1990. The trustee's written acceptance of this obligation has been previously filed with the Board of Port Commissioners in connection with issuance of Bond No. 1 of this Series A. Each and every provision of Section 3, Section 4, Section 5, Section 6, Section 7, Section 8, Section 9 and Section 10 of said Ordinance No. 1-1980, as amended, shall apply, except as otherwise herein provided, with respect to this Bond No. 1, Series B, issued pursuant to the provisions hereof, and shall be a part hereof as though here set out in full.

Section 4. (ADDITIONAL DEPOSITS TO DEBT SERVICE ACCOUNT). In addition to the amounts required to be transferred to the Debt Service Account as established and required by paragraph (2) of subsection B of section 4 of the said Ordinance No. 1980-1 with respect to Series A Bond No. 1, and by Ordinance No. 2-1990 with respect to Series A Bond No. 2, additional amounts shall be transferred to the debt service account with respect to Series B Bond No. 1, as hereinafter provided

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and required. After the transfer required to the Operation and Maintenance Account, there shall be transferred to the separate Debt Service Account each month within the Revenue Fund before any other expenditures or transfers therefrom, excepting only those authorized pursuant hereto or by Ordinance No. 1-1980 or by Ordinance No. 2-1990, for payment of the annual installments of principal of and semiannual installments of interest on Series B Bond No. 1, commencing on April 1, 1982, a sum equal to at least one-sixth of the next succeeding interest payment, and commencing on April 1, 1984, a sum equal to at least one-sixth of the next succeeding interest payment and at least one-twelfth of the next succeeding principal installment becoming due on the bond. As provided in said Ordinance No. 1-1980, the trustee shall pay from the debt service account to the registered holder or bearer, as the case may be, of this bond and of other bonds issued on parity herewith, as the case may be, such sums of principal and/or interest as shall become due from time to time according to the terms of such bonds.

If the Port for any reason shall fail to make such monthly deposit, then an amount equal to the deficiency shall be set apart and deposited in the debt service account out of the net revenues

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in the following month or months, which amount shall be in addition to the regular monthly deposit required during each succeeding month or months.

Whenever there shall accumulate in the Debt Service Account amounts in excess of that required during the next twelve months for the payment of principal and interest on the combined outstanding installments of all Installment Revenue Bonds, South Beach Marina Project, Series A or Series B, or in the Operation and Maintenance Account and the Reserve Account hereinafter established, amounts shall accumulate in excess of the requirements thereof, any such excess shall be deposited to the Debt Service Account and may be used by the Port to pay or prepay any of the bonds as provided in the form of any such bond, or may be used for the regular payments, as the same shall accrue. The Port shall not be obligated to prepay any installment accruing upon any such bond, although it may elect to do so in accordance with the form of the bond, and so long as any such excess shall remain in the Debt Service Account over and above the requirements thereof, the Port shall not be required to pay into the Revenue Fund created pursuant to subsection B of Section 4 of said Ordinance No. 1-1980 any more of the revenues pledged pursuant to Section 5 of said

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Ordinance 1-1980 except as, when taken together with the excess in said Debt Service Account, shall be required for transfer to the Debt Service Account to make the payments and transfers required hereunder and under said Ordinance 1-1980 or as may be required for the Operation and Maintenance Account in accordance with paragraph (1) of subsection B of Section 4 of said Ordinance 1-1980.

Section 5. (RESERVE ACCOUNT). Out of the balance of monies in the revenue fund remaining after the transfers required pursuant to the provisions of Ordinance 1-1980 and of this ordinance, above, there shall be set aside and deposited in a separate Reserve Account the sum of \$700.00 each month until there is accumulated in that account the sum of \$85,375.00 for Bond No. 1 of Series A, as required by Section 4 of said Ordinance 1-1980, and, if Series A Bond No. 2 is issued, the additional sum of \$504.00 each month until there is accumulated in that account the sum of \$64,885.00 for Bond No. 2 of Series A as required by Section 5 of Ordinance 2 - 1980, for a total of \$150,260.00 for both of the said bonds of the said Series A, and there shall be set aside and deposited in said separate Reserve Account the sum of \$330.00 each month until there is accumulated in that Account the sum of \$42,545.00 for Series B Bond No. 1

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authorized by this ordinance, after which no further deposits need be made into such Account except to replace withdrawals therefrom. As provided in Ordinance No. 1-1980, the Reserve Account shall be used and disbursed only for the purpose of paying the costs of repairing or replacing any damage to the facility which may be caused by any unforeseen catastrophe and when necessary or for the purpose of making payments of principal of and interest on the bonds in the event the amount of the Debt Service Account is insufficient to meet such payments. Whenever disbursements are made from the Reserve Account, deposits monthly to the Reserve Account shall be resumed in the amounts herein provided until there is again accumulated the full reserve amount required above, at which time deposits may be again discontinued.

Section 6. (INVESTMENT) Any monies held as part of the Construction Fund and/or Revenue Fund, including any account thereunder, shall be invested in accordance with subsection C of section 4 of said Ordinance 1-1980.

Section 7. (EMERGENCY CLAUSE). The Board of Commissioners of the Port of Newport has and hereby does determine that the adoption of this ordinance is immediately necessary to permit the sale of the bond herein authorized in a proper and orderly

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fashion, and to carry out the purposes and intent of this ordinance, and to take advantage of the availability of a purchaser for the bonds, and for other good and sufficient cause, an emergency is therefore determined to exist and, immediately upon the passage of this ordinance, this ordinance shall be signed by the president and attested by the secretary of the Port and recorded in a book kept by the secretary for that purpose, and shall take effect immediately thereupon.

ADOPTED by the Board of Port Commissioners this 6th day of November, 1980, by the following vote:

Ayes: 4
Nays: 0
Absent: 1

Submitted to and approved by the president and secretary of the Port Commission on this 6th day of November, 1980.

Bill Heppen
President

ATTEST:

Paul W. Shumate
Secretary

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Approved by the United States of America, Farmers Home
Administration, this 6th day of November, 1980.

FARMERS HOME ADMINISTRATION

By: Jerry D. Spindler
Authorized Representative

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