

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Ability Oakland II, LLC

FHFC Case No.: 2013-004VW

**ORDER GRANTING PETITION FOR WAIVER
OF PART III.B.4.b OF THE 2011 UNIVERSAL CYCLE
APPLICATION INSTRUCTIONS**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on April 26, 2013, pursuant to a "Petition for Waiver of the 2011 Universal Application Instructions, Housing Credit Program, Part III, Section (B)(4)(b)" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on March 28, 2013, from Ability Oakland II, LLC ("the Petitioner"). On March 29, 2013, the Notice of the Petition was published in Volume 39, Number 62, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M. Harrell / DATE: 4/26/13

2. During the 2011 Universal Cycle, Ability Oakland II, LLC (“Petitioner”) applied for and was awarded an allocation of tax credits to finance the preservation of a family development known as Oakland Terrace Apartments (the “Development”) located in Duval County, Florida.

3. Rule 67-48.004(1)(a) Fla. Admin. Code (2011) provides, in pertinent part:

(a) The Universal Application Package or UA1016 (Rev. 2-11) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation’s Website under the 2011 Universal Application link labeled Instructions and Application, or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-00703>, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the HOME and HC Program(s).

Part III.B.4.b. of the Instructions provides in pertinent part:

b. For all rehabilitation units:

If the proposed Development includes any rehabilitation units (regardless of the Development Category selected at Part III.A.3.a. of the Application), the rehabilitation units must include as many of the following energy features as structurally and financially feasible within the scope of the rehabilitation work. The feasible energy features for each proposed Development will be based on a capital needs assessment performed during the credit underwriting process. If this provision applies to the proposed Development, the Applicant must select “Yes” to be considered for participation in any program.

- Energy Star qualified refrigerator
- Energy Star qualified dishwasher

- Water heating (choose gas, electric, gas tankless, or boiler/hot water maker):

4. Petitioner requested a waiver of the above Rule to allow it to utilize shared tankless water heaters, instead of installing individual water heaters in all units in the Development. As justification, Petitioner states that the use of shared tankless water heaters will allow the Development to substantially reduce installation costs. Petitioner also states that its proposed shared tankless water heaters will provide increased living space and reduced costs to the residents as the Development will pay for the utility.

5. The requested change would neither affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants.

6. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

7. The Board finds that strict application of the above Rule under these circumstances would violate the principles of fairness. Petitioner established that permitting this change in Development would promote construction of energy-efficient systems, provide more living space for its

residents, and provide a cost benefit to the low income residents. A denial of the requested waiver would result in a substantial hardship due to increased costs of installation and operation of less efficient hot water heaters.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of Part III.B.4.b., of the 2011 Universal Application Instructions, to allow Petitioner to install shared tankless water heaters, instead of individual water heaters in each unit in the Development, with the shared tankless water heaters to be installed on the exterior of the units, serving two or three units in the Development, is hereby **GRANTED**.

DONE and ORDERED this 26TH day of April, 2013.

Florida Housing Finance Corporation



By:


Chairperson

Copies furnished to:
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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.