



Corporate Trust Services  
PD-OR-P6TD  
555 SW Oak Street, PL-6  
Portland, OR 97204

## **Notice of Forbearance Agreement and Request for Holder Consent**

\$12,475,000 Oregon Facilities Authority Revenue Bonds  
(Oregon Coast Aquarium Project 2005 Series A)

CUSIPS<sup>1</sup> 68608CAH9, -AJ5, AK2, -AL0, AM8, -AN6, AP1 and AQ9

### **Please forward this notice to beneficial holders.**

U.S. Bank National Association (the "Trustee") serves as indenture trustee under the Amended and Restated Trust Indenture dated as of June 1, 2005 (the "Indenture"), by and between the Treasurer of the State of Oregon acting on behalf of the State of Oregon and the Oregon Facilities Authority as issuer ("Issuer") governing the above-referenced Bonds. The Oregon Coast Aquarium, Inc., an Oregon nonprofit corporation (the "Aquarium") is the Participating Institution responsible for the repayment of the Bonds under the terms of that certain Loan Agreement, dated as of June 1, 2005, which has been assigned to the Trustee. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.

You were previously notified that Events of Default have occurred within the meaning of Section 6.01(d) of the Indenture by reason of the failure of the Aquarium to pay the minimum required loan payments to the Trustee of \$83,820 due on the first day of each month starting on December 2010 and continuing through November 2011. The Trustee was informed that the shortfall in payments resulted from reduced visitor traffic at the Aquarium attributable to the economic recession in 2010. The Aquarium instead paid only \$55,000 to the Trustee during that period, which was \$345,840 in the aggregate less than required by Section 3.2 of the Loan Agreement. Due to this shortfall in payments the Trustee was not able to redeem certain Bonds as contemplated by the Indenture, but it did receive sufficient funds to pay interest on the Bonds as it became due.

To address the above Events of Default, the Aquarium began paying an additional \$2,500 per month to the Trustee effective December, 2011, and has offered to make additional monthly minimum payments to the Trustee over time, consisting of 41 additional payments of \$2,500

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<sup>1</sup> Trustee is not responsible for the selection or use of CUSIP. It is included solely for holder convenience.

commencing on July 1, 2012, an aggregate of \$120,000 including the additional payments already received by the Trustee. The Aquarium has indicated it will endeavor, but will not be required, to pay amounts in excess of the minimum monthly payments described above. If the entire shortfall of \$345,840 is paid to the Trustee by November 30, 2015, the Aquarium has asked that the payment Events of Default relating to the shortfall be deemed waived. The Aquarium has also asked the Trustee to enter into a Forbearance Agreement in the form attached, which includes the requested waiver and provides that the Trustee will not, subject to certain conditions, accelerate the indebtedness evidenced by the Bonds or pursue collection remedies based upon the Events of Default related to the Deficiency Amount if the Aquarium Pays all of the Make-up Payments and performs upon its other promises in the Loan Agreement and Forbearance Agreement. The Trustee is willing to enter into the Forbearance Agreement if that action is approved by the Holders of a majority of the principal amount of the Bonds outstanding. **Please complete and return the attached Noteholder Consent Form, indicating whether you consent or do not consent to the Trustee's execution of the Forbearance Agreement<sup>2</sup>.** Please note that a description of the forbearance Agreement is included in this notice in summary form. The Trustee has set a voting record date of July 17, 2012 for purposes of obtaining the requested consents. Noteholder Consent Forms must be received by the Trustee no later than 5 P.M. Pacific Time on August 15, 2012, or such later date as the Trustee may advise by notice such as this.

The Trustee has retained legal counsel to assist it in the administration of its duties under the Indenture. Under the Indenture and related documents, the Trustee is entitled to the payment of its fees and expenses prior to distributions to holders of the Bonds. It is premature at this time to predict the extent to which, if any, your recovery may be impaired. The Trustee will continue to keep you advised in accordance with the Indenture.

Holders with questions about this Notice should direct them, in writing, to Lawrence J. Bell, Vice President, U.S. Bank National Association, PD-OR-P6TD, 555 SW Oak Street, Portland, OR 97204, or by facsimile transmission at 503-275-5738. Bondholders with other questions may contact Bondholder Services at 800-934-6802, option No. 4, or at their website located at [www.usbank.com/corp\\_trust/bondholder\\_contact.htm1](http://www.usbank.com/corp_trust/bondholder_contact.htm1).

The Trustee may conclude that a response to specific inquiries from particular holders may not be appropriate either because the disclosure in question may not be in the best interest of all holders or may not be consistent with the equal and full dissemination of information to all Bondholders. The Trustee makes no recommendations and gives no investment or tax advice, and Bondholders should not rely upon the Trustee as their sole source of information for any decisions relating to the Bonds.

**U.S. Bank National Association,**  
as Indenture Trustee

**July 17, 2012**

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<sup>2</sup> The Trustee encourages Bond holders to read the entire Forbearance Agreement in the form attached. This notice includes a summary for the convenience of Bond holders, but in the event of any conflict between this notice and the Forbearance Agreement, the latter controls.

**Bondholder Consent and Direction Form**

\$12,475,000 Oregon Facilities Authority Revenue Bonds  
(Oregon Coast Aquarium Project 2005 Series A) (the "Bonds")

U.S. Bank National Association, as Trustee  
Corporate Trust Services – Default Group  
PD-OR-P6TD  
555 SW Oak Street, PL-6  
Portland, OR 97204  
Attention: Lawrence J. Bell  
Fax: 503-275-5738  
Email: lawrence.bell@usbank.com

The undersigned hereby represents to U.S. Bank National Association as indenture trustee for the Bonds that as of June 15, 2012, it either owns or has the lawful power to act for the person or entity who owns the principal amount set Bonds set forth below and that the information below is correct to the undersigned's best information and belief.

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email address (optional): \_\_\_\_\_

**Principal Amount of Bonds:**

CUSIP 68608CAH9 - due 10/1/14.....\$ \_\_\_\_\_

CUSIP 68608CAJ5 - due 10/1/15.....\$ \_\_\_\_\_

CUSIP 68608CAK2 - due 10/1/16.....\$ \_\_\_\_\_

CUSIP 68608CAL0 - due 10/1/18.....\$ \_\_\_\_\_

CUSIP 68608CAM8 - due 10/1/20.....\$ \_\_\_\_\_

CUSIP 68608CAN6 - due 10/1/21.....\$ \_\_\_\_\_

CUSIP 68608CAP1 - due 10/1/26.....\$ \_\_\_\_\_

CUSIP 68608CAQ9 - due 10/1/31.....\$ \_\_\_\_\_

Total Bonds covered by this consent.....\$ \_\_\_\_\_

DTC Participant Number through which Bonds are held: \_\_\_\_\_

DTC Participant Name: \_\_\_\_\_

\_\_\_\_\_ I hereby consent to the Trustee entering into the Forbearance Agreement.

Or,

\_\_\_\_\_ I do not consent to the Trustee entering into the Forbearance Agreement.

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Dated: \_\_\_\_\_

## FORBEARANCE AGREEMENT

This Forbearance Agreement (the "Agreement") is made effective as of August \_\_\_\_, 2012, by and among Oregon Coast Aquarium, Inc., the State Treasurer of the State of Oregon (the "State") acting on behalf of the State and on behalf of the Oregon Facilities Authority (the State Treasurer acting in such capacities being herein called the "Issuer"), and U.S. Bank National Association, as indenture trustee (the "Trustee") under the terms of that certain Amended and Restated Trust Indenture (the "Indenture") between the Issuer and the Trustee relating to the issuance of \$12,965,000 State of Oregon Oregon Facilities Authority Revenue Bonds ("Oregon Coast Aquarium Project") 2005 Series A, dated as of June 1, 2005 (the "Bonds"). All capitalized terms used in this Agreement and not otherwise defined shall have the meanings ascribed to them in the Indenture.

### RECITALS

A. Oregon Coast Aquarium, Inc. is an Oregon non-profit corporation and is the "Participating Institution" under the terms of the Indenture (the "Aquarium"). An Event of Default has occurred within the meaning of Section 601 of the Indenture and is continuing at this time due to the failure of the Aquarium to make the full amount of Loan Repayments pursuant to the terms of Section 3.2 of the Loan Agreement on the first day of each month during the period commencing on December 1, 2010, and ending on November 1, 2011 (the "Current Defaults").

B. As of the date hereof the Trustee has not accelerated the indebtedness evidenced by the Bonds (the "Bond Indebtedness").

C. Section 601 of the Indenture permits the Trustee to accelerate the Bond Indebtedness and Section 603 of the Indenture permits the Trustee to pursue legal remedies

against the Aquarium. The Bond Indebtedness is currently outstanding in the principal amount of \$12,475,000, plus accrued and unpaid interest as of the date hereof.

D. The Aquarium has defaulted with respect to certain Loan Repayments due from December 1, 2010 through November 1, 2011 in the aggregate delinquent amount of \$345,840.00. The Aquarium has prior to July 1, 2012 paid \$17,500 of this amount to the Trustee, and \$328,340, plus interest due thereon to the extent set forth in the Indenture or Loan Agreement remains delinquent (the "Loan Repayment Balance").

E. The Aquarium has requested the Trustee to temporarily forbear from the exercise of legal remedies based on the Current Defaults. Subject to the terms and conditions of this Agreement, the Trustee has informed the Aquarium that it is willing to agree to the forbearance as more specifically set forth herein. The holders of a majority of the outstanding principal amount of the Bonds have directed the Trustee to enter into this Agreement.

ACCORDINGLY, the Trustee and the Aquarium hereby each agrees as follows:

#### **AGREEMENT**

1. Recitals are Part of the Agreement. The Aquarium agrees for the benefit of the Trustee that the foregoing Recitals are true and correct.

2. Conditional Forbearance. Subject to the terms and conditions of this Agreement, the Trustee agrees to forbear from the acceleration of the Bond Indebtedness, and from the commencement of legal proceedings for the collection of the Bond Indebtedness or the Loan Repayments until the earlier of (i) the occurrence of a Forbearance Default within the meaning of Section 7 hereof, or (ii) the date on which the Aquarium has paid all amounts required for the waiver set forth in Section 8 hereof, (iii) November 30, 2015 or (iv) a formal direction to the Trustee by the holders of a majority of the outstanding principal amount of the Bonds to

terminate the Trustee's obligations under this Agreement. The foregoing period of time shall be referred to herein as the "Forbearance Period."

3. Special Covenants of the Aquarium. Without limitation of any of the obligations of the Aquarium under the terms of the Indenture, the Loan Agreement, or any related agreement or instrument delivered in connection therewith or related thereto, the Aquarium agrees that it shall:

- (a) Contemporaneous with the execution of this Agreement, deliver to the Trustee a legal opinion acceptable to the Trustee from Orrick Herrington & Sutcliffe LLP, in form and substance acceptable to the Trustee, confirming that the execution and delivery of this Agreement will not cause interest on the Bonds to be included in gross income for federal income tax purposes or result in a deemed exchange of the Bonds for modified obligations within the meaning of Treas. Reg. § 1.1001-3(b).
- (b) Commencing on July 1, 2012, and continuing on the first Business Day of each month thereafter, make an additional Loan Repayment (in excess of the minimum amounts required under the Loan Agreement) in the minimum amount of \$2,500.00 ("Make-Up Payments"). During the Forbearance Period, the Aquarium will endeavor (but will not be required to) pay Make-Up Payments in excess of the amounts required by the preceding sentence, and all such payments shall be credited to Loan Repayments under the Loan Agreement.
- (c) On or before the 30th day of each calendar month commencing with the calendar month immediately following the execution of this Agreement by

all parties hereto, provide to the Trustee an accurate cash flow statement, income statement, balance sheet and attendance information reflecting the actual performance of the Aquarium on a fiscal year-to-date basis through the end of the preceding calendar month.

- (d) Within twenty (20) days of receiving a written request from the Trustee, pay to the Trustee all of the Trustee's reasonable fees and expenses due and payable to the Trustee pursuant to the terms of the Indenture, including the fees and expenses of its legal counsel, incurred on or after the date of this Agreement in connection with the Trustee's exercise of its rights and duties under the Indenture, the Loan Agreement and all related documents and agreements.
- (e) Comply on an ongoing basis with all provisions of the Indenture and Loan Agreement during the term of the Forbearance Period, except that the Current Defaults shall not constitute Forbearance Defaults within the meaning of Section 6 hereof.

4. Authorization to Communicate and Disclose. The Aquarium hereby authorizes the Trustee to communicate all information received by the Trustee from the Aquarium pursuant to Section 3(c) of this Agreement or otherwise with its Bondholders in accordance with the terms of the Indenture, the Loan Agreement, and all related documents and agreements. The Aquarium agrees to consult with the Trustee concerning any press release that it makes regarding the subject matter of this Agreement. The Aquarium authorizes the Trustee to discuss its finances with any accountant or consultant retained by the Aquarium and shall direct such accountant or consultant to discuss these matters with the Trustee.



5. Representations and Warranties. The Aquarium represents and agrees and warrants that, to the best of its knowledge, there are no Defaults or Events of Default in existence on the date hereof except for the Current Defaults.

6. Forbearance Defaults. Any of the following shall constitute a “Forbearance Default” within the meaning of this Agreement:

- (a) The occurrence of any Event of Default within the meaning of the Bonds, the Indenture, the Loan Agreement and all related documents and agreements, except for the Current Defaults.
- (b) Any breach by the Aquarium of any agreement, covenant, warranty or other provision of this Forbearance Agreement; or
- (c) Any written statement or misrepresentation made by the Aquarium or its agents to the Trustee during the term of the Forbearance Agreement proves to have been an untrue statement of material fact at the time that it was made.

7. Remedies Upon Forbearance Default. Upon the occurrence of a Forbearance Default, the Forbearance Period shall terminate automatically, without notice to the Aquarium, and the Trustee and the Bondholders shall immediately be entitled to pursue any and all remedies available to them pursuant to the terms of the Indenture, the Loan Agreement, all related documents and agreements and applicable law. Upon the occurrence of a Forbearance Default, the Trustee shall have no further obligation under the terms of this Agreement, but all obligations of the Aquarium shall remain in full force and effect. Mere delay or failure to act upon the occurrence of a Forbearance Default shall not constitute a waiver of the Trustee’s exercise or

enforcement of any of its rights or remedies under this Agreement, the Indenture, the Loan Agreement, all related documents and applicable law.

8. No Waiver. Except for the forbearance described in Section 2 hereof, nothing in this Agreement is intended to constitute a waiver or modification by the Trustee or any of the holders of any of the Bonds of any Default or Event of Default or any rights under the terms of the Indenture, or the Loan Agreement or any other related document or agreement, and the Trustee and the holders of all the Bonds retain all rights and remedies with respect to all existing Defaults and Events of Default at the conclusion of the Forbearance Period, which rights shall not be affected, limited or impaired by this Agreement. Notwithstanding the foregoing, if the Aquarium shall have paid the extra Loan Payments described in Section 3 (b) hereof to the Trustee in an aggregate amount of not less than \$328,340 (plus interest thereon to the extent provided in the Indenture or Loan Agreement) on or before the conclusion or termination of the Forbearance Period, then the Current Defaults shall be deemed waived pursuant to Section 606 of the Indenture.

9. Release of Claims. The Aquarium, for good and valuable consideration, including without limitation, the Forbearance Period granted hereunder, hereby releases and forever discharges the Trustee in its capacity as trustee and each of the Trustee's present, future and former officers, directors, employees, agents and attorneys from any and all claims, losses, liabilities, demands and causes of action of any kind whatsoever, if any, whether absolute or contingent, known or unknown, matured or unmatured, that the Aquarium may now have or ever have through the date of this Forbearance Agreement, provided however, that the foregoing release shall not limit the right of the Aquarium to enforce this Agreement or its rights under the

terms of the Indenture, Loan Agreement or related documents prospectively from and after the date hereof.

10. Costs and Expenses. The Aquarium agrees to pay all reasonable fees and expenses of the Trustee incurred in connection with the exercise of its duties under the Indenture and all related documents and agreements.

11. Effective Agreement/Modification. The terms and conditions of the Bonds, the Indenture, the Loan Agreement and all related documents and agreements shall remain in full force and effect during the Forbearance Period in accordance with their terms, which are not being modified hereby. All prior oral and written communications, commitments, alleged commitments, promises, alleged promises, agreements and alleged agreements by and between the Trustee and the Aquarium relating to the subject matter of this Agreement are hereby merged into this Agreement and shall not be enforceable, except to the extent expressly contained herein. This Agreement is binding upon the parties and their respective successors and assigns, and shall be governed by the substantive laws of the State of Oregon. This Agreement may not be modified, except in a writing signed by the parties hereto. Nothing herein modifies the Indenture.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument if and when all parties have executed counterpart signature pages. Facsimile signature pages shall be deemed effective and delivered upon transmission to the other party.

13. Issuer Acknowledgement. At the request of the Aquarium and the Trustee, the Issuer is acknowledging the terms and conditions of this Agreement to the extent necessary to avoid a reissuance of the Bonds under the provisions of the Internal Revenue Code and regulations promulgated thereunder in a manner that would, in the absence of such

acknowledgement by the Issuer, cause the Bonds to cease to be an “obligation of the [Issuer]” within the meaning of Section 103 of the Internal Revenue Code. The Aquarium and the Trustee waive any breach by the Issuer of the terms and conditions of the Indenture and the Loan Agreement that might result from such acknowledgement by the Issuer of the terms and conditions of this Agreement.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

U.S. BANK NATIONAL ASSOCIATION, as  
Indenture Trustee

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

Lawrence J. Bell  
Its Vice President

OREGON COAST AQUARIUM, INC.

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

Carrie Lewis  
Its President

ACKNOWLEDGED BY:

STATE TREASURER, acting on behalf of  
THE STATE OF OREGON AND THE  
OREGON FACILITIES AUTHORITY

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