

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION
FHFC CASE NO. 2009-025 JW
Application No. 2008-082H

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

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____ /

**PETITION FOR WAIVER OF PART III.B.1. OF THE 2008 UNIVERSAL APPLICATION
INSTRUCTIONS REQUIRING THE PROVISION OF SPECIFIC FEATURES
AND AMENITIES FOR ALL DEVELOPMENTS**

Petitioner, Spinal Cord Living-Assistance Development, Inc. (SCLAD), a Florida not-for-profit corporation ("SCLAD") petitions Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of the requirement to provide a "Bathtub with shower in at least one bathroom in at least 90% of the new construction non-Elderly units". See Part III.B.1. of the 2008 Universal Application Instructions (the "Rule") as it is implemented in Part III.B.1.b. of the 2008 Universal Application, (the "Application").

1. Pursuant to Section 120.542, Fla. Stat. (2008), and Rules 28-104.001 through 28-104.006, F.A.C. (2008), SCLAD requests a waiver of the Rule to allow for the use of "Roll-in showers" in lieu of a "Bathtub with shower" in all units of the development.

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A. **THE PETITIONER**

2. The name, address, and telephone and facsimile numbers for SCLAD and its qualified representative for purposes of this Petition are:

SCLAD, Inc.
Attention: Pedro F. Rodriguez
240 E First Avenue
Suite 122
Hialeah, Florida 33010
Telephone: 305-887-8838
Facsimile: 305-884-7606
E-mail: pfr Rodriguez@sclad.org

3. Pursuant to the 2008 Combined Universal Cycle, SCLAD submitted its Universal Application for a HOME Loan under the HOME Investment Partnership Program.

See Application No. 2008-082H.

4. Florida Housing has issued a Preliminary Commitment for a HOME Loan in the amount of \$1,200,000.

5. Funds from the HOME Loan will be used for the development of SCLAD Plaza, a new 18-unit apartment development (the "Development") intended to serve very-low and low-income families in the City of Hialeah, Miami-Dade County, Florida.

6. At least thirty three percent (33%) of the families to be served by the Development have a member who uses a wheelchair, or has severe mobility impairment.

7. The Development is designed under the Universal Design concept, which calls for all its units and common areas to be usable by all individuals, regardless of their physical ability.

8. The requested Rule waiver will not adversely affect the Development. However, a denial of this Petition (a) would result in depriving individuals who use wheelchairs or have serious mobility impairments of the ability to bathe/shower, independently or without considerable assistance; (b) would result in a safety hazard for those who use wheelchairs, have severe mobility impairments, and/or have physical limitations because of advanced age due to the architectural barrier inherent to bathtubs; (c) would violate principles of fairness. §120.542(2), Fla. Stat. (2008).

9. The waiver being sought is permanent in nature.

B. **Rule from Which Relief is Requested and Statute Implemented by the Rule**

10. SCLAD requests a waiver of Part III.B.1. of the Universal Application Instructions, which provides as follows:

B. Construction Features and Amenities

All required features and amenities and all optional features and amenities selected by the Applicant, as well as the Green Building features, will be included in the Land Use Restriction Agreement(s) and/or Extended Use Agreement and must be maintained in order for the Development to remain in compliance unless the Board approves a change. The quality of the features and amenities...

1. Required Features and Amenities for All Developments. In addition to meeting all building code, Fair Housing Act, and Americans with Disabilities Act requirements for MMRB, SAIL, HOME and HC Applications, and the HQS Guidelines and Section 504 of the Rehabilitation Act of 1973 for HOME Applications, all units for the type of Development indicated must have the itemized features and amenities.

And, is implemented in Part III.B.1.b. of the Universal Application as follows:

B. Construction Features and Amenities

1. Required for All Developments:

Does the Applicant commit to provide the following items, as applicable, for the proposed Development?

- Yes No

- a. All Units for All Developments:

- Air conditioning in all units (window units are not allowed; however, through-wall units are permissible for rehabilitation);
- Window treatments for each window...

- b. All Units in All Developments Except SRO:

- Cable or satellite TV hook-up in all units;
- Full-size range, oven and refrigerator in all units;
- At least two full bathrooms in all...
- Bathtub with shower in at least one bathroom in at least 90% of the new construction non-Elderly units;

11. The applicable Rule¹ for which the waiver is requested is implementing Florida Housing Finance Corporation Act's statute that authorized the creation of the HOME Partnership Program (HOME) §420.5089, Fla. Stat. (2008)². The Act authorizes Florida Housing to administer the Application process, determine loan amounts, make and service mortgage loans for new construction or Rehabilitation/Substantial Rehabilitation of affordable rental units. Accordingly, the *Rule* that is the subject of SCLAD's waiver request is implementing, among other sections of the Act, the statutory authorization for Florida Housing's establishment of selection process established and described by the HOME Partnership Program rules §§ 420.5089(1), Fla. Stat. (2008).

C. Justification for SCLAD's Requested Waiver

12. Pursuant to the Rule, "Bathtub with shower in at least one bathroom in at least 90% of the new construction non-Elderly units" is required. However, as a result of its experience in working with individuals who use wheelchairs and others with limited mobility and in developing affordable housing units that are accessible and usable by persons with all degrees of ability, the developer for the Development has found that a Roll-in-shower, an upgraded amenity for which the developer will bear the increased cost, allows for wheelchair users and those with mobility impairments as well as able-bodied individuals to bathe/shower independently and without the architectural barrier and safety risks inherent to bathtubs.

13. The use of Roll-in showers, therefore, would be the only way to meet the health, safety, daily-living and independence needs of persons with disabilities for whom a large portion of the Development is intended.

14. Because the use of bathtub with shower is a threshold requirement for a non-SRO, non-Elderly Application seeking a HOME Loan, a waiver is necessary to permit the use Roll-in showers in 100% of the units. However, the requested waiver will not prejudice the Development or the affordable housing market to be served by the Development, and will provide upgraded features and amenities within the units for the Development's residents who use wheelchairs as well as those with mobility impairments.

¹ Pursuant to Rule 67-48.004(1), F.A.C. (2008), the 2008 Universal Application Instructions are incorporated into Rule Chapter 67-48.

² The Florida Housing Finance Corporation Act (the "Act") is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

D. **Conclusion**

15. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 18 affordable housing units that are accessible and usable by persons with all degrees of physical ability will be available for the population of Miami-Dade County, Florida.

16. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant.

17. The requested waiver serves the purposes of Section 420.5089, Florida Statutes (2008) the Act, as a whole, and of 24 CFR Part 92, which is 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."

18. Finally, by granting the requested waiver, Florida Housing would recognize the need for affordable, barrier-free housing that exists in our State, and specifically in Miami-Dade County. Additionally, Florida Housing would recognize the principles of fundamental fairness in the development of affordable rental housing by promoting the development of housing that is accessible and usable by everyone. This recognition would promote participation by experienced developers in meeting the purpose of the Act through new construction in an economical and efficient manner, as well as providing safer, upgraded and barrier-free features and amenities within residential units developed for low and very low-income residents.

19. Should Florida Housing require additional information, SCLAD is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Part III.B.1 of the 2008 Universal Application Instructions to Provide Specific Features in All Developments.

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WHEREFORE, Petitioner Spinal Cord Living-Assistance Development, Inc. (SCLAD), respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

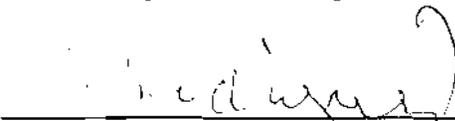
A. Waive Part III.B.1 of the 2008 Universal Application Instructions that requires the use of "Bathtub with shower in at least one bathroom in at least 90% of the new construction non-Elderly units", and allow the use of Roll-in showers in 100% of the units by SCLAD in its Development; and

B. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

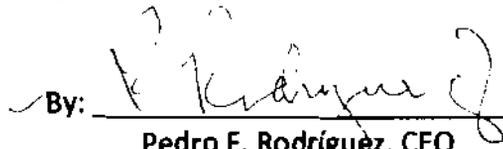
Spinal Cord Living-Assistance Development, Inc. (SCLAD)
240 E First Avenue
Suite 122
Hialeah, Florida 33010
Tel. 305-887-8838
Fax: 305-884-7606
E-mail: pfrodriguez@sclad.org

By: _____


Pedro F. Rodríguez, Chief Executive Officer

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 9th day of February, 2009.

By: 
Pedro F. Rodríguez, CEO