

April 21, 2022

Board of County Commissioners
Clackamas County

Members of the Board:

Adoption of Resolution authorizing a Payment in Lieu of Taxes (PILOT) Agreement between Molalla Apartments Limited Partnership, the Housing Authority of Clackamas County (HACC) and Clackamas County, Housing Assistance Payment Contract (AHAP) and Related Matters, for the Molalla Apartments Project. Total Value is \$500,000. Clackamas County General Funds are not involved.

Purpose/Outcomes	Adoption of Resolution authorizing a PILOT Agreement other related documents to support the affordability of the 60-unit affordable housing apartment project, commonly known as Molalla Apartments, in Molalla, Oregon
Dollar Amount and Fiscal Impact	Annual payments of \$25,000 paid to HACC by Molalla Apartments Limited Partnership and then distributed to Clackamas County for a term of 20 years.
Funding Source(s)	Molalla Apartments Limited Partnership
Duration	20 years from July 1, 2022, thru June 30, 2042.
Previous Board Action/Review	3/1/22 – PTE & PILOT concepts presented at Issues 4/19/22 – Resolution presented at Issues
Strategic Plan Alignment	This funding aligns with the County’s strategic priority to ensure safe, healthy, and secure communities by increasing the inventory of affordable housing units in Clackamas County.
Counsel Review	3/29/2022 - Andrew Naylor, County Counsel on behalf of the Housing Authority of Clackamas County 3/29/2022 – Kathleen Rastetter, County Counsel on behalf of Clackamas County
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. If no, provide brief explanation: Tax exemption/real property transactions are outside the procurement code. Voucher award based on previous successful LIFT Funding Award
Contact Person	Devin Ellin, Director of Housing Development, HACC 971-227-0472
Contract Number	Clackamas County Resolution

BACKGROUND:

The state of Oregon is experiencing a housing crisis which has led to a shortage of affordable housing units in Clackamas County. Property tax exemptions are an effective affordable housing tool that can increase the amount of debt an affordable property can sustainably take on, thereby decreasing the demand for other limited funding sources. Property tax exemptions are especially useful to projects like Molalla Apartments that are being developed outside of the Urban Growth Boundary (UGB) where resources like the Regional Affordable Housing Bond are not available.

Affordable apartment communities owned by Oregon housing authorities receive a property tax exemption so long as the housing is rented to low-income households (ORS 307.092). 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.

Since local governments do not receive their share of property taxes from exempt properties, local governments can enter into agreements with low-income housing developers to compensate them for a portion of their lost revenues. These agreements are known as "payment in lieu of taxes" (PILOT) agreements.

In support of Molalla Apartments, a 60-unit affordable housing project located in Molalla, the Housing Authority of Clackamas County—in partnership with Home First Development, LLC and Green Light, LLC—would become a Special Limited Partner in the Molalla Apartments Limited Partnership. If approved, the Partnership agrees to make a \$25,000 annual payment for the next 20 years to permit the Authority to make a payment in lieu of taxes to Clackamas County.

Each tax year during the term of the 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 a fixed annual sum in the amount of \$25,000 to the Authority and the Authority will, in turn, promptly pay the PILOT Fee to the County to satisfy its obligation under the Agreement.

ATTACHMENTS:

- CC Resolution - PILOT Agreement – Molalla Apartments
- PILOT Agreement – Molalla Apartments – partnership executed

RECOMMENDATION:

Staff recommends approving Resolution authorizing the Chair of the Board of County Commissioners to act on behalf of Clackamas County to approve the PILOT Agreement and such other documents as may reasonably be required in connection with the PILOT Agreement.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rodney A. Cook".

Rodney A. Cook, Director
Health, Housing and Human Services

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

Resolution Authorizing the PILOT Agreement and Related Matters, for the Molalla Apartments Project



Resolution No. _____
Page 1 of 3

WHEREAS, Clackamas County, Oregon (“**County**”) desires to provide affordable multifamily housing (“**Affordable Housing**”) for persons and families of lower income; and

WHEREAS, GL-HR Molalla 2021 GP LLC, an Oregon limited liability company (the “**General Partner**”), has formed an Oregon limited partnership, Molalla Apartments Limited Partnership (the “**Partnership**”), of which the General Partner is the sole general partner, for the purposes of acquiring and developing Molalla Apartments, a 60-unit Affordable Housing project with a property address of 1000 W. Main Street, Molalla, Oregon (the “**Project**”); and

WHEREAS, the Partnership will be operated pursuant to the terms and provisions of an Amended and Restated Agreement of Limited Partnership, among General Partner, an entity designated by Enterprise Housing Credit Investments as Investor Limited Partner, Evergreen Community Partners, an Oregon public benefit nonprofit corporation as a Special Limited Partner, and the Housing Authority of Clackamas County, a public body and politic of the state of Oregon (the “**Authority**”), as a Special Limited Partner (the “**Partnership Agreement**”); and

WHEREAS, the Authority will be admitted as a Special Limited Partner to the Partnership pursuant to the Partnership Agreement with a 0.001% interest in the Partnership; and

WHEREAS, 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 (“**PILOT Agreement**”) and the Authority desires to enter into such a PILOT Agreement with the County and the Partnership for the Project; and

WHEREAS, 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 assuming the County and the Authority enter into the PILOT Agreement with the Partnership, and in the amount identified in the PILOT Agreement;

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

Resolution Authorizing the PILOT Agreement and Related Matters, for the Molalla Apartments Project



Resolution No. _____
Page 2 of 3

NOW, THEREFORE, the Clackamas County board of Commissioners do hereby resolve as follows:

Section 1. Approve PILOT Agreement.

BE IT RESOLVED, that the County is authorized to negotiate, execute and deliver on behalf of the County the PILOT Agreement in the form submitted to the Board of Commissioners and such other documents as reasonably may be required in connection with the PILOT Agreement all in the form approved by the Authorized Representative (such approval to be conclusively demonstrated by the signature of such Authorized Representative on such documents).

Section 2. Delegation.

BE IT RESOLVED, that the Clackamas County Chair Commissioner is hereby designated as an Authorized Representative, as that term is used in these Resolutions, and may individually, acting on behalf of the County and without further action by the Board, finalize the terms of, execute, acknowledge, and deliver the documents authorized herein and take the actions authorized herein.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

Resolution Authorizing the PILOT
Agreement and Related Matters,
for the Molalla Apartments
Project



Resolution No. _____
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Section 3. General Resolutions Authorizing and Ratifying Other Actions.

BE IT RESOLVED, that each of the Authorized Representatives is authorized to negotiate, execute and deliver on behalf of the County such other agreements, certificates, and documents, and to take or authorize to be taken all such other actions as such Authorized Representative shall deem necessary or desirable to carry out the agreements and transactions contemplated by the foregoing resolutions (such determination to be conclusively demonstrated by the signature of such Authorized Representative on such document); and

BE IT FURTHER RESOLVED, that to the extent any action, agreement, document, or certification has heretofore been taken, executed, delivered or performed by an Authorized Representative named in these Resolutions on behalf of the County to carry out the transactions contemplated by the foregoing resolutions, the same is hereby ratified and affirmed.

BE RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

The above statements were approved and declared adopted on this ____ day of March, 2022

DATED this ____ day of APRIL, 2022

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

APPROVED AS TO FORM

Kathleen Rastetter, Approved via email on 3/29/22

COUNSEL FOR CLACKAMAS COUNTY
OF CLACKAMAS COUNTY, OREGON

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 _____ April 4 , 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: Tootie Smith

Title: Chair of the Housing Authority of Clackamas County Board

The County has executed this Agreement _____, 2022.

COUNTY:

CLACKAMAS COUNTY,
a municipal subdivision of the state of Oregon

By: _____

Name: Tootie Smith

Title: Chair of the Clackamas County Board of Commissioners

APPROVED AS TO FORM

APPROVED AS TO FORM

Kathleen Rastetter, Approved via email on 3/29/22

Andrew Naylor, Approved via email on 3/29/22

COUNSEL FOR CLACKAMAS COUNTY
OF CLACKAMAS COUNTY, OREGON

COUNSEL FOR HOUSING AUTHORITY
OF CLACKAMAS COUNTY, OREGON

EXHIBIT A

Legal Description

Part of the Rachel Larking Donation Land Claim No. 43 in Township 5 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the northeast corner of that tract of land conveyed to Harvey C. Burghardt, et ux, by Deed recorded in Deed Book 491, page 381, and running thence South 81°30' East along the south line of Market Road No. 32, 196 feet to a point; thence South 18°47' West 669.00 feet, more or less, to the south boundary of that tract of land conveyed to L.O. Nightingale, et ux, by Deed recorded in Deed Book 137, page 426; thence North 81°30' West along the south boundary of the Nightingale tract 196.00 feet, more or less, to the point of Intersection of said south boundary with the southerly extension of the easterly boundary line of the aforesaid Harvey C. Burghardt tract; thence Northerly along the southerly extension of the east boundary line of the said Burghardt tract 244.00 feet, more or less, to the southeast corner of said Burghardt tract; thence continuing Northerly along the east boundary line of the said Burghardt tract 425.00 feet to the point of beginning.