

## MEMORANDUM

TO: Clackamas County Board of Commissioners and Housing Authority Board of Commissioners

FROM: Rodney A. Cook, Director of Health, Housing and Human Services

RE: Fuller Station Apartments & Property Tax Exemptions

DATE: February 7, 2023

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### Request:

Health, Housing & Human Services (H3S) is providing background information to the Board of County Commissioners and the Housing Authority Board regarding a request for a Payment in Lieu of Taxes (PILOT) agreement received from Guardian Real Estate Services, LLC for Fuller Station Apartments. **Staff recommends denial of the request for Fuller Station Apartments at this time.**

If the Board would like to hold a Policy Session in the future to discuss implementing a Property Tax Exemption Policy for regulated affordable housing developments in Clackamas County, staff will provide relevant information.

### Background on Fuller Station Apartments:

In January 2020, the Housing Authority of Clackamas County (HACC) released a Notice of Funding Availability (NOFA) making approximately \$40 million in Metro Affordable Housing Bond funding available to support affordable housing development projects sponsored by non-profit and for-profit developers throughout the eligible Metro boundary. In addition to the bond funds, HACC allocated 125 Project-Based Section 8 Vouchers (PBVs) to support awarded projects as part of this funding opportunity.

In April 2020, HACC received an application from project sponsors Geller Silvis & Associates Inc. and Guardian Real Estate Services, LLC for \$10 million in bond funding and 25 PBVs to support the development of 100 units of affordable housing adjacent to the Fuller Station MAX line in the unincorporated Happy Valley area. This project, which came to be known as Fuller Station Apartments, was awarded the requested funding and PBVs. Fuller Station Apartments is a new construction, transit-oriented housing development consisting of one-, two-, and three-bedroom units serving families and individuals with incomes up to 60% of area median income (AMI). 30 units are reserved for households at or below 30% or AMI, including 25 units for families and individuals experiencing homelessness.

The narrative section of the Fuller Station Apartments NOFA application briefly mentioned interest from the project sponsors in pursuing a partnership with HACC for certain tax exemption benefits. It noted that the related cost savings could be used to support additional resident and supportive services. The sponsor suggested paying a fixed amount of approximately \$42,150 per year, or \$35 per unit per month, as a payment in lieu of the property taxes exempted as part of a partnership with HACC. (For context, Section 307.092 of the Oregon Revised Statutes (ORS) allows affordable apartment communities owned by Oregon Housing Authorities to receive a property tax exemption so long as the housing is rented to low-income households. This exemption exists even when a Housing Authority has an extremely limited role – e.g. a 0.01% ownership stake, no fiduciary responsibilities, and no role in daily operations. Unlike other property tax exemptions, this exemption requires no local approval.)

In July 2020, HACC staff recommended Fuller Station Apartments for a preliminary award of bond funds and the Housing Authority Board authorized staff to forward Fuller Station Apartments to Metro for concept endorsement. As with the other bond projects awarded under the NOFA, the assumption of a property tax exemption was not included in the conceptual award packages presented to the Housing Authority Board.

Fuller Station Apartments is one of three projects awarded under the NOFA. Maple Apartment and Good Shepherd Village are the other two. All three projects inquired about partnering with HACC for a property tax exemption, but HACC leadership declined partnership out of concern that there was not sufficient support from the Housing Authority Board for granting property tax exemptions at that time.

In December 2020, the Housing Authority Board approved Resolution Number 1951 Authorizing Metro Bond Funds Loan Financing, Project-Based Section 8 Vouchers, and Related Matters, for the Fuller Road Station Project. In a separate process in March 2021, HACC conditionally awarded Fuller Road Apartments funding for supportive services for 25 units of permanent supportive housing reserved for households experiencing homelessness (approximately \$320,000 per year contracted to Clackamas Women's Services using Supportive Housing Services funds).

In April 2021, Green Line Affordable Development, L.P. closed construction financing for the project. The project's financing includes the following County funds: \$8.57 million in Metro Affordable Housing bond funds, 30 project-based Section 8 rental assistance vouchers, and a commitment of Supportive Housing Services funding to support the 25 units reserved for homeless households with an estimated contract value of \$320,000 per year. In September 2022, Fuller Station Apartments received a Temporary Certificate of Occupancy and began leasing the building. The project is currently 63% occupied and the developer anticipates having all 100 units leased by the end of February 2023.

**Request to Board for PILOT Agreement:**

Following a number of similar requests made to directly to HACC, in January 2023, Guardian Real Estate Services, LLC submitted a letter to the Clackamas County Board requesting that it enter into a PILOT agreement to exempt the project from property taxes in favor of a payment in lieu (thereby reducing the tax liability of the project). The letter states that this agreement is necessary as part of converting Fuller Station Apartments to permanent financing.

**Considerations:**

The Clackamas County Assessor's Office provided an estimation of the property taxes, as if the property was 100% complete and on the tax roll for the 2020-21 tax year, of \$112,740. Although there would not be a loss in current tax revenue since the property is new to the tax rolls, if the PILOT agreement is approved to pay \$42,150 a year for 20 years, as originally proposed, the tax revenue loss over the 20 year term could be between \$1.5 and \$2.5 million.

Although property tax exemptions and reductions pose a loss of future tax revenue, they are an effective tool for incentivizing affordable housing development and addressing housing shortages. Additionally, the availability of affordable housing reduces burdens on other systems, including law enforcement and human services, meaning that the loss of revenue is offset by the broader value of access to affordable housing.

It is important to consider this issue in the broader context of the housing crisis the state and county are facing. Staff recommends that the Board consider this decision at the policy level, not at the individual project level. It is good practice for jurisdictions to have clear and consistent policies for how and when these exemptions are granted because of the wide ranging implications, including impacts to revenue and precedents that can be set by granting exemptions outside of a formal policy.

**Recommendation:**

Staff recommends that the Board deny the request from Guardian Real Estate Services, LLC at this time.

Respectfully submitted,

Rodney A. Cook  
Director of Health Housing & Human Services



January 12, 2023

**Sent by email to:** BCC@clackamas.us

Clackamas County Board of Commissioners  
2051 Kaen Road  
Oregon City, OR 97045

**RE:** Fuller Station Apartments - 100 affordable units  
Property Tax PILOT Agreement

Dear Chair Tootie Smith and County Commissioners,

Fuller Station Apartments is a 100-unit affordable housing project located in Happy Valley. Construction was recently completed. The original developer, Anna Geller, had an excellent track record in Clackamas County with three previously completed projects. Guardian joined Ms. Geller as her co-developer late in the development period when she was experiencing health problems and assisted her with final phases of development including closing the project capitalization. Ms. Geller passed away shortly after the project was capitalized in 2021. Guardian is the General Partner of the ownership entity and property manager for the project. The company is a prominent, Oregon-based affordable housing developer, owner and operator.

For the past couple of years, we have been working collaboratively with the county to move the project forward. It is 58% leased with full occupancy expected in February 2023. We have greatly appreciated the county's cooperation and working relationship to date. While every project has challenges and setbacks, Fuller Station was delivered on schedule and on budget. The county should be very proud of this new community asset that will house 100 low-income families.

There is one piece of unfinished business that must be addressed by the county at this time. It is time-sensitive and critical to ensuring the long-term fiscal health of Fuller Station Apartments. In our attempt to complete the project and convert our construction loan to permanent, a partial property tax exemption is required. To fulfill the original development intent, it is necessary to structure a Payment in Lieu of Taxes (PILOT) agreement for the property tax. This will need to be approved by the Board of Commissioners.

In the Metro Housing Bond NOFA Application, the developer stated:

*"Real Estate Taxes: Estimated property taxes at \$42,150 based on our hope to include HACC as an affiliate of the Ownership Program. While we generally do not take properties off the rolls, HACC staff and the developer have briefly discussed how savings in property taxes could be used, dollar for dollar, to pay for additional resident and supportive services. The property is not currently on the tax rolls. FRS looks to HACC's leadership to partner for the benefit of the residents and to accomplish reduced property taxes."*

The attached sample PILOT Agreement will include HACC as an affiliate of the Ownership.

We fulfilled our promise to provide 100-units of housing targeting households at or below 60% of area median income along with an array of services including Permanent Supportive Housing Services. We secured a Housing Assistance Payments contract (HAP) from HUD through the Housing Authority, and partnered with Clackamas Women's Services, DevNW, and Cornerstone Community Housing to provide case management, supportive services, and resident services.

760 SW 9th Avenue, Suite 2200 Portland, OR 97205 • P.O. Box 5668 Portland, OR 97228  
office: 503-802-3600 • fax: 503-802-3648 • tty 711 • [www.gres.com](http://www.gres.com)

GUARDIAN DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY STATUS IN THE ADMISSION OR ACCESS TO, OR TREATMENT OR EMPLOYMENT IN, IS FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES. GUARDIAN HAS DESIGNATED AGENTS TO COORDINATE COMPLIANCE WITH THE NONDISCRIMINATION REQUIREMENTS CONTAINED IN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S REGULATION IMPLEMENTING SECTION 504. FOR MORE INFORMATION, CONTACT GUARDIAN AND REQUEST TO SPEAK WITH THE COORDINATOR FOR THE SPECIFIC COMMUNITY FOR WHICH YOU ARE INQUIRING.



- 25 project-based vouchers targeting households at or below 30% of area median income are given preference to Clackamas Women Services clients. Additionally, Clackamas County is in contract with Clackamas Women's Service to provide Supportive Housing Services for the 25 project-based voucher units at Fuller Station.
- 5 additional mainstream vouchers targeting households at or below 50% of area median income will serve families, where the head of household is disabled and homeless or at risk of homelessness.
- 7 units are given preference to DevNW for housing insecure or homeless youth. DevNW provides housing payment assistance for these individuals.

We also engaged non-profit Cornerstone Community Housing to provide additional services - transition support, stabilization support, and case management. They are also providing resident services for all Fuller Station families, such as a move-in support, community events, and resource hours. This services contract was not considered in our Metro Bond Application. Given the nature of the resident population and quantity of children, we believe this additional component of services is necessary for success. The annual fee for services is \$80,600.

Additionally, since application approval, we have determined it will be necessary to provide additional property management staff support for the project. Wages and salaries have dramatically escalated over the past few years. The combination of these two factors have created an additional \$100,000+ in ongoing payroll burden for the project.

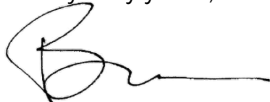
We encourage the county commissioners to create and maintain a policy for property tax exemption on all regulated, affordable housing projects. Capital structures that provide for long-term affordability require a variety of government support mechanisms including property tax exemption. While Fuller Station could justify a full exemption, the developer's intent was a PILOT, and this is what the capital partners are expecting.

Our need is to successfully conclude this matter by mid-February. An affirmative board vote is required as soon as possible. The documentation process is extensive and will need to be completed by March if we are going to make our April loan conversion date.

If there are additional questions or concerns, we would be happy to meet with you or staff to address them.

Thank you.

Very truly yours,



Thomas B. Brenneke  
President

Enclosures

Example PILOT Agreement  
Agreement with Cornerstone Community Housing

## PAYMENT IN LIEU OF TAXES (PILOT) AGREEMENT

This Payment in Lieu of Taxes (PILOT) Agreement (the “**Agreement**”), is effective as of the date that the last party signs upon execution by all parties, is entered into by and among Molalla Apartments Limited Partnership, an Oregon limited partnership (the “**Partnership**”), the Housing Authority of Clackamas County, a public body corporate and politic (the “**Authority**”), and Clackamas County, Oregon, a municipal subdivision of the state of Oregon (the “**County**”).

### RECITALS

**A.** The Partnership was formed for the purpose of acquiring and owning real property located in Molalla, Oregon that is described on **Exhibit A** attached hereto and incorporated herein by reference (the “**Property**”) and developing and operating thereon a 60-unit affordable housing apartment project commonly known as “Molalla Apartments” (the “**Project**”).

**B.** The Partnership will be operated pursuant to the terms and provisions of an Amended and Restated Agreement of Limited Partnership to be entered into among GL-HR Molalla 2021 GP LLC, an Oregon limited liability company, as General Partner, Wincopin Circle LLLP, a Maryland limited liability limited partnership, as Investor Limited Partner, and the Housing Authority of Clackamas County (“**HACC**”) as a Special Limited Partner (the “**Partnership Agreement**”). Evergreen Community Partners, an Oregon public benefit nonprofit corporation or its designee may also be admitted as a Special Limited Partner.

**C.** Pursuant to the provisions of ORS 307.092 and the fact that HACC has been admitted as a Special Limited Partner of the Partnership, the Property is exempt from all taxes to the extent authorized by ORS 307.092.

**D.** HACC has agreed to continue as a Special Limited Partner of the Partnership during the term of this Agreement.

**E.** Pursuant to ORS 307.092(2)(b), the Authority may enter into an agreement with the County to make an annual payment in lieu of paying taxes and the Authority desires to enter into such an agreement.

**F.** The Partnership has agreed to make a payment annually for twenty (20) years to the Authority to permit the Authority to make the payment in lieu of paying taxes to the County.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Recitals.** The Recitals are incorporated herein as if fully set forth in this Agreement.

**2. Term.** The term of this Agreement shall be for a period commencing as of the date of this Agreement and continuing until June 30, 2042, and shall relate to tax years beginning July 1, 2022, and continuing for a total of twenty (20) tax years ending June 30, 2042.

**3. PILOT Fee.** The fee in lieu of taxes (the “**PILOT Fee**”) shall be a fixed annual sum in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000).

**4. Payment of PILOT Fee.** Each tax year during the term of this Agreement, beginning July 1, 2022 and ending June 30, 2042, on or before March 1 (commencing March 1, 2023 and March 1 of each year thereafter), the Partnership shall pay an amount equal to the PILOT Fee to the Authority and the Authority will in turn promptly pay the PILOT Fee to the County to satisfy its obligation under this Agreement.

**5. Burden and Benefit; Assignment.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties and their respective successors, and assigns. No party may assign this Agreement without the prior written consent of the other parties which consent may be withheld in such party’s sole discretion.

**6. Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

**7. No Continuing Waiver.** The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

**8. Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the state of Oregon applicable to agreements made and to be performed entirely therein without regard to the conflict of law provisions of Oregon law.

**9. Headings.** All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

**10. Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

**11. Reliance.** Except with the written consent of all parties to this Agreement, no person other than the parties to this Agreement may directly or indirectly rely upon or enforce the provisions of this Agreement, whether as a third-party beneficiary or otherwise.

**12. No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys’ fees and expenses.

**13. Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties or any third party to create the relationship of partners or joint ventures between the County and the Partnership.

**14. Modification.** This Agreement may not be amended or modified in any respect whatsoever without written agreement of the parties.

*[Remainder of page intentionally left blank]*



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth opposite the name of each party.

The Partnership has executed this Agreement \_\_\_\_\_, 2022.

**PARTNERSHIP:**

**MOLALLA APARTMENTS LIMITED PARTNERSHIP,**  
an Oregon limited partnership

By: GL-HF Molalla 2021 GP LLC, an  
Oregon limited liability company,  
General Partner

By: Green Light – Home First LLC, an  
Oregon limited liability company,  
Manager

By: Home First Development, LLC,  
an Oregon limited liability company,  
Manager

By: \_\_\_\_\_  
Benjamin Pray  
Manager

By: Green Light LLC,  
an Oregon limited liability company,  
Manager

By: \_\_\_\_\_  
Mark N. R. Desbrow  
Managing Member

***[Remainder of page intentionally left blank]***

The Housing Authority has executed this Agreement \_\_\_\_\_, 2022.

**HOUSING AUTHORITY:**

**HOUSING AUTHORITY OF CLACKAMAS COUNTY,**  
a public body corporate and politic of Clackamas County, Oregon

By: \_\_\_\_\_  
Name:  
Title:

The County has executed this Agreement \_\_\_\_\_, 2022.

**COUNTY:**

**CLACKAMAS COUNTY,**  
a municipal subdivision of the state of Oregon

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**Legal Description**

## RESIDENT SERVICES AGREEMENT

This Resident Services Agreement is entered into effect as of November 2022, by and between Green Line Affordable Development Limited Partnership (Green Line) and Cornerstone Community Housing (Cornerstone), a 501c3 non-profit public benefit corporation.

Guardian is the property management company for 100 affordable housing units in Clackamas County known here as Fuller Station Apartments. Cornerstone is experienced in providing Resident Services at affordable housing communities across Oregon. For and in consideration of the mutual covenants set forth herein, the parties agree:

- 1) AGENCY: Green Line hereby appoints Cornerstone to provide Resident Services (as defined below) during the term of this Agreement, and Cornerstone hereby agrees to facilitate Resident Services to Fuller Station Apartments as described below under “Program Delivery”.
- 2) TERMS: This Agreement is effective November 2022. Both parties agree to a 12 month guarantee of payment for services, even if an alternate services provider is identified, unless a breach of Agreement\* is identifies and incurable. After 6 months of services, Green Line and Cornerstone will reevaluate the level of services needed. After the first 12 months, either party may cancel this Agreement by providing a 60-day written notice. This will be known as Phase 1\*\*.

\*Breach of Agreement: If either part sends written notice specifying in detail a material breach of this Agreement, and such breach has not been cured within ten (10) business days or a mutually agreed upon reasonable time to cure, or if such breach is of a nature that it cannot be cured.

\*\*Phase 1 will include more case management focus from Cornerstone. Green Line has the flexibility to pivot to a more traditional resident services model after the first 6 months. This will be known as Phase 2.

- 3) COMPENSATION: Green Line agrees to pay a fee to Cornerstone for providing Resident Services pursuant to this agreement. This will begin on the first day of the first month that services are delivered on the week of 11/14/22, and on the first day of each month thereafter, while this Agreement remains in effect. The annual fee for services is \$80,600 payable to Cornerstone in the amount of \$6,717 monthly. Fees escalate annually by 3% from proposal presentation date.
- 4) PROGRAM DELIVERY: Cornerstone shall facilitate on-site resident services programs at Fuller Station Apartments. Program implementation will include:
  - 25 hours of staff time 3-4 days weekly. Schedule programs include:
    - Monthly Food Program
    - Move-in Support
    - Weekly Resource Hours (Coffee Connections)
    - Monthly Community Building Event
    - Transition Support
    - Stabilization Support
    - Case Work Management

PROGRAM DELIVERY (cont.):

- Prepare annual OHCS Resident Services Reports, quarterly program updates, grant reports, conduct resident surveys, and distribute tenant handbooks.
- Create monthly calendar of events and producing outreach flyers as necessary.
- Maintain proper tracking documentation and recommending program modifications and improvements as needed.
- Develop ongoing cooperative network of government, social service, and non-profit agencies.

- 5) DIVERSITY, EQUITY, & INCLUSION (DEI) COMMITMENTS: The Healthy Homes Resident Services program is committed to meeting the needs of residents by providing culturally responsive services. Culturally responsive is defined as having services that have been adapted to maximize the respect of and relevance to the beliefs, practices, culture, and linguistic needs of the diverse client populations and communities being served, including, clients and communities of color. To meet this goal, we work to assure competent language access and incorporate diverse cultural approaches, strengths, perspectives, experiences, frames of reference, values, norms, and performance styles of clients and communities to make services and programs more welcoming, accessible, appropriate, and effective for all eligible and intended recipients. Our program is built upon a model of encouraging resident feedback to drive programming and collaborating with culturally specific service agencies to provide that are culturally adaptive to the specific needs of the individual communities we serve.
- 6) LIMITATION ON AUTHORITY: The power and authority of Cornerstone to act for and on behalf of Green Line is strictly limited to the terms of this Agreement. Nothing herein shall be construed to grant to Cornerstone by implication or otherwise, any right, power or privilege that is not expressly set forth in this Agreement.
- 7) INSURANCE: Cornerstone shall, at its own expense, maintain commercial general liability insurance insuring against any and all claims for injury to, or death of, persons and or loss of, or damage to, property occurring upon, in or about the Properties. Guardian Management LLC and Green Line Affordable Housing LP are included as additional insured parties under Cornerstone's insurance plan. Such insurance shall have liability limits of not less than \$1,000,000 in respect of injury or death to any one person, not less than \$1,000,000 in respect of any one occurrence or accident, and not less than \$10,000 for property damage. Such insurance shall be in place prior to or at the commencement date and be maintained without interruption throughout the term of this Agreement.

8) **NOTICES:** All notices, demands, requests or other communications to be sent by one party to the other hereunder, or required be law, shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee, or by depositing same with an overnight delivery service for next business day delivery, or by depositing same in the United States mail, postage prepaid, registered or certified mail return receipt requested, or by sending an E-mail electronic transmission or facsimile. In the case of E-mail or fax, notice is effective on receipt, provided that a duplicate copy of the notice is promptly given by first-class mail or by overnight delivery. Addressed for purpose of giving notice are as follows:

Attn: Danielle McBride  
Director of Client Engagement  
PO Box 11923, Eugene, OR 97440  
[dmcbride@cornerstonecommunityhousing.org](mailto:dmcbride@cornerstonecommunityhousing.org)

9) **ASSIGNMENT:** Cornerstone's Resident Services and duties under this Agreement may not be assigned, conveyed, or transferred without Guardian's prior written consent.

10) **APPLICABLE LAW:** This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed and construed in accordance with the laws of the State of Oregon. The venue for any dispute hereunder shall be a court of competent jurisdiction in Clackamas County, Oregon, and the parties waive any right to object to such venue.

11) **INTEGRATION:** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the provision of services at the properties and supersedes all prior and contemporaneous understandings or agreements of the parties. No supplement, amendment, or modification of the Agreement shall be binding unless it is in writing and signed by both parties.

12) **NON-SOLICITATION:** During the term of this Agreement and for a period of one year after its termination, Green Line or the property management agent representing Green Line will not directly or indirectly hire any employee of Cornerstone. If Green Line or their property management agent breaches this Section, Green Line agrees to pay to Cornerstone a sum equal to 30 percent of the amount of the sum of the employee's annual salary. This amount shall be the full, agreed, and liquidated damages for the breach of this Section of the Agreement by Green Line, all other claims to damage or other remedies being herein expressly waived by Cornerstone. The payment of this amount as liquidated damages is not intended as a forfeiture or penalty but is intended to constitute liquidated damages to Cornerstone.

IN WITNESS WHEREOF the parties have executed this Agreement to be effective on the date first set forth above.



\_\_\_\_\_  
Signature  
Green Line Affordable Development Limited Partnership

11/07/2022

Date



\_\_\_\_\_  
Signature  
Cornerstone Community Housing

11/8/2022

Date