

PORT OF NEWPORT

ORDINANCE NO. / -1982

AN ORDINANCE RELATING TO THE AGREEMENT FOR LEASE OF THE SOUTH BEACH MARINA FACILITY; TO THE INCOME DERIVED THEREFROM; TO THE GENERAL OBLIGATION INSTALLMENT BONDS NOS. 1 THROUGH 5; TO THE SOUTH BEACH MARINA PROJECT INSTALLMENT REVENUE BONDS, SERIES A AND SERIES B; TO THE INCOME DERIVED FROM SUCH FACILITY AND PLEDGED TO THE REPAYMENT OF SUCH BONDS; AND AMENDING AND SUPERSEDING ANY PRIOR ORDINANCES OR RESOLUTIONS CONTRARY TO THE TERMS AND PROVISIONS HEREOF.

WHEREAS, the Port of Newport, Lincoln County, Oregon, is authorized to construct, acquire, reconstruct, repair, extend and improve a marina facility within the Port of Newport, and has done so, said facility commonly being known and referred to as the "South Beach Marina," and

WHEREAS, in order to finance such construction, acquisition, reconstruction, repair, extension and improvement the Port of Newport has issued its general obligation bonds Nos. 1 through 5 in the aggregate amount of \$2,500,000.00, issued pursuant to Resolutions No. 11-1977, 1-1978, 10-1979, 14-1979, 15-1979 and others, and

WHEREAS, for the same purpose the Port of Newport did issue its installment revenue bonds, South Beach Marina Project, Series A in the aggregate amount of \$2,200,000.00 pursuant to Ordinances No. 1-1980 and 2-1980, and its South Beach Marina Project Installment Revenue Bond, Series B, in the amount of \$500,000.00 pursuant to Ordinance No. 3-1980, and

WHEREAS, all of the ordinances and resolutions authorizing the issuance of such bond, and such amendments and resolutions as are supplemental and amendatory thereto, provide certain terms, provisions and conditions for the repayment of said bonds, for the creation of security interests and the pledge of income from the project toward the payment thereof, and

WHEREAS, all of such outstanding bonds were acquired and are held by the United States of America, acting by and through the Farmers Home Administration, hereinafter referred to as "FmHA," and

WHEREAS, the Marina facility has been leased in its entirety to South Beach Marina, Inc., an Oregon corporation, hereinafter referred to as Lessee, and

WHEREAS, the parties desire to alter, modify and amend certain terms and provisions relating to the said lease agreement and the bonds, and the terms, provisions and conditions relating to the payment, security, reserve account and other matters relating thereto,

NOW, THEREFORE,

The Port of Newport ordains:

1. This Ordinance, when effective, shall serve to modify, amend, alter and supersede the South Beach Marina lease agreement and any provisions of any previously adopted resolution or ordinance to the extent that the terms, provisions and requirements of said lease and of any such resolution or ordinance shall be contrary hereto.

2. This Ordinance shall be in the nature of an agreement between Port, FmHA and Lessee, and the same shall become effective upon the occurrence of the expiration of 30 days from the passage of this Ordinance by the Port, as provided by law, or upon the execution hereof by all of the parties, that is, by the Port, by the FmHA and by Lessee, whichever shall later occur.

3. The security deposit required to be made by the Lessee pursuant to Section 21 of the lease agreement shall no longer be required and the deposit previously paid to the Port by the Lessee shall be released and such security deposit, together with such additional sums as may be required, shall be used to establish a reserve account for the payment of the general obligation bonds as hereafter provided. It is understood that it is the obligation of the Lessee under and in accordance with Section 8 of the lease agreement to pay all of the principal and interest upon all of the bonds, including both the general obligation installment bonds and the revenue bonds, Series A and B, as the same shall accrue, that is, the Lessee shall pay all of the debt service thereon, including any amounts required to be paid toward the establishment of any reserve account heretofore or by this Ordinance established provided, however, that any such reserve accounts so established, in accordance with all applicable terms, provisions, requirements and agreements, shall be used to pay any amounts remaining due upon such bonds when the same shall be sufficient to fully pay and retire the same, and any amounts not so utilized

shall be returned to Lessee when such bonds and all accrued interest and any other amounts due thereon shall have been fully paid, to the extent that such reserve funds shall have been established by payment of the Lessee or for which the Lessee shall have reimbursed the payor, and upon condition that the lease shall then remain in full force and effect and shall not then be in default.

4. Inasmuch as a reserve account for the payment of the revenue bonds exists pursuant to the terms of the ordinances authorizing the issuance and sale thereof, and inasmuch as a reserve account to secure payment of the general obligation bonds is established pursuant to this Ordinance, the pledge of said lease security deposit pursuant to Resolution 5-1980 is hereby released by FmHA, and the same shall be paid to Port, and the Port shall use the same to establish a reserve account as hereafter provided.

5. The parties recognize that it has always been intended that all revenues from the facility shall be available for the payment of all current debt service. In that connection, however, the parties further recognize that the existence of the present lease agreement provides for and requires the payment of annual debt service before any additional amounts will be paid to the Port, as Lessor, under the terms of the facility lease agreement, inasmuch as the payment of all debt service is the primary obligation of the Lessee. The parties believe that the reserve accounts heretofore established in connection with the installment revenue bonds and now established in connection with the general

obligation installment bonds are adequate to provide security for the payment of all of the debt service upon the various said bonds. Therefore, notwithstanding that all incomes from such facility shall remain pledged to and for the payment of such bonds in the event of default, the parties agree that such lease payments as are payable directly to the Port, as determined at the end of each lease year, shall not be required to be applied upon any debt service, including principal or interest on any such bonds, so long as all such payments shall otherwise be made by the Lessee and the debt service upon such bonds shall be fully current and not in default. Such extra lease payment revenues shall be paid by Port to the revenue bond trustee to be credited to the balance of the revenue bond reserve account, to help fund the same at an accelerated rate, and when such revenue bond reserve account has been fully funded, such extra lease payment revenues shall be retained by the Port.

It is understood that the amounts so paid by the Port of Newport into the revenue bond reserve account shall be in addition to, and not in lieu of, the regular annual additions to such account which are required by the Lessee, but no further payments to the reserve account shall be required from and after such time as the balance of such reserve account shall be equal to the full amount required under the terms and provisions of the ordinances providing for the sale of said revenue bonds and indenture of trust associated therewith. The amount so paid by

Port shall constitute a payment made by the Port for a reason not caused by breach or default of Lessee, as provided in Section 7 of this Ordinance, and said obligation shall bear interest and shall be repaid at the same rate as payments were required to be made to the revenue bond reserve account, as provided in Section 7 of this Ordinance.

6. In order to provide and establish a reserve account as security for the payment of the general obligation bonds, Nos. 1 through 5, inclusive, the parties agree that they shall establish a reserve account in the amount of \$168,000, which amount is greater than the largest amount of debt service which in any year will become due upon all of said general obligation bonds. Said fund shall be established and administered in the manner contemplated in Resolution No. 11-1977, which Resolution provides for the issuance of General Obligation Installment Bond No. 1. Such funds shall initially be established by Lessee's payment to the Port and the deposit to said general obligation reserve fund of the sum of \$150,000, representing the balance of the lease security deposit currently held by the Port and the Lessee's additional contribution. Thereafter, the balance of \$17,000.00 (less any interest accrued on the general obligation bond reserve account) necessary to increase the amount held in such reserve account to the sum of \$167,000.00 shall be paid by Lessee to Port not later than June 27, 1983, for addition to such reserve account. Thereafter, said balance shall be maintained at \$167,000.00,

and interest accruing upon the balance of such funds in the reserve account shall be applied to reduce the annual payment required to establish said reserve account, and thereafter shall be used toward the amounts due each year for the debt service upon such bonds.

7. Any sums which Port at any time shall pay or shall have paid on account of the debt service upon any of such bonds or upon any payment required for the establishment of a reserve account for such bonds or the debt service thereon shall be considered an advance made by said Port on behalf of the Lessee, which has the primary obligation to pay all such debt service. Nothing herein contained shall be construed to waive any right or remedy for default in the event that such payment shall be made by Port on account of any breach or default of Lessee. In the event such payment shall be made by reason of Lessee's breach or default, the same shall be considered an obligation immediately due and payable from Lessee to Port, and the same shall bear interest at the same rate or rates as interest shall have been paid upon such reserve funds, but not to exceed such rate of interest as Port may lawfully charge to the Lessee. In the event of any such payment made for any reason not caused by breach or default of Lessee, the same shall be considered an obligation due from the Lessee to Port, which obligation shall bear interest at the rate paid during such period upon

any amounts deposited in any reserve account established in connection with said bond (but not to exceed such rate as may lawfully be imposed thereon), compounded in the same manner as interest on amounts deposited in such reserve accounts, with the same to be repayable to Port at the same rate as payments are required to be made to the revenue bond reserve account, such payments to commence at such time as the revenue bond reserve account shall have been fully funded.

ADOPTED by the Board of Port Commissioners this 12th day of October, 1982, by the following vote:

AYES:	<u>4</u>
NAYES:	<u>0</u>
ABSENT:	<u>1</u>

SUBMITTED TO AND APPROVED by the President and Secretary of the Port Commission on this 12th day of October, 1982.

PORT OF NEWPORT

By Ronald A. Burtch
President

ATTEST:

Bin Rosen
Secretary

APPROVED, ADOPTED, RATIFIED AND AGREED by the United States of America, acting by and through the Farmers Home Administration, this 14th day of September, 1982.

FARMERS HOME ADMINISTRATION

By [Signature]
Authorized Representative

APPROVED, ADOPTED, RATIFIED AND AGREED by South Beach Marina, Inc., an Oregon corporation, with the consent of its guarantors, this 12th day of October, 1982.

SOUTH BEACH MARINA, INC.

By [Signature]
President

ATTEST:

[Signature]
Secretary

The undersigned, being the limited guarantors, having provided or having some interest in the security deposit as mentioned in paragraph 37 of the Lease Agreement, do hereby consent to the payment thereof to the Port of Newport for the purpose of establishing a general obligation bond reserve account, and do hereby consent to the terms and provisions hereof.

[Signature]
Charles H. Lostrom

[Signature]
Jim L. Edwards

[Signature]
Robert A. Ballin

[Signature]
Charles E. Warren