

THE EFFECTIVE DATE OF THIS RESOLUTION IS OCTOBER 20, 2020

RESOLUTION NO. 20-24

Re: Amendment to Sharpe Square PILOT

A RESOLUTION to authorize an amendment to the Sharpe Square PILOT Agreement dated January 7, 2019 (“PILOT”), between Frederick County, Maryland (“County”), The City of Frederick (“City”), and Sharpe Square Pax Buckeye, LLC, a Maryland limited liability company, (“Owner”).

WHEREAS, by Resolution No. 18-24, the Frederick County Council authorized the County Executive to “execute the [Sharpe Square] PILOT Agreement attached as Exhibit A hereto (including any changes to the PILOT Agreement that may be required by HUD and CDA), and any and all documents required in connection therewith”; and

WHEREAS, Owner acquired the property located at 820 Motter Avenue, Frederick, Maryland, tax parcel identification number 02-106205 (the “Property”), and constructed thereon an apartment development containing 86 apartment units which are rented as senior housing for low to moderate income residents of Frederick County age sixty-two or older (the “Project”); and

WHEREAS, leasing efforts for the Project began in January of 2020. However, due to the COVID-19 pandemic, only 34 of the 86 units are currently occupied, and ongoing leasing efforts have suffered, which has and will continue to have a financial effect on the Project; and

WHEREAS, the Owner has requested that the PILOT be amended to allow income averaging as allowed under 26 U.S. Code § 42(g)(1)(C), so that the average income for all residents of the Project will be no more than 60% of the Frederick County Area Median Income (“AMI”); and

WHEREAS, income averaging allows a project owner to qualify for low income housing tax credits as long as the incomes at the property average 60% or less of AMI, provided that the project otherwise complies with the requirements of 26 U.S. Code Section 42(g)(1)(C); and

WHEREAS, it is in the best interests of the County to encourage, facilitate, and protect the development of affordable workforce and age-restricted rental housing for low to moderate income residents of Frederick County, Maryland.

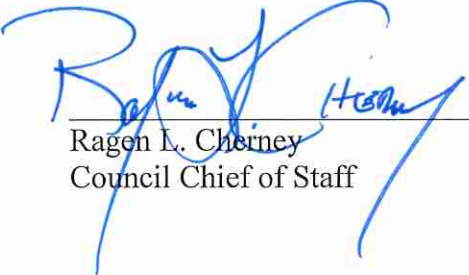
NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that pursuant to the authority granted to the County by the Annotated Code of Maryland, Tax-Property Article, Section 7-506.1, the County Council hereby approves the proposed amendment to allow income averaging to be used for the Project.

AND BE IT FURTHER RESOLVED, that the County Executive of Frederick County, Maryland, is authorized and empowered to execute the Amendment to Payment in Lieu of Tax Agreement attached hereto as Exhibit A, and any and all documents required in connection therewith.

The undersigned certifies that this Resolution was approved and adopted on the 20th day of October 2020.

ATTEST:

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND



Ragen L. Cherney
Council Chief of Staff

By: 

M. C. Keegan-Ayer, President 

AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT

(SHARPE SQUARE)

This Amendment to Payment in Lieu of Tax Agreement (the “Amendment”), made and entered into as of the 18th day of Nov., 2020, is by and between Sharpe Square Pax Buckeye, LLC, a Maryland limited liability company (the “Owner”), and Frederick County, Maryland, a body corporate and politic of the State of Maryland (the “County”), and The City of Frederick, a municipal corporation of the State of Maryland (the “City”).

WITNESSETH

WHEREAS, the City, County, and Owner entered into a Payment in Lieu of Taxes Agreement dated January 7, 2019, which is recorded in the land records of Frederick County, Maryland at Book 12789, page 147 (the “PILOT”), for an 86-unit income and age-restricted rental housing project located in the City of Frederick, Maryland at 820 Motter Avenue (“Project”); and

WHEREAS, the PILOT stated that the Owner intended “to provide rental housing for individuals whose income is or at below 60% of the Area Median Income as calculated and established each Fiscal Year by the Secretary of the U.S. Department of Housing and Urban Development and who are either a) at least 55 years of age; or b) at least 62 years of age (the “Project”)”; and

WHEREAS, leasing efforts for the Project began in January of 2020; however, due to the ongoing COVID-19 pandemic, leasing efforts have suffered (only 34 units are

occupied) which has and will continue to have a negative financial effect on the Project;
and

WHEREAS, Owner has requested that the County and the City agree to amend the PILOT to allow Owner to use income averaging as allowed under 26 U.S. Code §42(g)(1)(C) rather than requiring that each individual or head of household's income not exceed 60 percent of the Frederick County AMI (Area Median Income); and

WHEREAS, income averaging allows a project owner to qualify for low income housing tax credits so long as the incomes for all units at the property average 60% or less of AMI; and

WHEREAS, the County and the City have agreed to amend the language of the PILOT to allow income averaging.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants, terms and agreements hereof and pursuant to the authority granted by the Annotated Code of Maryland, Tax-Property Article, Section 7-506.1, the parties agree to amend the PILOT as shown herein.

1. The second and third WHEREAS clauses on page 1 of the PILOT are hereby deleted and replaced with the following two WHEREAS clauses:

WHEREAS, Owner intends to use the Property to provide rental housing for individuals who are at least 62 years of age, and households in which the head of household or spouse is at least 62 years of age. The average income of all residents must not exceed 60% of the Area Median Income as calculated and established each Fiscal Year by the Secretary of the U.S. Department of Housing and Urban Development (the "Project"); and

WHEREAS, Owner intends to thereafter preserve the Property and the Project as age- and income-restricted rental housing, and to comply with the requirements of 26 U.S. Code Section 42(g)(1)(C); and

2. The recitals set forth at the beginning of this Amendment shall be deemed to be a part of this Amendment.

3. Except as specifically amended herein, the Sharpe Square Payment in Lieu of Taxes Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Sharpe Square Pax Buckeye, LLC, a Maryland limited liability company, Frederick County, Maryland, a body corporate and politic of the State of Maryland, and The City of Frederick, a municipal corporation of the State of Maryland have caused this PILOT Agreement to be signed by duly authorized individuals, as duly attested, as of the day and year first hereinabove written.

WITNESS:

SHARPE SQUARE PAX BUCKEYE, LLC
A Maryland limited liability company

By: Sharpe Square Development, LLC,
A Maryland limited liability company,
Its Managing Member

By: Pax Edwards, LLC,
A Delaware limited liability company,
Its Managing Member

By:



By:


Name: Jeffrey Paxson

(SEAL)

WITNESS:

FREDERICK COUNTY, MARYLAND

By:



By:


Jan H. Gardner, County Executive 

WITNESS:

THE CITY OF FREDERICK

By: Phyllis McAn

By: 
Michael O'Connor, Mayor