

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

KEYS AFFORDABLE
DEVELOPMENT IV, LLC

Petitioner,

FHFC Case No.: 2019-029BP
RFA No.: 2019-110
App. No.: 2019-394CS

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation (the "Board") for consideration and final agency action on May 10, 2019. On April 23, 2019, Keys Affordable Development IV, LLC ("Keys Affordable") and Florida Housing Finance Corporation ("Florida Housing") executed a Consent Agreement, attached as Exhibit "A." Based on the Consent Agreement, the Keys Affordable application is eligible and is selected for funding under the terms of RFA 2019-110 (the "RFA").

The Consent Agreement is adopted and incorporated by reference as though fully set forth in this Order.

IT IS HEREBY ORDERED that Keys Affordable is eligible and selected for funding under the terms of the RFA, subject to credit underwriting.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Thomas R. Ramey / DATE: 5/10/19

DONE and ORDERED this 10th day of May, 2019.



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

**KEYS AFFORDABLE
DEVELOPMENT IV, LLC**

Petitioner,

**FHFC Case No. 2019-029BP
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vs.

**FLORIDA HOUSING FINANCE
CORPORATION.**

Respondent.

CONSENT AGREEMENT

Petitioner, Keys Affordable Development IV, LLC, (“Petitioner” or “Keys Affordable”) and Florida Housing Finance Corporation (“Florida Housing”), by and through counsel, hereby present the following Consent Agreement in accordance with Section 120.57(4), Florida Statutes.

PRELIMINARY STATEMENT

1. On February 5, 2019, Florida Housing issued RFA 2019-110 SAIL Financing for the Construction of Workforce Housing for Hurricane Recovery in Monroe County (the “RFA”) specifically targeting applications for development of Workforce Housing in Monroe County, Florida. The RFA provides as follows,

This Request for Applications (RFA) is open to Applicants that applied and were unfunded under RFA 2018-115 and are proposing the construction of workforce housing in Monroe County.¹

¹ RFA 2018-115 was likewise open to Applicants proposing the construction of workforce housing in Monroe County. Two (2) applicants out of five that applied under RFA 2018-115 were deemed eligible and selected for funding. The three unfunded applicants from RFA 2018-115 have all applied for funding under RFA 2019-110 and the amount of money available in RFA 2019-110 is enough to fund all three applicants who were not funded in RFA 2018-115.

Florida Housing ... expects to have up to \$11,260,000 in State Apartment Incentive Loan (SAIL) Program funding by the 2018 Legislature to serve primarily low-income persons (i.e. households with incomes that do not exceed 80 percent of the Area Median Income (AMI) as defined in Section 420.0004, F.S.) and moderate-income persons (i.e., households with incomes that do not exceed 120 percent of the AMI as defined in Section 420.0004, F.S). The Corporation also expects to have up to an estimated \$2,776,032 of Housing Credits available for award to proposed Developments serving low-income households at or below 60 percent of the AMI.

(RFA at p. 2).

2. Keys Affordable submitted Application No. 2019-394CS (the “Application”) in response to the RFA. Keys Affordable requested an allocation of \$5,000,000.00 in Workforce SAIL funding and \$925,344 in housing credits for its proposed fifty-two (52) unit affordable housing development in Monroe County, Florida to be known as Boatworks Residences (the “Development”).

3. Florida Housing received three applications in response to the RFA. Two of the applications, Residences at Coco Plum (Application No. 2019-393CS) and The Quarry III (Application No. 2019-395CS), were found eligible and preliminarily selected for funding. Keys Affordable was deemed ineligible based on its Total Set-Aside Breakdown Chart.

4. Keys Affordable timely filed a Notice of Intent to Protest followed by a Formal Written Protest and Petition for Administrative Hearing (the “Petition”) challenging its ineligibility.

5. On April 15, 2019, a Notice to Bidders was issued by Florida Housing informing all bidders that their substantial interest may be affected by the disposition of the Petition and advised applicants of the opportunity to intervene. No applicants sought to intervene.

6. Florida Housing has reviewed the Board’s preliminary RFA funding decision, the Application, and the Petition, and has determined that the Keys Affordable proposed Development meets the eligibility criteria in the RFA. Therefore, Petitioner’s Application met all requirements,

is eligible, and should be selected for funding according to the funding selection process outlined in the RFA.

7. Upon issuance of a Final Order adopting the terms of this Consent Agreement, Keys Affordable agrees to timely dismiss its Petition with prejudice. The parties waive all rights to appeal this Consent Agreement and the Final Order to be issued in this case. Each party shall bear its own costs and attorney's fees.

8. This Consent Agreement is subject to 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

9. 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.

10. Florida Housing administers the SAIL Program set forth in Section 420.5087, Florida Statutes. 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 ("housing credits").

11. Chapter 67-60, Florida Administrative Code, establishes the procedures by which Florida Housing administers the competitive solicitation funding process for the SAIL program and housing credits.

12. The RFA was issued pursuant to and in accordance with Rules 67-60.001 and 67-60.003, Florida Administrative Code, and is adopted and incorporated herein by reference, including all modifications to the RFA.

13. Section Four A.6.d of the RFA required each applicant to select its set-aside commitment and provided the following options:

Per Section 42 of the IRC, the Applicant must elect one (1) of the following minimum set-aside commitments:

- 20% of the units at 50% or less of the Area Median Income (AMI)
- 40% of the units at 60% or less of the AMI
- Average Income Test*

14. Keys Affordable elected the minimum housing credit set-aside commitment of 40% at 60% or less of the AMI.

15. Section Four A.6.d(5) of the RFA required that each applicant complete a Total Set-Aside Breakdown Chart (“Set-Aside Chart”).

The Total Set-Aside Breakdown Chart must reflect all income Set-aside commitments (required set-asides and additional set-asides, including all required ELI Set-Asides) and the required total set-aside percentage (as further outlined below).

(RFA at p. 17).

16. For applicants that selected the 40% at 60% or less of the AMI set-aside commitment, like Keys Affordable, the RFA required:

If the Applicant elects the minimum HC set-aside commitment of 40% at 60% AMI, the Applicant’s total set-aside commitments will be as outlined below:

- 40 percent of the total units, rounded up to the next whole unit, must be set aside at or below 60 percent of the AMI as the Applicant’s Minimum IRC HC Set-Aside;
- 5 percent of the total units, rounded up to the next whole unit, must be set aside as HC Set-Aside Units at 25 percent of the ELI AMI; and

- 55 percent of the total units must be set aside as workforce housing at or below 80 percent or 120 percent AMI.

Note: If the Applicant elects this minimum HC set-aside commitment, a total of 45 percent of the total units, rounded up to the next whole unit, must be set-aside as HC Set-Aside Units as outlined above.

17. In completing its Set-Aside Chart, Keys Affordable committed to construct:

- 45% at or below 60% AMI
- 5% at or below 25% AMI, and
- 50% at or below 80% AMI

18. During scoring, Florida Housing determined that the Keys Affordable Application failed to meet the RFA requirements for its Set-Aside Chart because Florida Housing intended the set-aside commitments stated in the RFA to be the only set-aside commitments eligible in this RFA.

19. During settlement negotiations, Keys Affordable explained that it interpreted the set-aside commitments to be minimums, not absolute values, based on the language in the RFA.

20. In reviewing the Application, the Petition, and the requirements of the RFA, Florida Housing determined that Keys Affordable's interpretation of the RFA is reasonable and Keys Affordable should be an eligible application.

21. Pursuant to the funding selection process, Keys Affordable should be selected for funding.

STIPULATED CONCLUSIONS OF LAW

22. In order to avoid the time, expense, and uncertainty of litigation, the parties agree that Keys Affordable is eligible for funding in RFA 2019-110.

23. The funding of Keys Affordable will not rescind or otherwise negatively impact the funding awarded to any other application in RFA 2019-110.²

24. The undersigned attorneys represent that they have the authority to execute this Consent Agreement on behalf of their respective clients.

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

26. The Keys Affordable Application is eligible and is selected for funding under the terms of RFA 2019-110.

STIPULATED DISPOSITON

Keys Affordable met all eligibility criteria in the RFA and is selected for funding under RFA 2019-110.

Respectfully signed this 23rd day of April 2019.



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² The other successful applications in RFA 2019-110 were previously invited into credit underwriting.