

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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

Petitioner,
v.

CASE NO.: 2018 - 007VW
APPLICATION NO. 2015-101/2015-224S

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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PETITION FOR WAIVER OF RULE 67-48.0072(4)(c)

Petitioner Spinal Cord Living-Assistance Development, Inc. (SCLAD) a Florida not-for-profit corporation (the "Petitioner) submits its Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-48.0072(4)(c) (the "Rule") in effect at the time the Petitioner submitted its application in response to the Corporation's Request for Applications 2015-101, SAIL Financing To Build Smaller Permanent Supportive Housing Developments for Persons with Special Needs (the "RFA"), to allow Petitioner to extend the required closing date for the SAIL and ELI loan proceeds allocated to Petitioner pursuant to the RFA. In support of its Petition, the Petitioner states as follows:

A. The Petitioner and the Development

1. The name, address, telephone and facsimile numbers for Petitioner and its qualified representative are:

Le Jeune Gardens
Attn: Pedro F. Rodriguez
221 E 2nd Avenue
Hialeah, Florida 33010
Tel.: 305-887-8838
Fax: 305-884-7606
e-mail: pfrodriguez@sclad.org

2. Pursuant to the RFA, Petitioner timely submitted its application for loan funding. See Application Number 2015-2245. Petitioner was preliminarily awarded \$3,420,000 in SAIL funding and \$352,600 in ELI funding under the RFA, and received an invitation to enter credit underwriting on June 22, 2015. The firm commitment for closing of the SAIL and ELI loans has not yet been issued.

3. The proceeds of the SAIL and ELI financing will be used for new construction of 18 low-income barrier-free units to be known as "Le Jeune Gardens" (the "Development"). The Development will also be financed with (i) \$765,000 in Miami-Dade County Surtax funds; (ii) \$458,864 in proceeds of HOME CHDO set-aside funds from the City of Hialeah, which have been already funded and used to purchase the site and cover part of the pre-development costs; and (iii) \$252,524 in deferred developer fee. The Development will serve special-needs individuals with physical and developmental disabilities in Miami-Dade County, Florida. Five units will be set aside for residents earning not more than 33% of Area Median Income, with the balance (Thirteen units) of the units set aside at 60% of Area Median Income.

B. Rule Requirements from Which Relief is Requested and Statute Implemented

4. The relevant portion of the Rule provides as follows:

(4) If the invitation to enter credit underwriting is accepted: ...

(c) For SAIL, EHCL, and HOME Applicants, the loan must close within 12 months of the date of the invitation to enter credit underwriting. Applicants may request one (1) extension of up to 12 months...In the event the loan does not close by the end of the 12 month extension period, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated.

Rule 67-48.0072(4)(c), F.A.C. (2013).

5. The applicable Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act")¹ the statute that created the SAIL loan program. *See* § 420.5087, Fla. Stat. (2014). Further, pursuant to the RFA, "Proposed Developments will be subject to the requirements of the RFA, the Application requirements outlined in Rule Chapter 67-60, F.A.C., the credit underwriting requirements outlined in Exhibit F of this RFA, *the SAIL and Housing Credit requirements of Rule Chapter 67-48, F.A.C.*, and the Compliance requirements of Rule Chapter 67-53, F.A.C."

6. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the requirement demonstrates that the application of the requirement would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

7. In this instance, Petitioner meets the standards for a waiver.

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes (the "Act").

C. **Justification for Petitioner's Requested Waiver**

8. Petitioner was previously granted a twelve-month extension of the SAIL and ELI loans closing deadline; and, also of the Credit Underwriting deadline extending such deadlines to June 22, 2017. A further extension of the closing deadline may not be granted without a waiver of the Rule.

9. Petitioner's credit underwriting deadline was extended from June 22, 2017 to December 8, 2017; and, extended again from December 8, 2017 to June 8, 2018.

10. Petitioner was previously granted a waiver of the Florida Housing Finance Corporation Act (the "Act")¹ the statute that created the SAIL loan program. *See* § 420.5087, Fla. Stat. (2014). Specifically the requirements outlined in Rule Chapter 67-60, F.A.C., the credit underwriting requirements in the RFA, "Proposed Developments will be subject to the requirements of the RFA, the Application outlined in Exhibit F of the RFA, *the SAIL and Housing Credit requirements of Rule Chapter 67-48, F.A.C.*, and the Compliance requirements of Rule Chapter 67-53, F.A.C.". This waiver extended the SAIL and ELI closing from June 27, 2017 to March 31, 2018.

11. Petitioner is requesting an extension of the SAIL and ELI loan closing deadline date from March 31, 2018 to September 14, 2018, due to delays in the development process due to the need to revise the design of the Development to serve Persons with Special Needs Demographic in order to arrive at a construction cost that would allow Developer to achieve a Total Development Cost (TDC) per Unit that would comply with the requirements of RFA 2015-101.

12. The above-described facts have delayed the development process. Notwithstanding such delay, Petitioner believes it may be in a position to close the SAIL and ELI funding as well as complete the Credit Underwriting process by the March 31, 2018 deadline, but in an abundance of caution, is seeking approval of this Petition in the event that the permit process, being completed, is further delayed. As previously noted, a construction cost resulting in full compliance with RFA 2015-101's TDC has been arrived at, Construction Cost negotiated and a Construction Contract has been finalized. Therefore, construction should commence promptly following closing.

13. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL and ELI funding in the RFA, or the Corporation. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner, as it has acquired the property and incurred between \$850,000 and \$900,000 in costs to date toward ensuring that the Development proceeds to completion; (b) deprive Miami-Dade County of essential affordable rental units set aside for persons with physical and developmental disabilities who desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness².

§ 120.542(2), F.S.

14. As discussed herein, Petitioner is requesting an additional extension of the SAIL and ELI loans closing date to September 14, 2018, which request requires a waiver of the Rule. Petitioner respectfully requests that no further extension fee be imposed.

15. The requested waiver will ensure the availability of SAIL financing which will otherwise be lost as a consequence of pre-development delays described herein.

²"Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principles of Fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Section 120.542(2), Florida Statutes.

D. Conclusion

16. The facts set forth in Sections 8 through 14 of this Petition demonstrate the hardship and other circumstances that justify Petitioner's request for a Rule waiver; that is, the delay in commencement of construction of the Development, the loss of a substantial sum of money should the transaction not go forward, and the loss of critical housing for special-needs individuals of limited means.

17. Controlling statutes and the Corporation's Rules are designed to allow the flexibility necessary to provide relief from requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. As demonstrated above, the requested waiver serves the purposes of Section 420.5087 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. Further, by granting the requested waiver, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

18. The waiver being sought is permanent in nature.

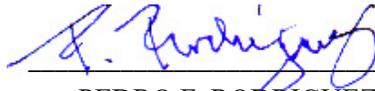
Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition.

WHEREFORE, Petitioner Spinal Cord Living-Assistance Development, Inc. (SCLAD), respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested therein; and
- B. Award such further relief as may be deemed appropriate.

Respectfully submitted,

SPINAL CORD LIVING-ASSISTANCE DEVELOPMENT, INC. (SCLAD)
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PEDRO F. RODRIGUEZ
CHIEF EXECUTIVE OFFICER
For SPINAL CORD LIVING-ASSISTANCE
DEVELOPMENT, INC. (SCLAD)

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, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 12th day of February, 2018.

