

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.:2026-032VW
APPLICATION NO.: 2025-362CSA

ASPIRE 1650, LTD.

Petitioner

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR WAIVER OF FLORIDA ADMINISTRATIVE CODE RULE 67-
48.002(96), F.A.C. (08/27/2024) AND THE 2024 QAP

Aspire 1650, Ltd. (the “Petitioner”) by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation (“Florida Housing”), for a waiver of the provisions of the 2024 Qualified Allocation Plan (“2024 QAP”) as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code (“F.A.C.”) (08/27/2024) (the “Rule”), such that Petitioner may return its 2025 Housing Credit Allocation now as opposed to waiting until after the end of the second calendar quarter of 2027. Due to forces outside of Petitioner’s control, Petitioner believes it will be unable to incur the costs necessary to meet the 10% Test by the July 31, 2026 deadline, as well as the Placed-in-Service deadline on December 31, 2027. Thus, in an abundance of caution, and in an effort to remain at all times in compliance with Florida Housing’s requirements, Petitioner respectfully requests a Rule waiver. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number, and e-mail address for Petitioner and its qualified representative are:

Tom Campbell Ruthardt
Broward Partnership for the Homeless, Inc.
920 NW 7th Avenue
Fort Lauderdale, FL 33311
Telephone: 954-779-3990
Email: Truthardt@bphi.org

2. The address, telephone and facsimile numbers, and e-mail address of Petitioner's counsel is:

Nicholas W. Heckman, Esq.
Nelson Mullins Riley & Scarborough, LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 669-4241
Email: nick.heckman@nelsonmullins.com

B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's application:

- Development Name: Aspire 1650 (the "Development")
- Development Address: Blount Rd. and NW 19th Street, Pompano Beach, Florida 33069
- County: Broward
- Developers: Aspire 1650 Dev, LLC; GM Aspire 1650 Dev, LLC
- Number of Units: 90 units
- Type: High Rise

- Set-Asides: 14 units at or below 33% AMI and 76 units at or below 60% AMI
- Demographics: Homeless
- Funding: \$3,300,000 Competitive Housing Credit allocation (annual amount); up to \$6,100,000 in State Apartment Incentive Loan (“SAIL”) program and Extremely Low Income (“ELI”) program funding (consisting of \$5,770,900 in SAIL funds and \$529,100 in ELI funds); and up to \$1,150,000 in HOME Investment Partnerships - American Rescue Plan (“HOME-ARP”) program funding

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.002(96), F.A.C. effective August 27, 2024, which provides in pertinent part:

““QAP” or “Qualified Allocation Plan” means, means, with respect to the HC Program, the 2024 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the State of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation’s website under the Multifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-16735>.”

6. Subsection II.J. of the 2024 QAP provides, in pertinent part, as follows:

“Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, and the Applicant has returned its Housing Credit Allocation after the end of the second calendar quarter of the year in which it was otherwise required to be placed in service pursuant to Section 42 of the IRC, the Corporation will reserve allocation in an amount not to exceed the amount of Housing Credits returned, and will issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the

year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC, provided the following conditions have been met:

- (i) The Applicant must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and
- (ii) A site inspection reflecting the Development is at least fifty (50) percent complete; and
- (iii) The Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

A Development located in a HUD-designated DDA or QCT at the time of original allocation may retain its basis boost as authorized by Section 42(d)(5)(B)(v) of the IRC.”

E. STATUTES IMPLEMENTED BY THE RULE AND THE 2024 QAP

7. The Rule implements Section 420.5087, Fla. Stat. (SAIL Program) and Section 420.5089, Fla. Stat. (HOME Investment Partnership Program; HOME Investment Partnership Fund) of the Florida Housing Finance Corporation Act (the “Act”).¹ The Act designates Florida Housing as the State of Florida’s housing credit agency within the meaning of Section 42(h)(8)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). See § 420.5099(1) and (2), Fla. Stat. Accordingly, the Rule implements, among other sections of the Act, the statutory authorization for Florida Housing’s establishment of Allocation Procedures for the HC Program. *Id.*

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

¹The Act is set forth in Sections 420.50 through 420.55 Fla. Stat.

8. Petitioner timely submitted Application No. 2025-362CSA (the “Application”) on January 21, 2025 in response to Request for Applications 2025-103 Housing Credit and SAIL Financing for Homeless Housing Developments Located in Medium and Large Counties (the “RFA”).

9. The Development was invited to credit underwriting on April 28, 2025, which invitation was accepted on April 29, 2025.

10. The Development received an allocation of 2025 Housing Credits (“Tax Credits”) in the annual amount meeting the requirements of Section 42(h)(1)(E) and (F) of the Internal Revenue Code of 1986, as amended (the “Code”).

11. Florida Housing staff and Petitioner executed a 2025 Carryover Allocation Agreement (“CAA”) on or about September 19, 2025 for the allocation of its Tax Credits. The CAA required Petitioner to incur at least ten percent of the reasonably expected basis of the Development (the “10% Test”) on or before July 31, 2026 (the “10% Test Deadline”). The CAA further requires Petitioner to be placed-in-service on or before December 31, 2027.

12. Failure to comply with the 10% Test Deadline will cause the Housing Credits allocated within the CAA to be deemed returned to Florida Housing under 26 U.S.C. § 42(h)(3)(C).

13. Pursuant to 26 U.S.C. § 42(h)(1)(E)(i), the Development must be placed in service no later than the close of the second calendar year following the calendar year in which the allocation is made; in this case, the federally mandated placed-in-service date is December 31, 2027.

14. After being selected for funding and invited to credit underwriting, Petitioner took all steps within its power to move the Development forward toward a successful closing and

groundbreaking. Petitioner began predevelopment activities immediately upon accepting its invitation to enter credit underwriting. Since that time, Petitioner has been engaged in the pursuit of all necessary development approvals; specifically:

- Petitioner received Final Site Plan approval on November 19, 2025.
- Petitioner applied for South Florida Water Management District (“SFWMD”) environmental resource permit conceptual approval on September 4, 2025, and received approval on January 19, 2026.
- Petitioner applied for SFWMD environmental resource permit construction approval on January 19, 2026, and received approval on March 6, 2026.
- Petitioner submitted to Broward County for a Surface Water Management License on August 29, 2025, and received approval on January 8, 2026.
- Petitioner submitted to Broward County for Water and Wastewater Services approval on November 14, 2025, and received first round of comments on May 7, 2026. Petitioner is collaborating with a civil engineer to submit responses as expeditiously as possible.
- Petitioner submitted for building permits on January 20, 2026.
- Petitioner received the first round of building permit comments on February 13, 2026, and collaborated with its design professionals to submit corrections on February 26, 2026. Petitioner received the second round of building permit comments on March 16, 2026, and collaborated with its design professionals to submit corrections on April 3, 2026. Petitioner received the third round of building permit comments on April 23, 2026, and is currently working with its design professionals to resubmit corrections before the end of May 2026.
- Petitioner issued a competitive bid for construction pricing on February 26, 2026, and on April 22, 2026, selected an experienced bidder that provided favorable pricing. Construction contract negotiations are ongoing at this time.

- Petitioner has procured donations through its not for profit corporation development partner, as well as congressional appropriations totaling \$850,000 to balance the sources and uses of the development budget, but will need environmental clearance from Housing and Urban Development for the congressional appropriations and HOME-ARP funding for the use of these funds. Environmental clearance has not been received at this time.
- Petitioner expects to have all development permits in hand on or before September of 2026.

15. The single most significant factor preventing Petitioner from meeting the 10% Test Deadline is a circumstance entirely outside of its control involving necessary off-site drainage improvements on adjacent, county-owned land. The Development site was previously used as a retention pond serving as drainage for the North Homeless Assistance Center (“NHAC”) operated by Broward Partnership for the Homeless, Inc (“BPHI”). To make the Development’s site available to the Petitioner, BPHI entered into an agreement with county (the “Agreement”) under which the retention pond serving the NHAC’s drainage would be deeded to BPHI and then ground leased to the Petitioner for the development of supportive affordable housing. The Agreement further provided that any additional drainage needed in order to support both the NHAC and the Development would be accommodated on county-owned land adjacent to the Development’s site, currently used as a county highway division property. Petitioner’s commencement of construction for site development is conditioned upon completion of those off-site drainage improvements. In order to expedite the process Petitioner’s retained civil engineer, who was also retained by the county to process their permits for the off-site drainage improvements, worked expeditiously to submit for permits to the State and County to commence construction; however, permitting took longer than anticipated for the SFWMD construction approval (as discussed above) which delayed construction. Construction was expected to begin in January of 2026 on the off-site drainage

improvements, but it did not begin until March 2026. This delay in the off-site work was further compounded by a lengthier construction schedule than was originally anticipated by the county and Petitioner. While Petitioner expected the off-site improvements to be completed within six months, the county retained site contractor produced a construction schedule that reflects a timeline of eight months. Petitioner and the county worked diligently with each other to come up with a solution to expedite construction. After multiple meetings between the parties, the county's site contractor agreed to work on weekends to finish construction faster. However, the incurred delays are still too severe to comply with Petitioner's CAA deadlines.

16. Moreover, the county also experienced its own permitting delays in advancing the off-site drainage improvements, which in turn affected the timing of the Petitioner meeting CAA deadlines. While the county has commenced construction of the off-site drainage improvements, construction is currently estimated to be completed in December of 2026, after Petitioner's July 31, 2026, 10% Test Deadline. Even under the county's current schedule, the chain of events on which Petitioner's closing depends cannot reasonably be expected to occur in time for Petitioner to incur sufficient costs to meet the 10% Test by July 31, 2026.

17. Currently, the Petitioner's general contractor's schedule for the construction of the Development reflects an aggressive 14-month construction duration, which is incompatible with the existing December 31, 2027 federal placed-in-service deadline if Petitioner's equity and construction/permanent financing closing slips past the notice of commencement deadline of October 26, 2026. A credit swap to a 2026 or 2027 Housing Credit allocation, with corresponding reset of the carryover and placed-in-service deadlines, is therefore necessary to deliver the Development.

18. Lastly, the Petitioner has employed every possible strategy available to Petitioner in order for it to satisfy the 10% Test by the 10% Test Deadline. As required by the Carryover Allocation Agreement, Petitioner must incur a minimum of \$3,282,650.90 in qualifying costs by the 10% Test Deadline. To date, Petitioner has incurred approximately \$787,000 in qualifying predevelopment costs toward this threshold, leaving a remaining shortfall of approximately \$2,495,650.

19. The customary strategies for closing a shortfall of this magnitude include paying out an acceptable amount of developer fee, closing on the underlying land, and pre-purchasing construction materials, all of which are either unavailable to the Development or insufficient to cover the gap. First, including the maximum acceptable amount of developer fee that may reasonably be brought into basis at this stage of the Development — approximately twenty percent (20%) of the budgeted developer fee — would add approximately \$933,000 in qualifying costs, bringing total incurred costs to approximately \$1,720,000. This still leaves a gap of approximately \$1,562,650 against the 10% Test threshold. Second, the Petitioner will be obtaining the land for the Development via a ground lease structure and not fee simple. As such, the Petitioner cannot close on the underlying land. Moreover, the ground lessor, BPHI, the co-general partner of Petitioner, is a related party to Petitioner under federal tax rules. Accordingly, Petitioner has been advised by its accountants that a ground lease payment to a related party cannot be relied upon to count toward the 10% Test since related-party transactions generally are not permitted by the Internal Revenue Service to be included in the 10% Test calculation. Even if Petitioner were to make the payment, Petitioner's tax advisors are not confident the payment would qualify.

20. Third, after exhausting the developer fee strategy and confirming that a ground lease payment to BPHI cannot be relied upon, the only remaining theoretical option would be to pre-

order and store construction materials in an amount sufficient to satisfy the \$1,562,650 gap. Prudently, Petitioner would need to order materials in excess of the gap (approximately \$1,750,000 in total) to provide a cushion sufficient to satisfy the 10% Test with confidence. Pre-purchasing construction materials in this amount, however, is not practical or feasible for several converging reasons. Petitioner's financing partners generally cap the amount of construction materials that may be pre-ordered and stored, typically \$500,000 at any one time. Pre-purchasing materials in the amount required to satisfy the 10% Test gap would exceed those limits. Moreover, the cost to store and insure approximately \$1,750,000 of construction materials over the months between pre-order and construction commencement is cost-prohibitive to the Development and was not contemplated in the underwritten budget. Providing such insurance would strain the Petitioner's financial resources and put the Development at risk of not being financially feasible. The situation is exacerbated by the fact that suitable physical storage for that volume of materials may not be obtainable. The Development site itself cannot receive or stage materials because the site cannot be developed until the off-site drainage improvements described in paragraphs 15 and 16 above are complete; materials would therefore have to be warehoused at a third-party off-site facility. Finally, Petitioner is still working through Broward County and City of Pompano Beach permit review processes; materials specifications could change based on final permit conditions, creating risk that pre-ordered materials become obsolete and unusable.

21. Having exhausted all possible strategies of accounting for earned developer fee, a ground lease payment on the underlying land, and pre-purchase of construction materials, Petitioner has no remaining path to satisfy the 10% Test by the July 31, 2026 Deadline. A credit swap is therefore not one alternative among several; it is the only available path to deliver this Development and the 90 units of permanent supportive housing it represents.

22. While Petitioner believes it has a path forward to breaking ground on the Development within a reasonable timeframe, getting to this point has not been an easy task and has been burdened by delays caused by unforeseen events outside of the Petitioner's control, which significantly delayed the Petitioner's timeline. Petitioner seeks this waiver in an abundance of caution because Petitioner believes it will be unable to incur the costs necessary to meet the 10% Test by the July 31, 2026 deadline, and a credit swap is the only viable path to deliver this Development.

23. Petitioner therefore respectfully requests a waiver of the 2024 QAP to permit Florida Housing to approve the tax credit exchange now, as opposed to waiting until after the end of the second calendar quarter of 2027.

24. As set forth above, this request was not necessitated through any fault of Petitioner. Rather, Petitioner has exercised due diligence in attempting to move the Development toward closing and construction. The off-site drainage construction, which directly affects the timing of the Petitioner's permits is entirely controlled by a separate third party outside of the Petitioner's control.

25. If the Petition is denied, and Petitioner loses its allocated Housing Credits as a result of insufficient time to satisfy the 10% Test, Petitioner will be forced to abandon the Development. Stated differently, losing this funding source will cause Broward County to lose 90 affordable, permanent supportive housing units — approximately half of which are reserved for households at risk of or experiencing homelessness — in a community with profound and well-documented need.

26. This Petition should be granted, as opposed to de-obligating the award, because Broward County is currently experiencing a critical shortage of permanent supportive housing units. Granting the Petition will result in the delivery of 90 new affordable units, including dedicated permanent supportive housing for households experiencing homelessness, far faster than reallocating the funding through a new competitive cycle. The Development is the product of a longstanding public/private partnership with Broward Partnership for the Homeless, Inc., whose ground lease, co-general partnership role, and supportive services delivery model are integral to the project. Reallocating this funding to a different development cannot replicate that partnership or that supportive housing model on the same site.

27. Under Section 120.542(1), *Fla. Stat.*, and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers 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 or violate principles of fairness,² 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.*

28. Strict adherence to Subsection II.J. of the 2024 QAP would violate principles of fairness, as Florida Housing has granted waivers to other developments similarly facing unforeseen delays beyond their control (*e.g.*, Cardinal Oaks — granted credit swap in October 2025; Legacy

²“Substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the 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. See § 120.542(2), *Fla. Stat.*

Village – granted credit swap in December 2025; Lofts at Southbank – granted credit swap in January 2026).

29. In this instance, Petitioner meets the standards for a waiver of the Rule and the 2024 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 90 affordable units — including dedicated permanent supportive housing for persons experiencing homelessness — are made available for the target population in Broward County, Florida. The strict application of the 2024 QAP would prevent Petitioner from completing the swap now and will create a substantial hardship for Petitioner because it cannot, due to no fault of its own, meet the 10% Test by the July 31, 2026 deadline. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act’s primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, and further ensuring the development of 90 affordable units in Broward County, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable housing. See § 420.5099(2), Fla. Stat.

30. The foregoing demonstrates the hardship and other circumstances justifying this Petition.

31. The requested waiver should be granted because, as demonstrated above, the delay was caused by circumstances beyond Petitioner’s control, due diligence was employed in an attempt to resolve those circumstances, the Development in all respects, except timing, still meets the

conditions upon which the Housing Credits were originally allocated, and the Development is still desirable in terms of meeting affordable housing needs.

32. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

G. ACTION REQUESTED

33. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver to permit the requested credit exchange, immediate return of Petitioner's 2025 Housing Credit Allocation, and an immediate allocation of new Housing Credits; (ii) grant a corresponding extension of deadlines relative to those credits, including the 10% Test, Credit Underwriting Report, Firm Loan Commitment, Construction Commencement, Tax Credit Partnership Close, and Placed-in-Service deadlines; (iii) grant this Petition and all of the relief requested herein; and (iv) grant such further relief as it may deem appropriate.

Respectfully submitted on the 1st day of June, 2026.

Respectfully submitted,



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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 1st day of June, 2026.

By: 

Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356