STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2021-091VW
APPLICATION NO.: _____

PRAXIS VENTURE LP

Petitioner
vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-21.003(8)(g)

Pursuant to section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, PRAXIS VENTURE LP, a Florida limited partnership ("**Petitioner**"), by and through its undersigned counsel, hereby petitions Florida Housing Finance Corporation (the "**Corporation**") for a waiver of the prohibition under Rule 67-21.003(8)(g), Florida Administrative Code ("**F.A.C.**") (2018), against changing the development type designated in the Non-Competitive Application Package after such is deemed complete. This Petition is filed pursuant to Section 120.542 of the Florida Statutes and Chapter 28-104, Florida Administrative Code. In support of this Petition, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number and e-mail address of Petitioner are:

Praxis Venture LP
2711 N. Sepulveda Blvd. #526
Manhattan Beach, CA 90266
c/o The Affordable Housing Institute, Inc.
Attn: Bryan Hartnett, President
Telephone: (704) 575-1268
Email: bHartnett@ahidevelopment.com

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Petitioner's counsel are:

Hollie A. Croft, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4239
Facsimile: (407) 650-0979
Email: hollie.croft@nelsonmullins.com

B. THE DEVELOPMENT

3. The Petitioner submitted a Multi-Family Housing Bond Program Application to the Housing Finance Authority of Broward County (the "**HFA**") requesting a loan (the "**Loan**"), financed by the proceeds of multifamily housing revenue bonds (the "**Bonds**"), to provide financing for the rehabilitation of a 224-unit affordable housing development located in Deerfield Beach, Broward County, Florida commonly known as Praxis of Deerfield Beach (the "**Development**"). Petitioner also submitted a Non-Competitive 4% Application Package (Rev. 04-2018) for Non-Competitive Housing Credits (the "**Application**") to the Corporation for an allocation of 4% low-income housing tax credits ("**Housing Credits**") to fund a portion of the acquisition and rehabilitation of the Development. On August 1, 2019, the HFA issued the Bonds and made the Loan to Petitioner in the principal amount of $22,00,000.00.

C. THE RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner is seeking a waiver of the relevant provision of Rule 67-21.003(8)(g), F.A.C. (2018) (the "**Rule**"). The relevant provisions of the Rule, and the provision of the Application from which Petitioner is seeking a waiver, are as follows:

5. Specifically, Rule 67-21.003(8)(g), F.A.C. (2018) provides in pertinent part:

> (8) 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 is deemed complete. Those items are as follows:**
>
> ***
>
> **(g) Development Type**;
>
> (emphasis added).

D. STATUTES IMPLEMENTED BY THE RULE

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. *See* §§ 420.509, 420.5099, *Fla. Stat.* (the "**Statute**").

7. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended results in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals 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*.

E. JUSTIFICATION FOR GRANTING THE WAIVER

8. Petitioner timely submitted the Application for the Development and was invited to credit underwriting on July 30, 2019.

9. The instructions of the Application, which are incorporated into the Rule by Rule 67-21.003(1)(b), F.A.C., define each development type at Part A, Section 6(g). Specifically, a "Mid-Rise 4-stories" development type is a building comprised of 4 stories and each residential building must have at least one elevator, while a "Garden Apartments" development type is a building comprised of 1, 2, or 3 stories, with or without an elevator.

10. In the Application, the Petitioner mistakenly identified the Development Type as Garden Apartments (the "Development Type"), rather than Mid-Rise 4-stories.

11. The Petitioner was subsequently alerted to this discrepancy by the Corporation because despite the fact that four (4) of the seven (7) total buildings comprising the Development consist of less than 4-stories, 128 of the 224 total units in the Development are located in the three (3) 4-story buildings of the Development. As such, Petitioner has prepared this Petition in order to amend the Development Type after the Application was deemed complete.

12. Pursuant to Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and authority to grant waivers or variances to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. A waiver or variance shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship[1] *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. *See* § 120.542(2), Fla. Stat.

[1] "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Further, "principles of fairness" are violated when the literal application of a rule

13. Here, Petitioner meets the requirements for the waiver. The requested waiver of the Rule will not adversely impact the Development or the Corporation and will ensure that the 224 affordable housing units will be preserved and made available for the target population in Broward County.

14. The strict application of the Rule will create substantial hardship for Petitioner because i) the Petitioner is unable to reallocate the number of units among the buildings in the development or remove stories from the relevant buildings without incurring substantial financial burdens not contemplated by the Petitioner, ii) the investor of the Petitioner has committed to certain financial obligations contingent on the receipt of Housing Credits, which obligations were critical to Petitioner's acquisition and rehabilitation of the Development, and iii) the Petitioner has obtained the financing described in Section B hereinabove in connection with the Development. Imposing the Rule will cause Petitioner to suffer a substantial and unnecessary financial and operational hardship, including the triggering of various defaults caused by the loss of the Housing Credits at a time when the rehabilitation of the Development has already been completed. A waiver of the Rule and the granting of permission to amend the Development Type will not harm the Corporation because the intent of the Rule and the Section will not be violated. Further, even though all buildings in the Development are not 4-stories in height, all buildings do have an elevator, adhering with such quality of the Mid-Rise 4-stories development type. Additionally, since there is no total development cost limitation for Non-Competitive Applications, amending the Development Type will not cause any negative effects with respect to total development cost calculations. Finally, by granting this Petition the Corporation will ensure

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affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. *See* Fla. Stat. § 120.542.

that the Development will remain available as a much-needed source of affordable housing for the residents of the area in which the Development is situated.

15. The requested waiver serves the purpose of the Statute that is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, *et seq*.) was passed in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program and Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting the requested waiver, Petitioner will be able to obtain the needed Housing Credits and avoid suffering financial and administrative hardship, while the Corporation would recognize the goal of providing persons of low-income with affordable housing through private investment.

F. WAIVER IS PERMANENT

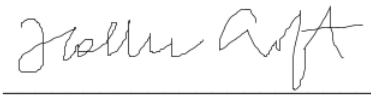
16. The waiver being sought is permanent in nature.

G. ACTION REQUESTED

17. For the reasons set forth herein, Petitioner respectfully requests the Corporation (*i*) grant the requested waiver of the Rule, (*ii*) grant the Petition and all of the relief requested herein; and (*iii*) grant such further relief as it may deem appropriate.

Respectfully submitted on the 18th day of November, 2021.

Respectfully submitted,



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Email: hollie.croft@nelsonmullins.com
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

The 18th day of November, 2021.

By: _____
Hollie A. Croft, Esq.
Fla. Bar No. 886181