

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

KINNERET, INC.

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FHFC Case No. 2015-045BP

FHFC No. 2015-115

Application No. 2016-209M

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

Petitioner, KINNERET, INC. (“Kinneret”), pursuant to sections 120.57(3), Florida Statutes (“F.S.”), and Rule 28-110 and 67-60, Florida Administrative Code (“FAC”) hereby files this Formal Written Protest and Petition for Administrative Hearing regarding the scoring decision of Respondent, FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”) to award funding to responsive bidders pursuant to RFA 2015-115 Multifamily Energy Retrofit Program (MERP) for Affordable Housing Developments located in Medium and Small Counties. In support Kinneret provides as follows:

1. Kinneret is a Florida Corporation in the business of providing affordable housing. Kinneret is located at 5300 W. Cypress Street, Suite 200, Tampa, FL 33607. For the purposes of this proceeding, Kinneret’s phone number is that of its undersigned attorneys.
2. Florida Housing is the allocating agency for the State of Florida that was granted the authority to issue RFA 2015-115 for the purpose of providing much needed affordable

housing. Florida Housing's address is 227 North Bronough Street, Suite 500, Tallahassee, Florida 32301.

3. On October 23, 2015, Florida Housing issued the RFA to award \$7,533,084 in loan funds to applicants proposing the retrofit of existing multifamily rental developments that meet certain listed conditions.

4. Through the issuance of the RFA Florida Housing sought to solicit proposals from qualified Applicants that would commit to retrofit housing in accordance with the terms and conditions of the RFA, applicable laws, rules, and regulations.

5. On November 13, 2015, Kinneret submitted an Application in Response to the RFA which included information concerning a 168 unit apartment complex in Orange County, Florida, named Kinneret. Florida Housing received 33 applications in response to the RFA. Through the Application, Kinneret is eligible for \$2,500,000 in funding assistance for the proposed project. Kinneret believed that it had satisfied all requirements of the RFA.

6. As the owner and developer of a project seeking funding, Kinneret is substantially affected by evaluation and scoring of the responses to the RFA. The results of this and related proceedings may affect Kinneret's ability to obtain funding through the RFA.

7. Consistent with the primary mission and goal of the RFA, the Kinneret's Development will provide much needed affordable housing and services. Without the funds provided by the RFA and specifically the benefits of being a Non-Profit Applicant, Kinneret's ability to complete the task called for in the RFA will be negatively impacted. Accordingly Kinneret's substantial interests are affected by the decisions made by Florida Housing.

8. At Section Four the RFA lists those items which must be included in a response to the RFA as found in the Application Form A. Included in these items at Section Four (A) is information concerning the Applicant and the Developer and the Development.

9. The RFA at Section Five describes the Applicant Eligibility and Funding Section process. The mandatory items for the RFP are listed at page 18 of the RFA.

10. At page 19 the RFA lists the selection process and indicates as a goal to fund two (2) Non-Profit Applications.

11. The RFA indicates that the two (2) highest ranked eligible Applications that qualify as Non-Profit will be selected for funding. If funding remains after meeting this goal then the next highest eligible applicants regardless of the Non-Profit status will be funded.

12. At Section Six the RFA sets out the award process as follows:

- A. Committee member shall independently evaluate and score their assigned portions of the submitted Applications, consulting with non-committee Corporation staff and legal counsel as necessary and appropriate.
- B. The Committee shall conduct at least one public meeting during which the Committee members may discuss their evaluations, select Applicants to be considered for award, and make any adjustments deemed necessary to best serve the interest of the Corporation's mission. The Committee will list the Applications deemed eligible for funding in order from highest ranking to lowest ranking, applying the funding selection criteria outlined in Section Five B above, and develop a recommendation or series of recommendations to the Board.
- C. The Board may use the Applications, the Committee's evaluation, any other information or recommendation provided by the Committee or staff, and any other information the Board deems relevant in its selection of Applicants to whom to award funding. Notwithstanding an award by the Board pursuant to this RFA, a positive recommendation from the Credit Underwriter based on criteria outlined in this RFA and the credit provision in Exhibit F.

D. The Corporation shall provide notice of its decision, or intended decision, for this RFA on the Corporation's Website the day of the application Board vote. After posting, an unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.47(3), Fla. Stat., et. al. Failure to file protest within the time prescribed in Section 120.57(3), Fla. Stat. et. a. shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

E. After issuance by the Board of all final orders regarding this RFA, the Corporation shall send all Applicants within the funding range a preliminary letter of award. The Corporation shall select the Credit Underwriter for each Development.

13. On December 2, 2015, the designated Review Committee met and considered the Applications responding to the RFA. At the meeting the Review Committee orally listed and manually input the scores for each section of each RFA Response and ultimately made recommendations to the Board of Directors for their consideration. The Review Committee consisted of Florida Housing staff.

14. During the meeting, the Review Committee announced that the Kinneret Application was eligible for funding but not as one of the two Non-Profit Applicants as defined by the RFA.

15. On December 11, 2015, Florida Housing's Board of Directors accepted the Review Committee's ranking and funding. (See Exhibit A)

16. On December 15, 2015, Kinneret timely filed its Notice of Intent to Protest. (See Exhibit B) This Formal Written Protest is being timely filed and Florida Housing has waived the bid protest bond requirement for the RFA. As a Developer of affordable housing in need of supplemental funding, Kinneret's substantial interests are affected by Florida Housing's decision not to award the necessary funding pursuant to the RFA.

17. As it relates to the specific reason cited by Florida Housing for not considering Kinneret's Application as an eligible Non-Profit, the RFA at Section Four (B)(2) provides as follows:

To qualify for up to 15 percent of the MERP award to be forgiven, the Applicant must, as of the Application submission date, qualify as a Non-Profit Applicant, or be certified by the Department of Management Services as a Women, Veteran or Minority-Owned Business. All other Applicants will qualify for up to 10 percent of the MERP award to be forgiven. The forgivable portion of the loan is further explained in Section Five, G.4.

Is the Applicant a Non-Profit Applicant as of Application submission date?

Yes

No

If "Yes", in order to be considered to be a Non-Profit entity for purposes of this RFA, the Applicant must meet the definition of Non-Profit as set out in Section Two, answer the following questions, and provide the required information.

18. The RFA defines Non-Profit as follows:

"Non-Profit" means a qualified Non-Profit entity as defined in Section 42(h)(5)(C), subsection 501(c)(3) or 501(c)(4) of the IRC and organized under Chapter 617, F.S., if a Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida, **to provide housing and other services on a not-for-profit basis**, which owns at least 51 percent of the ownership interest in the Development held by the general partner or managing member entity and which entity is acceptable to federal and state agencies and financial institutions as a Sponsor for affordable housing where **the purpose of the Non-Profit must be, in part, to foster low-income housing and such purpose must be reflected in the Articles of Incorporation of the Non-Profit entity.** A Non-Profit entity shall own an interest in the Development, either directly or indirectly; shall not be affiliated with or controlled by a for-profit Corporation; and shall materially participate in the development and operation of the Development throughout the total affordability period as stated in the Land Use Restriction Agreement and the Extended Use Agreement.

(emphasis added)

19. In response to Section 4(b)(2) Kinneret responded that "yes" it was a Non-Profit as of the Application submission date and submitted various documents including a letter from

the Internal Revenue Service attesting to the 501(c)(3) status of Kinneret as well as Articles of Incorporation.

20. In reviewing the documents provided by Kinneret Florida Housing found as follows:

“The Articles of Incorporation do not demonstrate that one of the purposes of the Non-Profit to foster low –income housing.”

(See Exhibit C)

21. Based on this finding Florida Housing did not consider the Kinneret Application as a Non-Profit entity and accordingly did not award Kinneret funding as one of the two designated Non-Profit Applicants. Accordingly Kinneret will not qualify for the 15% forgiveness of the loan amount pursuant to Section 4(b)(2). The result of this decision by Florida Housing will cause a financial impact to Kinneret.

22. Florida Housing’s conclusion is erroneous for several reasons. First it is clear that Kinneret is a Non-Profit 501(c)(3) organization. Additionally its Articles of Incorporation indicated that providing affordable housing is one of the organizations purposes.

23. Specifically the Articles of Incorporation submitted by Kinneret provide as follows:

THIRD: The purpose for which the corporation is formed, and the business and objects to be carried on, and promoted by it, are as follows:

(a) To provide for elderly families and elderly persons **on a non-profit basis, rental housing and related facilities**, and services especially designed to meet the physical, social, and psychological needs of the elderly, and contribute to their health, security, happiness and usefulness in longer living.

(b) **To plan, construct, operate maintain, and improve rental housing, and related facilities and services for elderly families and elderly persons.**

(c) To acquire by give or purchase, hold, sell, convey, assign, mortgage, or lease any property, real or personal, necessary or **incident to the provision of rental housing and related facilities and services for elderly families and elderly persons.**

(d) To borrow money and issue evidences of indebtedness in furtherance of any or all of the objects of its business; and, to secure loans by mortgage, deed of trust, pledge, or other lien.

(e) To apply for, obtain, and contract with any Federal agency for a direct loan or loans, or other financial aid in the form of mortgage insurance, or otherwise, **for the provision of rental housing and related facilities and services for elderly families and elderly persons.**

(f) To engage in any kind of activity, and to enter into, person, and carry out contracts of any kind, necessary or in connection with, or incidental to the accomplishment of any one or more of the non-profit purposes of the corporation.

FOURTH: The corporation formed hereby is also authorized to enter into a Regulatory Agreement **with the Secretary of Housing an Urban Development to carry out the provisions of Section 202 of the Housing Act of 1959, and any amendments thereto.** Upon execution, the Regulatory Agreement shall be binding upon the corporation, its successors and assigns so long as any loan under Section 202 of the Housing Act of 1959, as amended, is outstanding, and for such further period of time as may be agreed to by the corporation.

24. Clearly the Section 202 program like those offered by Florida Housing provides capital advances to finance the construction, rehabilitation or acquisition with or without

rehabilitation of structures that will serve as supportive housing for very low-income elderly persons, and provides rent subsidies for the projects to help make them affordable. The Section 202 program helps expand the supply of affordable housing with supportive services for the elderly.

25. The above language of the Articles of Incorporation shows that one of the purposes of Kinneret is to not only “foster” the provision of but actually provide rental housing for the elderly.

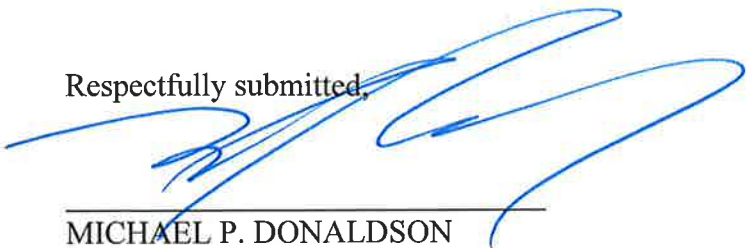
26. Kinneret reserves the right to amend this petition as additional documents and facts are discovered.

27. Material issues to be resolved:

- a. Whether the review of Kinneret’s Application was inconsistent with the RFA requirements.
- b. Whether Florida Housing review and actions taken concerning Kinneret’s Application was arbitrary or capricious, clearly erroneous and contrary to competition.
- c. Whether Kinneret is a Non-Profit as defined by the RFA.
- d. Whether Kinneret should have been funded as a Non-Profit

WHEREFORE, Kinneret requests that a settlement meeting be scheduled and if settlement is not reached the scheduling of a hearing and entry of an order determining that Florida Housing's review and scoring of Kinneret’s Application 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.

Respectfully submitted,

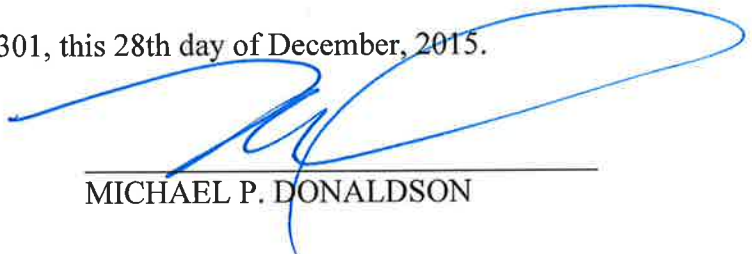


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Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a copy of the foregoing has been filed by Hand Delivery to the Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301, this 28th day of December, 2015.



MICHAEL P. DONALDSON

RFA 2015-115 Recommendations

MERP Funding Available	\$ 7,533,084.00
MERP Funding Awarded	\$ 7,270,000.00
MERP Funding Balance	\$ 263,084.00

Application Number	Name of proposed Development	County	Contact Name	Name Of Applicant	Non-Profit?	Total Existing Units	Maximum Eligible Funding Amount	75% of Maximum Funding Amount	Applicant Meets the 75% Funding Test?	Eligible for Funding	Age of Development Preference?	Florida Job Creation Preference?	Lottery
Non-Profit Applications Recommended													
2016-212M	Middletowne Apartments	Clay	Rodger L Brown	POAH Middletowne Apartments, LLC	Y	100	1,500,000.00	1,125,000.00	Y	Y	Y	Y	5
2016-195M	New Hope Community	Martin	Donna M Carman	Indiantown Non Profit Housing, Inc.	Y	60	900,000.00	675,000.00	Y	Y	Y	Y	8
Other Applications Recommended													
2016-200M	McPines Apartments	DeSoto	William A Gilson	Pinet-Cypress, Ltd.	N	64	950,000.00	720,000.00	Y	Y	Y	Y	1
2016-209M	Kinneret Apartments	Orange	Laurel C. Macdonald	KINNERET, INC.	N	168	2,500,000.00	1,875,000.00	Y	Y	Y	Y	2
2016-192M	Wildwood Townehomes	Sumter	William A Gilson	Wildwood Townehomes, Ltd.	N	30	450,000.00	337,500.00	Y	Y	Y	Y	4
2016-218M	North Grove Apartments	Hillsborough	Thomas F. Flynn	North Grove Associates, Ltd.	N	31	465,000.00	348,750.00	Y	Y	Y	Y	12
2016-219M	Forest Glen I Apartments	Putnam	Thomas F. Flynn	Forest Glen Associates, Ltd.	N	33	495,000.00	371,250.00	Y	Y	Y	Y	14

On December 11, 2015, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee's motion and staff recommendation to select the above Applications for funding and proceed to issue Corporation letters of preliminary award to the Applicants.

Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., Rule Chapter 28-110, F.A.C., and Rule 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

**CARLTON FIELDS
JORDEN BURT**

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December 15, 2015

Kate A. Flemming
Legal Analyst/Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

VIA HAND DELIVERY AND EMAIL
Kate.flemming@floridahousing.org

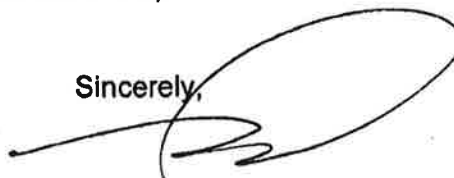
NOTICE OF INTENT TO PROTEST

Re: RFA 2015-115

Dear Ms. Flemming:

On behalf of Kinneret, Inc. (2016-209M), we hereby give notice of our intent to protest the Award Notice and scoring and ranking of RFA 2015-115 issued by Florida Housing on December 11, 2015, concerning the Multifamily Energy Retrofit Program (MERP) loans to Housing Development (see attached).

Sincerely,



Michael P. Donaldson

Enclosure
cc: Laurel Macdonald

FLORIDA HOUSING FINANCE CORPORATION

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RFA 2015-115 Recommendations

MERS Funding Available	\$ 7,353,084.00
MERS Funding Awarded	\$ 7,276,000.00
MERS Funding Balance	\$ 77,084.00

Application Number	Name of proposed Development	County	Contact Name	Name Of Applicant	Non-Profit?	Total Existing Units	Maximum Eligible Funding Amount	75% of Minimum Funding Amount	Applicant Meets the 75% Funding Test?	Eligible for Funding	Age of Development Preference?	Florida Job Creation Preference?	Lottery
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2015-195M	New Hope Community	Martin	Donna M Carman	Indiantown Non Profit Housing, Inc.	Y	60	900,000.00	675,000.00	Y	Y	Y	Y	8
Other Applications Recommended													
2015-200M	JacPines Apartments	DeSoto	William A Gibson	Forest-Cypress, Ltd.	N	64	560,000.00	720,000.00	Y	Y	Y	Y	1
2015-209M	Renner Apartments	Orange	Janet C. McDonald	RENNER, INC.	N	168	2,500,000.00	3,875,000.00	Y	Y	Y	Y	2
2015-192M	Wildwood Townhomes	Sumter	William A Gibson	Wildwood Townhomes, Ltd.	N	30	450,000.00	337,500.00	Y	Y	Y	Y	4
2015-213M	North Grove Apartments	Hillsborough	Thomas F. Flynn	North Grove Associates, Ltd.	N	31	465,000.00	348,750.00	Y	Y	Y	Y	12
2015-219M	Forest Glen Apartments	Polk	Thomas F. Flynn	Forest Glen Associates, Ltd.	N	33	465,000.00	371,250.00	Y	Y	Y	Y	14

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RFA 2015-115 Multifamily Energy Retrofit Program

App. No.	Development	B.1. Name of Applicant provided	B.3. Principals of the Applicant provided	B.4. Contact information provided	B.2.a. Non-Profit Applicant qualifications met?	
2016-207M	Four Freedoms House Miami Beach	Yes	No	Yes	Yes	*Principals list contains the following: "FFMB Housing Partners, LP is party to a purchase agreement (dated 7/3/15) with the current owner of the property. We are scheduled to close and obtain ownership by mid-December, 2015. This list contains the post-closing organizational structure". Further, while the list of principals provided contains the FHFC Approved stamp, the list actually approved by Florida Housing did not contain the statement above. Per the RFA: "provide a list identifying the Principals of the Applicant as of the Application submission date". The list of principals provided in the application does not reflect the Applicant structure as of application submission.
2016-208M	Trinity Towers South	Yes	Yes	Yes	Yes	
2016-209M	Kinneret Apartments	Yes	Yes	Yes	No	The articles of incorporation do not demonstrate that one of the purposes of the Non-Profit to foster low-income housing.
2016-210M	Palm Grove	Yes	Yes	Yes	n/a	
2016-211M	Golden Acres Development	Yes	Yes	Yes	Yes	
2016-212M	Middletowne Apartments	Yes	Yes	Yes	Yes	

Elizabeth Dool