

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

SPINAL CORD LIVING-ASSISTANCE  
DEVELOPMENT, INC. (SCLAD),

Petitioner,

*FHFC Case No. 2007-027W*  
Application No: 2007-024H  
Development: SCLAD Plaza

vs.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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PETITION FOR VARIANCE/WAIVER FROM FLORIDA  
ADMINISTRATIVE CODE RULE 67-48.004(14)(n)

Pursuant to Section 120.542, Florida Statutes and Rule 28-104.001 through 28-104.006, Florida Administrative Code, Petitioner, SPINAL CORD LIVING-ASSISTANCE DEVELOPMENT, INC. ("Petitioner") requests the FLORIDA HOUSING FINANCE CORPORATION ("the Agency"), to grant a waiver from the provisions of Rule 67-48.004(14)(n), Florida Administrative Code, and to grant the relief requested herein. In support of this Petition, Petitioner states as follows:

AGENCY AFFECTED

1. The name and address of the Agency affected is Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The Agency's file or identification number with respect to this matter is 2007-024H.

PETITIONER

2. The Petitioner is Spinal Cord Living-Assistance Development, Inc. (SCLAD), a nonprofit Florida corporation, 501c(3) organization and a certified CHDO by the Agency and the City of Hialeah, where it is located. The address of Petitioner is 240 East First Avenue – Suite 122, Hialeah, FL 33010, telephone No: 305-887-8838, facsimile number: 305-884-7606.

The foregoing shall serve as Petitioner's address for service purposes during the course of these proceedings.

RULE WITH RESPECT TO WHICH A WAIVER IS SOUGHT

3. The Rule with respect to which a waiver is sought is Florida Administrative Code Rule 67-48.004(14)(n), as in effect for the 2007 Universal Application Cycle, pursuant to which Petitioner's Application was found not to meet threshold for funding. Rule 67-48.004(14)(n) provides as follows:

(14) Notwithstanding any other provision of these Rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempt to change these items will not be accepted. Those items are as follows:

(n) Funding Request (except for Taxable Bonds) amount; ...

#### TYPE OF ACTION REQUESTED

4. Petitioner requests the Agency grant a waiver and variance from the provision of Rule 67-48.004(14)(n), Florida Administrative Code, as in effect and governing 2007 Universal Application Cycle. The provision of the foregoing Rule prohibits a change in the funding request amount. For the reasons set forth below, compliance with the foregoing provision of the aforementioned Rule would give rise to substantial hardship to Petitioner, would violate principles of fairness and could lead to unintended, unreasonable or unfair results or consequences for the persons Petitioner serves, who are the most needy and vulnerable residents of Miami-Dade County, where affordable rental housing is particularly needed.

#### FACTS

5. The specific facts that demonstrate that a variance/waiver for Petitioner is justified, as requested above, are as follows:
  - (a) Petitioner is a Community Based Organization and a Community Housing Development Organization, certified as a CHDO by the Agency and the City of Hialeah, where it is located. It operates a Resource Center for persons with disabilities, and is currently coordinating the development of its third barrier-free housing project, SCLAD Plaza. Petitioner completed PARK PLACE APARTMENTS, a barrier-free rental

housing project similar to SCLAD Plaza, in 1998. The development of PARK PLACE was partially financed with a HOME loan from the Agency, No. 95-HR-004. Petitioner has successfully managed PARK PLACE since 2000. PARK PLACE has always been fully occupied and currently has a waiting list of more than 350 persons.

- (b) The one and most significant reason for the success of PARK PLACE is its affordability by those it is intended to serve: persons with disabilities, most of whom are of very low and low income.
- (c) With much intra-organizational planning and support from local government, Petitioner was able to purchase a parcel of land in November 2006 for SCLAD Plaza, a new barrier-free rental housing project in Miami-Dade County, Florida, similar to PARK PLACE. SCLAD Plaza is an 18-unit barrier-free rental project fully accessible for persons with disabilities.
- (d) By the end of March 2007, Petitioner had secured a grant in excess of \$985,000 from the City of Hialeah and a \$300,000 construction/permanent loan from Miami-Dade County for SCLAD Plaza.
- (e) Petitioner simultaneously committed \$365,000 of its own funds to SCLAD Plaza.

- (f) Petitioner obtained as well a non-firm commitment for first mortgage financing from a private lender in the amount of \$521,009.
- (g) On or about the 12th day of March, 2007, the Agency opened the 2007 Universal Application Cycle for 30 days, which closed on April 10, 2007. Petitioner submitted an Application for \$1,100,000 in HOME funds for SCLAD Plaza. The total development cost, as stated in Petitioner's Application was \$3,271,414.
- (h) Petitioner received the 2007 Universal Scoring Summary, accompanied by a Memorandum from Vicki Robinson, Deputy Development Officer, dated May 9, 2007, regarding Preliminary Scores for HOME Applications, on May 10, 2007 via Federal Express. The Memorandum contained information and instructions regarding Notices of Possible Scoring Errors (NOPSE). Petitioner learned its Application for HOME funds for its development SCLAD Plaza had failed to achieve maximum points in numerous items, and had not met threshold from the 2007 Universal Scoring Summary.
- (i) Petitioner found no errors in the scoring of its application relative to another Applicant's Application. Filing a NOPSE was not a

recourse available to Petitioner regarding its Application for HOME funds.

- (j) On June 7, 2007, via Federal Express, Petitioner received a Memorandum from Vicki Robinson, Deputy Development Officer, dated June 6, 2007, regarding Notices of Possible Scoring Errors (NOPSE) and other items to be addressed by Applicants. The Memorandum was accompanied by the 2007 Scoring Summary reflecting the Agency's decisions regarding NOPSE filed against Petitioner's Application, a form entitled **INSTRUCTIONS FOR FILING CURES**, the Cure Form and the Summary Cure Form. A copy of the **INSTRUCTIONS FOR FILING CURES** is attached hereto.
- (k) The first paragraph of said instructions states: "Additional documentation, revised pages and other information ("Cures") must be submitted in accordance with the following instructions required by subsections 67-21.003(6) and 67-48.004(6), F.A.C".
- (l) Petitioner prepared the "Cures" of its Application pursuant to the **INSTRUCTIONS FOR FILING CURES** and submitted them to the Agency by the stipulated deadline.
- (m) One of the "Cures" Petitioner filed with the Agency involved a letter from Bank of America for construction/permanent private lender first mortgage financing in the amount of

\$521,009. The Bank of America letter did not meet 2007 Universal Application requirements for firm commitments. Bank of America failed to issue a firm commitment, pursuant to 2007 Universal Application Cycle instructions, before the deadline for filing cures. Petitioner sought alternatives to construction/permanent first mortgage financing that would not put at risk the affordability of the development by its intended users: persons with disabilities. Unwilling to risk pricing SCLAD Plaza out of the reach of this vulnerable, disenfranchised population of very low and low income, Petitioner:

(1) Petitioner deferred its \$205,000 Developer Fee and enabled those funds for use in the development of SCLAD Plaza, and provided its Commitment to Defer Developer Fee as a partial cure for the funding shortfall created by the withdrawal of the Bank of America construction/permanent loan as the first mortgage financing; and

(2) Petitioner increased the HOME funding request by \$316,000.

(n) Change in the funding amount, as well as Petitioner's Commitment to defer its own Developer's Fee, was a result

from a desire by Petitioner to preserve the affordability of the proposed development.

(o) Petitioner so accurately followed the Instructions for filing Cures that Petitioner's Application scored maximum points throughout on Final Scoring.

(p) Petitioner's Application, however, failed to meet threshold for the following reason, as stated in the 2007 HOME Scoring Summary dated July 10, 2007: "In an attempt to address the financing shortfalls the Applicant included in its Cure a revised HOME request which reflected an increase of \$316,000 from the original request. Per Paragraph 67-48.004(14)(n), F.A.C., the funding request amount cannot be revised, corrected or supplemented after the Application Deadline".

(q) Petitioner filed its cures, pursuant to the instructions provided by the Agency in the **INSTRUCTIONS FOR FILING CURES**. Instructions cited only Rule 67-48.004(6). Rule 67-48.004(14)(n) was not cited in the **INSTRUCTIONS FOR FILING CURES**.

(r) If the Agency does not waive the provision of this subsection of the Rule, SCLAD Plaza would not be eligible for funding, and

(1) Petitioner would have to seek funding elsewhere and be forced to delay the development of SCLAD Plaza



- [2] Delay in the development of SCLAD Plaza, would generate additional costs such as property taxes and insurances, an increase of construction costs, and an increase in the overall project cost.
- (3) Be forced to seek financing by incurring a debt which service would jeopardize the affordability of the project by its intended users;
- (4) Petitioner would lose \$300,000 awarded by Miami-Dade County in Surtax funds for SCLAD Plaza as the commitment for surtax funds will be rescinded if Petitioner's project is not selected for funding by the Agency in the 2007 Universal Application Cycle.
- (s) Failure to grant Petitioner's Petition for Waiver/Variance of Rule 67-48.004(14)(n), F.A.C., would adversely affect and result in substantial hardship for Petitioner that could jeopardize the development of SCLAD Plaza and its affordability.
- (t) Failure to grant Petitioner's Petition for Waiver/Variance of Rule 67-48.004(14)(n), F.A.C. could lead to unintended, unreasonable or unfair results or consequences for Petitioner and/or the persons Petitioner serves, who are the most needy and vulnerable residents of Miami-Dade County, where affordable rental housing is particularly needed/lacking.

- (u) Approval of the requested waiver or variance would have no impact on Petitioner's Application's scoring, thus it would give Petitioner no advantage over its competitors.
- (v) The Agency's approval of the requested waiver or variance would serve to further the purpose and mission of the Agency and to address the need for and promote the development of affordable housing for the disadvantaged members of the community. (420.502, Florida Statutes)
- (w) The Agency's approval of the requested waiver or variance would serve to further the objectives of the HOME Investment Partnership Program "to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary and affordable housing, with primary attention to rental housing, for very low-income and low-income families." (24 CFR 92.1)
- (x) Granting Petitioner's Petition, the Agency would recognize the financial constraints of developing and constructing affordable rental housing and would be providing affordable housing through new construction in an economical and efficient manner.

RELIEF SOUGHT

6. The specific variance/waiver which Petitioner wishes the Agency to grant is to waive the requirements of Rule 67-48.004(14)(n) to permit a change in the funding request amount from \$1,100,000 to \$1,416,000.

WHEREFORE, Petitioner respectfully requests the Agency:

1. Waive the prohibition on change in the funding request amount, in order to permit an increase in the HOME amount from \$1,100,000 to \$1,426,000.

Respectfully Submitted this 30<sup>th</sup> day of July, 2007.

By: 

PEDRO F. RODRIGUEZ  
Chief Executive Officer  
Spinal Cord Living-Assistance  
Development, Inc. (SCLAD)  
240 East First Avenue – Suite 122  
Hialeah, FL 33010  
(305) 887-8838

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300, this 30<sup>th</sup> day of July, 2007.

  
PEDRO F. RODRIGUEZ

## **INSTRUCTIONS FOR FILING CURES**

Additional documentation, revised pages and other information (“Cures”) must be submitted in accordance with the following instructions required by subsections 67-21.003(6) and 67-48.004(6), F.A.C.:

- A new form, page or exhibit provided to the Corporation during this period shall be considered a replacement of that form, page or exhibit if such form, page or exhibit was previously submitted in the Applicant’s Application.
- Do not submit pages of the Application that are not revised or otherwise changed. Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that documents executed by third parties must be submitted in their entirety even if only a portion of the original document was revised.
- Where revised or additional information creates an inconsistency with another item in that Application, the Applicant must make such other changes as necessary to keep the Application consistent as revised.
- Submit an original labeled “Original” and three photocopies of the original Cures.

To better facilitate the processing of Cures, Florida Housing requests Applicants to follow these additional instructions:

- Provide all documentation in three-ring binders.
- Label the front of the binders with the Development Name.
- Label the spine of the binders with the assigned Application Number.
- Complete and submit a Cure Form for each revision or additional documentation. Insert each Cure Form immediately preceding the applicable revised form, additional documentation or other information.
- Provide a brief statement explaining each revision or additional documentation so that Florida Housing will understand the reason the Cure is being submitted. Place the statement behind the applicable completed Cure Form for that Cure.
- Separate each part for which you are providing revisions or additional documentation with divider tabs labeled for that part. For example, insert a divider tab labeled “Part V” in front of the Cure Form and accompanying revisions submitted concerning Part V.
- Organize your submission by grouping all revisions and additional documentation for each part together in the same order the parts and exhibits appear in the most recent Application Summary Report.
- Complete and submit a Cure Summary Form. Insert the Cure Summary Form in the front of the Original and each photocopy.