



10400 Detrick Avenue
 Kensington, Maryland 20895
 240-627-9425

EXPANDED AGENDA

February 2, 2022

YouTube Link: <https://youtu.be/UwMznmltHuc>

In order to continue to implement recommended social distancing guidelines, HOC will conduct its meetings via an online platform and teleconference call until further notice

		Res #
4:05 p.m. Page 5	I. <u>INFORMATION EXCHANGE</u> A. Community Forum B. Report of the Acting Executive Director C. Commissioner Exchange	
4:30 p.m. Page 11	II. <u>APPROVAL OF MINUTES</u> A. Approval of Minutes of January 12, 2022 B. Approval of Minutes of January 12, 2022 Closed Session	
Page 19	III. <u>CONSENT</u> A. Approval to Temporarily Amend the Bylaws of the Housing Opportunities Commission of Montgomery County	22-07 (pg. 20)
Page 22	B. Approval to Extend the Closing Date for the Sale of 4527 Avondale Street to the National Center for Children and Families (“NCCF”)	22-08 (pg. 25)
4:40 p.m.	IV. <u>COMMITTEE REPORTS and RECOMMENDATIONS FOR ACTION</u>	
Page 29	A. Development and Finance Committee – Com. Simon, Chair 1. Paddington Square: Affirmation of Resolution 21-001 ^{PS} , Approval of Dwight Capital, LLC, as Successor Lender of Love Funding Corporation, and Approval to Amend the Bylaws of the Paddington Square Development Corporation	22-09 (pg. 36)
5:20 p.m. Page 39	2. Willow Manor Properties: Approval to Increase DHCA’s Share of Construction Period Interim Cash Flow to Repay	22-10 (pg. 43)

5:30 p.m. Page 45	its HIF Loan to HOC at Willow Manor, LLC, a Condition for DHCA to Close the Transaction	
5:40 p.m. Page 53	3. Westside Shady Grove: Approval to amend the Development Budget (to Allocate Net Financing Proceeds from Initial Construction Closing)	22-11 (pg. 51)
5:50 p.m. Page 62	4. Upton II: Approval of the Naming and Branding of HOC at the Upton in Accordance with HOC Naming Guidelines	22-12 (pg. 61)
	5. The Metropolitan: Emergency Procurement to Select Smislova, Kehnemui & Associates, P.A. (SK&A) as Structural Engineers to Prepare a Plan for Repair and Evaluation of Waterproofing Services Contractor for the Green Roof at Metropolitan Apartments	22-13 (pg. 68)
6:00 p.m.	V. <u>ELECTION OF OFFICERS</u> <ul style="list-style-type: none"> • Chair • Vice Chair • Chair Pro Tem 	
6:10 p.m.	<u>RECESS</u>	
6:15 p.m.	<u>DEVELOPMENT CORPORATION MEETINGS</u>	
Page 74	<u>Paddington Square Development Corporation Meeting</u> <ul style="list-style-type: none"> • Affirmation of Resolution 21-001^{PS}, Approval of Dwight Capital, LLC, as Successor Lender of Love Funding Corporation, and Approval of Amendments to the Bylaws and Articles of Incorporation of the Paddington Square Development Corporation 	22-001 ^{PS} (pg. 75)
6:25 p.m. Page 85	<u>Metropolitan Development Corporation Meeting</u> <ul style="list-style-type: none"> • Emergency Procurement to Select Smislova, Kehnemui & Associates, P.A. (SK&A) as Structural Engineers to Prepare a Plan for Repair and Evaluation of Waterproofing Services Contractor for the Green Roof at Metropolitan Apartments 	22-001 ^{ME} (pg. 92)
6:35 p.m.	<u>ADJOURN</u>	
6:40 p.m.	<u>RECONVENE HOC MEETING</u>	
Page 96	<u>CLOSING STATEMENT</u> <ul style="list-style-type: none"> • Vote to close meeting 	

6:45 p.m.	<u>ADJOURN</u>		
7:00 p.m.	<u>CLOSED SESSION</u> <i>The closed committee meeting will be called to order pursuant to Section 3-305(b)(1), 3-305(b)(3), and 3-305(b)(13) of the General Provisions Article of the Annotated Code of Maryland</i>		
	<u>ADJOURN</u>		

NOTES:

1. This Agenda is subject to change without notice.
2. Public participation is permitted on Agenda items in the same manner as if the Commission was holding a legislative-type Public Hearing.
3. ***Times are approximate and may vary depending on length of discussion.***
4. *These items are listed "For Future Action" to give advance notice of coming Agenda topics and not for action at this meeting.
5. Commission briefing materials are available in the Commission offices the Monday prior to a Wednesday meeting.

If you require any aids or services to fully participate in this meeting, please call (240) 627-9425 or email commissioners@hocmc.org.

Information Exchange

Resident Services Team Bolsters Housing Stability and Supplemental Nutrition for Families

The Service Coordination Unit provides assessment, counseling, information, referrals and program services to HOC customers. During the month of January 2022, staff continued to provide services primarily virtually due to the COVID-19 pandemic and the continued closure of HOC offices. Resident Counselors continued to engage HOC customers to determine their needs. During the month of January customers were referred to our partners and received food and other assistance. Resident counselors continued to perform wellness checks with customers to ensure their safety and assess their needs. Customers with delinquent rent were referred to the COVID-19 Rent Relief Program and the Housing Stabilization Program.

During the month of January, HOC customers also continued to receive referrals to unemployment assistance, TCA, SNAP, MEAP, EARP and other benefit programs. Housing Stabilization staff continued to process a vast number of applications for rental assistance. Though resident counselors continued working remotely due to the COVID-19 pandemic, staff continues to come in as needed for emergencies and to assist with food distribution, vaccination clinics and other activities. Resident Counselors have also been in attendance at the Housing Resources Division virtual briefings for new voucher recipients to provide information on the services that Resident Services offers. Additionally, the Resource Services team continues to provide services to persons with disabilities to meet their service needs.

Highlights for January activities of resident counselors include the following:

- Facilitating the Fundamentals of Housing workshops on January 9th and January 20th;
- Assisting with the coordination and facilitation of the vaccination booster clinic at HOC's East Deer Park office on January 26th;
- Assisting Property Management with gathering information from customers for the Community Development Block Grant rental assistance program;
- Partnering with Nourishing Bethesda to distribute food to customers at Waverly House;
- Facilitating the Senior Fitness Exercise Program at Forest Oak Towers;
- Facilitating the Senior Brown Bag food distribution at Elizabeth House;
- Assisting with relocation efforts at Rockville Town Center; and
- Attending RAD conversion meetings and assisting customers at Stewartown, Shady Grove and Willow Manor with the conversion process.

Resident Services Division continued to provide food resources and other supports with the help of Manna Food Center, Emmanuel Brinklow Seventh Day Adventist Church, Montgomery County Senior Nutrition Lunch Program, and the Capital Area Food Bank's Senior Brown Bag and My Groceries To Go programs. In January 460 HOC customers were provided food. Resident Services staff also continued to facilitate the Senior Nutrition Program. The Resident Services Division is also coordinating with the County to receive and distribute rapid antigen COVID-19 tests to seniors in February.

Resident Services staff will continue its collaboration with Senior Planet Montgomery. Resident Services staff is working with Senior Planet Montgomery to offer a 10-week iPad class for seniors beginning in February. iPads will be distributed to all participants. The classes will focus on basic skills such as using the camera and video functions, email clients, and more.

***Resident Services – HOC Academy Supports First Generation College Students and Small Business Enterprises
Youth Enrichment***

After school STEAM enrichment for elementary aged youth 3rd – 5th grade began on January 10, 2022. The program currently has 22 registrants with a daily participation of a minimum of 19 participants. Special presenters include Mad Science (will offer Funky Forces and Sensational Science at Home Experiments), Manna Food Center (Nutrition Education), First Generation College Bound Homework Club, and Jared Parks (Peace Mode Fit). For middle and high school students, HOC Academy will offer scholarships for up to 20 youth to attend STEAM enrichment programs hosted by our HOC Academy Partners.

HOC Academy staff continued to recruit for, and administer, HOC's College Success Program. Students are participating in monthly webinars and/or one-on-one phone contact with their coaches. HOC Academy also continued to facilitate the First Generation College Bound Program.

Adult Education and Workforce Development

In January, HOC Academy staff facilitated one Small Business Webinar: Access to Capital. The workshop focused on information about how to position business to receive bank loans and more. Twelve customers attended the workshop. The Small Business Strategy began its three (3) month mentoring period in January.

HOC Academy staff continued to process tuition assistance request for Montgomery College. In January, HOC Academy processed 12 requests for tuition assistance. HOC Academy staff also followed up on several more inquiries for tuition assistance and employment/workforce development assistance. The HOC Academy Social Work Intern continued to work with those customers to review their goals and action steps, and complete barrier and employment assessments as needed.

Customer highlights for January include:

- Renita Twyman (a tuition assistance recipient) received her Phlebotomy Technician certificate from Montgomery College and plans to work on obtaining the national Phlebotomy Technician certification;
- Misty Wilson (a Small Business Strategy Course participant) began the process of opening a private therapy practice; and
- Someka Hanson and Wane Mendoza (both Small Business Strategy Course participants) completed all steps to legalize their business and are awaiting approval.

Resident Services – Financial Literacy Coaches Customers for Financial Success

The Financial Literacy Coach continued to work with HOC customers and individuals on the HousingPath waitlist on creating a financial foundation. During the month of January, the Financial Literacy Coach provided one-on-one financial literacy coaching to four (4) HOC customers and eight (8) individuals from the HousingPath waitlist. The coaching sessions continued to cover topics including: creating a working budget; identifying disposable income; reading one's credit report; and, creating and accomplishing monthly financial goals.

Resident Services – Supportive Housing Team Works to Keep Customers Housed

The Supportive Housing Program provides housing assistance and case management services to 230 participants who are formerly homeless and have disabilities. The program services some of the most vulnerable residents of the county. In January program staff continued to have home visits with program participants. Program staff continue to wear the appropriate personal protective equipment and maintaining distancing. Program staff also continued to refer program participants that have demonstrated that they no longer need the supportive services were for the recently awarded Emergency Vouchers. Program staff are assisting these participants with completing the process to receive the vouchers. Program staff is also providing services to individuals receiving the emergency vouchers. These services include assistance with application fees, housing location, security deposits, moving assistance and household items. Program staff continued to recruit for a housing locator to assist with finding housing units for those awarded an Emergency Voucher.

During the month of January program staff continued to implement the Rent Supplement Program (RSP). The RSP provides a shallow rental subsidy (up to \$600 monthly) to county residents who struggle to pay their full rent with their current income. The program serves a large number of seniors on fixed incomes. The program serves up to 300 families, though there is still a large number of vacant slots due to program exits and lack of follow-up from applicants on the waitlist. Program staff is working to fill these vacancies.

Resident Services – Fatherhood Initiative

The Fatherhood Initiative is a national program funded by the U.S. Department of Health and Human Services. HOC is the first and only housing agency to be awarded a grant under the Fatherhood Initiative. HOC completed its first five-year grant as a best practice model. HOC was awarded a second five-year grant and is currently in year two of the five-year grant period. The program provides parenting education, case management services, financial assistance for educational classes and training, and participation incentives. In January, 41 new fathers were enrolled in the program. Additionally, 32 fathers are set to graduate in January.

HOC's Fatherhood Initiative also continued its participation in the Strengthening the Implementation of Responsible Fatherhood Programs (SIRF) Study. The study will work closely with the program to identify and overcome the challenges the program may face along the lines of case management. The study also identifies challenges, helps implement possible solutions, examine those effects on the program, and make adjustments when needed. The SIRF study will produce usable, broadly applicable lessons to inform emerging best practices in recruiting, engaging, and retaining fatherhood participants, as well as methods for implementing rapid cycle evaluations within Responsible Fatherhood programs. During the month of January Fatherhood Initiative staff worked to continue the facilitation of the SIRF.

Information Technology – HOC Information Security Safeguards Developed

Protecting data and safeguarding systems are major priorities for the Information Technology (IT) Division. Cyberattacks impact small businesses, huge corporations, government agencies and municipalities alike; there has been more attention and awareness of this problem due to increased reliance on online operations and remote work worldwide. Last July 2021, CBS news program, "60 Minutes", even featured an entire story about cities and companies that experienced ransomware attacks and its repercussions.

IT continuously works to enhance security controls and evolve with the challenging threat landscape. Last October 2021, Compliance and IT evaluated and acquired “KnowBe4” as the cybersecurity training platform for the agency. Planning and development of an agency wide and ongoing cybersecurity training initiative is in progress. Currently, IT is evaluating next generation anti-virus software and Endpoint Detection and Response (EDR) platforms. EDR is an endpoint security solution that monitors end-user devices by recording activities and events taking place in real time to detect and respond to cyber threats such as ransomware and malware. IT also is in the process of encrypting all agency issued laptops using Bitlocker technology; this project will be completed by the end of February 2022. Plans for penetration testing are moving forward as well.

Housing Resources – Family Self Sufficiency Program Supports Financial Education

Family Self Sufficiency held a meeting with partner, Emmanuel Brinklow Seventh Day Adventist Church, was held on January 6, 2022, to discuss the financial literacy topics for 2022. We discussed and finalized the workshop topics, schedule, and dates for the year. Emmanuel Brinklow will continue to conduct one virtual financial literacy workshop monthly.

In partnership with HOC, the Emmanuel Brinklow conducted a virtual Financial Literacy workshop for FSS participants on January 18, 2022. Forty-one participants attended the session on “Understanding the impact of the Child Tax Credit and the New Rules on third party processors”. The presenter provided general information on the seven most common tax credits but focused specifically on the Child Tax Credit. He spoke about the advance payments some families may have received and the additional credit available when taxes are filed this year. The group discussed how the rules and regulations would affect their 2022 tax filing. In addition, the presenter provided information, practical advice, and guidance regarding the new rules on third-party processors such as Cash App, Zelle, Paypal, and Venmo. Four \$25 gift cards were raffled to end the session.

Housing Resources – Increasing Voucher Utilization and Getting People Housed

Monthly, HOC selects applicants from the Housing Path Waitlist to achieve a 95% program utilization rate. The program baseline is 7,659, with a current utilization rate of 94%. HOC housed 479 new applicants during calendar year 2021. Currently, 272 families with issued vouchers are searching for suitable units to rent.

2,348 families were selected from the HCV wait list during 2021, of which 56% responded to our communications. We continue to receive certification packets for selected applicants past the requested response dates and will process them upon receipt. Currently, HOC has 102 Request for Tenancy Approval (RFTA) Forms in-house pending a pass inspection and rent reasonableness result. We anticipate that all 102 RFTA forms will meet program requirements and increase our utilization rate.

Additionally, many voucher extensions were granted to applicants having difficulty securing units to rent, resulting from poor credit, lack of application fees, security deposits and other reasons. The response rate is low during the pandemic and often certification packets trickle in after the requested return date. The mailing time is slower than usual. As a result, correspondence is sent electronically to the customer email address on the application, and by the US Postal Service.

HOC has received 121 referrals from the Department of Health and Human Services (“HHS”) for the Emergency Housing Voucher (“EHV”) Program. Our program allocation is 118 EHV. To date, 106 families have been

determined eligible for program participation of which 16 families have successfully leased units. Twelve families are ineligible to receive EHV's and the remaining three referrals are in process. Staff will continue to meet with HHS to obtain 9 additional referrals.

Minutes

HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY

10400 Detrick Avenue
Kensington, Maryland 20895
(240) 627-9425

Minutes

January 12, 2022

22-01

The monthly meeting of the Housing Opportunities Commission of Montgomery County was conducted via an online platform and teleconference on Wednesday, January 12, 2022, with moderator functions occurring at 10400 Detrick Avenue, Kensington, Maryland beginning at 4:05 p.m. Those in attendance were:

Present via Teleconference

Roy Priest, Chair
Frances Kelleher, Vice Chair
Richard Y. Nelson, Jr., Chair Pro Tem
Pamela Byrd
Linda Croom
Jeffrey Merkowitz
Jackie Simon

Also Attending via Teleconference

Kayrine Brown, Acting Executive Director
Jennifer Arrington
Nathan Bovelie
Darcel Cox
Paige Gentry
Lynn Hayes
Bonnie Hodge
Charnita Jackson
Fred Swan
Terri Fowler
Nilou Razeghi

Aisha Memon, General Counsel
Christina Autin
John Broullire
Marcus Ervin
Timothy Goetzinger
Ian-Terrell Hawkins
Matt Husman
Zachary Marks
Olutomi Adebo
Eugenia Pascual
John Vass

IT Support

Aries Cruz

Commission Support

Patrice Birdsong, Spec. Asst. to the Commission

Chair Priest opened the meeting welcoming all to the monthly meeting. There was a roll call of Commissioners participating.

I. **Information Exchange**

Community Forum

- There were no participants signed up for the Community Forum.

Executive Director's Report

- Kayrine Brown, Acting Executive Director, provided an update on the parking area at the Kensington Headquarters, as well as an overview of the written report, and addressed questions of the Commissioners.

Commissioner Exchange

- Chair Priest noted that there was an affordable housing panel held for candidates running for the position of County Executive. He suggested that it would be ideal to view because it provides the candidates' views on affordable housing.
- II. **Approval of Minutes** - The minutes were approved as submitted with a motion by Commissioner Byrd and seconded by Chair Pro Tem Nelson. Affirmative votes were cast by Commissioners Priest, Kelleher, Nelson, Byrd, Croom, Merkwitz, and Simon.
- A. **Approval of Minutes of December 8, 2021**
- B. **Approval of Minutes of December 8, 2021 Closed Session**

At the request of Chair Pro Tem Nelson, Chair Priest amended the agenda to move Consent Item B to Items Requiring Deliberation and/or Action.

III. **CONSENT**

- A. Approval of the Nominations of Kenneth B. Tecler, Theresa Finney-Dumais, and Morgan G. Smith to the Board of Directors of the Housing Opportunities Community Partners, Inc.

The following resolution was adopted upon a motion by Commissioner Croom and seconded by Commissioner Simon. Affirmative votes were cast by Commissioners Priest, Kelleher, Nelson, Byrd, Croom, Merkwitz, and Simon.

RESOLUTION NO.: 22-01

RE: Approval of the Nominations of Kenneth B. Tecler, Theresa Finney-Dumais, and Morgan G. Smith to the Board of Directors of the Housing Opportunities Community Partners, Inc.

WHEREAS, the Housing Opportunities Commission of Montgomery County ("HOC") approved the creation of the non-profit organization, Housing Opportunities Community Partners, Inc. ("HOCP"), in 1999 to support the residents and programs of HOC; and

WHEREAS, HOC is required, by the HOCP bylaws, to approve nominees to the HOCP Board of Directors; and

WHEREAS, the HOCP board unanimously nominated Kenneth B. Tecler, Theresa Finney-Dumais, and Morgan G. Smith to serve on the Board of Directors each for a three-year term.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that Kenneth B. Tecler, Theresa Finney-Dumais, and Morgan G. Smith are hereby approved and appointed to serve on the Board of Directors of the Housing Opportunities Community Partners, Inc.

BE IT FURTHER RESOLVED by the Housing Opportunities Commission of Montgomery County that its Executive Director is authorized, without any further action on its part, to take any and all other actions necessary and proper to carry out the transaction and action contemplated herein, including the execution of any documents related thereto.

IV. **COMMITTEE REPORTS and RECOMMENDATIONS FOR ACTION**

A. **Budget, Finance and Audit Committee – Com. Nelson, Chair**

1. **Fiscal Year 2022 (FY'22) First Quarter Budget to Actual Statements:** Commission Acceptance of the First Quarter Fiscal Year 2022 Budget to Actual Statements

Timothy Goetzinger, Acting Chief Financial Officer, introduced Olutomi Adebo, Assistant Budget Officer, who was the presenter.

The following resolution was adopted upon a motion by Chair Pro Tem Nelson and seconded by Commissioner Byrd. Affirmative votes were cast by Commissioners Priest, Kelleher, Nelson, Byrd, Croom, Merkowitz, and Simon.

RESOLUTION NO.: 22-03

RE: Acceptance of the First Quarter FY'22 Budget to Actual Statements

WHEREAS, the Budget Policy for the Housing Opportunities Commission of Montgomery County (“HOC” or “Commission”) states that quarterly budget to actual statements will be reviewed by the Commission; and

WHEREAS, the Commission reviewed the First Quarter FY'22 Budget to Actual Statements during its January 12, 2022 meeting; and

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that it hereby accepts the First Quarter FY'22 Budget to Actual Statements.

2. **Fiscal Year 2022 (FY'22) Second Quarter Budget Amendment:** Commission Approval of Fiscal Year 2022 Second Quarter Budget Amendment

Timothy Goetzinger, Acting Chief Financial Officer, introduced Terri Fowler, Budget Officer, who was the presenter.

The following resolution was adopted upon a motion by Chair Pro Tem Nelson and seconded by Vice Chair Kelleher. Affirmative votes were cast by Commissioners Priest, Kelleher, Nelson, Byrd, Croom, Merkowitz, and Simon.

RESOLUTION NO.: 22-04

RE: Approval of FY 2022 Second Quarter Budget Amendment

WHEREAS, the Housing Opportunities Commission of Montgomery County (the “Commission”) adopted a budget for FY'22 on June 9, 2021; and

WHEREAS, the Commission’s Budget Policy allows for amendments to the budget; and

WHEREAS, the net effect of the FY'22 Second Quarter Budget Amendment maintains a balanced operating budget; and

WHEREAS, the total FY'22 Operating Budget remains unchanged at \$300,440,652; and

WHEREAS, the total FY'22 Capital Budget increased from \$439,141,889 to \$440,017,929;
and

WHEREAS, approval of the budget amendments to revise the FY'22 budget will reflect an accurate plan for the use of the Commission's resources for the remainder of FY'22.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County that it hereby amends the FY'22 Capital Budget by increasing capital revenues and expenditures for the Commission from \$439,141,889 to \$440,017,929.

3. **Uncollectible Tenant Accounts Receivable:** Authorization to Write-off Uncollectible Tenant Accounts Receivable (July 1, 2021 – September 30, 2021)

Timothy Goetzinger, Acting Chief Financial Officer, introduced Nilou Razeghi, Accounting Manager, who was the presenter.

The following resolution was adopted upon a motion by Chair Pro Tem Nelson and seconded by Commissioner Croom. Affirmative votes were cast by Commissioners Priest, Kelleher, Nelson, Byrd, Croom, Merkwitz, and Simon.

RESOLUTION NO.: 22-05

**RE: Uncollectible Tenant Accounts Receivable:
Authorization to Write-Off Uncollectible Tenant
Accounts Receivable**

WHEREAS, the current policy of the Housing Opportunities Commission of Montgomery County ("HOC") is (i) to provide for an allowance for tenant accounts receivable balances that are delinquent for more than ninety (90) days; and (ii) to propose the write-off of former tenant balances; and

WHEREAS, staff periodically proposes the write-off of uncollected former tenant balances, which updates the financial records to accurately reflect the receivables and the potential for collection; and

WHEREAS, the proposed write-off of former tenant accounts receivable balances for the period of July 1, 2021 – September 30, 2021 is \$16,676, consisting of \$13,684 from Opportunity Housing properties, \$230 from LIHTC/RAD Properties, and \$2,762 from Town Center Apartments (236 Properties).

NOW, THEREFORE, BE IT RESOLVED that the Housing Opportunities Commission of Montgomery County authorizes and directs the Acting Executive Director, or her designee, without further action on its part, to take any and all actions necessary and proper to write off \$16,676 in uncollectible accounts receivable related to (i) tenant balances that are delinquent for more than ninety (90) days, and (ii) former tenant balances, including the execution of any and all documents related thereto.

V. **ITEMS REQUIRING DELIBERATION and/or ACTION**

1. Approval to Allocate Funds from the Opportunity Housing Bond fund as Additional Closing Costs to Reimburse the Real Estate Working Capital Operating Fund, Drawn to Close Lindley

Marcus Ervin, Director of Real Estate, provided an overview and addressed Chair Pro Tem Nelson's question regarding legal expenses. Acting Executive Director Brown also addressed the concern regarding Opportunity Housing (OH) Bond Fund balances and fund use, as well as the use of the Real Estate Working Capital Bond Operating Fund.

The following resolution was adopted upon a motion by Vice Chair Kelleher and seconded by Commissioner Simon. Affirmative votes were cast by Commissioners Priest, Kelleher, Nelson, Byrd, Croom, Merkwowitz, and Simon.

RESOLUTION NO.: 21-02

RE: Approval to Allocate Funds from the Opportunity Housing Bond Fund as Additional Closing Costs to Reimburse the Real Estate Working Capital Operating Fund, Drawn to Close Lindley

WHEREAS, the Housing Opportunities Commission of Montgomery County ("HOC" or the "Commission") is the managing member of CCL Multifamily LLC, a Maryland limited liability company (Company"), which is the owner entity of The Lindley ("Property"), a 200-unit mixed-income Class-A rental development consisting of 120 market rate units, 40 affordable units, and 40 workforce housing units that is strategically located adjacent to a future Purple Line station; and

WHEREAS, the Commission previously approved (i) executing a new Operating Agreement with ORLO for the Company, and (ii) funding related closing costs from the Opportunity Housing Bond Fund not to exceed \$1,175,000; and

WHEREAS, on December 8, 2021, ORLO was admitted to the Company; and

WHEREAS, the Real Estate Working Capital Operating Fund ("REWCOF") is a source of funding available to staff to cover certain unexpected costs related to closing on transactions; and

WHEREAS, final closing costs exceeded \$1,175,000 by \$39,219.26; and the REWCOF was used to fund those costs; and

WHEREAS, to replenish the REWCOF, staff is recommending an increase in funding from the Opportunity Housing Bond Fund.

NOW, THEREFORE, BE IT RESOLVED that the Housing Opportunities Commission of Montgomery County hereby amends the draw limit on the Opportunity Housing Bond Fund from \$1,175,000 to \$1,214,219.26 to reimburse the \$39,219.26 in closing costs covered by the REWCOF.

BE IT FURTHER RESOLVED by the Housing Opportunities Commission of Montgomery County that the Acting Executive Director, or her authorized designee, is hereby authorized, without any further action, to execute such documents and to take any and all other actions, in each case as necessary and proper, to carry out the actions contemplated herein.

Chair Priest read the Written Closing Statement. Commissioner Simon seconded the motion, with Commissioners Priest, Kelleher, Nelson, Byrd, Croom, Merkowitz, and Simon voting in approval.

Based upon this report and there being no further business to come before this session of the Commission, the Commission adjourned the open session at 4:48 p.m. and reconvened in closed session at 4:56 p.m.

In compliance with Section 3-306(c)(2), General Provisions Article, Maryland Code, the following is a report of the Housing Opportunities Commission of Montgomery County's closed session held on January 12, 2022 at approximately 4:56 p.m. via an online platform and teleconference, with moderator functions occurring at 10400 Detrick Avenue, Kensington, MD 20895. The meeting was closed under the authority of Sections 3-305(b)(1), 3-305(b)(3), and 3-305(b)(13) to discuss two topics: (1) the employment, performance, and compensation of a specific individual employee (pursuant to Section 3-305(b)(1)); and (2) the potential acquisition/purchase of multifamily properties located in Bethesda, Maryland (pursuant to Sections 3-305(b)(3)), including the confidential commercial and financial terms of financing the acquisition (pursuant to Section 3-305(b)(13)).

The meeting was closed and the closing statement dated January 12, 2022 was adopted on a motion made by Roy Priest, seconded by Jackie Simon, with Roy Priest, Frances Kelleher, Richard Y. Nelson, Jr., Pamela Byrd, Linda Croom, Jeffrey Merkowitz, and Jackie Simon voting in favor of the motion. The following persons were present: Roy Priest, Frances Kelleher, Richard Y. Nelson, Jr., Pamela Byrd, Linda Croom, Jeffrey Merkowitz, Jackie Simon, Kayrine Brown, Aisha Memon, Paige Gentry, Timothy Goetzinger, Christina Autin, Zachary Marks, Marcus Ervin, John Broullire, Matt Husman, Darcel Cox, Gio Kaviladze, Ian-Terrell Hawkins, and Patrice Birdsong.

In closed session, the Commission discussed the below topics and took the following actions:

1. **Topic:** The potential acquisition/purchase of multifamily properties located in Bethesda, Maryland (pursuant to Section 3-305(b)(3)), and the confidential commercial and financial terms of financing the acquisition, which were provided to HOC from private financial institutions (pursuant to Section 3-305(b)(13)).
 - a. **Action Taken:** The Commission directed staff to take into consideration the Commission's comments and questions and to bring the item back to the next Development and Finance Committee for further consideration. No formal action was taken (i.e., no resolution was approved and no vote was conducted).
2. **Topic:** The employment, performance, and compensation of a specific individual employee (pursuant to Section 3-305(b)(1)).
 - a. **Action Taken:** With a quorum present, Commissioners Priest, Kelleher, Nelson, Byrd, Croom, Merkowitz, and Simon approved increasing the individual's compensation retroactively on a prorated basis effective August 1, 2001, when responsibilities were increased, and to continue such compensation level as long as the employee continues to carry increased responsibilities.

The closed session was adjourned at 6:22 p.m.

Respectfully submitted,

Kayrine Brown
Acting Secretary-Treasurer

/pmb

Consent

**APPROVAL TO TEMPORARILY AMEND THE BYLAWS OF THE
HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY
COUNTY**

FEBRUARY 2, 2022

- HOC's Bylaws provide that at the Annual Meeting, a quorum must consist of four (4) Commissioners *physically* present.
- In order to comply with the current social distancing guidelines, staff recommends that HOC's Bylaws be temporarily amended to allow the Annual Meeting to take place virtually.

RESOLUTION: 22 - 07

RE: Approval to Temporarily Amend the Second Amended and Restated Bylaws of the Housing Opportunities Commission of Montgomery County

WHEREAS, the Housing Opportunities Commission of Montgomery County (“HOC” or “Commission”), a public body corporate and politic duly created, organized, and existing under the laws of the State of Maryland, is authorized pursuant to the Housing Authorities Law, organized under Division II of the Housing and Community Development Article of the Annotated Code of Maryland (the “Act”), to carry out and effectuate the purpose of providing affordable housing and is governed by the Act and its bylaws;

WHEREAS, the Commission’s bylaws provide that at the Annual Meeting, a quorum must consist of four (4) Commissioners physically present;

WHEREAS, the ongoing response to COVID-19 requires the community to participate in social distancing measures, which includes participating in meetings remotely;

WHEREAS, staff recommends temporarily amending HOC’s bylaws to allow HOC to continue to operate and transact business remotely;

WHEREAS, HOC’s bylaws shall be temporarily amended by adding the following provision: “Article III – MEETINGS, Section 11. *State of Emergency*. Notwithstanding anything in these Second Amended and Restated Bylaws to the contrary, in the event there is a federal, state, and/or local state of emergency, or other exigent situation that the Commission determines requires remote participation, all the Commissioners may participate and vote on matters by teleconference or electronic medium at the Annual Meeting as long as (i) a quorum of the Commission participates, and (ii) all Commissioners and staff (and, for open meetings, members of the public) can communicate and view all materials clearly” (the “Temporary Amendment”); and

WHEREAS, the Temporary Amendment shall automatically terminate as of December 31, 2022.

NOW, THEREFORE, BE IT RESOLVED that the Housing Opportunities Commission of Montgomery County hereby approves and adopts the Temporary Amendment, which shall automatically terminate as of December 31, 2022.

I HEREBY CERTIFY that the foregoing Resolution was adopted by the Housing Opportunities Commission of Montgomery County at an open session conducted on February 2, 2022.

S
E
A
L

Patrice M. Birdsong
Special Assistant to the Commission

APPROVAL TO EXTEND THE CLOSING DATE FOR THE SALE OF 4527 AVONDALE STREET TO THE NATIONAL CENTER FOR CHILDREN AND FAMILIES ("NCCF")

February 2, 2022

- HOC is the owner of 4527 Avondale Street, Bethesda, MD ("4527 Avondale").
- NCCF is a Bethesda-based nonprofit dedicated to providing housing to low-income families, many who would otherwise be at risk of homelessness.
- The Commission previously approved executing a non-binding letter of intent ("LOI"), and subsequently a Purchase and Sale Agreement ("PSA"), for the sale of 4527 Avondale to NCCF.
- The LOI and PSA stated that the closing date for 4527 Avondale shall occur on or before the day NCCF closes on its acquisition of 4531 Avondale Street, Bethesda, MD ("4531 Avondale"), a neighboring property directly to the west of 4527 Avondale. The LOI and PSA also included an outside closing date of February 12, 2022.
- NCCF is obtaining funding from Montgomery County's Department of Housing and Community Affairs ("DHCA") for its acquisition of 4527 Avondale and 4531 Avondale. DHCA has approved funding for 4531 Avondale and the acquisition is scheduled to close on January 28, 2022. DHCA notified HOC on January 26, 2022, that it will take approximately 60-75 additional days to close on its funding for 4527 Avondale in order to complete administrative procedure required to comply with the funding source (Community Development Block Grant) to be used for the acquisition of the property.
- On January 27, 2022, the Acting Executive Director executed a PSA amendment to extend the closing date for 4527 Avondale to April 29, 2022, contingent upon Commission approval, in order to provide NCCF additional time to obtain funding from DHCA. If the Commission does not wish to extend the closing date, HOC can unilaterally terminate the PSA.
- Staff recommends that the Commission approve extending the closing date for 4527 Avondale to April 29, 2022.

MEMORANDUM

TO: Housing Opportunities Commission of Montgomery County

VIA: Kayrine Brown, Acting Executive Director

FROM: Division: Real Estate
Staff: Zachary Marks, Chief Real Estate Officer Ext. 9613
Marcus Ervin, Director of Development Ext. 9752
Kathryn Hollister, Senior Financial Analyst Ext. 9437

RE: **4527 Avondale:** Approval to Extend the Closing Date for the Sale of 4527 Avondale Street to the National Center for Children and Families (“NCCF”)

DATE: February 2, 2022

STATUS: Committee Report Consent: X

OVERALL GOAL & OBJECTIVE:

To approve an extension of the closing date for the sale of 4527 Avondale Street, Bethesda, MD, to NCCF to April 29, 2022.

BACKGROUND:

HOC is the owner of 4527 Avondale Street, Bethesda, MD (“4527 Avondale”).

NCCF is a Bethesda-based nonprofit dedicated to providing housing to low-income families, many who would otherwise be at risk of homelessness.

On October 6, 2021, the Commission authorized the Acting Executive Director to enter into a non-binding letter of intent (“LOI”) for the sale of 4527 Avondale, to NCCF (“NCCF”). On November 3, 2021, the Commission authorized the Acting Executive Director to negotiate and execute a Purchase and Sale Agreement (“PSA”) for the disposition of 4527 Avondale to NCCF, pursuant to the LOI, and complete the sale of the Property to NCCF.

Both the LOI and PSA stated that the closing date for 4527 Avondale shall occur on or before the day NCCF closes on its acquisition of 4531 Avondale Street, Bethesda, MD (“4531 Avondale”), a neighboring property directly to the west of 4527 Avondale. The LOI and PSA also included an outside closing date of February 12, 2022.

NCCF is obtaining funding from Montgomery County’s Department of Housing and Community Affairs (“DHCA”) for its acquisition of 4527 Avondale and 4531 Avondale. DHCA has approved funding for 4531 Avondale and the acquisition is scheduled to close on January 28, 2022. DHCA notified HOC on January

26, 2022, that it will take approximately 60-75 additional days to close on its funding for 4527 Avondale in order to complete administrative procedures required to comply with the funding source (Community Development Block Grant) to be used for the acquisition of the property.

On January 27, 2022, the Acting Executive Director executed a PSA amendment to extend the closing date for 4527 Avondale to April 29, 2022, contingent upon Commission approval, in order to provide NCCF additional time to obtain funding from DHCA. If the Commission does not wish to extend the closing date, HOC can unilaterally terminate the PSA.

Staff recommends that the Commission approve extending the closing date for 4527 Avondale to April 29, 2022.

ISSUES FOR CONSIDERATION:

Will the Commission accept staff's recommendation to approve an extension of the closing date for the sale of 4527 Avondale to NCCF to April 29, 2022?

BUDGET/FISCAL IMPACT:

No impact to the Commission's FY 2022 operating budget.

PRINCIPALS:

Housing Opportunities Commission of Montgomery County
NCCF
DHCA

TIME FRAME:

For formal Commission action on February 2, 2022.

STAFF RECOMMENDATION & COMMISSION ACTION NEEDED:

Staff recommends that the Commission approve an extension of the closing date for the sale of 4527 Avondale to NCCF to April 29, 2022.

RESOLUTION No.: 22-08

RE: Approval to Extend the Closing Date for the Sale of 4527 Avondale Street to the National Center for Children and Families

WHEREAS, the Housing Opportunities Commission of Montgomery County (“HOC” or the “Commission”) is the owner of 4527 Avondale Street, Bethesda, MD (“4527 Avondale”); and

WHEREAS, on October 6, 2021, the Commission authorized the Acting Executive Director to enter into a non-binding letter of intent (“LOI”) for the sale of 4527 Avondale to the National Center for Children and Families (“NCCF”); and

WHEREAS, on November 3, 2021, the Commission authorized the Acting Executive Director to negotiate and execute a Purchase and Sale Agreement (“PSA”) for the disposition of 4527 Avondale to NCCF, pursuant to the LOI, and complete the sale of the Property to NCCF; and

WHEREAS, both the LOI and PSA with NCCF stated that the closing date for 4527 Avondale shall occur on or before the day NCCF closes on its acquisition of 4531 Avondale Street, Bethesda, MD (“4531 Avondale”), a neighboring property directly to the west of 4527 Avondale; the LOI and PSA also included an outside closing date of February 12, 2022; and

WHEREAS, NCCF is obtaining funding from Montgomery County’s Department of Housing and Community Affairs (“DHCA”) for its acquisition of 4527 Avondale and 4531 Avondale; and

WHEREAS, DHCA has approved funding for 4531 Avondale and the acquisition is scheduled to close on January 28, 2022; however, DHCA has notified HOC that it will take approximately 60-75 additional days to close on its funding for 4527 Avondale in order to complete administrative procedure required to comply with the funding source to be used for the acquisition the property; and

WHEREAS, on January 27, 2022, the Acting Executive Director executed a PSA amendment (“Amendment”) to extend the closing date for 4527 Avondale to April 29, 2022, contingent upon Commission approval, in order to provide NCCF additional time to obtain funding from DHCA; and

WHEREAS, pursuant to the Amendment, if the Commission does not wish to extend the closing date, HOC can unilaterally terminate the PSA.

NOW, THEREFORE, BE IT RESOLVED that the Housing Opportunities Commission of Montgomery County hereby approves the Amendment to extend the closing date for 4527 Avondale to April 29, 2022.

BE IT FURTHER RESOLVED that the Housing Opportunities Commission Montgomery County authorizes the Acting Executive Director, or her authorized designee, without any further action on its part, to take any and all other actions necessary and proper to carry out the transaction and actions contemplated herein.

I HEREBY CERTIFY that the foregoing resolution was approved by the Housing Opportunities Commission of Montgomery County at an open meeting conducted on February 2, 2022.

S
E
A
L

Patrice M. Birdsong
Special Assistant to the Commission

Committee Reports and Recommendations for Action

Development and Finance Committee

PADDINGTON SQUARE: AFFIRMATION OF RESOLUTION 21-001_{PS}, APPROVAL OF DWIGHT CAPITAL LLC, AS SUCCESSOR LENDER OF LOVE FUNDING CORPORATION, AND APPROVAL TO AMEND THE BYLAWS OF THE PADDINGTON SQUARE DEVELOPMENT CORPORATION

FEBRUARY 2, 2022

- On April 7, 2021, the Board of Directors of the Paddington Square Development Corporation (the "Corporation") approved Resolution 21-001_{PS} (the "Paddington Resolution"), which approved, among other actions, (a) the refinancing of the Corporation's existing permanent loan from Love Funding Corporation ("Original Senior Lender") insured under FHA Section 207 pursuant to Section 223(f) of the National Housing Act, as amended (the "223(f) Loan"), in the approximate amount of \$18,800,000 from the Original Senior Lender to the Corporation (the "New Loan"), (b) re-subordinating the Corporation's HIF Loan, and (c) using existing cash held in the existing replacement reserve and renovation escrow accounts to fund a new initial replacement reserve of approximately \$4,600 per unit pursuant to the terms of the New Loan (collectively, the "Refinancing Plan").
- Dwight Capital LLC, a Delaware limited liability company and approved FHA Multifamily Accelerated Processing lender, acquired the Original Senior Lender and new FHA debt cannot be issued under the Original Senior Lender's name. Therefore, Dwight Capital LLC will provide the New Loan to the Corporation pursuant to that certain Firm Commitment for FHA Mortgage Insurance under Section 207 pursuant to Section 223(a)(7) of the National Housing Act, as amended, dated November 23, 2021, as amended.
- The Bylaws of the Corporation (the "Bylaws") provide that the Board of Directors of the Corporation shall obtain the approval of the Commission not more than sixty (60) days in advance of the issue of any bonds, notes or other obligations of the Corporation (the "Obligations"). As required by the Bylaws, this Resolution serves as the Commission's affirmation of Resolution 21-001_{PS} and approves the Refinancing Plan for the Corporation no more than sixty (60) days in advance of entering into the Refinancing Plan.
- The Bylaws also provide that they may be amended subject to the Commission's approval.
- In order to obtain the New Loan, FHA requires that the Corporation amend the Bylaws to include certain FHA provisions that will remain in effect so long as the United States Department of Housing and Urban Development, or its successors or assigns, insures or holds any loan to borrower secured by the Project, including the New Loan.
- Additionally, in order to expedite future actions of the Corporation, the Bylaws should also be amended to remove the sixty (60) day approval period for Corporation Obligations and permit the Commission to approve Corporation Obligations at any time prior to entering into a Corporation Obligation.
- The Development and Finance Committee discussed this request at its meeting on January 21, 2022 and join staff's recommendation that the full Commission approve the actions herein requested.

On April 7, 2021, the Board of Directors of the Corporation approved Resolution 21-001_{ps} (the “Paddington Resolution”), which approved and/or authorized:

1. A refinancing plan, which includes (a) refinancing the Corporation’s 223(f) Loan, pursuant to the terms of a Firm Commitment for FHA Mortgage Insurance under Section 207 pursuant to Section 223(a)(7) of the National Housing Act, as amended, in the approximate amount of \$18,800,000 from the Original Senior Lender to the Corporation (the “New Loan”), (b) re-subordinating the Corporation’s HIF Loan, and (c) using existing cash held in the existing replacement reserve and renovation escrow accounts to fund a new initial replacement reserve of approximately \$4,600 per unit pursuant to the terms of the New Loan (collectively, the “Refinancing Plan”);
2. The Commission’s Executive Director to negotiate and execute a financing commitment with the Original Senior Lender;
3. The Commission’s Executive Director to negotiate and execute re-subordination of the County HIF Loan; and,
4. The Corporation’s acceptance of the New Loan and re-subordination of the HIF Loan.

Affirmation of the Paddington Resolution and Approval of Successor Lender

Staff is on target to close the New Loan by the end of February 2022. The final loan amount will be \$18,665,800 for a term of 35 years at an interest rate of 2.75%, which is 50 basis points lower than originally underwritten and 85 basis points lower than the current rate.

While a financing commitment was executed with the Original Senior Lender in accordance with the Paddington Resolution, the Original Senior Lender (Love Funding Corporation) was acquired by Dwight Capital, LLC, an FHA approved Multifamily Accelerated Processing (“MAP”) lender, and the Original Senior Lender is no longer able to issue new debt under its name. Therefore, Dwight Capital, LLC, will succeed the Original Senior Lender and become the new Senior Lender in the transaction, pursuant to a Firm Commitment for FHA Mortgage Insurance under Section 207 pursuant to Section 223(a)(7) of the National Housing Act, as amended, dated November 23, 2021, as amended.

Dwight Capital, LLC (hereinafter “Dwight Capital” or the “Senior Lender”), is a Delaware limited liability company. Headquartered in New York, New York with offices in Washington, D.C., Dwight Capital was established in 2014 and has consistently ranked among the highest FHA MAP lenders in the country. In 2017, Dwight Capital was approved as a Ginnie Mae Issuer/Servicer and officially began servicing its own loans. During HUD’s 2021 Fiscal Year, Dwight Capital obtained over \$3 billion in multifamily and healthcare FHA Firm Commitments. This placed Dwight Capital second among all FHA lenders both by dollar volume and number of transactions. Dwight Capital’s FHA activity spans across 36 states and the District of Columbia, including Maryland and Virginia, and has a strong underwriting, mortgage and legal team with significant experience working with large developers and housing authorities across the country.

It is further noted that Article VII.2 of the Bylaws of the Corporation (the “Bylaws”) states that the Board of Directors shall obtain the approval of the Commission not more than sixty (60) days in advance of the issue of any bonds, notes or other obligations (together, “Obligations”) of the Corporation. Therefore, as required by the Bylaws, staff requests the Commission’s affirmation of Resolution 21-001_{ps} and approve the Refinancing Plan and the successor Senior Lender for the transaction.

Amendment to Bylaws of Corporation

Article VI of the Bylaws of the Corporation states that any amendment of the Bylaws is subject to the approval of the Commission, and in connection with obtaining the New Loan from the Senior Lender, the Corporation's Bylaws must be amended to add certain FHA-required provisions that will automatically terminate when the New Loan is no longer insured or held by the U.S. Department of Housing and Urban Development ("HUD"). The existing Bylaws include 10 Articles. Adding the new provisions in accordance with FHA will create Article 11, which will read as follows:

"Article XI

Notwithstanding any clause or provision in the Bylaws or Articles of Incorporation to the contrary, and so long as the United States Department of Housing and Urban Development ("HUD"), or its successors or assigns, insures or holds any loan to (the "HUD Insured Loan"), including the loan secured by a deed of trust lien on Paddington Square Apartments, FHA Project Number 000-11323 in Silver Spring, Montgomery County, Maryland (the "Project") the following provisions apply:

1. The terms listed below shall have the following definitions:
 - a) "Borrower" means Paddington Square Development Corporation.
 - b) "Lender" means the entity identified as "Lender" in the first paragraph of the Security Instrument, or any subsequent holder of the HUD-insured Note.
 - c) "HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.
 - d) "Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended, or modified.
 - e) "HUD-insured Note" means the Note executed by Borrower, and described in the Security Instrument, including all schedules riders, allonges and agenda, as such Note may be amended from time to time.
2. Requirements:
 - a) If any of the provisions of Borrower's organizational documents conflict with the terms of the HUD insured Note, Security Instrument, or HUD Regulatory Agreement ("HUD Loan Documents"), the provisions of the HUD Loan Documents shall control.
 - b) No provision required by HUD to be inserted into the organizational documents may be amended without HUD's prior written approval. Additionally, if there is a conflict between any HUD-required provisions inserted into these Bylaws and any other provision of these Bylaws, the terms of the HUD-required provisions will govern; and if there is a conflict between any of the provisions in the Articles of Incorporation of the Borrower and any HUD-required provisions of these Bylaws, the HUD-required provisions will govern.
 - c) Unless otherwise approved in writing by HUD, Borrower's business and purpose shall consist solely of the acquisition, ownership, operation and maintenance of the Project and activities incidental thereto. Borrower shall not engage in any

other business or activity. The Project shall be the sole asset of the Borrower entity, which shall not own any other real estate other than the aforesaid Project.

3. None of the following will have any force or effect without the prior written consent of HUD:
 - a) Any amendment that modifies the term of Borrower's existence;
 - b) Any amendment that triggers application of the HUD previous participation certification requirements (as set forth in Form HUD2530, Previous Participation Certification, or 24 CFR § 200.210, et seq.);
 - c) Any amendment that in any way affects the HUD Loan Documents;
 - d) Except as permitted under Section 9 below, any amendment that would authorize any member, manager, partner, owner, officer or director, other than the one previously authorized by HUD, to bind the Borrower entity for any matters concerning the Project which require HUD's consent or approval;
 - e) A change that is subject to the HUD TPA requirements contained in Chapter 13 of HUD Handbook 4350.1 REV-1;
 - f) Any change in a guarantor of any obligation to HUD (including those obligations arising from violations of the HUD Regulatory Agreement); and
 - g) Any grant of a security interest in any of Borrower's assets or mortgaged property.
4. Borrower is authorized to execute a Note and Security Instrument in order to secure a loan to be insured by HUD and to execute the HUD Regulatory Agreement and other documents required by the Secretary in connection with the HUD-insured loan.
5. Any incoming member/partner/owner of Borrower must, as a condition of receiving an interest in the Borrower entity, agree in writing to be subject to the HUD Loan Documents and all other documents required in connection with the HUD-insured loan, to the same extent and on the same terms as the other members/partners/owners.
6. Upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents from the Project, shall pass to any person or entity that is not bound by the HUD Regulatory Agreement in a manner satisfactory to HUD.
7. The key principals of Borrower identified in the HUD Regulatory Agreement are liable in their individual capacities to HUD to the extent set forth in the HUD Regulatory Agreement.
8. Borrower shall not voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.
9. Borrower has designated Kayrine Brown, as Acting Executive Director of the Housing Opportunities Commission of Montgomery County, as its official representative for all matters concerning the Project that require HUD consent or approval. The signature of this representative will bind Borrower entity in all such matters. Borrower may, from

time to time, appoint a new representative to perform this function, provided that the individual so appointed is 2530 Previous Participation Certified, and within three business days of doing so, will provide HUD with written notification of the name, address, and telephone number of its new representative. When a person other than the person identified above has full or partial authority with respect to management of the Project, Borrower will promptly provide HUD with the name of that person and the nature of that person's management authority.

10. Any obligation of the Corporation to provide indemnification under these Bylaws shall be limited to (i) amounts mandated by state law, if any, (ii) coverage afforded under any liability insurance carried by the Corporation and (iii) available surplus cash of the Borrower as defined in the HUD Regulatory Agreement. Until funds from a permitted source for payment of indemnification costs are available for payment, the Corporation shall not (a) pay funds to any members, partners, officers and directors, or (b) pay the deductible on an indemnification policy for any members, partners, officers and directors.
11. Unless otherwise approved by HUD under Section 8 above, the Borrower will remain in existence at least through the term of the HUD Insured Loan."

Finally, in order to expedite future actions of the Corporation, staff recommends that the last sentence of Article VII.2 of the Bylaws be deleted in its entirety, which required the Board of Directors of the Corporation to obtain Commission approval not more than sixty (60) days in advance of the issue of Obligations of the Corporation. This simplifies the approval process - the Commission will still need to approve the Corporation entering into a loan, note, or other documents, but such approval can occur at any time prior to closing. Article VII.2, as amended, will read as follows:

2. "The Board of Directors shall not enter into any loan, mortgage bond, promissory note or contract to purchase real property without obtaining the approval of the Housing Opportunities Commission of Montgomery County."

ISSUES FOR CONSIDERATION:

Does the Commission and the Board of Directors of the Paddington Square Development Corporation wish to join staff's recommendation with the support of the Development and Finance Committee to:

1. Affirm the Refinancing Plan, as approved in Resolution 21-001_{ps}, in accordance with the existing Bylaws of the Paddington Square Development Corporation?
2. Approve Dwight Capital, LLC, as the successor lender of Love Funding Corporation, due to its acquisition by Dwight Capital, LLC and Love Funding Corporation's inability to conduct new FHA/HUD lending business?
3. Approve an amendment of the existing Bylaws of the Corporation to incorporate certain required FHA provisions of the New Loan and to revise the Bylaws to expedite future actions of the Corporation?

PRINCIPALS:

Housing Opportunities Commission of Montgomery County
Paddington Square Development Corporation
Dwight Capital, LLC

BUDGET IMPACT:

There is no direct impact of the actions herein requested on HOC's operating budget.

TIME FRAME:

For formal action at the February 2, 2021 open meeting of the Commission and special meeting of the Paddington Square Development Corporation.

STAFF RECOMMENDATION & COMMISSION ACTION NEEDED:

Staff recommends with the support of the Development and Finance Committee to:

1. Affirm the Refinancing Plan, as approved in Resolution 21-001_{PS}, in accordance with the existing Bylaws of the Paddington Square Development Corporation;
2. Approve Dwight Capital, LLC, as the successor lender of Love Funding Corporation, due to its acquisition by Dwight Capital, LLC, an FHA approved Multifamily Accelerated Processing lender, and Love Funding Corporation's inability to conduct new FHA/HUD lending business; and,
3. Approve amending the existing Bylaws of the Corporation to incorporate certain required FHA provisions of the New Loan and to revise the Bylaws to expedite future actions of the Corporation.

RESOLUTION: 22-09

**RE: Affirmation of Resolution No.: 21-001_{PS},
Approval of Dwight Capital LLC, as Successor
Lender to Love Funding Corporation, and
Approval to Amend the Bylaws of the
Paddington Square Development Corporation**

WHEREAS, the Paddington Square Development Corporation (the “Corporation”) is a wholly-controlled corporate instrumentality of the Housing Opportunities Commission of Montgomery County (“HOC” or the “Commission”);

WHEREAS, the Corporation owns the property known as “Paddington Square,” a community consisting of 165 units in Silver Spring, Maryland, FHA Project No. 000-11323 (the “Project”), which was acquired by the Corporation on February 4, 2004;

WHEREAS, on November 5, 2014, the Board of Directors of the Corporation approved, and on December 18, 2014, closed on a permanent loan in the amount of \$20,741,700 from Love Funding Corporation (“Original Senior Lender”) insured under Section 207 pursuant to Section 223(f) of the National Housing Act, as amended (the “223(f) Loan”), assumed an existing loan from the Montgomery County’s Housing Initiative Fund (“HIF”) of approximately \$5.1 million (the “HIF Loan”), and contributed equity of \$738,000, which combined with loan proceeds were used to retire existing debt and pay closing costs;

WHEREAS, on April 7, 2021, the Board of Directors of the Corporation approved Resolution 21-001_{PS}, which approved, among other actions, (a) the refinancing of the Corporation’s 223(f) Loan pursuant to the terms of a Firm Commitment for FHA Mortgage Insurance under Section 207 pursuant to Section 223(a)(7) of the National Housing Act, as amended, for a new loan in the approximate amount of \$18,800,000 from Original Senior Lender to the Corporation (the “New Loan”), (b) re-subordinating the HIF Loan, and (c) using existing cash held in the existing replacement reserve and renovation escrow accounts to fund a new initial replacement reserve of approximately \$4,600 per unit pursuant to the terms of the New Loan (collectively, the “Refinancing Plan”);

WHEREAS, Dwight Capital LLC, a Delaware limited liability company and an approved FHA Multifamily Accelerated Processing lender (“Senior Lender”), acquired the Original Senior Lender and the Original Senior Lender can no longer conduct new FHA business, the Senior Lender will provide the New Loan in the amount of \$18,665,800.00, as successor to Original Senior Lender, pursuant to that certain Firm Commitment for FHA Mortgage Insurance under Section 207 pursuant to Section 223(a)(7) of the National Housing Act, as amended, dated November 23, 2021, as amended (the “Firm Commitment”);

WHEREAS, Article VII.2 of the Bylaws of the Corporation (the “Bylaws”) states that the Board of Directors of the Corporation shall obtain the approval of the Commission not more than sixty (60) days in advance of the issue of any bonds, notes or other obligations of the Corporation;

WHEREAS, as required under Article VII.2 of the Bylaws, this Resolution shall serve as an affirmation of the Corporation’s Resolution 21-001_{PS} and as the Commission’s approval of the Refinancing Plan (this affirmation and approval is made no more than sixty (60) days in advance of the Corporation entering into the Refinancing Plan);

WHEREAS, Article VI of the Bylaws of the Corporation states that any amendment of the Bylaws is subject to the approval of the Commission;

WHEREAS, in connection with obtaining the New Loan from the Senior Lender, the Corporation’s Bylaws need to be amended to add certain FHA-required provisions that will automatically terminate when the New Loan is no longer insured or held by the U.S. Department of Housing and Urban Development (“HUD”);

WHEREAS, in order to expedite future actions of the Corporation, the last sentence of Article VII.2 of the Bylaws should be deleted in its entirety, such that Article VII.2 reads as follows:

2. “The Board of Directors shall not enter into any loan, mortgage bond, promissory note or contract to purchase real property without obtaining the approval of the Housing Opportunities Commission of Montgomery County.”

NOW, THEREFORE, BE IT RESOLVED that the Housing Opportunities Commission of Montgomery County hereby:

1. Affirms the Corporation’s Resolution 21-001_{PS}, approves the Refinancing Plan with Dwight Capital LLC, as Senior Lender under the Firm Commitment, and approves the Refinancing Plan no more than sixty (60) days in advance of entering into the Refinancing Plan.
2. Approves the amendment to the Bylaws to (a) insert the FHA-required language that will terminate when the New Loan is no longer insured or held by HUD and (b) replace the final sentence of Article VII.2, as stated herein, to permit the Commission to approve certain actions at any time before such actions are taken by the Corporation.

[remainder of page intentionally blank]

I HEREBY CERTIFY that the foregoing Resolution was adopted by the Housing Opportunities Commission of Montgomery County at a regular open meeting conducted on February 2, 2022.

S
E
A
L

Patrice M. Birdsong
Special Assistant to the Commission

WILLOW MANOR PROPERTIES: APPROVAL TO INCREASE DHCA'S SHARE OF CONSTRUCTION PERIOD INTERIM CASH FLOW TO REPAY ITS HIF LOAN TO HOC AT WILLOW MANOR, LLC, A CONDITION FOR DHCA TO CLOSE THE TRANSACTION

February 2, 2022

- On December 17, 2021, HOC closed on the resyndication of the Willow Manor Properties, three existing age-restricted (62+) Low Income Housing Tax Credit ("LIHTC") properties located in Olney, Germantown and Silver Spring, MD (the "Properties").
- Sources for the transaction included an FHA Risk Share senior mortgage, LIHTC equity, Montgomery County Housing Initiative Fund loan ("HIF Loan"), HOC Seller Note, and HOC equity.
- Preserving the affordability of the Properties has been a priority for HOC and Montgomery County's Department of Housing and Community Affairs ("DHCA") since 2018. In 2018, DHCA entered into a contract to purchase the Properties under Article 53A of the Montgomery County Code, the Right of First Refusal ("ROFR") Ordinance. DHCA assigned the contract to HOC at closing and provided subordinate financing for the acquisition ("Acquisition Loan").
- The LIHTC resyndication of the Properties enabled a permanent financing structure that maximized the proceeds available to renovate the Properties and repay a portion of the Acquisition Loan.
- HOC's initial analysis of the resyndication projected a \$10,000,000 repayment of the Acquisition Loan at closing; however, due to a number of factors, HOC's repayment of the Acquisition Loan was reduced to \$8,147,774, which was \$1,852,226 less than originally projected.
- As a condition to providing additional HIF funds to the transaction, DHCA requested that the HIF Loan be amended so that construction period interim income ("Retained Cash Flow") be distributed 75% to repay the HIF Loan and 25% to repay the Seller Note to HOC. All other subsequent cash flow distributions would be split 50%/50%. Currently, the HIF Loan is structured so that Retained Cash Flow is split 50%/50%. The Retained Cash Flow amount is projected to be \$7.5 million.
- Staff reviewed this item with the Development and Finance Committee at its meeting on January 21, 2022 and supports staff's the recommendation to the Commission to restructure the Retained Cash Flow such that 75% is allocated to repay the HID loan and to DHCA and 25% to repay the seller note, with the effect of increasing the payment to DHCA by \$1,875,000 and a reduction in the equivalent payment to HOC.

MEMORANDUM

TO: Housing Opportunities Commission of Montgomery County

VIA: Kayrine Brown, Acting Executive Director

FROM: Division: Real Estate
Staff: Zachary Marks, Chief Real Estate Officer Ext. 9613
Marcus Ervin, Director of Development Ext. 9752
Kathryn Hollister, Senior Financial Analyst Ext. 9437

RE: **WILLOW MANOR PROPERTIES:** Approval to Increase DHCA’s Share of Construction Period Interim Cash Flow to Repay its HIF Loan to HOC at Willow Manor, LLC, a Condition for DHCA to Close the Transaction

DATE: February 2, 2022

STATUS: Committee Report Deliberation X

OVERALL GOAL & OBJECTIVE:

To approve an increase in the distribution of construction period interim cash flow to Montgomery County’s Department of Housing and Community Affairs (“DHCA”) to repay its Housing Initiative Fund loan (“HIF Loan”) for the Willow Manor Properties, a condition of the December 2021 closing.

BACKGROUND:

On December 17, 2021, HOC closed on the resyndication of three existing age-restricted (62+) Low Income Housing Tax Credit (“LIHTC”) rental communities in Montgomery County, MD: Willow Manor at Clopper’s Mill, located at 18003 Mateny Road in Germantown, MD; Willow Manor at Fair Hill Farm, located at 18301 Georgia Ave in Olney, MD; and Willow Manor at Colesville, located at 601 E Randolph Rd in Silver Spring, MD (together, the “Willow Manor Properties” or “Properties”).

The Willow Manor Properties consist of 286 units that serve households earning up to 40%, 50%, 60% and 80% of AMI. Specifically, 57 units (20%) serve households earning up to 40% AMI, 20 units (7%) serve households earning up to 50% AMI, 189 units (66%) serve households earning up to 60% AMI and 20 units (7%) serve households earning up to 80% AMI.

As part of the resyndication, the Willow Manor Properties were sold to a new tax credit owner entity (“HOC at Willow Manor, LLC”), of which HOC is the managing member (“HOC MM Willow Manor, LLC”) and PNC Bank and Columbia Housing SLP Corporation (an affiliate of PNC Bank) are the investor (“IM”) and special investor (“SM”), respectively.

Sources for the transaction included an FHA Risk Share mortgage in the amount of \$49,550,000, LIHTC equity in the amount of \$30,394,400, HIF Loan in the amount of \$12,972,776, HOC seller note (“Seller

Note”) in the amount of \$7,670,962 and HOC equity in the amount of \$100.

Preserving the affordability of the Willow Manor Properties has been a priority for HOC and DHCA since 2018. In 2018, DHCA entered into contracts to purchase the Properties under Article 53A of the Montgomery County Code, the Right of First Refusal (“ROFR”) Ordinance. DHCA assigned the contracts to HOC at closing and provided subordinate financing in the amount of \$19,801,587 for the acquisition (“Acquisition Loan”). The partnership between DHCA and HOC was critical in preserving these affordable senior properties.

The LIHTC resyndication of the Properties enabled a permanent financing structure that maximized the amount of proceeds available to renovate the Properties and repay a portion of the County’s Acquisition Loan, allowing the County to re-invest those funds in other affordable housing endeavors. HOC’s initial analysis of the resyndication projected a \$10,000,000 repayment of the County’s Acquisition Loan; however, due to a number of factors, notably increases in construction costs, HOC’s repayment of the County’s Acquisition Loan was reduced to \$8,147,774, which was \$1,852,226 less than originally projected.

Currently, the repayment of the HIF Loan is limited to 50% of cash flow available after payment of the asset and partnership management fees. The remaining 50% of available cash flow is distributed to repay the Seller Note. Cash flow distributions will begin after the Properties’ renovations are complete and permanent loan conversion occurs, which is anticipated for December 2024. During the three-year construction period, all interim income will be reserved in the event of unexpected cost overruns. The amount of interim income that will accrue during the construction period (“Retained Cash Flow”) is estimated to be approximately \$7.5 million.

Given the additional County investment left in the transaction, DHCA has requested that the Retained Cash Flow be distributed 75% to repay the HIF Loan and 25% to repay the Seller Note. All other subsequent cash flow distributions would be split 50%/50%.

The increase in DHCA’s share of Retained Cash Flow distribution would result in DHCA receiving approximately \$5,625,000 of the Retained Cash Flow (an increase of \$1,875,000), and HOC receiving \$1,875,000 of the Retained Cash Flow (a decrease of \$1,875,000), instead of the \$3.75 million each entity would receive if the Retained Cash Flow were distributed 50%/50%.

A 75%/25% split of the Retained Cash Flow would have the following additional implications:

- The HIF Loan would be repaid about four (4) years earlier and the Seller Note would be repaid about four (4) years later than originally forecasted.
- The investor’s return would drop very slightly (less than 10 basis points). This is largely driven by the fact that the amount of losses the investor can claim over the years are decreased since the interest rate on the HIF Loan (3.5%) is higher than the interest rate on the Seller Note (Applicable Federal Rate). Since more is paid on the HIF Loan near the beginning, less interest is incurred over the life of the deal.

- Ending partner's capital would remain above \$0, so there would be no exit tax implications.

DHCA's steadfast support and commitment to keep additional funds in the Willow Manor Properties was critical to the transaction. As such, staff recommends that the Commission approve increasing the share of Retained Cash Flow distributed to repay the HIF Loan from 50% to 75%.

Should the Commission approve staff's recommendation, HOC, acting in the capacity of HOC MM Willow Manor, LLC will need to obtain SM consent to revise the HIF Loan, pursuant to Section 6.2(d) of the HOC Willow Manor, LLC amended and reinstated operating agreement. The SM has indicated that the proposed change seems reasonable and is reviewing the revision internally.

ISSUES FOR CONSIDERATION:

Will the Commission accept staff's recommendation, which is supported by the Development and Finance Committee, to approve increasing the share of Retained Cash Flow distributed to repay the HIF Loan from 50% to 75%?

BUDGET/FISCAL IMPACT:

There is no impact on the Commission's FY 2022 operating budget. However, the fiscal impact would be a reduction of \$1.875 million in cash flow to HOC if all \$7.5 million of Retained Cash Flow were achieved during the construction period.

PRINCIPALS:

DHCA
HOC at Willow Manor, LLC
HOC MM Willow Manor, LLC
Housing Opportunities Commission of Montgomery County

TIME FRAME:

For formal Commission action on February 2, 2022.

STAFF RECOMMENDATION & COMMISSION ACTION NEEDED:

Staff requests that the Commission approve increasing the share of Retained Cash Flow distributed to repay the HIF Loan from 50% to 75%.

RESOLUTION No.: 22-10

RE: Approval to Increase DHCA's Share of Construction Period Interim Cash Flow to Repay its HIF Loan to HOC at Willow Manor, LLC, a Condition for DHCA to Close the Transaction

WHEREAS, in 2018, Montgomery County's Department of Housing and Community Affairs ("DHCA") entered into contracts to purchase three existing age-restricted (62+) Low Income Housing Tax Credit ("LIHTC") rental communities in Montgomery County, MD: Willow Manor at Clopper's Mill, located at 18003 Mateny Rd in Germantown, MD; Willow Manor at Fair Hill Farm, located at 18301 Georgia Ave in Olney, MD; and Willow Manor at Colesville, located at 601 E Randolph Rd in Silver Spring, MD (together, the "Willow Manor Properties" or "Properties"), under Article 53A of the Montgomery County Code, the Right of First Refusal Ordinance; and

WHEREAS, DHCA assigned the contracts to three single purpose entities wholly owned and controlled by the Housing Opportunities Commission of Montgomery County ("HOC" or the "Commission"): The Manor at Cloppers Mill, LLC, The Manor at Fair Hill Farm, LLC and The Manor at Colesville, LLC (together, "Willow Manor Single-Purpose Entities"), at closing and provided subordinate financing for the acquisition ("Acquisition Loan"); and

WHEREAS, on December 17, 2021, the Willow Manor Single-Purpose Entities sold the Willow Manor Properties to a new tax credit owner entity ("HOC at Willow Manor, LLC"), of which HOC is the managing member ("HOC MM Willow Manor, LLC") and PNC Bank and Columbia Housing SLP Corporation (an affiliate of PNC Bank) are the investor and special investor ("SM"), respectively; and

WHEREAS, sources for the transaction included an FHA Risk Share mortgage in the amount of \$49,550,000, LIHTC Equity in the amount of \$30,394,400, a County Housing Initiative Fund ("HIF") Loan in the amount of \$12,972,776 ("HIF Loan"), a HOC seller note ("Seller Note") in the amount of \$7,670,962 and HOC equity in the amount of \$100; and

WHEREAS, HOC's initial analysis of the transaction projected a \$10,000,000 repayment of the Acquisition Loan at closing; however, due to a number of factors, HOC's repayment of the Acquisition Loan was reduced to \$8,147,774, which was \$1,852,226 less than originally projected; and

WHEREAS, as a condition to providing additional HIF funds to the transaction, DHCA requested that the HIF Loan be amended so that construction period interim income ("Retained Cash Flow") is distributed 75% to repay the HIF Loan and 25% to repay the Seller Note; all other subsequent cash flow distributions would be split 50%/50%; and

WHEREAS, HOC will need to obtain SM consent to revise the HIF Loan, pursuant to the HOC at Willow Manor, LLC operating agreement; and

NOW, THEREFORE, BE IT RESOLVED that the Housing Opportunities Commission of Montgomery, acting on behalf of itself and on behalf of HOC MM Willow Manor, LLC (as its sole member), and HOC at Willow Manor, LLC (as the sole member of its managing member), authorizes to amend the HIF Loan, subject to SM approval, so that Retained Cash Flow is distributed 75% to repay the HIF Loan and 25% to repay the Seller Note.

BE IT FURTHER RESOLVED that the Housing Opportunities Commission Montgomery County, acting on behalf of itself and on behalf of HOC MM Willow Manor, LLC (as its sole member), and HOC at Willow Manor, LLC (as the sole member of its managing member), authorizes the Acting Executive Director or HOC, or her authorized designee, without any further action on their respective parts, to take any and all other actions necessary and proper to carry out the transaction and actions contemplated herein.

I HEREBY CERTIFY that the foregoing resolution was approved by the Housing Opportunities Commission of Montgomery County at a regular open meeting conducted on February 2, 2022.

S
E
A
L

Patrice M. Birdsong
Special Assistant to the Commission

WESTSIDE SHADY GROVE: APPROVAL TO AMEND THE DEVELOPMENT BUDGET TO ALLOCATE NET FINANCING PROCEEDS FROM INITIAL CONSTRUCTION CLOSING

FEBRUARY 2, 2022

- On December 9, 2020, the Housing Opportunities Commission of Montgomery County (the “Commission” or “HOC”) approved the Financing Plan and Public Purpose for Westside Shady Grove Apartments and adopted Resolution 20-87, which authorized the Executive Director to issue a loan commitment to HOC at Westside Shady Grove, LLC for acquisition, construction and permanent financing for up to \$100 million, and authorized the borrower to accept a loan in accordance with the Financing Plan.
- Also on December 9, 2020, the Commission approved the Final Development Plan for the Westside Shady Grove development and adopted Resolution 20-86, which authorized the Executive Director to accept the assignment of third-party contracts for the development and ratification of formation of additional legal entities, authorized the Commission to accept a Montgomery County Housing Initiative Fund (“HIF”) short-term bridge loan of up to \$15M, and authorized the Commission to advance funds for the payment to secure building permits and bind the Builder’s Risk Insurance.
- On January 28, 2021, the construction closing for the permanent financing occurred, which resulted in excess funds of \$2,578,683 due to a higher Senior Debt amount of \$99.25 million that was the result of a more favorable interest rate, and a smaller County HIF loan. Staff proposes to use these excess funds to repay interest on the HIF Loan, fund a capitalized interest account for payments on the Housing Production Fund (“HPF”) Loan, and set aside remaining funds of approximately \$564K for a soft cost contingency.
- On May 5, 2021, the Commission approved a Revolving Housing Production Fund Program (the “Housing Production Fund”) and adopted Resolution 21-46, which authorized the Resolution for a New Master Resolution to implement the Housing Production Fund, and approved the structure, Cost of Issuance budget, and adopted the Series Resolution for the issuance of Limited Obligation Bonds, Series 2021 to provide Funding for the HPF.
- On November 3, 2021 the Commission approved a subordinate loan in an amount of \$14.3 million from the HPF to HOC at Westside Shady Grove, LLC and adopted Resolution 21-06 for which the closing occurred on December 22, 2021. Staff informed the Commission that it would return at a future meeting to request an amendment to the development budget and propose a use for the excess funds.
- The Development and Finance Committee discussed this item at its meeting on January 21, 2022 and staff recommends, with the support of the Development and Finance Committee, approval of an amendment to the development budget to allocate excess proceeds from the bond issuance to be used to repay interest on the HIF loan, fund a capitalized interest account for payments on the HPF loan, and set aside the remaining funds of approximately \$564K for a soft cost contingency.

MEMORANDUM

TO: Housing Opportunities Commission of Montgomery County

VIA: Kayrine V. Brown, Acting Executive Director

FROM: Division: Real Estate
Staff: Zachary Marks, Chief Real Estate Officer Ext. 9613
Marcus Ervin, Director of Development Ext. 9752

RE: **Westside Shady Grove:** Approval to Amend the Development Budget to Allocate Net Financing Proceeds from Initial Construction Closing

Date: February 2, 2022

STATUS: Committee Report Deliberation X

OVERALL GOAL & OBJECTIVE:

To obtain approval to amend the development budget to allocate net financing proceeds generated by the bond issuance in the approximate amount of \$2.57 million to be used to repay interest on the interim County Housing Initiative Fund (“HIF”) loan, fund a capitalized interest account for payments on the \$14.3 million loan from the Housing Production Fund (“HPF”), and set aside the remaining proceeds as a soft cost contingency for the 268-unit mixed-income & mixed-use Westside Shady Grove development.

BACKGROUND:

On August 17, 2021, the Housing Opportunities Commission (“HOC”) closed on the issuance of \$50,000,000 in Limited Obligation Bonds (Housing Production Fund) Series 2021 (Federally Taxable) sold by the Commission to PNC Capital Markets, LLC and Wells Fargo Bank, National Association, as underwriters.

The net lendable proceeds (after payment of Cost of Issuance) are \$49,787,500. Developments funded by the HPF will incur interest costs at 5% of the loan and such interest will be remitted to the County annually. The County will pay all bond debt service for 20 years. The interest payments will help to reduce the cost to the County. Once all funds are loaned, the projected annual cost to the County is less than \$600,000.

The bond issuance was unique in that it was the first-ever collaboration of its kind between the County and HOC that created an innovative revolving source of construction financing that will help to expand affordable housing in the County, and is replicable for other localities.

The HPF is utilized in conjunction with additional HOC investment, private investment, and conventional construction debt to finance construction and lease-up phases for new-construction developments. Permanent financing repays the initial HPF investment, which is subsequently returned to the fund for investment into the next HPF development. Developments funded by the HPF are “30/70” new construction developments, so that no less than thirty percent of a project’s total units are affordable to low- and moderate-income residents and no more than seventy percent are market-rate units. The

affordable units are set at two (2) affordability levels. Ten percent (10%) of a project's units are at Moderately Priced Dwelling Unit ("MPDU") rents, which are affordable to a family of four (4) making approximately \$85,000 or less, and twenty percent (20%) of project's units are at 50% of the AMI, which are affordable to a family of four (4) making \$64,500 or less per year¹.

The goal of the HPF is to produce 2,500-3,000 newly constructed units over a twenty-year period. With \$50 million available, it is anticipated that two (2) or more development projects can be undertaken at any given time. On average, each transaction will yield at least 150-180 affordable units and approximately 500-600 total units. At the end of five (5) years, HPF financing is repaid at the permanent financing of the development back to the HPF.

Housing in Montgomery County is in high-demand. The HPF is an innovative financing tool, which produces new, mixed-income communities for Montgomery County residents. It becomes a permanent source of construction financing for HOC free of County encumbrance after twenty (20) years of appropriations. The HPF is projected to revolve every five (5) years resulting in \$250 million of construction loans over a twenty-year period and will provide committed capital for part of HOC's 5,500-unit pipeline.

The Commission formally approved the acceptance of a loan from the HPF on November 3, 2021, and on December 22, 2021, the Commission closed on the first loan in an amount of \$14.3 million evidenced by a Deed of Trust, Loan Agreement, Regulatory Agreement and Promissory Note for the Westside Shady Grove Development, and subsequently repaid the County's \$14.3 million short term Housing Initiative Fund ("HIF") loan that was secured at the initial construction loan closing on January 28, 2021. Framing for the project is nearly complete with interior mechanical and plumbing trades ongoing. Construction is expected to be completed at the end of January 2023, and lease-up is expected to be completed by the end of February 2024, at which time the project would convert to permanent financing; therefore, it is expected that the \$14.3 million HPF loan will be returned to the HPF for a future project at the end of February 2024.



¹ Income numbers are based on the current annual area median income numbers published by HUD for the Washington, DC metro area in March 2021.

Westside Shady Grove

Westside Shady Grove is a \$121 million, 268-unit, transit-oriented, new construction development located next to the Shady Grove Metro Station. Of the 268 units, 30% (80-units) will be affordable, including 67-units at 50% AMI and 13-units at 65% AMI (MPDU income limit). The development predominantly consists of one- and two-bedroom units with a few studios and three-bedroom units. Per HPF guidelines, the loan will carry a term of no more than five (5) years with an interest rate at five percent (5%). The HPF loan will be repaid at the permanent financing to be recycled into a future HOC mixed-income housing development.

HPF Loan Terms	
\$14,300,000	Loan Amount
5.0%	Interest Rate (payable monthly)
5	Maximum Term (years)

Sources of Financing

Sources of Funds	Commission Approved	Construction Closing	Permanent (Projected)
Senior Debt	96,627,228	99,250,000 ²	99,250,000
HOC Equity	5,486,300	5,486,300	5,486,300
EYA / Bozzuto Equity	2,235,944	2,235,944	2,235,944
County Development Loan (HPF / HIF)	15,000,000	14,300,000	-
Mezzanine Loan / Private Equity	-	-	15,067,832
Total	119,349,472	121,272,244	122,040,076

The Commission, via Resolution 20-87, approved a Financing Plan in the amount of \$119 million, including Senior Debt in the amount not to exceed \$100 million of tax exempt bonds the “(2021 A Bonds”) to fund the Senior Debt. The actual construction closing was \$121 million due to closing on a higher Senior Debt, within the Commission-authorized amount, and a smaller County HIF Loan. The higher Senior Debt was made possible by more favorable interest rate at the time of the bond sale.

It was originally assumed that interest on the HIF loan would accrue during the construction period, and be due in full at the permanent conversion. This assumption was made because it was unclear if the HPF would be approved and if not, the HIF loan would remain outstanding until the permanent financing. However, final negotiations with the County resulted in the successful closing of the HPF and interest on the HIF being due annually during the construction period, which was not projected in the budget. The excess funds of \$2,578,683 are proposed to be used to repay interest on the County HIF loan, closing costs, and to fund capitalized interest account in an approximate amount of \$1.55 million to account for payments on the HPF loan. The remaining funds of approximately \$564K are proposed to be set aside towards a soft cost contingency to account for any unexpected supply chain issues, inflation, or subcontractor delays through project completion. Staff is returning per the November 3, 2021 approval to formally request amendment to the development budget to perfect this action. Should these funds not be needed during the construction period, they be applied at conversion to reduce the Commission’s required equity contribution.

² Favorable interest rate at the time of the bond sale yielded a higher bond issuance within the Commission approved limit of up to \$100 million of tax-exempt bonds, which funded the higher mortgage.

Summary of past approvals for the Westside Shady Grove development and the HPF

Note that Resolution 20-86 identified the Housing Production Fund as a possible source financing to repay the County's short-term HIF loan.

Date	Res.	Description
4-Sep-19	19-92AS	Approval to Assume all Rights and Obligations Under the Terms of the Purchase and Sale Agreement for the Acquisition of the Underlying County Land Currently Under Contract by EYA/CSP Associates, LLC, an EYA Affiliate; Approval to Complete the Acquisition and Fund the Predevelopment Expenditures; and Authorization to Establish a Single Asset Entity to Own the Development.
5-Dec-19	19-110AS	Approval to Enter into a Joint Pre-Development Agreement and Agreement to Assign with EYA/CSP Associates LLC and EYA BA/SGS Mf D, LLC for the Development of the West Side Shady Grove Multifamily Development known as Building D.
8-Jan-20	20-09	Approval of a Resolution Declaring the Official Intent of the Housing Opportunities Commission of Montgomery County to Reimburse itself with the Proceeds of a Future Tax-Exempt Borrowing for Certain Capital Expenditures to be Undertaken in Connection with the Acquisition and Development of the Property.
1-Jul-20	20-59AS	Authorization to Approve Additional Pre-Development Funding (\$1.07 million) from the County Revolving Opportunity Housing Development Fund.
1-Jul-20	20-56	Adoption of an Authorizing Resolution for the Selection of PNC Bank, National Association, as the Lender of a Tax-Exempt Obligation for the Purpose of Financing Westside Shady Grove.
9-Dec-20	20-86	Approval of a Final Development Plan; Authorization for the Executive Director to Accept the Assignment of Third-Party Contracts for the Development, Ratification of Formation of Additional Legal Entities, Authorization to Accept a Montgomery County Housing Initiative Fund Short-Term Bridge Loan of up to \$15M, and Authorization to Advance Funds in an Amount up to for the Payment to Secure Building Permits and Bind the Builder's Risk Insurance
9-Dec-20	20-87	Approval of the Financing Plan, Feasibility and Public Purpose for Westside Shady Grove Apartments; Authorization to Issue a Loan Commitment to HOC at Westside Shady Grove, LLC for Acquisition, Construction and Permanent Financing for up to \$100 million; and, Authorization for the Borrower to Accept Loan in Accordance with the Finance Plan
5-May-21	21-46	Approval of a Revolving Housing Production Fund Program; Authorizing Resolution for a New Master Resolution to Implement the Revolving Housing Production Fund Program; Approval of Structure, Cost of Issuance Budget, and Adoption of Series Resolution for the Issuance of Limited Obligation Bonds, Series 2021 to Provide Funding for the Revolving Housing Production Fund
03-Nov-21	21-06	Approval of a Subordinate Loan from the Housing Production Fund to HOC at Westside Shady Grove, LLC

ISSUES FOR CONSIDERATION:

Will the Commission accept staff's recommendation which is supported by the Development & Finance Committee to approve an amendment to the development budget to allocate net proceeds from the initial closing and generated by the bond issuance in the approximate amount of \$2,578,683 to be used to repay interest on the HIF loan, fund a capitalized interest account for payments on the \$14.3 million loan from the HPF, and set aside remaining funds of approximately \$564K for a soft cost contingency to account for any unexpected supply chain issues, inflation, or subcontractor delays through project completion.

PRINCIPALS:

Housing Opportunities Commission of Montgomery County
HOC at Westside Shady Grove, LLC

FISCAL/BUDGET IMPACT:

There is no impact on the agency's 2022 operating budget.

TIME FRAME:

For formal action at the February 2, 2022 open meeting of the Commission.

STAFF RECOMMENDATION:

Staff recommends that the Commission approve an amendment to the development budget to allocate excess proceeds from the bond issuance to be used to repay interest on the HIF loan, fund a capitalized interest account for payments on the HPF loan, and set aside the remaining funds of approximately \$564K for a soft cost contingency. This will increase the closing budget from \$119,349,472 to \$121,272,244.

RESOLUTION: 22-11

Re: Westside Shady Grove: Approval to Amend the Development Budget to Allocate Net Financing Proceeds from Initial Construction Closing

WHEREAS, Westside Shady Grove Building D (the “Property”) is currently under construction and will be a 268-unit mixed use apartment building with 21,000 square feet of retail space and serve as the Housing Opportunities Commission of Montgomery County’s (the “Commission” or “HOC”) Up-County Customer Service Center in the Westside Shady Grove area of Rockville, MD;

WHEREAS, the Property is owned by HOC at Westside Shady Grove, LLC (“Owner”), which is ultimately controlled by the Commission;

WHEREAS, on December 9, 2020, the Commission passed Resolution 20-86 and Resolution 20-87, which approved the Final Development Plan and Financing Plan, respectively, for the Property, including Owner’s acceptance of an approximately \$15 million loan from the Montgomery County Housing Initiative Fund (“HIF Loan”);

WHEREAS, on January 28, 2021, the Commission closed on the permanent financing debt in an amount of \$99.25 million for the construction of the Property, which resulted in excess funds of \$2,578,683 (the “Permanent Financing Excess Proceeds”);

WHEREAS, on May 5, 2021, the Commission passed Resolution 2021-46, which approved a Revolving Housing Production Fund Program (the “Housing Production Fund”);

WHEREAS, the HIF Loan was accepted with the intention of substituting a loan from the Housing Production Fund in an equal amount when funds from the Housing Production fund became available;

WHEREAS, on December 22, 2021, the subordinate loan from the Housing Production Fund (“HPF Loan”) closed and the HIF Loan was subsequently repaid; and

WHEREAS, staff recommends an amendment to the Property’s development budget to allocate the Permanent Financing Excess Proceeds to be used to repay interest on the HIF Loan, fund a capitalized interest account for payments on the HPF Loan, and set aside the remaining funds of approximately \$564K for a soft cost contingency.

NOW, THEREFORE, BE IT RESOLVED by the Housing Opportunities Commission of Montgomery County, on its behalf and on behalf of the Owner, as the sole member of its ultimate managing member, that it approves an amendment to the Property’s development budget to allocate the Permanent Financing Excess Proceeds to be used to repay interest on the HIF Loan, fund a capitalized interest account for payments on the HPF Loan, and set aside the remaining funds of approximately \$564k for a soft cost contingency.

BE IT FURTHER RESOLVED by the Housing Opportunities Commission of Montgomery County, acting on its behalf and on behalf of the Owner, as the sole member of its ultimate managing member, that the Acting Executive Director of HOC, or a duly appointed designee of the Acting Executive Director of HOC, is hereby authorized, without any further action on their respective parts, to execute such other documents and to take any and all other actions, in each case as necessary and proper, in the Acting Executive Director's judgment, to carry out the transaction and actions contemplated herein.

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Housing Opportunities Commission of Montgomery County at a regular open meeting conducted on February 2, 2022.

S
E
A
L

Patrice M. Birdsong
Special Assistant to the Commission

UPTON II: APPROVAL OF THE NAMING AND BRANDING OF HOC AT THE UPTON IN ACCORDANCE WITH HOC NAMING GUIDELINES

Rockville, MD



KAYRINE V. BROWN, ACTING EXECUTIVE DIRECTOR

CHRISTINA AUTIN, DIRECTOR, LEGISLATIVE & PUBLIC AFFAIRS

Table of Contents

Topic	Page #
Executive Summary	3
Guidelines for Naming of HOC Properties & Facilities	4
Local History: Rockville’s African American Heritage Walking Tour	5
Local History: “The Lane” and the Hebron House and Print Shop	6
Residences on the Lane	7
Summary and Recommendations	8

Executive Summary

Upton II (“Upton II” or the “Property”) is a 150-unit, age-restricted apartment community in downtown Rockville, Maryland, owned and operated by the single purpose entity HOC at the Upton II, LLC.

The first units having been delivered in late December 2021, selection of a permanent name for Upton II is required to support ongoing marketing and leasing efforts as more units come online and to create a unique brand for the Property.

In November 2021, staff shared with Commissioners the “Guidelines for Naming of HOC Properties and Facilities,” which details the principles and process by which staff will work to generate permanent names for HOC owned properties and facilities

The Acting Executive Director and staff brought the recommendation “Residences at the Print Shop” to the Development and Finance Committee at its meeting on January 21, 2022. After discussion, including consideration given to an alternate name that pays tribute a prominent print shop operated by Jesse and Celestine Hebron, the Committee unanimously agreed to join a new staff recommendation to the Commission to approve “Residences on The Lane” as the permanent name for Upton II in Rockville, Maryland.



Guidelines for Naming of HOC Properties & Facilities

The naming of HOC-owned properties and facilities shall be the function of the Board of Commissioners.

The general principles to be considered, either collectively or individually, in all HOC property name selections indicate the proposed name must:

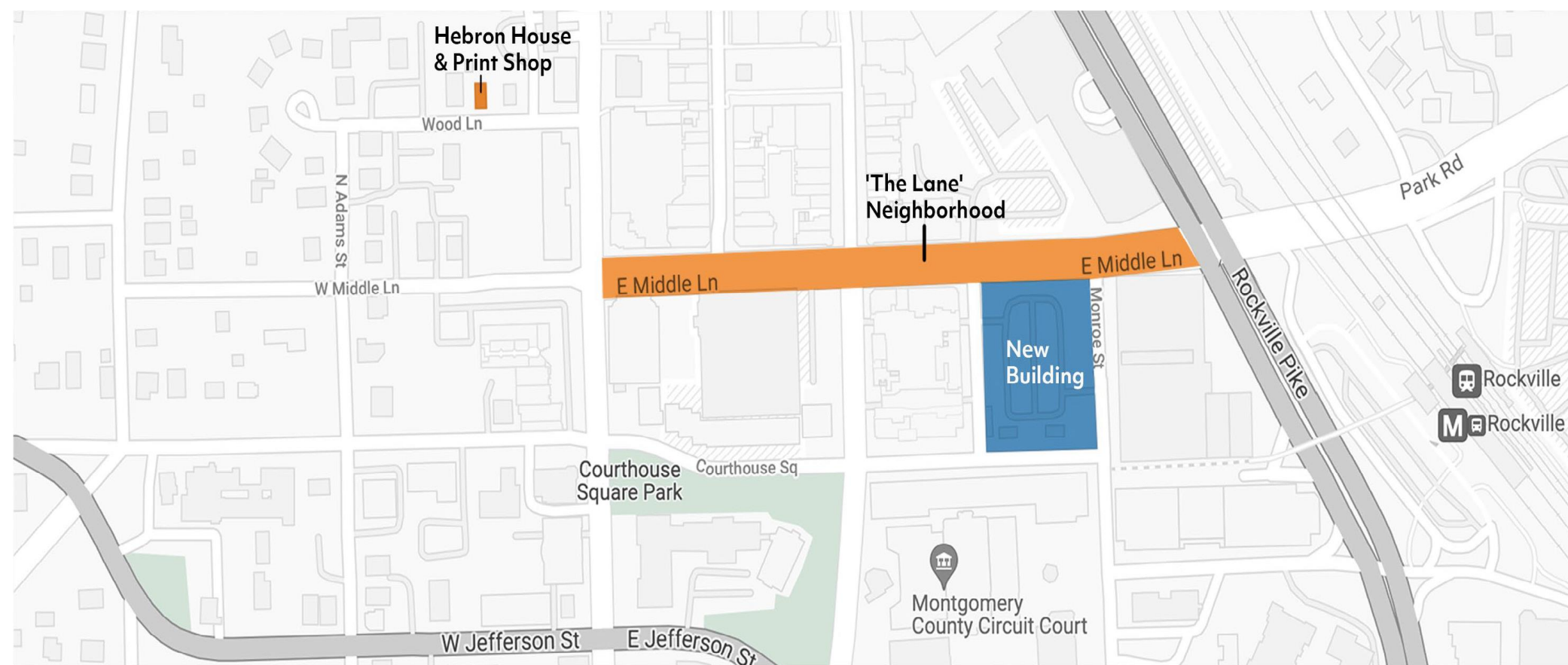
1. Have a strong positive image and should stand the test of time;
2. Have appropriate regard for the facility's location, geography, natural land feature, and/or history;
3. Commemorate places, people or events that are of continued importance to the town, region, and/or state, and
4. Recognize outstanding accomplishments by an individual for the good of the community. Individuals should be distinguished persons who are preeminent in their field of endeavor and/ or have contributed meaningfully to the agency's mission and/or to the community. Quality of the contribution should be considered along with the length of service by the individual.

In generating an appropriate recommended permanent name for Upton II, staff chose to focus on the local history (Principle 2) of downtown Rockville, with a particular emphasis on thriving Black businesses in Rockville and the contribution of Black business owners to the Rockville economy (Principles 1 and 4).

Local History: Rockville's African American Heritage Walking Tour

Staff used research compiled by the City of Rockville for their African American Heritage Walking Tour to draw relevant inspiration for permanent name recommendations for Upton II. The Walking Tour – which is available in an interactive format online¹ – focuses on the history and contributions of Black individuals, families, businesses, and institutions in downtown Rockville, Maryland. Staff chose to focus on the local history of downtown Rockville, with an emphasis on successful Black businesses and the early economy and community institutions they built.

Two markers on the Walking Tour factored prominently in the final name recommendation: “The Lane” neighborhood and the Hebron House and Print Shop – both located proximate to Upton II, as shown in the map below.



1. <https://www.arcgis.com/apps/MapTour/index.html?appid=4986c0caa4834eafa5c03cd3a84dd913>

Local History: “The Lane” and the Hebron House & Print Shop



The Property, located in downtown Rockville, is surrounded by significant markers of African American history in Montgomery County. According to the City of Rockville’s African American Heritage Walking Tour, East Middle Lane (running just north of the Property) was an area historically known as ‘The Lane’ or ‘The Back Lane’. Initially sold to and settled by freed slaves, the land was considered unsuitable for planting or for white development due to its marshy, low-lying soil. The Lane was the site of the first Clinton A.M.E. Zion Church in 1890 and many residences. Homes and businesses continued to sprout up on the surrounding lots, providing living quarters, goods, and services to African American citizens when they could not obtain them elsewhere. The Lane was a historical center for African American people, buildings, and events. It was the birthplace of Father Divine; it was the home field for Rockville’s colored baseball team; it was the site of community gatherings at the Elks Lodge; it was where Black folks could grab a sandwich at Mr. Kelly’s; and it was home to many citizens who lived in the single-family homes and duplexes along Cairo and Sarah Streets. This area was home to a thriving Black economy and community populated by successful African American businesses and culturally significant gathering places for several decades.

However, as early as the 1930s, the City of Rockville began to consider downtown revitalization projects. Discussions initially revolved around improving housing conditions for residents on the Lane, but by the 1950s and ‘60s, focus shifted towards commercial revitalization of the entire downtown area resulting in the removal of the remainder of the African American community in the downtown core.

Despite the effects of revitalization efforts, one of the most successful Black business ventures in the county to survive was a print shop operated by Jesse and Celestine Hebron, just two blocks from the current site of Upton II. The Hebrons started their printing business in 1932 on Falls Road and moved their shop and home to downtown Rockville in 1945 after Mr. Hebron returned from World War II. The Print Shop owned by the Hebrons provided services to corporations, individuals, churches, and other entities throughout Montgomery County and beyond for over 50 years.

Residences on The Lane



The recommended permanent name – “Residences on The Lane” – is an acknowledgement of downtown Rockville’s Black history and the economic and cultural significance of a community that was overlooked for decades as a result of the revitalization efforts that occurred. In alignment with the agency’s commitment to diversity, equity, and inclusion, this name recognizes and lifts up that history.

“The Lane” recalls the successful Black businesses that contributed to Rockville’s economy and evolution toward what it is today.

Staff plans to create a marker outside the Property that details the inspiration for the name and denotes the rich African American history that surrounds the Property.

While this may take more time and require copyright approvals, staff will also explore including a montage of photographs from our historical research to highlight the importance of African Americans businesses in Rockville’s history and provide further insight into the naming of “Residences on The Lane.”

At the same time the recommended name honors the history of its surroundings, it also feels contemporary and will contribute to a unique brand that will attract customers. A search by staff has determined there is no other residential building with this particular name in the market or region.

Summary and Recommendations

Issues for Consideration:

Will the Commission accept staff's recommendation, joined by the Development and Finance Committee, to approve "Residences on The Lane" as the permanent name for Upton II in Rockville?

Time Frame:

For formal action at the Commission meeting on February 2, 2022.

Budget/Fiscal Impact:

There is no budget or fiscal impact for the Commission. All costs and expenses related to the naming and branding of Upton have been included and will be borne by the Property's development budget.

Staff Recommendation and Commission Action Needed:

Staff recommends that the Commission approve "Residences on The Lane" as the permanent name for Upton II in Rockville.

RESOLUTION NO.: 22-12

RE: Approval of the Naming and Branding of HOC at the Upton in Accordance with HOC Naming Guidelines

WHEREAS, the HOC at the Upton or “Upton II” in Rockville, Maryland (the “Property”), requires selection of a permanent name to support ongoing marketing and leasing efforts and to create a unique brand for the Property; and

WHEREAS, the Housing Opportunities Commission of Montgomery County (“HOC”) is the sole managing member of HOC MM Upton II, LLC (the “Managing Member”), which in turn is the managing member of HOC at The Upton II, LLC (“Owner”), the owner of the Property; and

WHEREAS, HOC staff, in alignment with the Guidelines for Naming of HOC Properties and Facilities (the “Guidelines”), developed a permanent name recommendation; and

WHEREAS, the recommended permanent name aligns with the general principles set forth in the Guidelines, including: having a strong positive image that withstands the test of time; having appropriate regard for the Property’s location and history; and commemorating places and people that are of continued importance to the town and region.

NOW, THEREFORE, BE IT RESOLVED that the Housing Opportunities Commission of Montgomery County, on behalf of itself and on behalf of the Owner, as its ultimate managing member, approves “Residences on The Lane” as the permanent name for the Property.

BE IT FURTHER RESOLVED by the Housing Opportunities Commission of Montgomery County, on behalf of itself and on behalf of the Owner, as its ultimate managing member, that the Acting Executive Director of HOC, or her designee, is authorized and directed, without further action on their respective parts, to take any and all other actions necessary and proper to carry out the activities contemplated herein.

I HEREBY CERTIFY that the foregoing resolution was approved by the Housing Opportunities Commission of Montgomery County at an open meeting on February 2, 2022.

S
E
A
L

Patrice M. Birdsong
Special Assistant to the Commission

The Metropolitan: Emergency Procurement to Select Smislova, Kehnemui & Associates, P.A as Structural Engineers to Complete a Plan for Repair and Evaluation of a Waterproofing Services Contractor for the Green Roof at Metropolitan Apartments

February 2, 2022

- The Metropolitan Apartments (the “Property”) was constructed in 1997 as a 14-story, 308-unit high-rise apartment building located at 7620 Old Georgetown Road, Bethesda and currently consists of 216 market rate units and 92 affordable units.
- The Property is built above the Montgomery County-owned Metropolitan Public Parking Garage 49 (the “County Garage”) and legal title is structured as an air rights condominium.
- On January 13, 2021, The Commission approved the selection of Miner Feinstein Architects as architect for the Property for design services for the rehabilitation of the Property.
- The Property has the green roof above apartment parking spaces and the plaza level structural slabs that both exhibit signs of moisture intrusion. The County informed HOC staff that this has caused corrosion of the steel reinforcement of the concrete structural slabs, beams, and foundation walls.
- The Southeast corner of the facility experiences flooding with significant rain events, including water intrusion into the County Garage’s elevator shafts, resulting in elevator outage.
- Though it is the County’s garage and elevators that are impacted, repairs to the green roof are the responsibility of the Commission given the green roof is associated with the Property’s residential use.
- The Development and Finance Committee discussed this item at its meeting on January 21, 2022 and staff recommends, with the support of the Development and Finance Committee, request approval to select Smislova Kehnemui & Associates, P.A as Structural Engineers to a plan for repair and evaluation of a waterproofing services contractor for green roof at Metropolitan Apartment and the funding of engineering services by Metropolitan Development Corporation operations.

MEMORANDUM

TO: Housing Opportunities Commission of Montgomery County

VIA: Kayrine Brown, Acting Executive Director

FROM: Division: Real Estate
Staff: Zachary Marks, Chief Real Estate Officer Ext. 9613
Marcus Ervin, Director of Development Ext. 9752
Hyunsuk Choi, Housing Acquisition Manager Ext. 9762
Paul Vinciguerra, Construction Manager Ext. 9715

RE: **The Metropolitan:** Emergency Procurement to Select Smislova, Kehnemui & Associates, P.A as Structural Engineers to Complete a Plan for Repair and Evaluation of a Waterproofing Services Contractor for the Green Roof at Metropolitan Apartments.

DATE: February 2, 2022

STATUS: Committee Report Deliberation X

OVERALL GOAL & OBJECTIVE:

Emergency Procurement to Select Smislova, Kehnemui & Associates, P.A (“SK&A”) as Structural Engineers to Complete a Plan for Repair and Evaluation of a Waterproofing Services Contractor for the Green Roof at Metropolitan Apartments.

BACKGROUND:

The Metropolitan Apartments (the “Property”) was constructed in 1997 as a 14-story, 308-unit high-rise apartment building located at 7620 Old Georgetown Road, Bethesda and currently consists of 216 market rate units and 92 affordable units.

The Property is built above the Montgomery County-owned Metropolitan Public Parking Garage 49 (the “County Garage”) and legal title is structured as an air rights condominium.

The Commission approved the selection of Miner Feinstein Architects (“MFA”) as architect for the Property for design services for the rehabilitation of the Property. MFA engaged with SK&A as Structural Engineers as part of the design team. SK&A’s original scope of work under MFA’s engagement includes evaluation of the green roof; which, while located on top of the parking garage, is related to the Property’s residential use. Had this not been elevated by the County to an emergency status, it would have been addressed as part of the evaluation of the Property in preparation for the planned rehabilitation work.



The Property has the green roof above the apartment parking spaces and the plaza level structural slabs, both of which exhibit signs of moisture intrusion. The County informed HOC staff that this has caused corrosion of the steel reinforcement of the concrete structural slabs, beams, and foundation walls. The Southeast corner of the facility experiences flooding with significant rain events, including water intrusion into the County Garage's elevator shafts, resulting in elevator outage.

The County hired a civil engineer to investigate and perform a survey with testing in 2018, which revealed ineffective drainage media beneath the paved area, such as concrete overlay and insulation without drainage channels, on the protection course and self-adhering rubberized asphalt membrane. Additionally, the survey revealed blocked and poorly maintained drains. Therefore, the County closed the County Garage's elevators at the Southeast corner of Plaza area.



The SK&A team also reported moisture intrusion at the Northeast area of the Plaza and the Northwest corner of the Bethesda-Chevy Chase Regional Service Center.

Design

The SK&A team already completed 95% of the structural drawings for the repair work, and will issue 100% of construction documents after receiving any comments from the DPS. SK&A provided staff a building permit set of drawings for the plaza repair and staff can submit the building permit to Department of Permitting Service (the "DPS") on or about February 18.

Additionally, they will assist HOC with identifying and selecting qualified waterproofing subcontractors to completing the repair work.



The waterproofing subcontractor will work on the shaded part of plaza area to install new waterproofing system and perform structural concrete repairs to the suspended plaza level structure to include various categories of concrete patching such as full depth repairs, top surface partial depth repairs, crack repairs, overlay repairs, beam/beam soffit repairs, column repairs, and partial depth slab soffit repairs based on SK&A structural drawing.

Furthermore, the waterproofing subcontractor will be tasked with identifying and repairing or replacing the existing plumbing fixtures (drains, hose bibs, forced water mains and others) and components at the plaza level and garage facility below.

Though it is the County's garage and elevators that are impacted, repairs to the green roof are the responsibility of the Commission given the green roof is associated with the Property's residential use. SK&A has submitted a proposal to

HOC to complete 100% of the construction documents; to complete the bidding and award process for the waterproofing contractor; and any other additional necessary consultants (e.g. fountain consultant, civil engineer, and permit expediter); and to perform oversight of the work for \$160,000. HOC will separately fund an amount of \$83,000 in permit fees, including a contingency of \$23,300 shown in the table below.

Items	Amount
SK&A design fees	
100% of Construction Documents	\$20,000
Bidding & Awarding	\$10,000
Additional Consultants	\$60,000
SK&A construction administration service	\$70,000
Total SK&A Fees	\$160,000
HOC Costs	
Permit Fees - DPS	
Sediment Control Fee	\$3,000
Tree Canopy Fee	\$4,000
Forest Conservation Exemption	\$200
Right-of-Way Permit	\$2,500
Estimated Commercial Building Permit for alteration/repair (50% of final building permit fee)	\$50,000
HOC - construction contingency	\$23,300
Total HOC Costs	\$83,000
Total	\$243,000

Staff requests to authorization to engage SK&A as structural engineers to complete 100% of construction documents for the repair and evaluation of a Waterproofing Services Contractor for \$160,000 including construction administration services.

Repair

On February 3, 2022, HOC staff will join SK&A and prospective bidders at the site for a pre-bid conference. Bidders will be asked to provide bids to complete the work based on SK&A’s description and design. SK&A will assist staff with the evaluation of the bids based on HOC’s selection criteria, including qualification and price.

It is anticipated that work will commence in May 2022 after obtaining the building permit and will be completed between seven (7) month and nine (9) months. Once staff receives recommendation from SK&A for waterproofing subcontractor around February 25, staff will return to the Development & Finance Committee on March 25, 2022, to recommend the firm best suited to complete the work and seek Commission approval at the April 6, 2022 meeting.

Funding

Again, the Property is responsible for the cost to repair the green roof, which would be paid from operating cash flow from The Metropolitan.

Summary of past approvals for the Metropolitan

Date	Res.	Description
9-Sep-20	20-65	Approval of Feasibility Funding for the Financing and Renovation of The Metropolitan and Authorization to Make loans to The Metropolitan of Bethesda Limited Partnership and The Metropolitan Development Corporation
9-Sep-20	20-004 _{ME}	Approval of Metropolitan Development Corporation (the “Corporation”) to Accept a Loan from the Opportunity Housing Reserve Fund for Feasibility Funding to Explore the Refinancing and Renovation of Units Owned by the Corporation
13-Jan-21	21-10	Approval to Select Miner Feinstein Architects, Authorization for the Executive Director to Negotiate and Execute a Contract for the Renovation of The Metropolitan Apartments and Authorization to Make Loans to Metropolitan Bethesda Limited Partnership and Metropolitan Development Corporation
13-Jan-21	21-001 _{ME}	Approval by Metropolitan Development Corporation to Accept the Selection Miner Feinstein Architects as Architect and Accept a Loan from the Opportunity Housing Reserve Fund for Architectural and Interior Design Services for the Predevelopment Phase of the Rehabilitation

ISSUES FOR CONSIDERATION:

Will the Commission accept staff’s recommendation, which is supported by the Development and Finance Committee to:

1. Approve the selection of Smislova, Kehnemui & Associates, P.A as Structural Engineers to Complete a Plan for Repair and Evaluation of Waterproofing Services Contractor for the Green Roof at Metropolitan?

2. Approve the use of \$243,000 to be funded by the operations from Metropolitan Development Corporation?

PRINCIPALS:

Housing Opportunities Commission of Montgomery County
The Metropolitan of Bethesda Limited Partnership
The Metropolitan Development Corporation
Montgomery County
SK&A

BUDGET IMPACT:

There may be an impact on the agency's 2022 operating budget from the reduction of total available cash flow from the Metropolitan Development Corporation of \$243,000. Staff will review the property performance through December 31, 2021 to determine if a budget amendment is warranted at this time.

TIME FRAME:

For formal Commission action on February 2, 2022.

STAFF RECOMMENDATION & COMMISSION ACTION NEEDED:

Staff requests that the Commission approve the selection of Smislova, Kehnemui & Associates, P.A as Structural Engineers to complete a Plan for Repair and Evaluation of Waterproofing Services Contractors for the Green Roof at Metropolitan, and approve to use \$243,000 from the operations Metropolitan Development Corporation to fund the costs.

RESOLUTION No: 22-13

RE: Emergency Procurement to Select Smislova, Kehnemui & Associates, P.A as Structural Engineers to Complete a Plan for Repair and Evaluation of a Waterproofing Services Contractor for the Green Roof at Metropolitan Apartments

WHEREAS, The Metropolitan Apartments (“the “Property”) was constructed in 1997 as a 14-story, 308-unit high-rise apartment building located at 7620 Old Georgetown Road, Bethesda and currently consists of 216 market rate units and 92 affordable units; and

WHEREAS, the Property is owned by The Metropolitan of Bethesda Limited Partnership (the “Metropolitan LP”), which is wholly owned by the Housing Opportunities Commission of Montgomery County (the “Commission” or “HOC”), and The Metropolitan Development Corporation (the “Metropolitan Corporation”), which is wholly controlled by HOC; and

WHEREAS, on January 13, 2021, the Commission approved the selection of Miner Feinstein Architects (“MFA”) as the architect for the upcoming renovations at the Property; and

WHEREAS, MFA engaged Smislova, Kehnemui & Associates, P.A (“SK&A”) as structural engineers to be a part of the design team for the renovations; and

WHEREAS, the Property has a green roof plaza and staff has recently learned that the structural slabs are exhibiting moisture intrusion, which is likely causing corrosion of steel reinforcements within the concrete structural slabs, beams, and foundation walls; and

WHEREAS, testing has revealed ineffective drainage beneath the paved area of the plaza, which needs to be remediated immediately in order to prevent more extensive and expensive damage to the Property; and

WHEREAS, staff recommends entering into a Non-Competitive procurement, pursuant to the Commission’s Procurement Policy, to select SK&A as structural engineers to (i) complete a plan for the necessary repairs, (ii) to evaluate proposals for the selection of a waterproofing services contractor, and (iii) to perform construction management services, in an amount of \$160,000 (the “Structural Engineer Services”); and

WHEREAS, staff estimates an additional \$83,000 in costs to obtain permits, including a contingency of \$23,300 (the “HOC Costs”); and

WHEREAS, the Structural Engineer Services and HOC Costs will be funded by the Metropolitan Corporation operating account.

NOW, THEREFORE, BE IT RESOLVED that the Housing Opportunities Commission of Montgomery County, acting on behalf of itself on behalf of the Metropolitan LP, as its general partner, approves entering into a Non-Competitive procurement, pursuant to HOC’s Procurement Policy, to select SK&A to perform the Structural Engineer Services, and negotiating and executing any necessary contracts.

BE IT FURTHER RESOLVED that the Housing Opportunities Commission of Montgomery County, acting on behalf of itself on behalf of the Metropolitan LP, as its general partner, authorizes and directs

the Acting Executive Director, or her designee, without further action on their respective parts, to take any and all other actions necessary and proper to carry out the transactions contemplated herein including, but not limited to, the execution of any and all documents related thereto.

I HEREBY CERTIFY that the foregoing resolution was adopted by the Housing Opportunities Commission of Montgomery County at a regular open meeting conducted on February 2, 2022.

S
E
A
L

Patrice M. Birdsong
Special Assistant to the Commission

Election of Officers

Recess

Development Corporation Meetings

Paddington Square Development Corporation

PADDINGTON SQUARE DEVELOPMENT CORPORATION

AFFIRMATION OF RESOLUTION 21-001_{PS}, APPROVAL OF DWIGHT CAPITAL LLC, AS SUCCESSOR LENDER OF LOVE FUNDING CORPORATION, AND APPROVAL OF AMENDMENTS TO THE BYLAWS AND ARTICLES OF INCORPORATION OF THE PADDINGTON SQUARE DEVELOPMENT CORPORATION

FEBRUARY 2, 2022

- On April 7, 2021, the Board of Directors of the Paddington Square Development Corporation (the “Corporation”) approved Resolution 21-001_{PS} (the “Paddington Resolution”), which approved, among other actions, (a) the refinancing of the Corporation’s existing permanent loan from Love Funding Corporation (“Original Senior Lender”) insured under FHA Section 207 pursuant to Section 223(f) of the National Housing Act, as amended (the “223(f) Loan”), in the approximate amount of \$18,800,000 from the Original Senior Lender to the Corporation (the “New Loan”), (b) re-subordinating the Corporation’s HIF Loan, and (c) using existing cash held in the existing replacement reserve and renovation escrow accounts to fund a new initial replacement reserve of approximately \$4,600 per unit pursuant to the terms of the New Loan (collectively, the “Refinancing Plan”).
- Dwight Capital LLC, a Delaware limited liability company and an approved FHA Multifamily Accelerated Processing lender, acquired the Original Senior Lender and new FHA debt cannot be issued under the Original Senior Lender’s name. Therefore, Dwight Capital LLC will provide the New Loan to the Corporation pursuant to that certain Firm Commitment for FHA Mortgage Insurance under Section 207 pursuant to Section 223(a)(7) of the National Housing Act, as amended, dated November 23, 2021, as amended.
- The Bylaws of the Corporation (the “Bylaws”) provide that they may be amended subject to the Commission’s approval.
- In order to obtain the New Loan, FHA requires that the Corporation amend the Bylaws to include certain FHA provisions that will remain in effect so long as the United States Department of Housing and Urban Development, or its successors or assigns, insures or holds any loan to borrower secured by the Project, including the New Loan.
- Additionally, in order to expedite future actions of the Corporation, the Bylaws and Articles of Incorporation should also be amended to remove the sixty (60) day approval period for Corporation Obligations and permit the Commission to approve Corporation Obligations at any time prior to entering into a Corporation Obligation.
- At its meeting on February 2, 2022, the Commission approved that the Article VI of the Bylaws of the Corporation may be amended in connection with obtaining the New Loan from the Senior Lender, to add certain FHA-required provisions that will automatically terminate when the New Loan is no longer insured or held by the U.S. Department of Housing and Urban Development (“HUD”). The Commission also approved that certain actions may be taken at any time before such actions are taken by the Corporation.”

PADDINGTON SQUARE DEVELOPMENT CORPORATION

RESOLUTION: 22-001_{PS}

**RE: Affirmation of Resolution No. 21-001_{PS},
Approval of Dwight Capital LLC, as Successor
Lender to Love Funding Corporation, and
Approval of Amendments to the Bylaws and
Articles of Incorporation of the Paddington
Square Development Corporation**

WHEREAS, the Paddington Square Development Corporation (the “Corporation”) is a wholly-controlled corporate instrumentality of the Housing Opportunities Commission of Montgomery County (“HOC” or the “Commission”);

WHEREAS, the Corporation owns the property known as “Paddington Square”, a community consisting of 165 units in Silver Spring, Maryland, FHA Project No. 000-11323 (the “Project”), which was acquired by the Corporation on February 4, 2004;

WHEREAS, on November 5, 2014, the Board of Directors of the Corporation approved, and on December 18, 2014, closed on a permanent loan in the amount of \$20,741,700 from Love Funding Corporation (“Original Senior Lender”), insured under Section 207 pursuant to Section 223(f) of the National Housing Act, as amended (the “223(f) Loan”), assignment of an existing loan from the County’s Housing Initiative Fund (“HIF”) of approximately \$5.1 million (the “HIF Loan”), and with an equity contribution of \$738,000, which combined proceeds were used to retire existing debt and pay closing costs;

WHEREAS, on April 7, 2021, the Board of Directors of the Corporation approved Resolution 21-001_{PS} (the “Paddington Resolutions”), which approved, among other actions, (a) the refinancing of the Corporation’s 223(f) Loan pursuant to the terms of a Firm Commitment for FHA Mortgage Insurance under Section 207 pursuant to Section 223(a)(7) of the National Housing Act, as amended, for a new loan in the approximate amount of \$18,800,000 from Original Senior Lender to the Corporation (the “New Loan”), (b) re-subordinating the HIF Loan, and (c) using existing cash held in the existing replacement reserve and renovation escrow accounts to fund a new initial replacement reserve of approximately \$4,600 per unit pursuant to the terms of the New Loan (collectively, the “Refinancing Plan”);

WHEREAS, Dwight Capital LLC, a Delaware limited liability company and an approved FHA Multifamily Accelerated Processing HUD lender (“Senior Lender”), acquired Original Senior Lender and the Original Senior Lender can no longer conduct new FHA business, the Senior Lender will provide the New Loan in the amount of \$18,665,800.00, as successor to the Original Senior Lender, pursuant to that certain Firm Commitment for FHA Mortgage Insurance under Section 207 pursuant to Section 223(a)(7) of the National Housing Act, as amended, dated November 23, 2021, as amended (the “Firm Commitment”);

WHEREAS, Article VI of the Bylaws of the Corporation states that the Bylaws may be amended by a majority vote of the Board of Directors of the Corporation at any special meeting of the Board of the Directors of the Corporation, subject to the approval of the Commission;

WHEREAS, in connection with obtaining the New Loan from the Senior Lender, the Corporation's Bylaws need to be amended to add certain FHA-required provisions that will automatically terminate when the New Loan is no longer insured or held by the U.S. Department of Housing and Urban Development ("HUD");

WHEREAS, in order to expedite future actions of the Corporation, the last sentence of Article VII.2 of the Bylaws should be deleted in its entirety, such that Article VII.2 reads as follows:

“2. The Board of Directors shall not enter into any loan, mortgage bond, promissory note or contract to purchase real property without obtaining the approval of the Housing Opportunities Commission of Montgomery County.”

WHEREAS, under Section 2-603 of the Annotated Code of Maryland, Corporations and Associations, a majority of the Board of Directors is required to amend the Articles of Incorporation of the Corporation;

WHEREAS, in order to expedite future actions of the Corporation, the second paragraph of Article IV of the Articles of Incorporation of the Corporation should be deleted in its entirety and the following language inserted in its stead:

“Each housing project undertaken, financed or assisted by the corporation, and the program and expenditures relating thereto, must be approved by the Housing Opportunities Commission of Montgomery County (the “Commission”). The Commission must also approve any issue of bonds, notes or other obligations by the corporation prior to the date of issue and any substantive changes to the terms and conditions of the issuance prior to the date of issue.”

WHEREAS, as required pursuant to the Bylaws, at a regular open meeting conducted on February 2, 2022, the Commission approved the amendments to the Bylaws and the Refinancing Plan by adopting Resolution No. 22-02 (Affirmation of Resolution No.: 21-001_{PS}, Approval of Dwight Capital LLC, as Successor Lender to Love Funding, and Approval to Amend the Bylaws of the Paddington Square Development Corporation) (this affirmation and approval was made no more than sixty (60) days in advance of the Corporation entering into the Refinancing Plan).

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Paddington Square Redevelopment Corporation hereby:

1. Affirms the Corporation’s Resolution 21-001_{PS} and approves the Refinancing Plan with Dwight Capital LLC, as Senior Lender under the Firm Commitment instead of Love Funding Corporation.
2. Approves the amendment to the Bylaws to (a) insert the FHA-required language that will terminate when the New Loan is no longer insured or held by HUD and (b) replace the final sentence of Article VII.2 as stated herein to permit the Commission to approve certain actions at any time before such actions are taken by the Corporation.
3. Approves the amendment to the Articles of Incorporation of the Corporation to replace the second paragraph of Article IV of the Articles of Incorporation as stated herein to permit the Commission to approve certain actions at any time before such actions are taken by the Corporation.

BE IT FURTHER RESOLVED that the Board of Directors of Paddington Square Development Corporation hereby designates, authorizes and directs Kayrine Brown, the Acting Executive Director of the Commission and authorized signatory of the Corporation (the “Authorized Signatory”), without any further action on the part of the Board of Directors, to (i) execute and deliver all documents evidencing the New Loan, all documents necessary to complete the Refinancing Plan, and all other documents, instruments and agreements, all with such changes therein as shall be approved by the Authorized Signatory, (ii) perform the obligations under all such documents, including, without limitation, such promissory notes, security instruments, and other documents as the Authorized Signatory deems necessary or desirable in connection with the New Loan on behalf of and in the name of the Corporation, and (iii) take any and all other actions necessary and proper to carry out the transaction and actions contemplated herein.

I HEREBY CERTIFY that the foregoing Resolution was adopted by a majority of the Board of Directors of the Paddington Square Development Corporation at a special meeting conducted on February 2, 2022.

S
E
A
L

Patrice M. Birdsong
Special Assistant to the Paddington
Square Development Corporation

FIRST AMENDMENT TO
BYLAWS OF
PADDINGTON SQUARE DEVELOPMENT CORPORATION

The Bylaws of Paddington Square Development Corporation (the “*Bylaws*”) are amended as of the ____ day of February, 2022, as set forth below. All terms capitalized but not defined herein have the meaning set forth in the Bylaws.

(1) The last sentence of Article VII.2 is hereby deleted and Article VII.2 will read as follows:

“2. LOANS, MORTGAGES, BONDS AND NOTES.

The Board of Directors shall not enter into any loan, mortgage bond, promissory note or contract to purchase real property without obtaining the approval of the Housing Opportunities Commission of Montgomery County.”

(2) Article XI is inserted to read as follows:

Article XI

Notwithstanding any clause or provision in the Bylaws or Articles of Incorporation to the contrary, and so long as the United States Department of Housing and Urban Development (“HUD”), or its successors or assigns, insures or holds any loan to (the “HUD Insured Loan”), including the loan secured by a deed of trust lien on Paddington Square Apartments FHA Project Number 000-11323 in Silver Spring, Montgomery County, Maryland (the “Project”) the following provisions apply:

1. The terms listed below shall have the following definitions:
 - a) “Borrower” means Paddington Square Development Corporation.
 - b) “Lender” means the entity identified as “Lender” in the first paragraph of the Security Instrument, or any subsequent holder of the HUD-insured Note.
 - c) “HUD Regulatory Agreement” means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.
 - d) “Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended, or modified.

- e) “HUD-insured Note” means the Note executed by Borrower, and described in the Security Instrument, including all schedules riders, allonges and agenda, as such Note may be amended from time to time.

2. Requirements:

- a) If any of the provisions of Borrower’s organizational documents conflict with the terms of the HUD insured Note, Security Instrument, or HUD Regulatory Agreement (“HUD Loan Documents”), the provisions of the HUD Loan Documents shall control.
- b) No provision required by HUD to be inserted into the organizational documents may be amended without HUD’s prior written approval. Additionally, if there is a conflict between any HUD-required provisions inserted into these Bylaws and any other provision of these Bylaws, the terms of the HUD-required provisions will govern; and if there is a conflict between any of the provisions in the Articles of Incorporation of the Borrower and any HUD-required provisions of these Bylaws, the HUD-required provisions will govern.
- c) Unless otherwise approved in writing by HUD, Borrower’s business and purpose shall consist solely of the acquisition, ownership, operation and maintenance of the Project and activities incidental thereto. Borrower shall not engage in any other business or activity. The Project shall be the sole asset of the Borrower entity, which shall not own any other real estate other than the aforesaid Project.

3. None of the following will have any force or effect without the prior written consent of HUD:

- a) Any amendment that modifies the term of Borrower’s existence;
- b) Any amendment that triggers application of the HUD previous participation certification requirements (as set forth in Form HUD2530, Previous Participation Certification, or 24 CFR § 200.210, et seq.);
- c) Any amendment that in any way affects the HUD Loan Documents;
- d) Except as permitted under Section 9 below, any amendment that would authorize any member, manager, partner, owner, officer or director, other than the one previously authorized by HUD, to bind the Borrower entity for any matters concerning the Project which require HUD’s consent or approval;

- e) A change that is subject to the HUD TPA requirements contained in Chapter 13 of HUD Handbook 4350.1 REV-1;
 - f) Any change in a guarantor of any obligation to HUD (including those obligations arising from violations of the HUD Regulatory Agreement); and
 - g) Any grant of a security interest in any of Borrower's assets or mortgaged property.
4. Borrower is authorized to execute a Note and Security Instrument in order to secure a loan to be insured by HUD and to execute the HUD Regulatory Agreement and other documents required by the Secretary in connection with the HUD-insured loan.
 5. Any incoming member/partner/owner of Borrower must, as a condition of receiving an interest in the Borrower entity, agree in writing to be subject to the HUD Loan Documents and all other documents required in connection with the HUD-insured loan, to the same extent and on the same terms as the other members/partners/owners.
 6. Upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents from the Project, shall pass to any person or entity that is not bound by the HUD Regulatory Agreement in a manner satisfactory to HUD.
 7. The key principals of Borrower identified in the HUD Regulatory Agreement are liable in their individual capacities to HUD to the extent set forth in the HUD Regulatory Agreement.
 8. Borrower shall not voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.
 9. Borrower has designated Kayrine Brown, as Acting Executive Director of the Housing Opportunities Commission of Montgomery County as its official representative for all matters concerning the Project that require HUD consent or approval. The signature of this representative will bind Borrower entity in all such matters. Borrower may, from time to time, appoint a new representative to perform this function, provided that the individual so appointed is 2530 Previous Participation Certified, and within three business days of doing so, will provide HUD with written notification of the name, address, and telephone number of its new representative. When a person other than the person identified above has full or partial authority with respect to management of the Project, Borrower will

promptly provide HUD with the name of that person and the nature of that person's management authority.

10. Any obligation of the Corporation to provide indemnification under these Bylaws shall be limited to (i) amounts mandated by state law, if any, (ii) coverage afforded under any liability insurance carried by the Corporation and (iii) available surplus cash of the Borrower as defined in the HUD Regulatory Agreement. Until funds from a permitted source for payment of indemnification costs are available for payment, the Corporation shall not (a) pay funds to any members, partners, officers and directors, or (b) pay the deductible on an indemnification policy for any members, partners, officers and directors.
11. Unless otherwise approved by HUD under Section 8 above, the Borrower will remain in existence at least through the term of the HUD Insured Loan.

This First Amendment to Bylaws of Paddington Square Development Corporation was approved in accordance with Article VII of the Bylaws by (i) a majority of the Board of Directors at a duly called special meeting held on February 2, 2022 at which quorum was present, and (ii) by the Housing Opportunities Commission of Montgomery County at a regular open meeting on February 2, 2022.

ARTICLES OF AMENDMENT

for a

MARYLAND Non-Stock **CORPORATION**

(1)

(2) Paddington Square Development Corporation

a Maryland corporation, certifies to the State Department of Assessments and Taxation of Maryland that the charter of the corporation shall be and hereby is amended as follows:

(3) The Second Paragraph of Article III is hereby deleted in its entirety and the following inserted in its stead:

"Each housing project undertaken, financed or assisted by the corporation, and the program and expenditures relating thereto, must be approved by the Housing Opportunities Commission of Montgomery County (the "Commission"). The Commission must also approve any issue of bonds, notes or other obligations by the corporation prior to the date of issue and any substantive changes to the terms and conditions of the issuance prior to the date of issue.

This amendment of the charter of the corporation has been approved by

(4) the directors. There is no membership entitled to vote on amendments.

The undersigned acknowledges that this is an act of the above-named corporation, and verifies, under the penalties for perjury, that the matters and facts stated herein, which require such verification, are true and accurate, to the best of his/her knowledge, information, and belief.

(5) _____
ATTESTED TO BY (signature/title)

(5) _____
SIGNED BY (signature/title)

(6) Return address of filing party:

10400 Detrick Avenue

Kensington, MD 20895-2484

GUIDELINES FOR DRAFTING ARTICLES OF AMENDMENT

This amendment format is appropriate for most Maryland Stock and Nonstock Corporations. It may not be used for Maryland Religious Corporations or Cooperatives, or for any non-Maryland entity. These instructions will aid you in meeting the legal requirements to amend a charter. Questions addressing the merits or wording of the changes you are making should be discussed with your lawyer, accountant, or other business or financial advisor. Legal questions of a general nature cannot be answered by the staff of this Department. You may complete the form above and submit it as your Articles of Amendment. **Please type or complete using a computer. Handwritten forms are much more likely to be rejected.**

Each list item below corresponds to a blank on the form.

(1) Insert "Stock", "Close", "Nonstock", or "Professional" depending on if the corporation is a regular stock corporation, a close corporation, a nonstock corporation, or a professional services corporation prior to any effects the amendment may have. If you are unsure, refer to the corporation's existing charter document(s).

(2) Insert the exact name of the corporation, prior to any effects the amendment may have, as found in Departmental Records. Spelling, punctuation, abbreviation, spacing, etc. all must match.

(3) State the change(s) to the charter. Since this document becomes part of the corporate charter, the wording must be clear and unambiguous, and must accurately express the corporation's intentions.

■ If the corporation is adopting a new name, be sure to include "INCORPORATED", "CORPORATION", "LIMITED", "COMPANY", or a common abbreviation of one of those terms (or "Chartered", "Professional Association", or "Professional Corporation" or an acceptable abbreviation if for a professional services corporation).

■ If the amendment changes authorized stock, it must state the number of shares and the par value of each share both before and after the amendment.

(4) State the method by which the Corporation approved the charter amendment. Below are the five most common methods of approval. Only one of these can apply.

- If this corporation has directors and stockholders, insert "the directors and stockholders".
- If this is a close corporation that has no directors, insert "the stockholders. This is a close corporation that has elected to have no directors".
- If this is a corporation that has authority to issue stock, but has not yet issued any, insert "the directors. No stock has been issued".
- If the corporation has no authority to issue stock, but has a membership entitled to vote on amendments, insert "the directors and members".
- If the corporation has no authority to issue stock and there is no membership entitled to vote on amendments, insert "the directors. There is no membership entitled to vote on amendments".

(5) Have the appropriate officers sign. Two signatures are necessary: one to acknowledge the corporate act and to verify the facts under the penalties for perjury, and one to witness or attest the signature. The signatures **must** be by different individuals unless the entity is a close corporation or a professional services corporation, and such is indicated per item (1) above.

(6) Insert a return address for the filing.

WHERE AND HOW DO I FILE MY DOCUMENTS?

Articles of Amendment may be filed online through the Maryland Business Express online filing portal. The portal may be accessed by visiting the following link: [Maryland Business Express](#).

By mail or in-person submissions should directed to:
State Department of Assessments and Taxation
Charter Division
301 W. Preston Street, Room 801
Baltimore, MD 21201-2395

FEES: The filing fee is \$150 for expedited processing within 10 business days of receipt by SDAT. There are additional fees if the amendment increases stock. If stock is increased, refer to [Corporations & Associations Article sec. 1-204](#) to calculate the increased organization and capitalization fee. Please make checks payable to the State Department of Assessments and Taxation. Standard processing of 6-8 weeks from receipt is available for \$100.

The Metropolitan Development Corporation

METROPOLITAN DEVELOPMENT CORPORATION

The Metropolitan: Emergency Procurement to Select Smislova, Kehnemui & Associates, P.A as Structural Engineers to Complete a Plan for Repair and Evaluation of a Waterproofing Services Contractor for the Green Roof at Metropolitan Apartments

February 2, 2022

- The Metropolitan Apartments (the “Property”) was constructed in 1997 as a 14-story, 308-unit high-rise apartment building located at 7620 Old Georgetown Road, Bethesda and currently consists of 216 market rate units and 92 affordable units.
- The Property is built above the Montgomery County-owned Metropolitan Public Parking Garage 49 (the “County Garage”) and legal title is structured as an air rights condominium.
- On January 13, 2021, The Metropolitan Development Corporation (“Corporation”) approved the selection of Miner Feinstein Architects as architect for the Property for design services for the rehabilitation of the Property.
- The Property has the green roof above apartment parking spaces and the plaza level structural slabs that both exhibit signs of moisture intrusion. The County informed HOC staff that this has caused corrosion of the steel reinforcement of the concrete structural slabs, beams, and foundation walls.
- The Southeast corner of the facility experiences flooding with significant rain events, including water intrusion into the County Garage’s elevator shafts, resulting in elevator outage.
- Though it is the County’s garage and elevators that are impacted, repairs to the green roof are the responsibility of the Corporation given the green roof is associated with the Property’s residential use.
- The Development and Finance Committee discussed this item at its meeting on January 21, 2022 and staff recommends, with the support of the Development and Finance Committee, request approval to select Smislova Kehnemui & Associates, P.A as Structural Engineers to a plan for repair and evaluation of a waterproofing services contractor for green roof at Metropolitan Apartment and funding of engineering services by the operations from Metropolitan Development Corporation.

METROPOLITAN DEVELOPMENT CORPORATION

MEMORANDUM

TO: Metropolitan Development Corporation Board of Directors

VIA: Kayrine Brown, Acting Executive Director

FROM: Division: Real Estate
Staff: Zachary Marks, Chief Real Estate Officer Ext. 9613
Marcus Ervin, Director of Development Ext. 9752
Hyunsuk Choi, Housing Acquisition Manager Ext. 9762
Paul Vinciguerra, Construction Manager Ext. 9715

RE: **The Metropolitan:** Emergency Procurement Approval by Metropolitan Development Corporation to Select Smislova, Kehnemui & Associates, P.A as Structural Engineers to Complete a Plan for Repair and Evaluation of a Waterproofing Services Contractor for the Green Roof at Metropolitan Apartments.

DATE: February 2, 2022

STATUS: Committee Report Deliberation X

OVERALL GOAL & OBJECTIVE:

Emergency Procurement to Select by Metropolitan Development Corporation (the “Corporation”) to Select Smislova, Kehnemui & Associates, P.A (“SK&A”) as Structural Engineers to Complete a Plan for Repair and Evaluation of a Waterproofing Services Contractor for the Green Roof at Metropolitan Apartments.

BACKGROUND:

The Metropolitan Apartments (the “Property”) was constructed in 1997 as a 14-story, 308-unit high-rise apartment building located at 7620 Old Georgetown Road, Bethesda and currently consists of 216 market rate units and 92 affordable units.

METROPOLITAN DEVELOPMENT CORPORATION

The Property is built above the Montgomery County-owned Metropolitan Public Parking Garage 49 (the “County Garage”) and legal title is structured as an air rights condominium.

The Corporation approved the selection of Miner Feinstein Architects (“MFA”) as architect for the Property for design services for the rehabilitation of the Property. MFA engaged with SK&A as Structural Engineers as part of the design team. SK&A’s original scope of work under MFA’s engagement includes evaluation of the green roof; which, while located on top of the parking garage, is related to the Property’s residential use. Had this not been elevated by the County to an emergency status, it would have been addressed as part of the evaluation of the Property in preparation for the planned rehabilitation work.



The Property has the green roof above the apartment parking spaces and the plaza level structural slabs both of which exhibit signs of moisture intrusion. The County informed HOC staff that this has caused corrosion of the steel reinforcement of the concrete structural slabs, beams, and foundation walls. The Southeast corner of the facility experiences flooding with significant rain events, including water intrusion into the County Garage’s elevator shafts, resulting in elevator outage.

The County hired a civil engineer to investigate and perform a survey with testing in 2018, which revealed ineffective drainage media beneath the paved area, such as concrete overlay and insulation without drainage channels, on the protection course and self-adhering rubberized asphalt membrane. Additionally, the survey revealed blocked and poorly maintained drains. Therefore, the County closed the County Garage’s elevators at the Southeast corner of Plaza area.



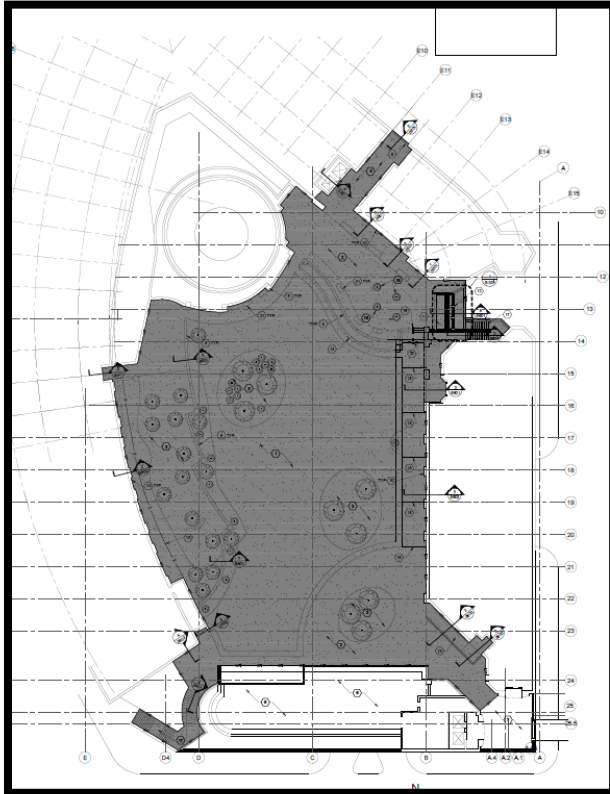
The SK&A team also reported moisture intrusion at the Northeast area of the Plaza and the Northwest corner of the Bethesda-Chevy Chase Regional Service Center.

Design

The SK&A team already completed 95% of the structural drawings for the repair work, 100% of construction documents after receiving any comments from the DPS. SK&A provided staff a building permit set of drawings for the plaza repair and staff can submit the building permit to Department of Permitting Services (the “DPS”) on or about February 18.

Additionally, they will assist HOC with identifying and selecting qualified waterproofing subcontractors to completing the repair work.

METROPOLITAN DEVELOPMENT CORPORATION



The waterproofing subcontractor will work on the shaded part of plaza area to install new waterproofing system and perform structural concrete repairs to the suspended plaza level structure to include various categories of concrete patching such as full depth repairs, top surface partial depth repairs, crack repairs, overlay repairs, beam/beam soffit repairs, column repairs, and partial depth slab soffit repairs based on SK&A structural drawing.

Furthermore, the waterproofing subcontractor will be tasked with identifying and repairing or replacing the existing plumbing fixtures (drains, hose bibs, forced water mains and others) and components at the plaza level and garage facility below.

Though it is the County's garage and elevators that are impacted, repairs to the green roof are the responsibility of the Corporation given the green roof is associated with the Property's residential use. SK&A has submitted a proposal to

HOC to complete 100% of the construction documents; to complete the bidding and award process for the waterproofing contractor; and any other additional necessary consultants (e.g. fountain consultant, civil engineer, and permit expediter); and to perform oversight of the work for \$160,000. HOC will separately fund an amount of \$83,000 in permit fees, including a contingency of \$23,300 shown in the table below.

Items	Amount
SK&A design fees	
100% of Construction Documents	\$20,000
Bidding & Awarding	\$10,000
Additional Consultants	\$60,000
SK&A construction administration service	\$70,000
Total SK&A Fees	\$160,000
HOC Costs	
Permit Fees - DPS	
Sediment Control Fee	\$3,000
Tree Canopy Fee	\$4,000
Forest Conservation Exemption	\$200
Right-of-Way Permit	\$2,500
Estimated Commercial Building Permit for alteration/repair (50% of final building permit fee)	\$50,000
HOC - construction contingency	\$23,300
Total HOC Costs	\$83,000

METROPOLITAN DEVELOPMENT CORPORATION

Total	\$243,000
--------------	------------------

Staff requests to authorization to engage SK&A as structural engineers to complete 100% of construction documents for the repair and evaluation of a Waterproofing Services Contractor for \$160,000 including construction administration services.

Repair

On February 3, 2022, HOC staff will join SK&A and prospective bidders at the site for a pre-bid conference. Bidders will be asked to provide bids to complete the work based on SK&A's description and design. SK&A will assist staff with the evaluation of the bids based on HOC's selection criteria, including qualification and price.

It is anticipated that work will commence in May 2022 after obtaining the building permit and will be completed between seven (7) month and nine (9) months. Once staff receives recommendation from SK&A for waterproofing subcontractor around February 25, staff will return to the Development & Finance Committee on March 25, 2022, to recommend the firm best suited to complete the work and seek Corporation approval at the April 6, 2022 meeting.

Funding

Again, the Property is responsible for the cost to repair the green roof, which would be paid from operating cash flow from The Metropolitan.

METROPOLITAN DEVELOPMENT CORPORATION

Summary of past approvals for the Metropolitan

Date	Res.	Description
9-Sep-20	20-65	Approval of Feasibility Funding for the Financing and Renovation of The Metropolitan and Authorization to Make loans to The Metropolitan of Bethesda Limited Partnership and The Metropolitan Development Corporation
9-Sep-20	20-004 _{ME}	Approval of Metropolitan Development Corporation (the "Corporation") to Accept a Loan from the Opportunity Housing Reserve Fund for Feasibility Funding to Explore the Refinancing and Renovation of Units Owned by the Corporation
13-Jan-21	21-10	Approval to Select Miner Feinstein Architects, Authorization for the Executive Director to Negotiate and Execute a Contract for the Renovation of The Metropolitan Apartments and Authorization to Make Loans to Metropolitan Bethesda Limited Partnership and Metropolitan Development Corporation
13-Jan-21	21-001 _{ME}	Approval by Metropolitan Development Corporation to Accept the Selection Miner Feinstein Architects as Architect and Accept a Loan from the Opportunity Housing Reserve Fund for Architectural and Interior Design Services for the Predevelopment Phase of the Rehabilitation

ISSUES FOR CONSIDERATION:

Will the Board of Directors of Metropolitan Development Corporation (the "Corporation") select staff's recommendation, which is supported by the Development and Finance Committee to:

1. Approve the selection of Smislova, Kehnemui & Associates, P.A as Structural Engineers to Complete a Plan for Repair and Evaluation of Waterproofing Services Contractor for the Green Roof at Metropolitan?
2. Approve the use of \$243,000 to be funded by the operations from Metropolitan Development Corporation?

PRINCIPALS:

Housing Opportunities Commission of Montgomery County
The Metropolitan of Bethesda Limited Partnership
The Metropolitan Development Corporation
Montgomery County
SK&A

BUDGET IMPACT:

There may be an impact on the Corporation's 2022 operating budget from the reduction of total available cash flow from the Metropolitan Development Corporation of \$243,000. Staff will review the property performance through December 31, 2021 to determine if a budget amendment is warranted at this time.

TIME FRAME:

For formal action on February 2, 2022 meeting of the Metropolitan Development Corporation.

METROPOLITAN DEVELOPMENT CORPORATION

STAFF RECOMMENDATION & COMMISSION ACTION NEEDED:

Staff requests that the Corporation approve the selection of Smislova, Kehnemui & Associates, P.A. as Structural Engineers to complete a Plan for Repair and Evaluation of Waterproofing Services Contractors for the Green Roof at Metropolitan, and approve to use \$243,000 from the operations from Metropolitan Development Corporation to fund the costs.

METROPOLITAN DEVELOPMENT CORPORATION

RESOLUTION No: 22-001 ME

RE: Emergency Procurement to Select Smislova, Kehnemui & Associates, P.A as Structural Engineers to Complete a Plan for Repair and Evaluation of a Waterproofing Services Contractor for the Green Roof at Metropolitan Apartments

WHEREAS, The Metropolitan Apartments (“the “Property”) was constructed in 1997 as a 14-story, 308-unit high-rise apartment building located at 7620 Old Georgetown Road, Bethesda and currently consists of 216 market rate units and 92 affordable units; and

WHEREAS, the Property is owned by The Metropolitan of Bethesda Limited Partnership (the “Metropolitan LP”), which is wholly owned by the Housing Opportunities Commission of Montgomery County (the “Commission” or “HOC”), and The Metropolitan Development Corporation (the “Metropolitan Corporation”), which is wholly controlled by HOC; and

WHEREAS, on January 13, 2021, the Commission approved the selection of Miner Feinstein Architects (“MFA”) as the architect for the upcoming renovations at the Property; and

WHEREAS, MFA engaged Smislova, Kehnemui & Associates, P.A (“SK&A”) as structural engineers to be a part of the design team for the renovations; and

WHEREAS, the Property has a green roof plaza and staff has recently learned that the structural slabs are exhibiting moisture intrusion, which is likely causing corrosion of steel reinforcements within the concrete structural slabs, beams, and foundation walls; and

WHEREAS, testing has revealed ineffective drainage beneath the paved area of the plaza, which needs to be remediated immediately in order to prevent more extensive and expensive damage to the Property; and

WHEREAS, staff recommends entering into a Non-Competitive procurement, pursuant to the Commission’s Procurement Policy, to select SK&A as structural engineers to (i) complete a plan for the necessary repairs, (ii) to evaluate proposals for the selection of a waterproofing services contractor, and (iii) to perform construction management services, in an amount of \$160,000 (the “Structural Engineer Services”); and

WHEREAS, staff estimates an additional \$83,000 in costs to obtain permits, including a contingency of \$23,300 (the “HOC Costs”); and

WHEREAS, the Structural Engineer Services and HOC Costs will be funded by the Metropolitan Corporation operating account; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of The Metropolitan Development Corporation approves entering into a Non-Competitive procurement, pursuant to HOC’s Procurement Policy, to select SK&A to perform the Structural Engineer Services, and negotiating and executing any necessary contracts.

METROPOLITAN DEVELOPMENT CORPORATION

BE IT FURTHER RESOLVED that the Board of Directors of the Metropolitan Development Corporation approves funding the Structural Engineer Services and HOC Costs from the Corporation's operating account.

BE IT FURTHER RESOLVED that the Board of Directors of the Metropolitan Development Corporation, that the Acting Executive Director of HOC, or her designee, without further action on its part, is authorized to take any and all other actions necessary and proper to carry out the transactions contemplated herein including, but not limited to, the execution of any and all documents related thereto.

I HEREBY CERTIFY that the foregoing resolution was adopted by the Board of Directors of The Metropolitan Development Corporation at a regular open meeting conducted on February 2, 2022.

S
E
A
L

Patrice M. Birdsong
Special Assistant to the Board of Directors of
The Metropolitan Development Corporation

Adjourn

Closing Statement

Written Statement for Closing a Meeting (“Closing Statement”)

Date: February 2, 2022

A. Pursuant to Section 3-305(b) and (d) of the General Provisions Article of the Annotated Code of Maryland, I move to adjourn this open session to a closed session only:

1. “To discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom this public body has jurisdiction; any other personnel matter that affects one or more specific individuals”;
3. “To consider the acquisition of real property for a public purpose and matters directly related thereto;” and
13. “To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.”

B. For each provision checked above, the topic to be discussed and the reason for discussing that topic in closed session is provided below.

Statutory Citation	Topic	Reason for closed-session discussion
§3-305(b)(1)	<p>The employment, performance, and compensation of a specific individual employee.</p> <p>[NOTE: This topic was discussed in a previous closed session on January 12, 2022. This is a continuation of that discussion.]</p>	<p>The meeting must be closed to the public because it involves an individual employee over whom HOC has jurisdiction, and the discussion will include personal information about the individual’s specific performance, compensation, and employment.</p>
§3-305(b)(3)	<p>The acquisition/purchase of (A) the fee simple interest (via a purchase and sale agreement) of three multifamily properties located in Bethesda, Maryland; and (B) three separate multifamily properties (via a purchase and sale agreement or ground lease) also located in Bethesda, Maryland.</p> <p>[NOTE: Part (A) and Part (B) were discussed in previous closed sessions, most recently at a closed Development and Finance committee meeting on January 21, 2022. This meeting is to continue those discussions.]</p>	<p>The meeting must be closed in order to ensure HOC can purchase the properties. Public discussion of these items could harm HOC’s ability to negotiate and could result in HOC not being able to purchase the properties.</p>
§3-305(b)(13)	<p>The confidential commercial and financial terms of HOC’s potential purchase of both of the above referenced acquisitions.</p>	<p>Section 4-335 of the Maryland Public Information Act prevents disclosure of confidential commercial or financial information obtained from a third-party. The meeting must be closed to the public in order to protect confidential commercial and financial information provided to HOC from private financial institutions regarding the financing of the above referenced acquisitions. All such information to be discussed is customarily and actually treated as private by the financial institutions, and has been provided to HOC under an assurance of privacy.</p>

C. This statement is made by Roy Priest, Chair.

D. Recorded vote to close the meeting:

- Date: February 2, 2022 Time: _____ Location: Zoom (LiveStream on YouTube)
- Motion to close meeting made by: _____
- Motion seconded by: _____
- Commissioners in favor: _____
- Commissioners opposed: _____
- Commissioners abstaining: _____
- Commissioners absent: _____

Officer's Signature: _____

Adjourn

Closed Session