

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2019-085VW

RECEIVED  
19 OCT -8 AM 10:41  
FLORIDA HOUSING  
FINANCE CORPORATION

ARBOURS AT HESTER LAKE, LLC,

Petitioner,

vs.

FHFC Application No. 2018-197C  
REQUEST FOR APPLICATIONS: 2017-111

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.0072(17)(h),  
FLORIDA ADMINISTRATIVE CODE**

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner Arbours at Hester Lake, LLC (“Arbours” or “Petitioner”) submits this Petition to Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of rule 67-48.0072(17)(h), Florida Administrative Code. Arbours submitted an application (No. 2018-197C) for Housing Credits (also known as tax credits) in response to Request for Applications (“RFA”) 2017-111, Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties. Arbours seeks a waiver of rule 67-48.0072(17)(h) so that its General Contractor may use affiliated subcontractors under certain specified conditions, which are outlined below. In support of this Petition, Arbours states:

**A. PETITIONER AND ATTORNEY**

1. The name, address, telephone number, and email address for Petitioner is Arbours at Hester Lake, LLC; 242 Inverness Center Drive, Birmingham, AL 35242; 205-981-3300; sam@arbourvalley.com. For purposes of this proceeding, the contact information for Petitioner

shall be that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney is: Donna E. Blanton, Radey Law Firm, 301 South Bronough Street, Suite 200, Tallahassee, Florida 32301; 850-425-6654; [dblanton@radeylaw.com](mailto:dblanton@radeylaw.com).

**B. BACKGROUND**<sup>1</sup>

3. On December 15, 2017, Arbours submitted an application in response to the RFA. Arbours proposed to use equity raised from the Housing Credits to build an 80-unit, garden-style apartment development in Pasco County (City of Dade City) called Arbours at Hester Lake to serve the family demographic.

4. On May 4, 2018, Florida Housing's Board of Directors preliminarily selected Arbours for funding. Arbours was subsequently invited to enter credit underwriting and submitted a signed acknowledgement accepting the invitation.

5. Arbours requested bids from five companies to serve as General Contractor for the proposed development. Three companies declined to bid on the project. Of the two that submitted bids, Arlington Construction Services, LLC ("Arlington"), submitted a bid that was \$2.3 million

---

<sup>1</sup> The following background information regarding Arbours is provided to facilitate staff's preparation of a memorandum to the Florida Housing Board of Directors ("Board"):

- Development Name: Arbours at Hester Lake
- Developer, including at least one natural person Principal: Arbour Valley Development, LLC; Sam Johnston
- County of Development: Pasco
- Number of Units: 80
- Type: Garden
- Set Asides: 15% @ 30% AMI; 62.5% @ 60% AMI; 22.5% @ 80% AMI
- Demographics: Family
- Funding Amounts: \$1,447,900 in 9% Housing Credits

lower than the bid submitted by the only other bidder, Winter Park Construction Co (“WPC”). Using WPC would make the project financially infeasible for Arbours’ developer; thus, Arbours proposes to use Arlington as its General Contractor. However, Arlington for many years has had a business structure in place where it subcontracts aspects of its construction responsibilities to two Affiliates, Professional Building Services, LLC (“PBS”) and CW Construction Services, LLC (“CW”). Through use of these Affiliates, Arlington is able to control performance, obtain better pricing, and mitigate its insurance risks. Arlington’s bid to serve as General Contractor for Arbours at Hester Lake is contingent on Arlington’s use of its established business structure, including use of the affiliated subcontractors.

6. Rule 67-48.0072(17)(h), Florida Administrative Code, prohibits construction costs from being subcontracted to any entity that has common ownership or is an Affiliate of the General Contractor or the Developer. Application of this rule would prohibit Arbours from using Arlington as its General Contractor.

7. Arbours has been working with the staff of Florida Housing to determine if a conditional waiver of the rule would be acceptable, despite the requirements of rule 67-48.0072(17)(h). Arbours understands, and absolutely intends to comply with, the purpose of the rule, which is to ensure that neither the Developer nor the General Contractor exceeds permissible limits on profits through the use of affiliated entities. Thus, Arbours will provide Florida Housing with a sworn affidavit from Arlington confirming that all labor and associated insurance performed by, or all materials provided by, the related entities will be at cost with no mark-up, fee, or profit built into those items. The affidavit is attached as **Exhibit 1**. Arbours also is amenable to the monitoring of construction activities by Florida Housing’s independent credit underwriter and to

the auditing by an independent Certified Public Accountant of all payments to the affiliates. Additionally, Arbours will commit to confirm and/or verify no less than forty percent (40%) of the Project's costs, per the Final Cost Certification Application Package, in addition to the confirmation and verification of one hundred percent (100%) of the work performed by the affiliates. Finally, Arbours is willing to limit the General Contractor's fee to 12.36 percent of actual construction cost, which is less than the maximum of 14 percent permitted by rule 67-48.0072(16)(b), Florida Administrative Code.

8. The requested waiver is permanent in nature.

**C. RULE FROM WHICH WAIVER IS SOUGHT**

9. Rule 67-48.0072(17)(h) provides:

(17) The General Contractor must meet the following conditions:

....

(h) Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of the General Contractor or the Developer. For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-48.002(5), F.A.C., except that the term 'Applicant' therein shall mean 'General Contractor.'"

**D. STATUTES IMPLEMENTED BY THE RULE**

10. Rule 67-48.0072(17)(h) implements section 420.5087 (State Apartment Incentive Loan Program), section 420.5089 (HOME Investment Partnership Program and HOME Investment Partnership Fund), and section 420.5099 (allocation of the low-income housing tax credit program). All of these programs are part of the Florida Housing Finance Corporation Act, found at sections 420.501-420.517, Florida Statutes. One of the purposes of the Act is "to create new programs to stimulate the construction and substantial rehabilitation of rental housing for eligible persons and families." § 420.502(8), Fla. Stat.

## **E. JUSTIFICATION FOR REQUESTED WAIVER**

11. Section 120.542(1), Florida Statutes, provides that “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” That procedure requires those seeking a variance of, or waiver from, a particular rule to demonstrate that application of the rule would create a substantial hardship or would violate principles of fairness. § 120.542(2), Fla. Stat. Petitions for variances and waivers also are required to demonstrate the purposes of the underlying statute will be achieved. *Id.*

12. Strict adherence to rule 67-48.0072(17)(h) would create a substantial hardship for Arbours, in that the proposed development cannot be built unless Arbours is allowed to use Arlington as its General Contractor. As described above, Arbours sought bids from five General Contractors and received only two responses. The bid from Arlington was \$2.3 million lower than the bid of the only other bidder.

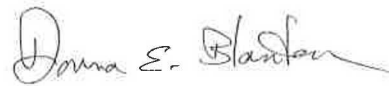
13. The requested waiver will not adversely affect any party, including any other party that applied to receive an allocation of Housing Credits in RFA 2017-111, or Florida Housing.

14. The statutes underlying the rule will be served by the approval of Arbours’ waiver request. Section 420.502(4), Florida Statutes, states that Florida faces “a serious shortage of decent, safe, and sanitary housing in the state available to persons and families of low, moderate, and middle income . . . .” One of the primary purposes of the Act is to facilitate the availability of affordable housing. Granting the waiver request will further these goals, as Arbours will not be able to build the proposed development if the waiver is not granted.

**F. ACTION REQUESTED**

15. For the reasons expressed, Arbours respectfully requests that the Florida Housing Board of Directors grant the requested waiver of rule 67-48.0072(17)(h).

Respectfully submitted,



\_\_\_\_\_  
Donna E. Blanton, FBN 948500  
Radey Law Firm  
301 South Bronough, Suite 200  
Tallahassee, Florida 32301  
Telephone: (850) 425-6654  
E-mail: [dblanton@radeylaw.com](mailto:dblanton@radeylaw.com)  
Secondary: [lmcelroy@radeylaw.com](mailto:lmcelroy@radeylaw.com)  
Counsel for Petitioner

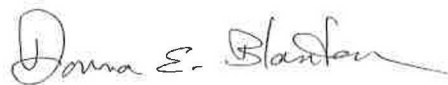
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Petition was filed this 8th day of October, 2019,

by electronic delivery to:

Florida Housing Finance Corporation,  
Attn: Corporation Clerk  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301  
[CorporationClerk@floridahousing.org](mailto:CorporationClerk@floridahousing.org),

Joint Administrative Procedures Committee  
680 Pepper Building  
111 W. Madison Street  
Tallahassee, Florida 32399  
[Joint.admin.procedures@leg.state.fl.us](mailto:Joint.admin.procedures@leg.state.fl.us)



\_\_\_\_\_  
Donna E. Blanton

**AFFIDAVIT OF TAI CRIPPS**

STATE OF ALABAMA

COUNTY OF JEFFERSON

Before me this day personally appeared Tai Cripps, who, being duly sworn, deposes and says:

1. My name is Tai Cripps and I am over the age of 21 and competent to provide this affidavit.

2. I am currently the President of Arlington Construction Services, LLC (“Arlington”). Arlington submitted a bid to Arbours at Hester Lake, LLC (“Arbours at Hester Lake”) to serve as the General Contractor for Arbours’ proposed development in Pasco County (Dade City), which was selected for funding pursuant to Request for Applications, 2017-111, Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties. Arlington’s bid to serve as General Contractor for Arbours at Hester Lake is contingent on Arlington’s use of its established business structure, including use of the affiliated subcontractors.

3. I confirm that all labor and associated insurance performed by, or all materials provided by, the related entities for this development will be at cost with no mark-up, fee, or profit built into those items.



FUTHER AFFIANT SAYETH NOT.

  
Tai Cripps

STATE OF <sup>Alabama</sup> FLORIDA  
COUNTY OF Jefferson

Sworn to (or affirmed) and subscribed before me this 7<sup>th</sup> day of October,  
2019 by Tai Cripps, who is personally known to me or who has produced  
\_\_\_\_\_ as identification.

(SEAL)



  
Notary Public

State of Alabama

Commission Number and Expiration Date: 7-7-22