

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATIONCASE NO. 2018-062VW

SHULL MANOR REH, LTD.,

Petitioner,

v.

FLORIDA HOUSING FINANCE  
CORPORATION

Respondent.

---

**PETITION FOR WAIVER OF THE QUALIFIED ALLOCATION PLAN'S  
REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS AND RULE  
67-48.002(96)**

Petitioner Shull Manor REH, Ltd., a Florida limited partnership (“Shull Manor”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver of the Corporation’s Qualified Allocation Plan’s prohibition from returning its 2017 Housing Credit Allocation prior to the last quarter of 2019. The return of these Housing Credits is required before the Corporation may reserve an allocation of Housing Credits that Shull Manor requests be immediately allocated. *See* Rule 67-48.002(96), Florida Administrative Code (the “Rules”), and Qualified Allocation Plan Section II.K.

1. Pursuant to Section 120.542, Fla. Stat. (2018) and Rules 28-104.001 through 28-104.006, F.A.C., Shull Manor requests a waiver of Rule 67-48.002(96), Florida Administrative Code, and of Section II.K of the Qualified Allocation Plan (“QAP”) to allow the immediate return of its 2017 Housing Credit Allocation, and an immediate allocation of new Housing Credits (2018 or later).

2. The name, address, telephone and facsimile numbers for Shull Manor and its qualified representative are:

Shull Manor REH, Ltd.  
1631 E. Vine Street  
Suite 300  
Kissimmee, FL 34744  
Attn: Lisa Lacock  
(904) 619-6215 (telephone)  
[Lisa.lacock@birdsonghousing.com](mailto:Lisa.lacock@birdsonghousing.com) (e-mail)

3. The name, address, telephone and facsimile numbers of Shull Manor's attorneys are:

Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
200 S. Biscayne Blvd., Ste. 4100  
Miami, Florida 33131  
305-347-7308 (telephone)  
305-347-7808 (telecopier)  
[gcohen@shutts.com](mailto:gcohen@shutts.com) (e-mail)

4. Pursuant to RFA 2016-116, Shull Manor timely submitted (on or about February 3, 2017) its application for competitive Housing Credits under the Low Income Housing Tax Credit program ("LIHTC Program" or "HC Program"). *See* Application Number 2017-191C.

5. Equity raised from Housing Credits will be used for the acquisition, rehabilitation and preservation of 65 residential units (all of which will be low-income housing tax credit units) to be known as Osprey Pointe (the "Development"). The Development will primarily serve low-income tenants in the City of Melbourne and Brevard County, Florida. The Development entails the acquisition and rehabilitation of nine residential buildings. All 65 units will receive project based rental assistance.

6. On May 5, 2017, Shull Manor's application was preliminarily selected for funding by FHFC, and Shull Manor was invited to credit underwriting on June 19, 2017.

7. Under Rule 67-48.028(1), if an applicant cannot complete its development by the end of the year in which the preliminary allocation of Housing Credits is issued, such applicant must enter into a “carryover allocation agreement” with the Corporation by December 31 of the year in which the preliminary allocation is issued. On September 26, 2017, Shull Manor and the Corporation entered into the carryover allocation agreement for the Development. The carryover allocation may (under Section 42 of the Internal Revenue Code) allow the applicant until the end of the second year following the year in which the carryover allocation is issued to place the development in service; in the instant case the Corporation mandated in the carryover allocation agreement that the development be placed in service by September 30, 2019. The carryover allocation agreement requires the 10% test to be submitted (as previously extended) by September 30, 2018; such date may not be further extended.

8. As explained more fully below, there is uncertainty as to whether or not the Development will be able to meet the above 10% test and placed in service deadlines, and as such Shull Manor is requesting an exchange of Housing Credits in order to effectuate an extension of such deadlines.

9. Over the last year the Development has suffered unforeseen events that make it clear that the Development will not be placed in service by September 30, 2019 (or December 31, 2019), or be able to satisfy the 10% test by September 30, 2018.

10. In late December 2017, Congress passed the Tax Cuts and Jobs Act of 2017, which reduced the corporate tax rate to 21%. As a result of the new lower corporate tax rate, placing for low income housing tax credits was substantially reduced. The equity pricing for Shull Manor was decreased; such decrease in price, coupled with the requirement of the United States Housing and Urban Development (“HUD”); the Development is being financed in part

with a HUD Section 221(d)(4) loan) that the scope of rehabilitation be expanded to include replacement of all windows, created a gap in financing for the Development.

11. As a result of the downward pricing described above, the Corporation issued RFA 2018-109 (“Development Viability Loan Funding”) in order to make additional funds available to applicants experiencing a reduction in equity funding for their active awards (recognizing a funding need based on changes in equity pricing, which downward equity pricing was also exacerbated by increased construction costs due to hurricane impact and construction market changes). Shull Manor applied for an \$810,000.00 “viability” loan on or about April 16, 2018, and was ultimately successful in receiving such award after resolution of litigation pertaining to such RFA. Shull Manor was invited to credit underwriting on June 7, 2018 for the viability loan funding.

12. Shull Manor is seeking financing under the HUD Section 221(d)(4) program through Greystone Servicing Corporation, Inc. (“Greystone”), and expects to receive a firm commitment for such financing on or about August 31, 2018. Such financing is highly desirable and advantageous, due to a low interest rate and 40-year amortization period and maturity. The application process for such HUD financing, together with the request for HUD consent for assignment of the Section 8 Housing Assistance Payments contract in order to continue the project based rental assistance for the Development, are time consuming processes. In addition, the award of Viability Loan Funding to the Development required Shull Manor to submit an updated scope of rehabilitation and schedule of values to HUD, based on the expanded scope of rehabilitation and additional sources available under the Viability Loan Funding RFA.

13. Shull Manor expects to receive a firm commitment from HUD on or about August 31, 2018, and it is expected that closing of the HUD financing will take at least two months from receipt of such firm commitment. Shull Manor has previously requested and

received an extension of the 10% test through September 30, 2018; no further extensions of this date are possible. However, the above-referenced schedule will cause Shull Manor to be unable to meet the 10% test by such date, which will cause loss of the Housing Credits. In addition, the required placed in service date for the Development is currently September 30, 2019, which date may be extended administratively by FHFC to no later than December 31, 2019. Based upon a November 2018 closing, the construction schedule for the rehabilitation of the Development is such that rehabilitation of the complex may not be completed by December 31, 2019.

14. The tax credit investor is concerned about the uncertainty of the credit swap if delayed until the last quarter of 2019 and is unwilling to close on the equity financing for the Development without assurance the tax credits will be available to the Development if the Development is not placed in service prior to September 30, 2019. Given that it is now known that the Development may not meet the placed in service deadline, the tax credit investor is unwilling to close its investment in the Development if there is any chance that it may not receive credits. Without the waiver request and current approval of the credit swap, the tax credit investor will not participate in the transaction, resulting in the inability of the Petitioner to rehabilitate the Development.

15. As discussed above, the delays have been caused by circumstances outside Shull Manor's control. The issues which ensued due to the tax credit industry's reaction to the reduction in marginal corporate tax rates were not only unforeseen and unanticipated by Shull Manor, they were unforeseen and unanticipated by the entire credit industry. As a result, the delay in closing which has arisen due to the need to secure additional financing makes it impossible to meet the September 30, 2019 (or if extended administratively, December 31, 2019) placed in service deadline or the September 30, 2018 10% test deadline.

16. As set forth more fully below, Shull Manor seeks to return its 2017 Housing Credit allocation now, rather than wait for the last calendar quarter of 2019 as required under the QAP, and obtain from the Corporation an immediate allocation of new Housing Credits with a later required 10% test date and placed in service date.

17. The requested waivers and variance will not adversely affect the Development. A denial of the Petition, however, would (a) result in substantial economic hardship to Shull Manor, (b) deprive the City of Melbourne and Brevard County of rehabilitated and upgraded rental units set aside for low-income and very low-income tenants, and (c) violate principles of fairness.

18. Section 42(m) of the Internal Revenue Code requires each state allocating agency to adopt an allocation plan for the allocation and distribution of federal low income housing tax credits. The Corporation, as the allocating agency for the State of Florida, must distribute housing credits to applicants pursuant to its qualified allocation plan.

19. The Corporation's Qualified Allocation Plan (Section II.K) provides that Housing Credits may be returned **only** in the last calendar quarter of the year in which a development is required to be placed in service:

...where a Development has not been placed in service by the date required or it is apparent that a development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant's control, and the Applicant **has returned its Housing Credit allocation in the last calendar quarter of the year** in which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of credits returned, and may allocate such housing credits to the Applicant **for the year after the year** in which the Development was otherwise required to be placed in service..."

QAP at Section II.K (emphasis added).

20. The applicable Rules for which waivers are requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),<sup>1</sup> the statute that created the Housing Credits Program. *See* § 420.5099, Fla. Stat. (2018). The Act designates FHFC as the State of Florida’s housing credit agency within the meaning of Section 42(h)(8)(A) of the Internal Revenue Code of 1986. As the designated agency, FHFC is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). §§ 420.5099(1) and (2), Fla. Stat. (2018). Accordingly, the Rules subject to Shull Manor’s waiver requests are implementing, among other sections of the Act, the statutory authorization for the Corporation’s establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2018).

21. The requested waivers will ensure the availability of Housing Credits which might otherwise be lost as a consequence of development delays described herein.

22. The facts set forth in Sections 8 through 15 of this Petition demonstrate the hardship and other circumstances which justify Shull Manor’s request for Rule waiver. Shull Manor respectfully requests that no further fees be imposed in connection with the requested credit exchange, given (a) the significant amount of extension fees already paid for the extension of various dates under the carryover allocation agreement, and (b) that the reasons for the delays described herein were wholly outside of Shull Manor’s control.

23. As demonstrated above, the requested waivers serve the purposes of Section 420.5099 and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

---

<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.55 of the Florida Statutes (the “Act”).

The maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

§ 420.5099(2), Fla. Stat. (2018).

24. Further, by granting the requested waivers, FHFC would recognize principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities, such as DDER Development, LLC, in meeting the purposes of the Act, regardless of the possible delays from factors outside of its control. In addition, grant of the requested waivers will permit the rehabilitation of much needed housing for low-income and very low-income tenants. Finally, grant of the request to waiver will enable Shull Manor to utilize (and not lose) its significant investment in due diligence expenses that cannot be recouped if the requested waiver is not granted.

25. The requested waivers will not adversely impact the Development or the Corporation.

26. The waivers being sought are permanent in nature.

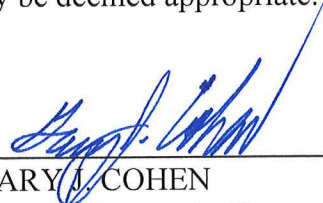
Should the Corporation require additional information, Shull Manor is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver.

WHEREFORE, Petitioner Shull Manor REH, Ltd., respectfully requests that the Corporation:

A. Grant the Petition and all the relief requested therein;



- B. Waive the Qualified Allocation Plan's prohibition from returning Housing Credit Allocations prior to the last quarter of 2019;
- C. Allow the immediate return of Shull Manor's 2017 Housing Credit Allocation;
- D. Immediately allocate new Housing Credits to Shull Manor with a later placed in service date, in an amount equal to the amount of its 2017 Housing Credit Allocation with no further fees imposed; and
- E. Award such further relief as may be deemed appropriate.



---

GARY J. COHEN  
Shutts & Bowen LLP  
200 S. Biscayne Blvd., Suite 4100  
Miami, Florida 33131  
(305) 347-7308  
ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

The Original Petition is being served by facsimile and overnight delivery for filing with the Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, City Centre Building, Room 5000, Tallahassee, Florida 32399, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400 this 16<sup>th</sup> day of August, 2018.

  
\_\_\_\_\_  
GARY J. COHEN

MIADOCS 16837472.2