

ORDINANCE NO. 2 - 1980

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF A SECOND PORT OF NEWPORT, OREGON, INSTALLMENT REVENUE BOND (SOUTH BEACH MARINA PROJECT, SERIES A) IN THE SUM OF \$950,000 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, and is now willing to purchase the remaining \$950,000 of said Series A Bonds, 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 obtain sufficient credit elsewhere to finance the Facility tak-

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ing into consideration prevailing private and cooperative rates and terms currently available.

Section 2. (TERMS OF LOAN). As provided in Ordinance 1-1980, the Port shall borrow \$950,000 and issue as evidence thereof its second Installment Revenue Bond (South Beach Marina Project, Series A) ("Bonds") for the full principal amount of the loan. In addition, the Port shall borrow an additional amount not to exceed \$500,000, and issue as evidence thereof its Installment Revenue Bonds (South Beach Marina Project, Series B) for the full principal amount of such 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, representing the remaining amount to be borrowed pursuant to the said Series A, 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:

<u>PROPOSED ISSUE AND DELIVERY DATE</u>	<u>PROPOSED MATURITY DATE</u>	<u>PRINCIPAL AMOUNT</u>
November 7, 1980	November 7, 2010	\$950,000

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

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NO. 2

UNITED STATES OF AMERICA
STATE OF OREGON
COUNTY OF LINCOLN
PORT OF NEWPORT, OREGON
INSTALLMENT REVENUE BOND
(SOUTH BEACH MARINA PROJECT, SERIES A)

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 Nine Hundred Fifty Thousand Dollars (\$950,000.00), plus interest on the unpaid principal balance at the rate of 5% 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 \$64,885 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 \$64,885 due the next succeeding 7th day of November.

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.

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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. 2-1980 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.

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 B Bond issued contemporaneously herewith and other bonds of this Series A as issued May 12, 1980, solely from the following sources, as provided by the said Ordinance No. 2-1980 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;

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(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 represents the remainder of the unissued Port of Newport, Oregon Installment Revenue Bonds (South Beach Marina Project, Series A) authorized by Ordinance No. 1-1980, of which \$1,250,000 was issued May 12, 1980 and this bond, taken with the bond previously issued, will aggregate \$2,200,000, the maximum amount authorized for said Series A Bonds. In addition, the Port has reserved the right to issue one or more series of additional bonds, including Series B, the aggregate amount of which additional bonds shall not exceed \$500,000, and to pledge to the payment of the principal of and interest thereon, on a parity with the pledge for the payment of this bond, any or all of the revenues pledged by the Port for the payment of the principal of and interest on this bond.

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 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% 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

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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 _____ day of November, 1980.

PORT OF NEWPORT
LINCOLN COUNTY, OREGON

By Bin Jensen
President, Board of Port
Commissioners

ATTEST:

Paul W. Shumat
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 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,

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Series A, as said ordinance is hereinafter amended. 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 (excepting, however, paragraph (2) of subsection B relating to the Debt Service Account of the Revenue Fund and paragraph (3) of said subsection B relating to the Reserve Account of said Revenue Fund, all as provided for in said Section 4, with respect to which accounts additional amounts shall be required by reason of the issuance of this additional bond No. 2, as hereinafter provided), Section 5, Section 6, Section 7, Section 8, Section 9 and Section 10 of said Ordinance No. 1-1980, shall apply, except as otherwise herein provided with respect to this bond No. 2 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 Bond No. 1, additional amounts shall be transferred to the debt service account with respect to Bond

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No. 2, as hereinafter provided 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, for payment of the annual installments of principal of and semiannual installments of interest on this Bond No. 2, Series A, 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 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 authorized pursuant to this ordinance, for a total of \$150,260.00 for both of the said bonds of the said Series A, and if the bond or bonds shall be issued for Series B in the amount of \$500,000.00, 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

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for this bond, 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. (AMENDMENT OF ORDINANCE NO. 1-1980). To the extent that subsection B of Section 4 of Ordinance 1-1980 requires deposit to the Revenue Fund of the revenues pledged pursuant to section 5 of said Ordinance 1-1980 in excess of the amounts required for the Operation and Maintenance

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Account, the Debt Service Account, and the Reserve Account, the said subsection B thereof is hereby amended to provide that revenues pledged to the project shall not be required to be deposited to the Revenue Fund in excess of the amounts required for the Operation and Maintenance Account and for the Debt Service Account (including transfers from the Debt Reserve Account to the Reserve Account). No amount shall be deemed required to be deposited to the Debt Service Account in excess of the amounts which, when taken with any excess in the Debt Service Account, are necessary to make all the transfers and payments required to be made from said account. Nothing in this ordinance nor in said Ordinance 1-1980 shall be construed to require any prepayment of any installment of any Bond, although the Port may, at its option, make prepayment thereof as provided in the bond form. Inasmuch as the provisions of Ordinance 1-1980 constitute a contract between the Port and the Farmers Home Administration, this section of this ordinance, to the effect that the same may modify or limit any right of the Farmers Home Administration accruing under said Ordinance 1-1980, shall become effective only upon endorsement hereon by an authorized representative of the said Farmers Home Administration of its approval hereof.

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Section 8. (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 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 Herder
President

ATTEST:

 Paul W. Shumat
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: Sam W. Spindler
Authorized Representative

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