

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

GM SILVER CREEK, LTD.,

Petitioner,

v.

FHFC Case No.: 2017-010BP
DOAH Case No. 17-1545BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,

and

AMBAR KEY, LTD.,

Intervenor.

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on July 28, 2017. On June 1, 2017, the parties executed the attached Consent Agreement in the above-captioned case. The Consent Agreement is adopted and incorporated by reference as though fully set forth in this Order.

IT IS HEREBY ORDERED that Ambar Key, Ltd., is ineligible for funding under the terms of Request for Applications 2016-114 ("RFA"). Funding under RFA 2016-114 will be distributed through the ranking and selection process

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FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Jennifer D. Marshall /DATL: 7/28/2017

conducted pursuant to the RFA and the outcome of the pending litigation under the same RFA.

DONE and ORDERED this 28th day of July, 2017.

FLORIDA HOUSING FINANCE
CORPORATION

By: _____

Chair



Copies to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 2000 DRAYTON DRIVE, TALLAHASSEE, FLORIDA 32399-0950, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

GM SILVER CREEK, LTD.,

Petitioner,

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FHFC Case No.: 2017-010BP
DOAH Case No. 17-1545BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,

and

AMBAR KEY, LTD.,

Intervenor.

CONSENT AGREEMENT

Petitioner, GM Silver Creek, Ltd. (“Silver Creek”), Respondent, Florida Housing Finance Corporation (“Florida Housing”), and Intervenor, Ambar Key, Ltd. (“Ambar Key”), by and through undersigned counsel, hereby present the following Consent Agreement in accordance with Section 120.57(4), Florida Statutes:

PRELIMINARY STATEMENT

On or before December 15, 2016, Petitioner Silver Creek submitted Application No. 2017-156C and Intervenor Ambar Key submitted Application No. 2017-147C to Florida Housing in response to Florida Housing’s Request for Applications 2016-114, Housing Credit Financing for Affordable Housing Developments Located in Miami-Dade County (the “RFA”). Florida Housing’s Review Committee for the RFA met on January 25, 2017, and reviewed all responsive applications to the RFA. The Review Committee determined that both the Silver Creek and

Ambar Key Applications were eligible for funding. Through the ranking and selection process outlined in the RFA, Ambar Key was recommended for funding. The Review Committee developed a chart listing its funding recommendations for the RFA that recommended Ambar Key, among other Applicants, for funding. Silver Creek's application, while eligible for funding, was not recommended for funding by the Review Committee.

The Florida Housing Board of Directors ("Board") adopted the Review Committee's RFA funding recommendations on February 3, 2017. Florida Housing posted its Notice of Intended Decision on February 3, 2017, and provided Applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes.

Silver Creek timely filed a Notice of Intent to Protest followed by a Petition for Formal Administrative Hearing ("Petition") challenging the Board's finding that Ambar Key's Application was eligible for funding. On March 3, 2017, Florida Housing sent a Notice to All Bidders on RFA 2016-114 ("Notice"), including those bidders who had been preliminarily selected for funding. The Notice informed all bidders that their substantial interests might be affected by the disposition of Petitioner's Petition and advised the bidders of their opportunity to intervene. Ambar Key timely intervened.

The matter was initially referred to the Division of Administrative Hearings ("DOAH") for a formal hearing and assigned DOAH Case No. 17-001545BID. The case was then consolidated with petitions filed by Joe Moretti Phase Three, LLC and Stirrup Plaza Phase Three, LLC, DOAH Case Nos. 17-1543BID and 17-1544BID, respectively. Hearing for the consolidated case was set for April 12, 2017. On April 11, 2017, representatives of Silver Creek, Ambar Key, and Florida Housing entered into a Settlement Agreement in order to resolve the

disputes and avoid the inconvenience, expense, and uncertainty of litigation. Silver Creek and Ambar Key have agreed to be bound by the terms of the April 11, 2017 Settlement Agreement.

Upon issuance of a Final Order adopting the terms of this Consent Agreement, Silver Creek agrees to dismiss its Petition with prejudice. Upon issuance of a Final Order adopting the terms of this Consent Agreement, the parties waive all right to appeal this Consent Agreement or the Final Order and each party shall bear its own costs and attorney's fees. This Consent Agreement is subject to the approval of the Florida Housing Board of Directors (the "Board"). If the Board does not approve this Consent Agreement, no Final Order will be issued and this Consent Agreement shall be null and void as if it were never executed.

STIPULATED FINDINGS OF FACT

1. Silver Creek is a Florida limited partnership in the business of providing affordable housing. Silver Creek is an Applicant for tax credit financing in Florida Housing's RFA 2016-114 to construct an 80-unit development for low-income families. Its Application, assigned number 2017-156C, was deemed "eligible" but was not selected for funding by the Board.

2. Florida Housing is a public corporation that is organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in the State of Florida. § 420.504, Fla. Stat.; Chapter 67-60, Fla. Admin. Code.

3. Ambar Key is a Florida limited partnership in the business of providing affordable housing. Ambar Key is an Applicant for tax credit financing in Florida Housing's RFA 2016-114 to construct a 120-unit development for low-income families. Its Application, assigned

number 2017-147C, was deemed “eligible” and was selected for funding subject to credit underwriting.

4. Pursuant to section 420.5099, Florida Statutes, Florida Housing is designated as the housing credit agency for Florida within the meaning of section 42(h)(7)(A) of the Internal Revenue Code and has the responsibility and authority to establish procedures for allocating and distributing low-income housing tax credits.

5. Florida Housing issued RFA 2016-114 seeking applications for development of affordable housing for low income individuals in Miami-Dade County.

6. On or about December 15, 2016, Silver Creek, Ambar Key, and others submitted applications for financing for RFA 2016-114.

7. Florida Housing’s Review Committee for the RFA met on January 25, 2017, and reviewed all responsive applications to the RFA. The Review Committee determined that both the Silver Creek and Ambar Key Applications were eligible for funding. Through the ranking and selection process outlined in the RFA, Ambar Key was recommended for funding.

8. The Review Committee developed a chart listing its funding recommendations for the RFA that recommended Ambar Key, among other Applicants, for funding. The Florida Housing Board of Directors (“Board”) adopted the Review Committee’s RFA funding recommendations on February 3, 2017. Florida Housing posted its notice of intended decision on February 3, 2017, and provided Applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes.

9. Silver Creek timely filed a Notice of Intent to Protest followed by a Petition for Formal Administrative Hearing (“Petition”) on February 16, 2017, challenging the Board’s finding that Ambar Key’s Application was eligible for funding.

10. On March 3, 2017, Florida Housing sent a Notice to All Bidders on RFA 2016-114 (“Notice”), including those bidders who had been preliminarily selected for funding. The Notice informed all bidders that their substantial interests might be affected by the disposition of Petitioner’s Petition and advised the bidders of their opportunity to intervene. Ambar Key timely intervened.

11. Upon review of the Petition, as well as the Application, RFA documents, and information revealed during discovery, Florida Housing has determined that Ambar Key’s Application should be ineligible for funding because it did not meet the minimum required score for Transit Services as outlined in the RFA.

12. Section 6.c.1 of the RFA set forth that Applications will receive points for proximity to certain services (“Proximity Points”). The Proximity Points at issue here involve Transit Services. To receive points for Transit Services, Applicants may select among 1) a Public Bus Stop (maximum of two points), 2) a Public Bus Transfer Stop (maximum of six points), 3) a Public Bus Rapid Transit Stop (maximum of six points), and 4) a Public Rail Station (maximum of six points).

13. In its Application, Ambar Key selected Public Bus Transfer Stop and received 5.5 points.

14. The RFA defines a Public Bus Transfer Stop as:

[A] fixed location at which passengers may access at least three routes of public transportation via buses. Each qualifying route must have a scheduled stop at the Public Bus Transfer Stop at least hourly during the times of 7am to 9am and also during the times of 4pm to 6pm Monday through Friday, excluding holidays, on a year-round basis.

15. The parties stipulate that the transit service stop identified by Ambar Key in its Application does not qualify as a Public Bus Transfer Stop, as defined in RFA 2016-114.

Specifically, the stop identified by Ambar Key is served by only one line that constitutes a “qualifying route,” as that term is used in the RFA to mean a route stopping at least hourly between the hours of 7 a.m. and 9 a.m., and again between 4 p.m. and 6 p.m., Monday through Friday. The other two routes relied upon by Ambar Key to qualify this stop as a Public Bus Transfer Stop do not in fact constitute “qualifying routes”.

16. Ambar Key submits that its reliance on information to the contrary was reasonable and that there was no intent on Ambar Key’s part to mislead Florida Housing or misrepresent the status of the transit service stop with the information provided in its application. Florida Housing and Silver Creek do not contest Ambar Key’s contentions in this regard.

17. The loss of Public Bus Transfer Stop points for the Ambar Key Application results in the Ambar Key Application not receiving points for Transit Services, and thus being deemed an ineligible Application under the terms of RFA 2016-114.

18. Florida Housing and Silver Creek agree that this Consent Agreement will not be considered a withdrawal of the Ambar Key Application, or any form of false statement or misrepresentation, and will not impact the ability of Ambar Key, its developers or co-developers, or any principal of the applicant or developer entities involved in the Ambar Key Application to participate in future Florida Housing funding programs.

19. Silver Creek withdraws the other issues raised in its Petition regarding the Ambar Key site, and both Silver Creek and Florida Housing agree as follows:

a. As of December 15, 2016, the Ambar Key site is appropriately zoned for multifamily residential use, and no further hearings or approvals are required to obtain the zoning classification or density necessary to construct the Ambar Key proposed development on its site;

b. The Ambar Key Application's use of "Intersection of NE 2nd Street and NE 3rd Avenue, Florida City, Florida" as its development location is sufficient to comply with Florida Housing's RFA requirements for site address or location;

c. The Ambar Key site does not constitute a Scattered Site; and

d. The Ambar Key Application did not identify an incorrect development type by designating "Garden Apartments" in its application to Florida Housing.

20. The Parties agree that Silver Creek's Application meets all requirements and is eligible for funding under RFA 2016-114. In the event Silver Creek's Application is recommended for a tax credit allocation under RFA 2016-114 to Florida Housing's Board of Directors, Ambar Key and/or its affiliates will in no way seek to overturn, negatively impact, modify, or otherwise challenge any such recommended award of funding to Silver Creek under RFA 2016-114.

STIPULATED CONCLUSIONS OF LAW

21. Pursuant to Sections 120.569 and 120.57(3), Florida Statutes, and Chapter 67-60, Florida Administrative Code, the Florida Housing Board of Directors has jurisdiction over the parties to this proceeding.

22. Florida Housing is statutorily authorized to institute a competitive application process for adopted Chapter 67-60, Florida Administrative Code, to govern the competitive solicitation process for several different programs, including the program for tax credits.

23. Florida Administrative Code, Section 67-60.001 provides that Florida Housing allocate its tax credits, which were made available to Florida Housing on an annual basis by the U.S. Treasury, through the bid protest provisions of Section 120.57(3), Florida Statutes.


24. Petitioner's Application is eligible for funding subject to the ranking and selection process outlined in the RFA.

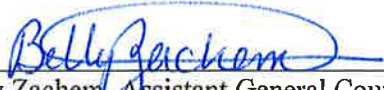
25. Ambar Key's Application is ineligible for funding under the terms of RFA 2016-114.

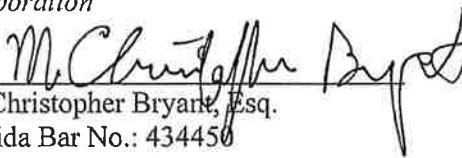
STIPULATED DISPOSITION

Ambar Key is ineligible for funding under the terms of RFA 2016-114. Funding under RFA 2016-114 will be distributed through the ranking and selection process conducted pursuant to the RFA and the outcome of pending litigation under the same RFA.

Respectfully signed this 1st day of ~~May~~ June 2017. (BZ)

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