

**HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY**

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

**Special Session Minutes**

**February 22 2019**

A Special Session of the Housing Opportunities Commission of Montgomery County was conducted on Friday, February 22, 2019 at 10400 Detrick Avenue, Kensington, Maryland beginning at 12:01 p.m. Those in attendance were:

**Present**

Jackie Simon, Chair  
Richard Y. Nelson, Vice Chair  
Roy Priest, Chair Pro Tem  
Frances Kelleher

**Absent**

Edgar Rodriguez  
Linda Croom  
Pamela Byrd

**Also Attending**

Stacy Spann, Executive Director  
Cornelia Kent  
Kayrine Brown  
Victoria Dixon  
Darcel Cox  
Terri Fowler  
Claudia Wilson  
Len Vilicic  
Gio Kaviladze

Aisha Memon, Acting General Council  
Eamon Lorinez  
Jay Shepherd  
Sherraine Rawlins  
Ellen Goff  
Vivian Benjamin  
Jennifer Arrington  
Marcus Ervin

**I. ITEMS REQUIRING DELIBERATION AND/OR ACTION**

- A. Approval to Amend the Financing Plan for the Upton II Development (“the Property”); Authorization to Increase the Acquisition Financing for HOC at the Upton II, LLC (the “Borrower”); Authorization to Increase the Commitment for Permanent Financing; and, Authorization for the Borrower to Accept Increased Financing**

Kayrine Brown, Chief Investment and Real Estate Officer, and Victoria Dixon, Senior Multifamily Underwriter, were presenters.

The foregoing resolution was adopted upon a motion by Commissioner Kelleher and seconded by Chair Pro Tem Priest. Affirmative votes were cast by Commissioners Simon, Nelson, Priest, and Kelleher. Commissioners Rodriguez, Croom, and Byrd were necessarily absent and did not participate in the vote.

**RESOLUTION NO.: 19-23**

**RE: Approval to Amend the Financing Plan for the Upton II Development (“the Property”); Authorization to Increase the Acquisition Financing for HOC at the Upton II, LLC (the “Borrower”); Authorization to Increase the Commitment for Permanent Financing; and, Authorization for the Borrower to Accept Increased Financing**

**WHEREAS**, the Housing Opportunities Commission of Montgomery County (the “Commission” or “HOC”) is a public body corporate and politic duly organized under Division II of the Housing and Community Development Article of the Annotated Code of Maryland, as amended, known as the Housing Authorities Law, and authorized thereby to effectuate the purpose of providing affordable housing, including providing for the acquisition, construction, rehabilitation and/or permanent financing or refinancing (or a plan of financing) of multifamily rental housing properties which provide a public purpose; and

**WHEREAS**, Upton II is a planned development in Rockville that is entitled by Duball (the “Master Developer”) under current zoning and planning requirements for retail, public parking, and up to 400 apartments, of which HOC and Victory Housing, Inc. will own and operate a condominium unit containing 150 apartments, which will be a mixed-income, age restricted community (the “Property”) and the remaining 250 units will be controlled by the Master Developer or its affiliates; and

**WHEREAS**, HOC is currently the sole member of HOC MM Upton II, LLC (the “Managing Member”), which in turn is the sole member of HOC at The Upton II, LLC (“Borrower”); and

**WHEREAS**, on January 9, 2019, the Commission approved Resolution 19-09, which included the approval of the Financing Plan for the Property; and

**WHEREAS**, the approved Financing Plan totaling \$49.5 million for the acquisition, construction and permanent financing for the Property, includes the following sources: a short-term, tax-exempt loan to fund construction by way of a Commission conduit loan from M&T Bank to be passed through to the Borrower (“Construction Loan”), which will be repaid by a FHA Risk Share Permanent Loan (“Permanent Loan”); bridge funding during acquisition/construction by way of draws on the Commission’s PNC Bank, N.A. Real Estate Line of Credit; LIHTC equity; a subordinate loan from Montgomery County, Maryland; acquisition financing in the form of a loan from the Commission (“HOC Loan”); and, deferred developer fees; and

**WHEREAS**, on February 6, 2019, to protect the transaction from potential interest rate increases the Commission authorized the execution of two interest rate hedges, one for the Construction Loan and one for the Permanent Loan; and

**WHEREAS**, the Master Developer has advised HOC of increased development costs of \$2 million above the previously approved budget for a total of \$51.5 million for the development of the Property; and

**WHEREAS**, the increased development costs are expected to be partially offset by a higher tax credit equity contribution, for a remaining financing gap of \$1.4 million; and

**WHEREAS**, interest rates for the forward starting swap have come in lower than originally underwritten, allowing the operations of the property to support a higher permanent loan amount of up to \$27,500,000.

**NOW, THEREFORE, BE IT RESOLVED** that the Housing Opportunities Commission of Montgomery County hereby amends the Financing Plan and authorizes increasing the HOC Loan by up to \$7,800,000 from \$6,000,000, a \$1,800,000 increase, to cover increased construction and transaction costs and to be funded from the Commission's FHA Risk Share account until such time funds have been replaced or unobligated in the Opportunity Housing Reserve Fund.

**BE IT FURTHER RESOLVED** that the Housing Opportunities Commission of Montgomery County authorizes restating the three year forward commitment for a permanent loan up to \$27.5 million from \$24,000,000, a \$3,500,000 increase, which will be credit enhanced by FHA Risk Share Mortgage insurance, pursuant to the Risk Sharing Agreement between the Commission and the U.S. Department of Housing and Urban Development ("HUD"), of which the Commission shall assume 25% of the risk and HUD shall assume 75% for the transaction.

**BE IT FURTHER RESOLVED** by the Housing Opportunities Commission of Montgomery County, acting in its own capacity and for and on behalf of the Managing Member and the Borrower, that the Managing Member and Borrower approve corresponding changes to the Financing Plan.

**BE IT FURTHER RESOLVED** that the Housing Opportunities Commission of Montgomery County, acting in its own capacity and for and on behalf of the Managing Member and the Borrower, that the Executive Director is hereby authorized, without any further action on their respective parts, to execute such documents and to take any and all other actions, in each case as necessary and proper, in the Executive Director's judgement, to carry out the Financing Plan and the transaction and action contemplated herein.

**B. Approval to Amend the Final Development Plan for the HOC at the Upton II**

Kayrine Brown, Chief Investment and Real Estate Officer, and Jay Shepherd, Senior Financial Analyst, were the presenters.

The foregoing resolution was adopted upon a motion by Vice Chair Nelson and seconded by Chair Pro Tem Priest. Affirmative votes were cast by Commissioners Simon, Nelson, Priest, and Kelleher. Commissioners Rodriguez, Croom, and Byrd were necessarily absent and did not participate in the vote.

**RESOLUTION NO.: 19-24**

**RE: Approval to Amend the Final Development  
Plan for the HOC at the Upton II**

**WHEREAS**, the Housing Opportunities Commission of Montgomery County (“HOC” or “Commission”), a public body corporate and politic duly organized under Division II of the Housing and Community Development Article of the Annotated Code of Maryland, as amended, known as the Housing Authorities Law, is authorized thereby to effectuate the purpose of providing affordable housing, including providing financing for the construction of rental housing properties which provide a public purpose; and

**WHEREAS**, Upton II is a planned development in Rockville Town Center that is entitled under current zoning and planning requirements of the City of Rockville for retail, public parking, and up to 400 apartments, of which HOC and Victory Housing, Inc. (“VHI”) will own and operate a condominium unit containing 150 apartments and a share of parking and general common elements (the “HOC Upton Development”) in a single purpose entity known as HOC at The Upton II, LLC (the “Owner”) and Duball LLC or an affiliate will own and operate a second condominium unit comprising the remainder of the development; and

**WHEREAS**, HOC is currently the sole member of HOC MM Upton II, LLC (the “Managing Member”), which in turn is the sole member of the Owner; and

**WHEREAS**, it is expected that the ownership structure will be modified to admit a tax credit investor as a non-managing member of the Owner and to admit VHI as a non-managing member of the Managing Member, with HOC remaining in control of the Owner as the managing member of the Managing Member entity; and

**WHEREAS**, the HOC Upton Development proposes to serve seniors 62 years and older across a wide income range through the implementation of the new income averaging component of the Low Income Housing Tax Credit (“LIHTC”) program, which will allow households with income from 40% up to 80% of the Washington DC Area Median Income (“AMI”) to enjoy rent protection without impairing the LIHTC equity for the development; and

**WHEREAS**, on October 3, 2018, the Commission approved the Development Plan for HOC at the Upton II as a 150-unit, mixed-income, new construction, age-restricted community containing 136 one-bedroom and 14 two-bedroom units; and

**WHEREAS**, on January 9, 2019, HOC approved a Final Development Plan (“Final Development Plan”), which estimated the total development cost of the HOC Upton Development of \$49.5MM to be funded with a combination of HOC-issued tax-exempt bonds, LIHTC equity, subordinate financing from Montgomery County, deferred developer fee, and an HOC subordinated loan; and

**WHEREAS**, also as part of the Final Development Plan, HOC at the Upton II would contain 28 Project Based Rental Assistance (“PBRA”) units, 80 Rental Assistance Payment (“RAP”) units through conversion of 112 units at Town Center Apartments via the Second Component of the Rental Assistance Demonstration (“RAD”) program, 27 units under LIHTC restrictions, and 15 market rate units; and

**WHEREAS**, in accordance with the Final Development Plan, HOC intends for the Owner to acquire the condominium unit that will comprise the HOC Upton Development (the "HOC Upton Condominium") and enter into a construction contract for the HOC Upton Development; and

**WHEREAS**, a development team led by Duball LLC has been assembled, construction permit drawings finalized and submitted with required building permit expected to be issued in early 2019, and the HOC Upton Development is projected to take 29 months and deliver in the Fall of 2021; and

**WHEREAS**, HOC and Duball negotiated a cost-plus fee guaranteed maximum price contract in early February 2019 with Paradigm Contractors and due to cost drivers in the market, realized a \$2,175,671 increase in construction materials and labor costs and after value engineering a total increase of \$1,822,629 over the Final Development Plan for the HOC portion of the development; and

**WHEREAS**, soft cost increases pegged to the GMP cost increases also were included raising the total increase to the development budget from \$49.5 million to \$51.5 million. Total cost increases were partially offset by additional equity raised by the participation in the Federal Low Income Housing Tax Credits from the Maryland Department of Housing and Community Development Federal Low Income Housing Tax Credits from the Maryland Department of Housing and Community Development; and

**NOW, THEREFORE, BE IT RESOLVED** by the Housing Opportunities Commission of Montgomery County that the Amended Final Development Plan for the construction of HOC Upton Development is hereby approved to include a total development cost of approximately \$51.5MM, the delivery of 150 apartment units which will serve seniors 62 years and older and of which 90% (135 units) will be restricted to those earning 40% to 80% of the area median income.

**BE IT FURTHER RESOLVED** by the Housing Opportunities Commission of Montgomery County, acting for itself that the Executive Director is authorized, without any further action on their respective parts, to take any and all other actions necessary and proper to carry out the transactions and actions contemplated herein, including the execution of any documents related thereto.

Based upon this report and there being no further business to come before this Special Session of the Commission, a motion was made by Vice Chair Nelson, seconded by Chair Pro Tem Priest, and unanimously adopted to adjourn.

The meeting adjourned at 12:28 p.m.

Respectfully submitted,

Stacy L. Spann  
Secretary-Treasurer

/pmb

**Approved: March 6, 2019**