

LICENSED DESIGN PROFESSIONAL'S STATEMENT

Le Pain Quotidien ("LPQ") is a small restaurant being constructed in an existing small two story building of 1798 square feet at 3456 Main Highway in Coconut Grove, Miami, Florida that previously contained a restaurant. The Owner of LPQ respectfully requests that the Council recommend, and then the Commission grant, a waiver of Florida's requirement that vertical accessibility be provided to the second floor even if Title III of the Americans with Disabilities Act ("ADA") would not impose such an obligation.

As an initial matter, the ADA does not impose the requirement of vertical accessibility on the project (so that your granting the requested waiver will not result in a violation of the ADA). The reason for this is not because the subject building is eligible for the ADA's elevator exemption, but because, in the proposed alteration, the cost to provide vertical accessibility to the areas containing primary functions on the second floor (e.g., the kitchen, dining room) is disproportionate to the cost of the alteration to the areas containing primary functions served by the path of travel. An analysis of these costs, along with supporting cost estimates, is provided with this waiver application.

It should be noted that the building containing LPQ falls within the definition of "shopping center" in the Title III regulations. For that reason, this building, which pre-existed the ADA, is not eligible for the ADA's elevator exemption. It is the disproportionate cost provision in 28 CFR 36.403(f)(1) that allows LPQ to not provide a means of vertical accessibility. By not being eligible for the elevator exemption, if vertical accessibility is provided, it must be by way of an elevator, not a LULA or wheelchair lift. *See* 2010 ADA Standards, § 206.6 ("Elevators provided for passengers shall comply with 407. Where multiple elevators are provided, each elevator shall comply with 407. **EXCEPTIONS: 1.** In a building or facility permitted to use the exceptions to 206.2.3 or permitted by 206.7 to use a platform lift, elevators complying with 408 shall be permitted."). Section 206.2.3 restates the ADA's elevator exemption and Section 408 specifies LULAs.

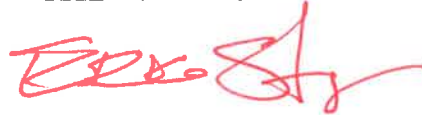
As the calculations provided with this application indicate, the path of travel to the 2nd story areas containing a primary function disproportionate cost threshold is \$74,356.25. However, the existing toilet rooms serving those areas are not accessible. The \$10,500 cost to modify the toilet rooms to be accessible "may be counted as [an expenditure] required to provide an accessible path of travel." 28 CFR 36.403(f)(2). Accordingly, the remaining amount that LPQ would be obligated to spend to provide an elevator to the 2nd story is \$63,856.25. The estimates for elevator "equipment" to be provided by Otis and ThyssenKrupp are \$112,250 and \$66,840 respectively. The cost to construct the elevator shaft and provide the necessary supporting

mechanical and electrical systems and support is \$157,029. This amount (\$157,029) must be added to the equipment costs provided by Otis and ThyssenKrupp to calculate the estimated costs to install an elevator.

It is clear from the cost estimates provided that the cost to provide an elevator to the 2nd story exceeds the cost hardship threshold(s) set forth in 28 CR 36.403(f)(1) and § 553.512(1), F.S. In fact, the cost to provide an elevator exceeds 20% of the total construction cost for the entire project although it is not required to do so in order to be eligible for a waiver based on cost hardship. For these reasons, it is my professional opinion that this project meets the financial hardship requirement of Section 553.512, F.S. and should be granted the requested waiver.

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Eric Styer, RA Seal

