

PORT OF EVERETT, WASHINGTON

RESOLUTION NO. 1191 (2022)

A RESOLUTION OF THE PORT COMMISSION OF THE PORT OF EVERETT, WASHINGTON, AUTHORIZING THE ISSUANCE OF SUBORDINATE LIEN REVENUE NOTES BY THE PORT TO BE ISSUED IN SERIES TO FINANCE THE COSTS OF CERTAIN IMPROVEMENTS; CREATING AND ESTABLISHING A LIEN UPON AVAILABLE REVENUE OF THE PORT FOR THE PAYMENT OF SUCH NOTES; AUTHORIZING THE SALE OF THE NOTES TO SNOHOMISH COUNTY AND MAKING COVENANTS AND AGREEMENTS FOR THE BENEFIT OF THE COUNTY.

ADOPTED: April 5, 2022

Prepared by:

K&L GATES LLP
Seattle, Washington

Port of Everett, Washington

Resolution No. 1191 (2022)

Table of Contents*

	<u>Page</u>
Section 1. Definitions.....	3
Section 2. Authorization of the Projects	11
Section 3. Authorization of Notes and Note Terms	11
Section 4. Prior Redemption	13
Section 5. Security; Priority of Use of Gross Revenue.....	13
Section 6. Note Fund; Reserve Deposit	16
Section 7. Sufficiency of Revenue.....	17
Section 8. Disposition of Note Proceeds.....	18
Section 9. Specific Covenants.....	18
Section 10. Lost, Stolen or Destroyed Note.....	19
Section 11. Form of Notes	20
Section 12. Execution	21
Section 13. Delivery of Notes	21
Section 14. Resolution and Law a Contract with the County	21
Section 15. General Authorization.....	22
Section 16. Severability	22
Section 17. Prior Acts	22
Section 18. Effective Date	22

* This Table of Contents and the Cover Page are for convenience of reference and are not intended to be a part of this resolution.

RESOLUTION NO. 1191 (2022)

A RESOLUTION OF THE PORT COMMISSION OF THE PORT OF EVERETT, WASHINGTON, AUTHORIZING THE ISSUANCE OF SUBORDINATE LIEN REVENUE NOTES BY THE PORT TO BE ISSUED IN SERIES TO FINANCE THE COSTS OF CERTAIN IMPROVEMENTS; CREATING AND ESTABLISHING A LIEN UPON AVAILABLE REVENUE OF THE PORT FOR THE PAYMENT OF SUCH NOTES; AUTHORIZING THE SALE OF THE NOTES TO SNOHOMISH COUNTY AND MAKING COVENANTS AND AGREEMENTS FOR THE BENEFIT OF THE COUNTY.

WHEREAS, the Port of Everett (the “Port”), a municipal corporation of the State of Washington, owns and operates a system of marine terminals and other properties; and

WHEREAS, the Port has authorized the issuance of revenue bonds in one or more series pursuant to Amended and Restated Master Resolution No. 1055, of the Commission adopted on July 5, 2016 (the “First Lien Master Resolution”), each series being payable from Net Revenues (as such term is defined herein); and

WHEREAS, the Port currently has outstanding three series of revenue bonds pursuant to the First Lien Master Resolution, as follows:

Authorizing Resolution Number	Date of Original Issue	Original Principal Amount	Principal Amount Outstanding (12/31/2021)	Final Maturity Date
873	05/16/2007	\$16,225,000	\$ 5,000	12/01/2026
1031	09/10/2015	9,205,000	7,175,000	12/01/2035
1056	08/16/2016	27,710,000	21,705,000	12/01/2046

(the “Outstanding First Lien Bonds”); and

WHEREAS, the Port also has outstanding its Revenue Bond (RRIF), 2018 issued pursuant to Resolution No. 1107, adopted by the Commission on October 28, 2018 in the original principal amount of \$5,949,999 and currently outstanding in the principal amount of

\$5,727,677 (the “RRIF Bond” and together with Outstanding First Lien Bonds, the “Outstanding First Lien Obligations”); and

WHEREAS, under authority of Resolution No. 1012 of the Commission, the Port also has an outstanding Master Equipment Lease Agreement, dated as of September 1, 2014 (“Master Equipment Lease Agreement”) with Bank of America, National Association that permits the Port to finance equipment acquisitions in the aggregate outstanding principal amount of \$10,294,917, payable from Net Revenues on a subordinate lien to the Outstanding First Lien Obligations; and

WHEREAS, the proceedings that authorized the issuance of the Outstanding First Lien Obligations and the Subordinate Lien Obligation authorized the issuance of obligations Port in the future having a lien on Net Revenues subordinate to the lien of the Outstanding First Lien Obligations and the Subordinate Lien Obligation; and

WHEREAS, the Port’s Properties (hereinafter defined) are in need of upgrade and improvement; and

WHEREAS, Snohomish County (the “County”) has offered to purchase notes from time to time to assist the Port in financing improvements under the terms and conditions set forth in this resolution; and

WHEREAS, the County has requested that the Port consider the use of union labor in the construction of the Projects financed by the notes; and

WHEREAS, the Port’s Commission wishes to accept the offer of the County;

NOW, THEREFORE, BE IT RESOLVED BY THE PORT COMMISSION OF THE PORT OF EVERETT, WASHINGTON, as follows:

Section 1. Definitions. As used in this resolution, the following words and phrases shall have the meanings hereinafter set forth unless the context clearly shall indicate that another meaning is intended:

Available Revenue means the Gross Revenue available after the payments identified in paragraphs First through Sixth of Section 5(a)(3) of this resolution.

Baseline Rating means the Rating Agency’s Rating Category A2 (or the equivalent thereof of the Rating Agency). If the Port no longer has a rating on its revenue debt, and the Rating Agency only rates the Port’s general obligation debt, the Baseline Rating shall be the Rating Agency’s Rating Category of Aa2.

Chief Executive Officer means the Chief Executive Officer of the Port, or any successor to the functions of the Chief Executive Officer.

Chief Financial Officer means the Chief Financial Officer of the Port, or any successors to the functions of the Chief Financial Officer.

Commission means the Commission of the Port as the Port’s governing body, or any successor thereto as provided by law.

County means Snohomish County.

County Treasurer means the duly elected County Treasurer of the County and/or his/her designated deputy.

Designated Port Representative means the Chief Executive Officer or the Chief Financial Officer or such other person as may be directed from time to time by resolution of the Commission.

First Lien Bonds means all bonds issued under the Outstanding First Lien Bonds and any obligations issued on a parity therewith, pursuant to the First Lien Master Resolution.

First Lien Master Resolution means Resolution No. 1055, adopted on July 5, 2016 as the same may be amended in the future in accordance with its terms.

First Lien Obligations mean the First Lien Bonds, the RRIF Bond and any obligations issued in the future on a parity therewith as permitted in the First Lien Master Resolution and the proceedings authorizing the RRIF Bond.

First Lien Series Resolution means a resolution authorizing the issuance of a series of First Lien Bonds, as such resolution may thereafter be amended or supplemented.

Fiscal Year means the fiscal year of the Port, which currently is the calendar year.

Gross Revenue means all income and revenue derived by the Port from time to time from any source whatsoever except:

- (a) the proceeds of any borrowing by the Port,
- (b) income and revenue which may not be legally pledged for revenue bond debt service,
- (c) income and revenue of the Port separately pledged and used by it to pay and secure the payment of the principal of and interest on any issue or series of Special Revenue Bonds of the Port issued to acquire, construct, equip, install or improve part or all of the particular facilities from which such income and revenue are derived, provided that prior to the issuance of such Special Revenue Bonds, the Designated Port Representative shall certify that the amount of such pledged income and revenue will be sufficient to pay and secure the payment of such principal and interest as provided in the resolution of the Port authorizing the issuance of such Special Revenue Bonds, and provided further, that nothing in this subparagraph (c) shall permit the withdrawal from Gross Revenue of any income or revenue derived or to be derived by

the Port from any income-producing facility which shall have been contributing to Gross Revenue prior to the issuance of such Special Revenue Bonds, and

(d) income from investments irrevocably pledged to the payment of bonds issued or to be refunded under any refunding bond plan of the Port.

The Port also may make adjustments to **Gross Revenue** to the extent permitted in the First Lien Master Resolution.

Interest Rate means, for each Note shall be a fixed rate,

(a) (1) initially on the date of issuance of the Note equal to (A) the 5-Year Treasury Rate plus (B) 0.75% (three-fourths of one percent) and (2) adjusted as of each Milestone Date to be equal to (A) the 5-Year Treasury Rate as of such Milestone Date plus (B) 0.75% (three-fourths of one percent) and

(b) increased or decreased, as the case may be, by the Rating Adjustment, but in no event shall the Interest Rate be less than the 5-Year Treasury Rate plus (B) 0.75% (three-fourths of one percent).

Junior Lien Coverage Requirement means Available Revenue for the most recent completed Fiscal Year of the Port equal to or greater than 1.00 times the maximum Junior Lien Debt Service in any future year on all Junior Lien Parity Obligations, including the Junior Lien Parity Obligations then proposed to be issued.

Junior Lien Debt Service means, with respect to all Junior Lien Parity Obligations (and with the assumption that all Notes have been issued, will bear interest at the Interest Rate then in effect, will mature twenty (20) years from their respective date of issuance and will be amortized during a twenty (20) year period with approximately equal payments of principal and interest),

(a) bearing interest at a fixed rate, a sum equal to (1) the principal amount of such outstanding obligations due or subject to mandatory redemption during such period, (2) the amount of any payments required to be made into any sinking fund established for the payment of principal of any such obligations plus (3) all interest payable during such period on any such obligations outstanding and with respect to outstanding obligations with mandatory sinking fund requirements, calculated on the assumption that mandatory sinking fund installments will be applied to the redemption or retirement of such obligations on the date specified in the resolution authorizing such obligations;

(b) bearing interest at variable rates, an amount equal to (1) the principal amount equal to the amount that would be paid if the Junior Lien Parity Obligations were amortized as of the date originally issued in substantially equal installments of principal and interest over a term of twenty (20) years (or the actual number of years if less than twenty (20)); plus (2) interest payable during the year at an assumed rate equal to the Bloomberg Swap Index (or comparable index approved by the County) in effect as of the date of calculation.

Junior Lien Parity Obligations mean the Notes and any obligations issued in the future on a parity therewith as provided in Section 5(b) of this resolution.

Junior Lien Rate Covenant has the meaning given such term in Section 9(a) of this resolution.

Master Equipment Lease Agreement means the agreement of that name, dated September 1, 2014 between the Port and Bank of America, National Association.

Maturity Date means, for each Note, initially the date that is five years from the date of original issuance for a particular Note; provided, that the Maturity Date for each Note shall be

extended for successive five-year periods; provided that the final Maturity Date of a Note shall be no later than twenty (20) years following the date of original issuance.

Maximum Annual Debt Service has the meaning given such term in the First Lien Master Resolution.

Milestone Date means, with respect to each Note, the date that initially is the five-year anniversary of the issuance of a Note and thereafter, each five-year anniversary of the date of issuance; provided that final Milestone Date shall occur on the fifteenth (15th) anniversary of the date of issuance.

Net Revenues means Gross Revenue less any part thereof that must be used to pay Operating Expenses.

Note Counsel means K&L Gates LLP or such other bond counsel firm of national reputation appointed by the Port.

Note Fund means the Junior Lien Revenue Note Redemption Fund established pursuant to Section 6(a) of this resolution.

Notes means each Port of Everett, Washington Revenue Note (Junior Lien, Taxable), with designation as to year, issued from time to time pursuant to this resolution.

Operating Expenses means the current expenses incurred for operation or maintenance of the Properties (other than Special Properties), as defined under generally accepted accounting principles, in effect from time to time, excluding any allowances for depreciation or amortization or interest on any obligations of the Port incurred in connection with and payable from Gross Revenue. **Operating Expenses** may be adjusted, regardless of the generally accepted accounting principles, for certain items (e.g., to omit) in order to more fairly reflect the Port's annual operating performance.

Outstanding First Lien Bonds has the meaning given such term in the recitals to this resolution.

Outstanding First Lien Obligations has the meaning given such term in the recitals to this resolution.

Permitted Prior Lien Obligations means and includes the First Lien Obligations, Subordinate Lien Obligations and any other revenue bonds or revenue obligations that may be issued in the future at the discretion of the Port payable from Gross Revenues available after the payment of the amounts described in paragraphs First, Second, Third, Fourth and Fifth of Section 5(a) of this resolution and having a lien on Net Revenues superior to the lien thereon of the Junior Lien Obligations.

Port means the Port of Everett, a municipal corporation of the State of Washington, as now or hereafter constituted, or the corporation, authority, board, body, commission, department or officer succeeding to the principal functions of the Port or to whom the powers vested in the Port shall be given by law.

Port Fund means, collectively, each of the accounts established within the Port's General Fund and any other account established in the office of the Treasurer of the Port for the receipt of Gross Revenues.

Project Account means the account authorized to be created by Section 8 of this resolution.

Projects have the meaning given such term in Section 2 of this resolution.

Properties mean all equipment and all property, real and personal, or any interest therein, whether improved or unimproved, now or hereafter (for as long as any Notes shall be

Outstanding) owned, operated, used, leased or managed by the Port and which contribute in some measure to its Gross Revenue.

Rating Adjustment means, if the Port's revenue debt (or general obligation debt if that debt is used to determine the Baseline Rate) is higher or lower than the Baseline Rate, one half of one percent (.5%) for each Rating Category higher or lower than the Baseline Rating.

Rating Agency means Moody's Investors Service, Inc. or its successors and assigns, as the rating agency currently maintaining a rating on the Port's revenue debt. If the Port no longer maintains a rating from Moody's Investors Service on its revenue debt, then the **Rating Agency** shall be (a) S&P Global Ratings or its successors and assigns, (b) Fitch Ratings, Inc. or its successors and assigns and/or (c) such other securities rating agency selected by the Port to rate its revenue debt. If no ratings are maintained with respect to revenue debt, the term **Rating Agency** shall mean any of the foregoing selected by the Port to rate its general obligation debt.

Rating Category means the generic rating categories of a Rating Agency, including each gradation of such rating category by a numerical modifier or otherwise.

RRIF Bond means the Port of Everett, Washington, Revenue Bond (RRIF), 2018, as authorized by Resolution No. 1107 of the Commission.

Special Properties means Port properties and assets, real and personal, tangible and intangible, which are declared, resolved or found by the Commission to constitute a system which is distinct from the Properties at the time they are financed and which may be financed with the proceeds of Special Revenue Bonds.

Special Revenue Bonds means any issue or series of revenue bonds, revenue warrants or other revenue obligations of the Port issued to directly or indirectly acquire (by purchase, lease

or otherwise), construct, equip, install or improve part or all of particular facilities and which are payable from and secured by the income and revenue from such facilities.

Subordinate Lien Obligations mean the Master Equipment Lease Agreement and any obligations issued in the future on a parity therewith pursuant to the authority granted in the Subordinate Lien Resolution.

Subordinate Lien Resolution means Resolution No. 1012 of the Commission as the same may be amended or restated in the future.

Interpretation. In this resolution, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this resolution, refer to this resolution as a whole and not to any particular article, section, subdivision or clause hereof, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this resolution;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several articles and sections of this resolution, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this resolution, nor shall they affect its meaning, construction or effect;

(e) All references herein to “articles,” “sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and

(f) Whenever any consent or direction is required to be given by the Port, such consent or direction shall be deemed given when given by the Designated Port Representative or his or her designee, respectively, and all references herein to the Designated Port Representative shall be deemed to include references to his or her designee, as the case may be.

Section 2. Authorization of the Projects. The Port intends to undertake infrastructure design and construction of utilities and roadways in the central marina area and other capital improvements approved by the Commission (the “Projects”).

Section 3. Authorization of Notes and Note Terms. In order to provide funds to pay the costs of the Projects as needed by the Port and to pay costs of issuance, the Port shall issue its junior lien revenue notes (the “Notes”) in an aggregate principal amount not to exceed \$15,000,000.

(a) *Note Details.* Each Note shall be designated as a “Port of Everett Revenue Note (Junior Lien, Taxable)” and also shall include a designation as to year and number of issuance, shall be dated as of the date of its original issuance, shall be fully registered as to both principal and interest, shall be in a minimum denomination of \$1,000,000, shall bear interest on unpaid principal from the date of each issuance at its Interest Rate, payable semiannually on each June 1 and December 1, commencing on the first December 1 or June 1 following the date of issuance of a Note and on its Maturity Date. Interest shall be calculated on the basis of a year of 360 days and 12 months of 30 days. Each Note shall mature on its Maturity Date. The principal of each Note also may be paid annually in the principal amounts set forth in the respective Note.

The Notes are not intended to be revolving obligations; the outstanding principal balance of the Notes may never exceed \$15,000,000, and principal amounts repaid may not be reborrowed. The Notes shall be junior lien revenue obligations of the Port, payable solely from Available Revenue and having a subordinate lien thereon to the lien of all Permitted Prior Lien Obligations. The Notes shall be a special fund obligation of the Port payable solely from the Note Fund established by the Chief Financial Officer into which the Port shall be obligated to deposit Available Revenue after providing for the payment of all obligations with respect to Permitted Prior Lien Obligations. The Notes shall not in any manner or to any extent constitute general obligations of the Port or of the State of Washington, or of any political subdivision of the State of Washington.

The principal of and interest on the Notes shall be payable in lawful money of the United States of America. Upon the final payment of all principal and interest on a Note, the Note shall be cancelled and returned to the Port. The Notes shall not be transferable, including to any trustee or agent for the purpose of issuing certificates of participation in the Note payments.

(b) *Issuance Procedures.* The Notes shall be issued and the proceeds disbursed as borrowings by the Port from the County. The issuance process shall be initiated by a written request from the Designated Port Representative in writing to the County Treasurer, all as provided in Section 8 of this resolution.

The proceeds of any Note shall be deposited into a Project Account of the Port and shall be expended solely to pay the costs of the Projects and financing costs.

(c) *Delegation to the Designated Port Representative.* The Designated Port Representative is hereby authorized to determine for the Port the amount and the timing of issuance of each Note.

Section 4. Prior Redemption. The Notes may be prepaid, in whole or in part, without penalty or premium annually (based on the issue date), with ten (10) days prior written notice. The written notice shall include the amount to be prepaid with a minimum of \$500,000, unless the outstanding balance of the Notes is less than \$500,000, in which case the outstanding balance shall be paid in full. Prepayments shall be applied to principal and then subject to the limitations provided for in this resolution.

Section 5. Security; Priority of Use of Gross Revenue.

(a) *Security.*

(1) Repayment Obligations. The Notes shall be special fund obligations. The Notes (and all obligations issued on a parity therewith) shall be payable by the Port solely from and secured solely by Available Revenue or money in the Port Fund (subject to the priorities established in subsection (3) below). From and after the time of issuance and delivery of the Notes and so long thereafter as the Notes (or Junior Lien Parity Obligations) remain outstanding and unsatisfied, the Port hereby irrevocably obligates and binds itself to set aside and pay out of Available Revenue, on or prior to the date on payments with respect to Subordinate Lien Parity Obligations shall become due, the amount necessary to pay such principal and interest.

(2) Lien on Gross Revenue. Said amounts so pledged to be paid into the Port Fund are hereby declared to be a prior lien and charge upon the Gross Revenue superior to all other charges of any kind or nature whatsoever except for Operating Expenses and except for the lien on Gross Revenue of the Permitted Prior Lien Obligations and except that the amounts so pledged shall be of equal lien to the liens and charges on Gross Revenue which may hereafter be made to pay and secure the payment of the principal of and interest on any Junior Lien Parity Obligations.

(3) Priority of Use of Gross Revenue. The Port's Gross Revenue shall be deposited in the Port Fund as collected. The Port Fund shall be held separate and apart from all other funds and accounts of the Port, and the Gross Revenue deposited therein shall be used only for the following purposes and in the following order of priority:

First, to pay Operating Expenses not paid from other sources;

Second, to make all payments, including sinking fund payments, required to be made into the debt service account(s) within any redemption fund maintained for First Lien Obligations to pay the principal of and interest and premium, if any, on any First Lien Obligations or to repay any issuer of a credit facility with respect thereto;

Third, to make all payments required to be made into any reserve account maintained for First Lien Obligations to secure the payment of any First Lien Obligations including amounts required to reinstate any credit facilities with respect thereto, if any;

Fourth, to make payments necessary to pay the principal of and interest and premium, if any, on Subordinate Lien Obligations;

Fifth, to make all payments required to be made into the reserve account(s), if any, securing Subordinate Lien Obligations;

Sixth, to make all payments required to be made into any other revenue debt redemption fund and debt service account or reserve account created therein to pay and secure the payment of the principal of, premium, if any, and interest on any revenue obligations or other revenue obligations of the Port having liens upon the Net Revenues junior and inferior to the lien thereon for the payment of the principal of, premium, if any, and interest on any First Lien Obligations and Subordinate Lien Obligations, but prior to the lien thereon of Junior Lien Obligations;

Seventh, to make all payments necessary to pay the principal of and interest on Junior Lien Parity Obligations;

Eighth, to make all payments required to be made into the reserve account(s) if any, securing Junior Lien Parity Obligations; and

Ninth, to retire by redemption or purchase any outstanding revenue bonds or other revenue obligations of the Port as authorized in the various resolutions of the Commission authorizing their issuance or to make necessary additions, betterments, improvements and repairs to or extension and replacements of the Properties, or any other lawful Port purposes.

(b) *Liens*. The Port will not incur obligations payable from Gross Revenue except as provided in the First Lien Master Resolution and as provided in this resolution. The Port may issue from time to time one or more series of (1) First Lien Bonds by means of a Series Resolution provided that the Port shall comply with the terms and conditions for the issuance of First Lien Bonds set forth in the First Lien Master Resolution and complying with the proceedings authorizing the RRIF Bond, (2) Subordinate Lien Obligations provided that the Port shall comply with the terms and conditions of Subordinate Lien Obligations set forth in the Subordinate Lien Resolution. The Port further may issue Permitted Prior Lien Obligations subordinate to First Lien Obligations and Subordinate Lien Obligations repayable with a priority of payment, as provided herein. Additionally, the Port shall not issue any Junior Lien Parity Obligations in the future that constitute a charge and lien on the Available Revenue equal to the lien thereon of the Notes unless the following conditions are satisfied:

(1) Available Revenue of the Port for the most recent Fiscal Year, as certified by the Executive Director or Chief Financial Officer, was at least sufficient to pay all

Debt Service due and owing in that Fiscal Year on all then outstanding Junior Lien Parity Obligations and

(2) the Gross Revenue, based upon the most recent audited financial statements of the Port, corroborated by the certified statements of the Division of Municipal Corporation of the State Auditor's office of the State of Washington, or any successor to the duties thereof, or by an independent certified public accounting firm, is sufficient to meet the Junior Lien Coverage Requirement taking into account the Junior Lien Parity Obligations to be issued.

Notwithstanding the foregoing, Junior Lien Parity Obligations may be issued for the purpose of refunding (including by purchase) at any time within one year prior to maturity, any Notes the payment of which sufficient Available Revenue or other moneys are not available, without the requirement of a certification pursuant to this Section.

(c) *Liens Subordinate to Junior Lien Parity Obligations.* Nothing herein contained shall prevent the Port from issuing revenue bonds or other obligations which are a charge upon the Available Revenue junior or inferior to the payments required by this resolution; provided that such subordinated lien obligations are not, by their terms, subject to acceleration of maturity as a remedy or at the option of any other party.

Section 6. Note Fund; Reserve Deposit.

(a) *Note Fund.* The Chief Financial Officer is requested to establish a Junior Lien Revenue Note Redemption Fund (the "Note Fund"). The Note Fund shall be held separate and apart from all other funds and accounts of the Port and shall be a trust fund for the County.

The Port hereby irrevocably obligates and binds itself for as long as the Notes remain outstanding to set aside and pay into the Note Fund from Gross Revenue after payment of the

amounts identified in paragraphs First through Sixth of Section 5(a)(3) of this resolution, on or prior to each date on which a payment of principal of and interest on the Note is due in an amount sufficient to pay make such payment when due.

Said amounts so pledged to be paid into the Note Fund, are hereby declared to be a prior lien and charge upon the Gross Revenues superior to all other charges of any kind or nature whatsoever, subject only to the payments provided in paragraphs First through Sixth of Section 5(a)(3) of this resolution.

(b) *Reserve Deposit.* On or prior to the date of issuance and delivery of the first Note, the Port shall deposit the sum of \$5,000,000 with the County Treasurer (the “Reserve Deposit Amount”). The initial required Reserve Deposit Amount shall be reduced by fifty percent (50%) on the fifth (5th) anniversary of the issuance of the first Note and shall be eliminated as of the tenth (10th) anniversary of the issuance of the first Note. The County Treasurer is authorized to invest the Reserve Deposit Amount in the County’s investment pool, with the interest earnings thereon credited for the benefit of the Port. If the Port shall fail to pay amount owing (principal of or interest on) the Note when due, the County Treasurer may utilize all or any portion of the Reserve Deposit Amount to satisfy the deficiency.

Section 7. Sufficiency of Revenue. The corporate authorities of the Port hereby declare that in fixing the amounts to be paid into the Note Fund as aforesaid they have exercised due regard to Operating Expenses and have not obligated the Port to set aside and pay into said Note Fund a greater amount of the Gross Revenue than in their judgment will be available over and above such Operating Expenses, the payments described in paragraphs First through Eighth of Section 5(a)(3) and the amounts necessary to pay the principal of and interest on the Note.

Section 8. Disposition of Note Proceeds. The Chief Financial Officer is requested to establish an account or subaccount for the purpose of accounting for the proceeds received from each Note (the “Project Account”). The proceeds of each Note shall be deposited into the Project Account and shall be expended solely to pay costs of the Projects and costs of issuing and delivering the Notes, as authorized herein. Following the adoption of this resolution, the Designated Port Representative shall notify the County Treasurer in writing each time that a Note is proposed to be issued to pay costs of the Projects and costs of issuance of the Note. Such requests may be made at any time but in no event later than five years following the date of issuance of the first Note hereunder. The County Treasurer shall fund each Note within twenty (20) calendar days of the request. The County Treasurer and the Designated Port Representative shall determine and agree upon the initial Interest Rate, the principal amortization, if any, and the proposed issuance and delivery date of the Note.

Section 9. Specific Covenants. The Port hereby covenants and agrees with the County for so long as any Notes remain outstanding as follows:

(a) *Rate Covenant.* The Port will at all times establish, maintain and collect rentals, tariffs, rates, fees, and charges in the operation of all of its business for as long as any Notes are outstanding that will produce Available Revenue in each Fiscal Year at least equal to the amounts required in such Fiscal Year to be paid as scheduled debt service (principal and interest) on all Junior Lien Parity Obligations (herein referred to as the “Junior Lien Rate Covenant”).

(b) *Maintenance of Properties.* The Port will at all times keep and maintain all of the Properties in good repair, working order and condition, and will at all times operate the same and the business or businesses in connection therewith in an efficient manner and at a reasonable cost.

(c) *Insurance on Properties.* The Port will keep all Properties insured, if such insurance is obtainable at reasonable rates and upon reasonable conditions, against such risks, in such amounts, and with such deductibles as the Commission shall deem necessary for the protection of the Port and of the County.

(d) *Liability Insurance.* The Port will at all times keep or arrange to keep in full force and effect policies of public liabilities and property damage insurance which will protect the Port against anyone claiming damages of any kind or nature, if such insurance is obtainable at reasonable rates and upon reasonable conditions, in such amounts and with such deductibles as the Commission of the Port shall deem necessary for the protection of the Port and of County,

(e) *Books and Records.* The Port will keep and maintain proper books of account and accurate records of all of its revenue, including tax receipts, received from any source whatsoever, and of all costs of administration and maintenance and operation of all of its business that are in accordance with proper and legal accounting procedure. Promptly upon receipt of its annual audited financial statements, it will provide a copy thereof to the County Treasurer.

Section 10. Lost, Stolen or Destroyed Note. In case any Note shall be lost, stolen or destroyed, the Port may execute and deliver a new Note of like date, number and tenor to the County.

Section 11. Form of Notes. Each Note shall be in substantially the following form:

NO. N-____ UNITED STATES OF AMERICA \$ _____

STATE OF WASHINGTON

PORT OF EVERETT

REVENUE NOTE (JUNIOR LIEN, TAXABLE) 20__ [year]-__ [number]

INITIAL INTEREST RATE: ____% (subject to adjustment as provided in the Note Resolution)

MATURITY DATE: _____ (subject to adjustment as provided in the Note Resolution)

REGISTERED OWNER: Snohomish County, Washington

TAX IDENTIFICATION #: _____

PRINCIPAL AMOUNT: _____ and NO/100 DOLLARS

The PORT OF EVERETT (the “Port”), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, but solely from the Note Fund, on the Maturity Date identified above, the Principal Amount, together with interest thereon from the date hereof at the Interest Rate indicated above, calculated on the basis of a of a year of 360 days and 12 months of 30 days each. Interest on the outstanding principal balance shall be paid on each June 1 and December 1 and on the Maturity Date identified above. The Principal Amount shall be paid in accordance with the following amortization schedule:

Payments shall be made by the Port to the Snohomish County Treasurer on the date due in lawful money of the United States of America. Payments of principal and interest shall be made by check, wire or electronic transfer.

This note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under Resolution No. 1191 (2022) of the Port Commission (the “Note Resolution”) until the Note shall have been manually signed by Chief Financial Officer of the Port. The definitions contained in the Note Resolution shall apply to capitalized terms contained herein.

The Port hereby irrevocably covenants and agrees with the Registered Owner of this note that it will keep and perform all the covenants of this note and of the Note Resolution to be by it kept and performed. Reference is hereby made to the Note Resolution for a complete statement of such covenants and for the definition of capitalized terms used herein.

This note is issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Washington and resolutions of the Port, including the Note Resolution, for the purpose of providing financing for certain improvements to the Port's Properties.

Both principal of and interest on this note are payable solely out of the special fund of the Port known as the "Junior Lien Revenue Note Redemption Fund" (the "Note Fund"). The Port does hereby pledge and bind itself to set aside and pay into the Note Fund the amount required by the Note Resolution to be paid therein from the sources and in the priority specified in the Note Resolution. This note is not a general obligation of the Port.

This note may be prepaid at any time, in whole or in part without penalty, upon 10 days prior written notice to the Registered Owner, as set forth in the Note Resolution.

This note is not transferable, and participation interests in this note may not be issued.

The Port has taken no action to cause the interest on this note to be excludable from federal gross income.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done and performed precedent to and in the issuance of this note have happened, been done and performed and that the issuance of this note does not violate any constitutional, statutory or other limitation upon the amount of indebtedness that the Port may incur.

IN WITNESS WHEREOF, the Port of Everett has caused this note to be signed on behalf of the Port with the manual signature of its Chief Financial Officer as of this ____ day of _____, 20__.

PORT OF EVERETT

By _____/s/_____
Chief Financial Officer

Section 12. Execution. The Notes shall be signed on behalf of the Port with the manual signature of the Chief Financial Officer.

Section 13. Delivery of Notes. The Port hereby ratifies and confirms its acceptance of the offer of the County to purchase the Notes.

Section 14. Resolution and Law a Contract with the County. This resolution is adopted under the authority of and in full compliance with the Constitution and laws of the State of Washington, including Title 53 of the Revised Code of Washington, as amended and

supplemented. In consideration of the notes purchased by the County, evidenced by the Notes, the provisions of this resolution and of said laws shall constitute a contract with the County, and the obligations of the Port and its Commission under said laws and under this resolution shall be enforceable by any court of in the jurisdiction of Snohomish County; and the covenants and agreements herein and in the Notes set forth shall be for the benefit of the County.

Section 15. General Authorization. The Designated Port Representative and all other appropriate officers of the Port are each hereby authorized and directed to take such steps, to do such other acts and things, and to execute all note documents and such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable in order to carry out the terms and provisions of, and complete the transactions contemplated by, this resolution.

Section 16. Severability. If any one or more of the covenants or agreements provided in this resolution to be performed on the part of the Port shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Notes.

Section 17. Prior Acts. All acts taken pursuant to the authority of this resolution but prior to its effective date are hereby ratified and confirmed.

Section 18. Effective Date. This resolution shall become effective from and after its passage and approval.

ADOPTED by the Port Commission of the Port of Everett at a meeting thereof, held this 5th day of April, 2022, and duly authenticated in open session by the signatures of the commissioners voting in favor thereof.

PORT OF EVERETT, WASHINGTON

By David Simpson
President and Commissioner

By [Signature]
Vice President and Commissioner

By Tom Stigee
Secretary and Commissioner

CERTIFICATE

I, the undersigned, duly chosen, qualified and acting Secretary of the Port Commission (the "Commission") of the Port of Everett (the "Port") and keeper of the records of the Commission, DO HEREBY CERTIFY:

1. That the attached resolution numbered 1911 (2022) (the "Resolution"), is a true and correct copy of a resolution of the Port, as finally adopted at a meeting of the Commission held on the 5th day of April, 2022, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum of the Commission was present throughout the meeting and a legally sufficient number of members of the Commission voted in the proper manner for the adoption of said Resolution; that all other requirements and proceedings incident to the proper adoption of said Resolution have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of April, 2022.



Secretary, Port Commission