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FLORIDA HOUSING
FINANCE CORPORATION

**BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

AUTUMN PALMS NFTM, LLC

Petitioner,
vs.

FHFC Case No. 2023-018BP
RFA No. 2022-205
Application No. 2023-130BSN

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**FORMAL WRITTEN PROTEST AND
PETITION FOR ADMINISTRATIVE HEARING**

Petitioner, AUTUMN PALMS NFTM, LLC (“Autumn Palms”), pursuant to sections 120.57(3), Florida Statutes (“F.S.”), and Rules 28-110 and 67-60, Florida Administrative Code (“FAC”) hereby files this Formal Written Protest and Petition for Administrative Hearing regarding the review, ranking, scoring and eligibility decisions of Respondent, FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”) in awarding funding pursuant to Request for Application 2022-205 Sail Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the “RFA”). In support Autumn Palms provides as follows:

1. Autumn Palms is a Florida limited liability company in the business of providing affordable housing. Autumn Palms is located at 13046 Race Track Road, #235, Tampa, FL 33626.
2. Florida Housing is the allocating agency for the State of Florida that was granted the authority to issue the RFA for the purpose of construction, redevelopment, or rehabilitation of much needed affordable housing. Florida Housing's address is 227 North Bronough Street, Suite 500, Tallahassee, Florida 32301.

3. On November 10, 2022, Florida Housing issued the RFA which offered funding as follows:

SECTION ONE
INTRODUCTION

This Request for Applications (RFA) is open to Applicants proposing the development of affordable, multifamily housing for Families and the Elderly utilizing State Apartment Incentive Loan (SAIL) funding as gap funding in conjunction with (i) Tax-Exempt Bond financing (i.e., Corporation-issued Multifamily Mortgage Revenue Bonds (MMRB) or Non-Corporation-issued Tax-Exempt Bonds obtained through a Public Housing Authority (established under Chapter 421, F.S.), a County Housing Finance Authority (established pursuant to Section 159.604, F.S.), or a Local Government), (ii) Non-Competitive Housing Credits (Housing Credit) and, if applicable, (iii) National Housing Trust Fund (NHTF).

A. SAIL

Florida Housing Finance Corporation (the Corporation) expects to offer an estimated \$60,240,702 comprised of a part of the Family and Elderly Demographic portion of the SAIL funding appropriated by the 2022 Florida Legislature. The amounts listed below include ELI Loan funding to cover the units that are set aside for Extremely Low Income (ELI) Households, including the commitment for a portion of ELI Set-Aside units as Link Units for Persons with Special Needs, as defined in Section 420.0004(13) F.S. and as further outlined in Sections Four A.6.d.(2)(c) of the RFA.

1. Demographic Categories

- a. \$22,686,720 of Elderly funding for proposed Developments with the Elderly Demographic Commitment (ALF and Non-ALF), and
- b. \$37,553,982 of Family funding for proposed Developments with the Family Demographic Commitment.

Up to a maximum of \$18,776,991 of the Family funding shall be reserved for Applicants that demonstrate self-financed sources and meet additional Application criteria set

forth in Section Four, A.3.a.(1)(b) below (“Self-Sourced Applicants”). \$18,776,991 of the Family funding shall be reserved for Applicants that select the Family Demographic Commitment but do not qualify as Self-Sourced Applicants.

2. County Geographic Categories

The following information is based on the most recent statewide low-income rental housing market study.

County Geographic	Amount of Funding Allocated to Each County Geographic
Small Counties	\$6,024,070
Medium Counties	\$22,710,745
Large Counties	\$31,505,887

These amounts are an estimate which may be further adjusted based on the funding results of 2022 Construction Housing Inflation Response Program (CHIRP) Invitation to Participate (ITP). If adjusted, the final amount available for this RFA will be posted to the RFA Webpage. A listserv will be issued when this information is available.

B. Tax-Exempt Bonds and Non-Competitive Housing Credits (Housing Credit)

The SAIL funding offered in this RFA must be used in conjunction with Tax-Exempt Bonds and Non-Competitive Housing Credits. For purposes of this requirement, the Applicant will NOT utilize the Non-Competitive Application Package to apply for (i) Corporation-issued MMRB and the Non-Competitive Housing Credits or (ii) Non-Competitive Housing Credits to be used with Non-Corporation-issued Tax-Exempt Bonds (i.e. issued by a Public Housing Authority (established under Chapter 421, F.S.), a County Housing Finance Authority (established pursuant to Section 159.604, F.S.), or a Local Government). Instead, the Applicant is required to apply for the MMRB and/or Housing Credits as a part of its Application for the SAIL funding.

If, prior to the submission of the Applicant’s Application in response to this RFA, the Applicant submits or has already submitted a Non-Competitive Application for the Development proposed in its SAIL Application, such

previous Non-Competitive Application will not be considered and the Applicant will be required to request the Corporation-issued MMRB and/or Non-Competitive Housing Credits as a part of its SAIL Application request, as outlined above.

If the proposed Development is not selected for funding or if the Applicant's funding award is rescinded, and the Applicant still wishes to receive the MMRB and/or Non-Competitive Housing Credits, the Applicant will be required to submit a new Application for such funding using the Non-Competitive Application Package that is in effect at that time.

Proposed Developments are not eligible for any funding offered in this RFA if the Applicant has already closed on the Tax-Exempt Bond financing prior to the Application Deadline for this RFA. In addition, proposed Developments are not eligible to receive any funding awarded through this RFA if the Applicant closes on the Tax-Exempt Bond financing prior to the issuance of the preliminary commitment for the SAIL funding. If the Bonds are closed between the Application Deadline and issuance of the preliminary commitment, the Applicant's award will be rescinded.

C. National Housing Trust Fund (NHTF)

The Corporation expects to offer an estimated \$18,552,000 in National Housing Trust Funds (NHTF) to support 22% Units that meet the requirements outlined in Section Four, A.6.d.(2)(d) of the RFA. NHTF funding will be awarded to all non-Self-Sourced Applicants that select the Development Category of New Construction or Redevelopment (with or without acquisition) and any Self-Sourced Applicants that request NHTF Funding and therefore commit to 22% Units. In such case, the invitation to enter credit underwriting will inform the Applicant of the NHTF award amount, and the requirement to set-aside 22% Units.

Note: Applicants that are selected for funding will be invited to enter credit underwriting and will be expected to complete the credit underwriting process, including Board approval of the credit underwriting report, and execute a written agreement within twelve months of the date of the invitation to enter into credit underwriting.

NHTF is further described in Exhibit I of the RFA.

Applicants that are not eligible for NHTF Funding due to requirements such as the HUD environmental requirements as provided in 24 CFR 93.301(f)(1) and (2) may instead be awarded an equivalent amount of funding through Home Investment Partnerships Program (HOME) From The American Rescue Plan Act (HOME-ARP). Although the HUD environmental requirements provided in 24 CFR 93.301(f)(1) and (2) do not apply; however, all HOME-ARP requirements would apply such as how the units must be used for Qualifying Populations, the HUD environmental requirements provided in 24 CFR Part 92 and 24 CFR Part 58, AND Davis-Bacon requirements apply, if there are at least twelve 22% Units.

HOME-ARP is further described in Exhibit J of the RFA

The Corporation is soliciting applications from qualified Applicants that commit to provide housing in accordance with the terms and conditions of this RFA, inclusive of all Exhibits, applicable laws, rules and regulations, and the Corporation's generally applicable construction and financial standards.

4. Through the issuance of the RFA, Florida Housing sought to solicit proposals from qualified applicants that would provide affordable housing consistent with the terms and conditions of the RFA, applicable laws, rules, and regulations.

5. On December 27, 2022, Autumn Palms submitted its Application in response to the RFA that included information concerning the development of a 72 unit complex in Lee County, Florida, named Autumn Palms at Bayshore. This area of Lee County was devastated by the impacts of Hurricane Ian.

6. Through the Application, Autumn Palms was requesting funding to develop affordable housing. Florida Housing received 46 applications in response to the RFA.

7. As the owner and developer of a project seeking funding through the RFA, Autumn Palms is substantially affected by the review, scoring, and ranking of the responses to the RFA.

The results of this proceeding as well as others that may be filed affects Autumn Palms' ability to obtain funding through the RFA. Consistent with the primary mission and goal of the RFA, Autumn Palms seeks to provide much needed affordable housing in Lee County. Without the funds provided by the RFA, Autumn Palms will be unable to provide this much needed housing. Accordingly, Autumn Palms' substantial interests are affected by the decisions made by Florida Housing.

8. On January 18, 2023, the designated Review Committee met and considered the Applications submitted in response to the RFA. At the meeting the Review Committee orally listed and manually input the scores for each section of the Application and ultimately made a recommendation to the Board for their consideration. The Review Committee consisted of Florida Housing staff. During the meeting, the Review Committee found Autumn Palms' application to be eligible. The Review Committee however did not award Autumn Palms' application funding instead the Committee recommended funding to 10 other Applications.

9. On January 27, 2023, the Florida Housing Board of Directors accepted and approved the Review Committee's ranking and funding recommendation.

10. On February 1, 2023, Autumn Palms timely filed its Notice of Intent to Protest. (See Attachment A) This Formal Written Protest is being timely filed and Florida Housing has waived the bid protest bond requirement for the RFA.

11. In this action Autumn Palms challenges the eligibility and funding determinations made by Florida Housing as they relate to the Application submitted by Bayside Breeze Redevelopment, LLLP (Application No. 2023-151BSN) ("Bayside Breeze") and specifically its Principal Disclosure Form. If successful in its challenge Autumn Palms will move into the funding range.

12. Bayside Breeze failed to provide all Principals in its Application. The RFA requires, as a mandatory eligibility item, that applicants identify all Principals of the Applicant, Developer and all Affiliates of the proposed Development on a properly completed Principals Disclosure Form (the "Disclosure Form").

13. The RFA specifically provides:

c. Principals Disclosure for the Applicant and for each Developer and Priority Designation (5 points)

(1) Eligibility Requirements

To meet the submission requirements, upload the Principals of the Applicant and Developer(s) Disclosure Form (Form Rev. 05-2019) ("Principals Disclosure Form") as outlined in Section Three above. Prior versions of the Principal Disclosure Form will not be accepted.

To meet eligibility requirements, the Principals Disclosure Form must identify, pursuant to subsections 67-48.002(94), 67-48.0075(8) and 67-48.0075(9), F.A.C., the Principals of the Applicant and Developer(s) as of the Application Deadline.

A Principals Disclosure Form should not include, for any organizational structure, any type of entity that is not specifically included in the Rule definition of Principals. Per subsection 67-48.002(94), F.A.C., any Principal other than a natural person must be a legally formed entity as of the Application deadline.

For Housing Credits, the investor limited partner of an Applicant limited partnership or the investor member of an Applicant limited liability company must be identified on the Principal Disclosure Form.

(See RFA, pp. 12-13)

14. "Principal" has the meaning set forth below and any Principal other than a natural person must be a legally formed entity as of the Application Deadline:

- (a) For a corporation, each officer, director, executive director, and shareholder of the corporation.
- (b) For a limited partnership, each general partner and each limited partner of the limited partnership.
- (c) For a limited liability company, each manager and each member of the limited liability company
- (d) For a trust, each trustee of the trust and all beneficiaries of majority

- age (i.e.; 18 years of age) as of Application deadline.
- (e) For a Public Housing Authority, each officer, director, commissioner, and executive director of the Authority.

(See Rule 67-48.002(94), F.A.C.)

15. In its Application, Bayside Breeze failed to disclose all of the Principals of their Applicant and Developer entities as defined by Rule 67-48.002(94), F.A.C.

16. Within the second level of the Principal Disclosure Form for the Applicant, Bayside Breeze listed TEDC Affordable Communities, Inc. as the Managing Member of the GP, TEDC Bayside Breeze GP, LLC. TEDC Affordable Communities, Inc. is also disclosed as a Developer and referenced within the Developer Principal Disclosure Form. A review of information found on Sunbiz however indicates the Manager of TEDC Bayside Breeze GP, LLC is actually Tacolcy Economic Development Corp., Inc. (See Attachment B)

17. Tacolcy Economic Development Corp., Inc. is a separate entity than TEDC Affordable Communities, Inc. and not disclosed in either the Applicant or Developer Principal Disclosure Form but it is clearly involved within the Applicant and Developer structure. (See Attachment C)

18. Bayside Breeze's failure to properly disclose all Principals on the Disclosure Forms specifically Tacolcy Economic Development Corp., Inc. is a material deviation from the requirements of the RFA, which renders Bayside Breeze's application ineligible for funding. See **HTG Village View, LLC, Petitioner v. Marquis Partners, Ltd., and Florida Housing Finance Corporation**, DOAH No. 18-2156BID (DOAH July 27, 2018, FHFC Nov. 17, 2018).

19. Material issues of disputed fact:
- a. Whether Bayside Breeze has provided correct information which identifies all Principals.
 - b. Whether Florida Housing has acted arbitrary or capricious in awarding funding in this RFA.

20. Autumn Palms reserves the right to amend this petition as more facts and issues are discovered.

WHEREFORE, Autumn Palms requests that a settlement meeting be scheduled and to the extent no settlement is reached a hearing scheduled and ultimately the entry of a Recommended and Final Order determining that Florida Housing's review and scoring of applications was contrary to the RFA specifications and to Florida Housing's governing statutes, rules and policies to such an extent as to be arbitrary, capricious, contrary to competition, and clearly erroneous and awarding funding to Autumn Palms.

Respectfully submitted,

CARLTON, FIELDS

/s/ Michael P. Donaldson

MICHAEL P. DONALDSON

Florida Bar No. 0802761

Post Office Drawer 190

215 S. Monroe St., Suite 500

Tallahassee, Florida 32302

Telephone: 850/224-1585

Facsimile: 850/222-0398

Email: mdonaldson@carltonfields.com

Counsel for Autumn Palms NFTM, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Formal Written Protest and Petition for Administrative Proceedings has been filed by e-mail with the Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301, this 13th day of February 2023.

/s/ Michael P. Donaldson

MICHAEL P. DONALDSON



ATTORNEYS AT LAW

215 S. Monroe Street | Suite 500
Tallahassee, Florida 32301-1866
P.O. Drawer 190 | Tallahassee, Florida 32302-0190
850.224.1585 | fax 850.222.0398
www.carltonfields.com

Michael Donaldson
850 513-3613 Direct Dial
mdonaldson@carltonfields.com

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FEB 1 2023 10:01 AM

February 1, 2023

FLORIDA HOUSING
FINANCE CORPORATION

Florida Housing Finance Corporation
Ana McGlamory, CP, FCP, FRP
Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

ELECTRONIC TRANSMISSION

Re: RFA 2022-205 – Sail Financing of Affordable Multifamily Housing
Developments to be Used in Conjunction with Tax-Exempt Bond
Financing and Non-Competitive Housing Credits

Dear Ms. McGlamory:

On behalf of Autumn Palms NFTM, LLC (“Autumn Palms”) (2023-130BSN), this letter constitutes a Notice of Intent to Protest (“Notice”) filed pursuant to sections 120.569 and 120.57(3), Florida Statutes, Rules 28-110.003 and 67.60.009, Florida Administrative Code, and the RFA.

This Notice is being filed within 72 hours (not including weekends and holidays) of the posting of the RFA on the Florida Housing’s website on January 27, 2023 at 10:54 a.m. Autumn Palms reserves the right to file a formal written protest within (10) days of the filing of this Notice pursuant to section 120.57(3), Florida Statutes.

Sincerely,

Michael P. Donaldson

Michael P. Donaldson

MPD/rb

cc: Michael Allan

Carlton Fields, P.A.

Carlton Fields, P.A. practices law in California through Carlton Fields, LLP.

ATTACHMENT A

Select the organizational structure for the Applicant entity:

The Applicant is a: Limited Partnership

Provide the name of the Applicant Limited Partnership:

Bayside Breeze Redevelopment, LLLP

First Principal Disclosure Level:

[Click here for Assistance with Completing the Entries for the First Level Principal Disclosure for the Applicant](#)

<u>First Level Entity #</u>	<u>Select Type of Principal of Applicant</u>	<u>Enter Name of First Level P</u>
1.	Investor LP	TEDc Bayside Breeze GP, LLC
2.	General Partner	TEDc Bayside Breeze GP, LLC
3.	General Partner	Bayside Breeze, GP, LLC
4.	General Partner	Bayside Breeze Interests, LLC

Second Principal Disclosure Level:

[Click here for Assistance with Completing the Entries for the Second Level Principal Disclosure for the Applicant](#)

Select the corresponding First Level Principal Entity # from above for which the Second Level Principal is being identified

<u>Second Level Entity #</u>	<u>Select the type of Principal being associated with the corresponding First Level Principal Entity</u>	<u>Enter Name of Second Level</u>
2. (TEDc Bayside Breeze GP, LLC)	Managing Member	TEDC Affordable Communities, Inc.
3. (Bayside Breeze GP, LLC)	Managing Member	Fort Walton Beach Revitalization, Inc.
4. (Bayside Breeze Interests, LLC)	Sole Member	Aguirre, Jorge



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Detail by Entity Name

Florida Limited Liability Company
TEDC BAYSIDE BREEZE GP, LLC

Filing Information

Document Number	L22000519808
FEI/EIN Number	NONE
Date Filed	12/12/2022
Effective Date	12/09/2022
State	FL
Status	ACTIVE

Principal Address

5900 NW 7TH AVE
102
MIAMI, FL 33127

Mailing Address

5900 NW 7TH AVE
102
MIAMI, FL 33127

Registered Agent Name & Address

CAROL, GARDNER
5900 NW 7TH AVE
102
MIAMI, FL 33127

Authorized Person(s) Detail

Name & Address

Title MGR

TACOLCY ECONOMIC DEVELOPMENT CORP INC
5900 NW 7TH AVE, STE 102
MIAMI, FL 33127

Annual Reports

No Annual Reports Filed



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Florida Not For Profit Corporation
TEDC AFFORDABLE COMMUNITIES INC.

Filing Information

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Principal Address

5900 NW 7 Avenue,
Suite 102
MIAMI, FL 33127

Changed: 03/10/2020

Mailing Address

5900 NW 7th Avenue
Suite 102
MIAMI, FL 33127

Changed: 03/10/2020

Registered Agent Name & Address

Edwards and Feanny, PA
9580 SW 107 Avenue
Suite 204 B
MIAMI, FL 33176

Name Changed: 03/10/2020

Address Changed: 03/10/2020

Officer/Director Detail

Name & Address

Title P

GARDNER, CAROL
5900 NW 7 Avenue,
Suite 102
MIAMI, FL 33127

Title CFO, Asst. Secretary

Rigby, Heidi
5900 NW 7th Avenue
Suite 102
MIAMI, FL 33127

Title Director

LOHIER, LUCE
5900 NW 7th AVE
SUITE 102
MIAMI, FL 33127

Title Director, Secretary

HUDSON, DEIDRE
5900 NW 7th AVE
SUITE 102
MIAMI, FL 33127

Title Director

GRIFFIN, TEDRIC
5900 NW 7th AVE
SUITE 102
MIAMI, FL 33127

Annual Reports

Report Year	Filed Date
2021	04/30/2021
2021	08/19/2021
2022	03/22/2022

Document Images

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Florida Not For Profit Corporation

TACOLCY ECONOMIC DEVELOPMENT CORPORATION, INC.

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Principal Address

5900 NW 7th Ave
Suite 102
MIAMI, FL 33127

Changed: 03/17/2020

Mailing Address

5900 NW 7th Ave
Suite 102
MIAMI, FL 33127

Changed: 03/17/2020

Registered Agent Name & Address

Edwards, Deborah, Esq.
9580 SW 107th Ave
204B
MIAMI, FL 33176

Name Changed: 03/17/2020

Address Changed: 03/17/2020

Officer/Director Detail

Name & Address

Title P

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