

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

MALABAR COVE, L.L.L.P.,

Petitioner,

APPLICATION NO. 2007-197BS

vs.

FHFC CASE NO.: _____

FLORIDA HOUSING FINANCE CORP.,

Respondent.

_____ /

**PETITION FOR WAIVER FROM FLORIDA
ADMINISTRATIVE CODE RULE 67-48.004**

MALABAR COVE, L.L.L.P. ("Petitioner"), by and through its undersigned attorney, hereby petitions the Florida Housing Finance Corporation ("Florida Housing") for a waiver from Rule 67-48.004, Florida Administrative Code ("FAC"). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

1. The address, telephone and facsimile number of Petitioner is:

Malabar Cove, L.L.L.P.
c/o Atlantic Housing Partners
329 North Park Avenue, Suite 300
Winter Park, Florida 32789
407-741-8682 (telephone)
(407) 643-2590 (facsimile)

2. The address, telephone and facsimile number of Petitioner's attorney is:

Kerey Carpenter
AHG Group, LLC
1551 Sandspur Road
Maitland, Florida 32751
407-741-8534 (direct line)
407-551-2353 (facsimile)

3. Petitioner successfully applied for a State Apartment Incentive Loan (“SAIL”) in the 2007 Universal Application Cycle that Florida Housing administers pursuant to Chapter 67-48, Florida Administrative Code. Petitioner’s Application Number is 2007-197BS (the “Application”). Petitioner applied for SAIL to finance a portion of the costs to develop a 76-unit multifamily rental apartment community in Brevard County, Florida, to be known as Malabar Cove – Phase I (the “Development”).

THE RULES FROM WHICH A WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-48.004(14), as in effect for the 2007 Universal Application Cycle. Rule 67-48.004(14) provides in relevant part as follows:

(14) 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 Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempt to make changes to these items will not be accepted. Those items are as follows:

* * *

(e) Site for the Development;

STATUTES IMPLEMENTED BY THE RULE

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the SAIL program. Section 420.5087, Florida Statutes.

6. Florida Housing has 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 consequences 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,

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

7. The provisions of the foregoing Rule prohibit a change in the “Site for the Development”. Petitioner is uncertain whether, under the scenario described below, the “Site for the Development” has in fact changed since it remains in the same location as described in the Application. However, in order to dispel any ambiguity with respect to this issue, Petitioner is submitting this Petition for Waiver. For the reasons set forth below, compliance with the provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.

8. In the Application, the Site for the Development was identified as “South side of Malabar Road NW, approximately ¾ mile west of the intersection of Malabar Road NW and Minton Road SE”. Further, Exhibit A to the contract for the purchase of the site submitted with the Application identified the site as follows:

COMMENCE at the Northwest corner of Section 1, Township 29 South, Range 36 East, Brevard County, Florida; thence run South 00°05’02” East, along the West line of said Section, a distance of 41.00 feet; thence run North 89°33’57” East, parallel with the North line of Section 1, Township 29 South, Range 36 East, for a distance of 775.80 feet to POINT OF BEGINNING; thence continue North 89°33’57” East, for a distance of 378.27 feet; thence run South 00°05’02” East, for a distance of 938.35 feet; thence run South 89°54’58” West, for a distance of 108.50 feet; thence run North 00°05’02” West, for a distance of 19.29 feet; thence run North 90°00’00” West, for a distance of 30.05 feet; thence run South 00°00’00” East, for a distance of 9.29 feet; thence run North 90°00’00” West, for a distance of 49.17 feet; thence run South 00°00’00” West, for a distance of 168.96 feet; thence run North 90°00’00” West, for a distance of 84.69 feet; thence run South 00°00’00” East, for a distance of 109.91 feet; thence run South 38°25’53” West, for a distance of 47.47 feet; thence run South 00°33’52” East, for a distance of 62.13 feet; thence run South 89°26’08” West, for a distance of 76.39 feet; thence run North 00°05’02” West, for a distance of 1305.08 feet to POINT OF BEGINNING.

(Attached hereto as Exhibit 1)

9. At the time the Application was submitted, the City of Palm Bay had reviewed the zoning designation, but had not approved the final site plan as reflected on the 2007 Universal Cycle – Local Government Verification of Status of Site Plan Approval for Multifamily Developments Form submitted with the Application. (Attached hereto as Exhibit 2). Final site plan approval from the local government was not required by the rules governing the 2007 Universal Application Cycle. It is not uncommon for local governments to require changes in the preliminary site plans prior to approving the final site plans. The City of Palm Bay did, in fact, require site plan changes prior to approving the final site plan resulting in a minor shift in the location of two building to accommodate the size and location of the storm water retention area. As a result of the minor shift, the original boundary line between the two phases of Malabar Cove crossed over the two buildings. To address this issue, the boundary line between the two phases needs to be shifted as shown on the Boundary Survey attached hereto as Exhibit 3 and the Architectural Site Plan drawing attached hereto as Exhibit 4. The shift in the boundary line has no adverse affect on the Development and does not impact the unit mix, the committed amenities, or the Tie Breaker Measurement Point in either phase. See Exhibit 4. The change in the legal description of the Development site would have had no impact on the application’s scoring, thus providing Petitioner with no advantage over its competitors.

11. In light of the considerable time that it takes to develop and construct multifamily rental housing, Florida Housing’s statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a proposed project. Florida Housing

routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed, the specific purpose of Rule 67-48.004(14) is to prevent an applicant from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the applicant to gain a possible advantage.

12. Florida Housing has recognized that the Development Site may change after applications have been submitted, and modified Rule 67-48.004(14) for the 2008 Universal Application Cycle to allow the Development Site to be increased or decreased, provided that “the Tie Breaker Measurement Point is on the site and the total proximity points awarded during scoring are not reduced.” Rule 67-48.004(14)(e), F.A.C. (2008). As explained above, the Tie Breaker Measurement Point on each phase has not changed and the total proximity points awarded during scoring are not reduced.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

13. Florida Housing’s approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5087. The purpose of both the Statute and the program is to facilitate and stimulate the development of multifamily rental housing that is affordable to families of limited means. If the requested waiver is granted, the SAIL allocation in question will be used to fund an affordable multifamily rental housing community for which there is a desperate need in the Palm Bay, Florida.

14. The violation of principles of fairness and imposition of a substantial hardship which would result from strict compliance with the provisions of FAC Rule 67-48.004(14), would be as follows. Unless the waiver is granted, Petitioner would not be able to utilize the SAIL funds for the development of Malabar Cove – Phase I, a much needed affordable housing

community. The substantial hardship which would result from strict compliance with the foregoing Rule is obvious.

15. By granting a waiver and permitting Petitioner to revise the Site for the Development, Respondent would recognize the economic realities of developing and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent's purpose by providing affordable housing, through new construction, in an economical and efficient manner.

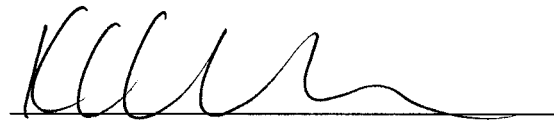
TYPE OF WAIVER

16. The waiver being sought is permanent in nature.

ACTION REQUESTED

17. Petitioner requests a waiver from Rule 67-48.004(14) to permit a change in the Site for the Development from the descriptions that were submitted in the Application to the Development site reflected on the boundary survey and legal description attached as Exhibit 3.

Respectfully submitted this 7th day of November, 2008.



Kerey Carpenter
AHG Group, LLC
1551 Sandspur Road
Maitland, Florida 32751
407-741-8534 (direct)
407-551-2353 (facsimile)
kcarpenter@ahg-group.com
Florida Bar No. 963781
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that an original and one copy of the foregoing Petition for Waiver have been filed with Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.



Kerey Carpenter

EXHIBIT A

COMMENCE at the Northwest corner of Section 1, Township 29 South, Range 36 East, Brevard County, Florida; thence run South 00°05'02" East, along the West line of said Section, a distance of 41.00 feet; thence run North 89°33'57" East, parallel with the North line of Section 1, Township 29 South, Range 36 East, for a distance of 775.80 feet to POINT OF BEGINNING; thence continue North 89°33'57" East, for a distance of 378.27 feet; thence run South 00°05'02" East, for a distance of 938.35 feet; thence run South 89°54'58" West, for a distance of 108.50 feet; thence run North 00°05'02" West, for a distance of 19.29 feet; thence run North 90°00'00" West, for a distance of 30.05 feet; thence run South 00°00'00" East, for a distance of 9.29 feet; thence run North 90°00'00" West, for a distance of 49.17 feet; thence run South 00°00'00" West, for a distance of 168.96 feet; thence run North 90°00'00" West, for a distance of 84.69 feet; thence run South 00°00'00" East, for a distance of 109.91 feet; thence run South 38°25'53" West, for a distance of 47.47 feet; thence run South 00°33'52" East, for a distance of 62.13 feet; thence run South 89°26'08" West, for a distance of 76.39 feet; thence run North 00°05'02" West, for a distance of 1305.08 feet to POINT OF BEGINNING.

2007 UNIVERSAL CYCLE - LOCAL GOVERNMENT VERIFICATION OF STATUS OF SITE PLAN APPROVAL FOR MULTIFAMILY DEVELOPMENTS

Name of Development: Malabar Cove - Phase I
Development Location: South side of Malabar Road NW, approximately 3/4 mile west of the intersection of Malabar Road NW and Minton Road SE, Palm Bay, Florida 32907
(At a minimum, provide the address assigned by the United States Postal Service, including the address number, street name and city, or if the address has not yet been assigned, provide the street name, closest designated intersection and city)

Zoning Designation: RM-15, Multiple Family

Mark the applicable statement:

- 1. The above-referenced Development is new construction or rehabilitation with new construction and the final site plan, in the zoning designation stated above, was approved by action of the (Legally Authorized Body*) on Date (mm/dd/yyyy)
2. The above-referenced Development is new construction or rehabilitation with new construction and this jurisdiction provides either preliminary site plan approval or conceptual site plan approval. The preliminary or conceptual site plan, in the zoning designation stated above, was approved by action of the (Legally Authorized Body*) on Date (mm/dd/yyyy)
3. [X] The above-referenced Development is new construction or rehabilitation with new construction and requires site plan approval for the new construction work. However, this jurisdiction provides neither preliminary site plan approval nor conceptual site plan approval, nor is any other similar process provided prior to issuing final site plan approval. Although there is no preliminary or conceptual site plan approval process and the final site plan approval has not yet been issued, the site plan, in the zoning designation stated above, was reviewed by LAND DEVELOPMENT DIV. on 3/30/07. CONDITIONAL Use by City Council required.
4. The above-referenced Development, in the zoning designation stated above, is rehabilitation without any new construction and does not require additional site plan approval or similar process.

* "Legally Authorized Body" is not an individual. Applicant must state the name of the City Council, County Commission, Board, Department, Division, etc., with authority over such matters.

CERTIFICATION

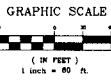
I certify that the City/County of Palm Bay has vested in me the authority to verify status of site plan approval as specified above and I further certify that the information stated above is true and correct.

Signature: [Handwritten Signature]
Date (mm/dd/yyyy): 3/30/07

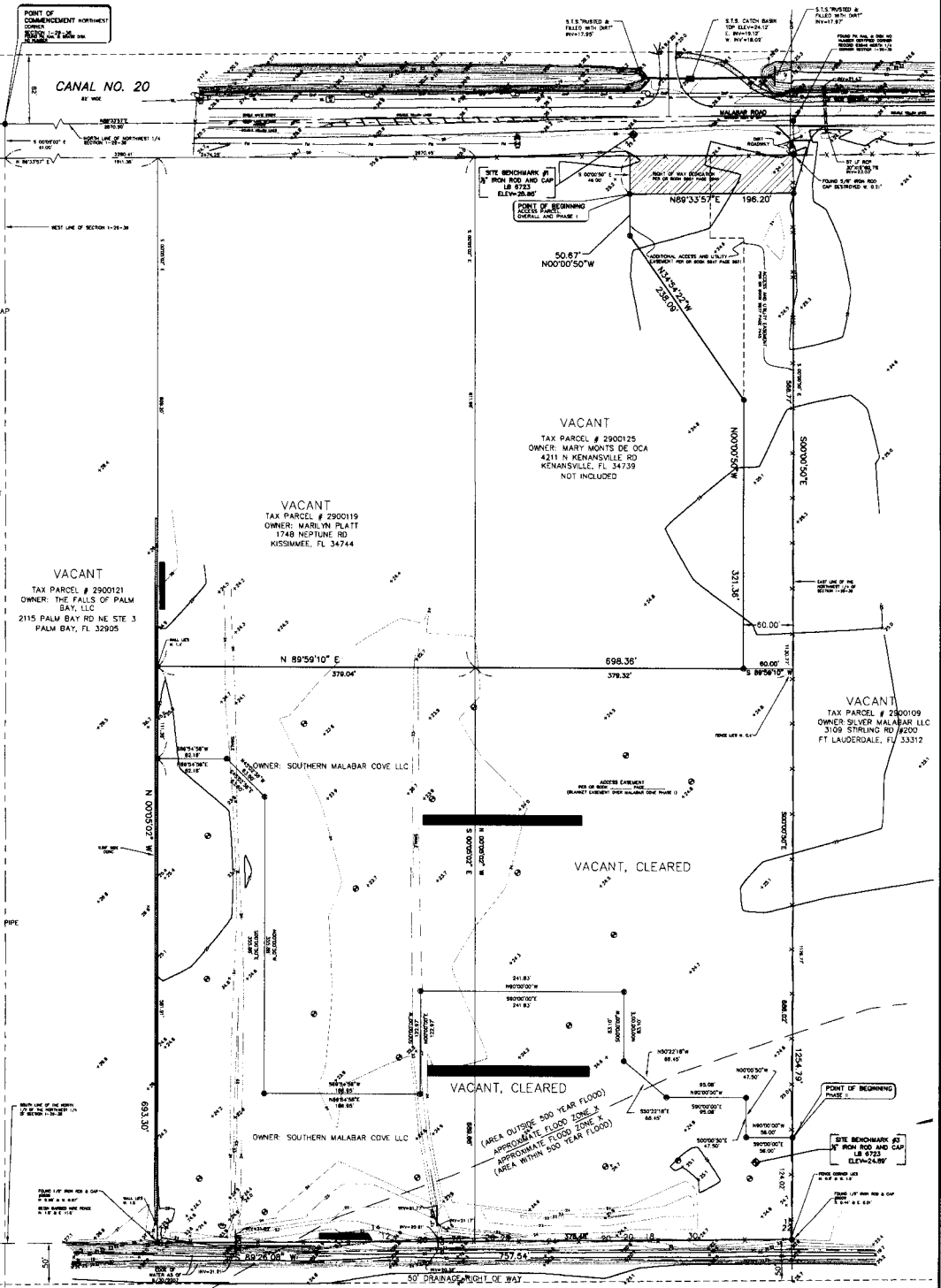
Print or Type Name: DAVID WATKINS
Print or Type Title: Growth Management Director

This certification must be signed by the applicable City's or County's Director of Planning and Zoning, chief appointed official (staff) responsible for determination of issues related to site plan approval, City Manager, or County Manager/Administrator/Coordinator. Signatures from local elected officials are not acceptable, nor are other signatories. If this certification is applicable to this Development and it is inappropriately signed, the Application will not be eligible for points. If this certification contains corrections or 'white-out', or if it is scanned, imaged, altered, or retyped, the Application will fail to meet threshold. The certification may be photocopied.

BOUNDARY SURVEY



- LEGEND:**
- DENOTES RECOVERED MONUMENT AS LABELED
 - ◆ DENOTES SET "N" IRON ROD AND CAP OR NAIL & DISK LB # 6723
 - ◆ DENOTES SITE BENCHMARK
 - DENOTES GUY POLE
 - DENOTES BORING
 - 14 DENOTES PINE TREE
 - 8 DENOTES OAK TREE
 - - - DENOTES BARR WIRE FENCE
 - - - DENOTES CENTER LINE
 - ▭ DENOTES ELECTRIC BOX
 - ▭ DENOTES EDGE OF ASPHALT PAVEMENT
 - ▭ DENOTES CONCRETE
 - + 97.72 DENOTES SPOT ELEVATION
 - ▭ DENOTES MITERED END SECTION
 - ▭ DENOTES SPEED LIMIT SIGN
 - ▭ DENOTES DRAINAGE DIRECTION
 - ⊕ DENOTES FIRE HYDRANT
 - ⊕ DENOTES WATER VALVE
 - ⊕ DENOTES SANITARY SEWER VALVE
 - ⊕ DENOTES STORM MANHOLE
 - ⊕ DENOTES SANITARY MANHOLE
 - ⊕ DENOTES BACKFLOW PREVENTER
 - ⊕ DENOTES WOOD POWER POLE
 - ⊕ DENOTES GUY WIRE & ANCHOR
 - ⊕ DENOTES CATCH BASIN
 - ⊕ DENOTES ELECTRICAL TRANSFORMER
 - ⊕ DENOTES UNDERGROUND ELECTRIC
 - ⊕ DENOTES WATER LINE
 - ⊕ DENOTES DRAINAGE STRUCTURE
 - ⊕ DENOTES OVERHEAD POWER
 - ⊕ DENOTES FORCE MAIN
 - ⊕ DENOTES NATURAL GROUND
 - ⊕ DENOTES EDGE OF CONCRETE
 - ⊕ DENOTES BACKFLOW PREVENTER
 - ⊕ DENOTES REINFORCED CONCRETE DRAIN PIPE
 - ⊕ DENOTES TELEPHONE RISER



SHEET 2 OF 2

DATE	REVISIONS

FOR:
ATLANTIC HOUSING

BOUNDARY SURVEY
ALTA/ACSM LAND TITLE STANDARDS
OF
MALABAR COVE
SECTION 1, TOWNSHIP 29 SOUTH, RANGE 36 EAST
BREVARD COUNTY, FLORIDA

BOUNDARY SURVEY
ALTA/ACSM LAND TITLE STANDARDS
OF
MALABAR COVE
SECTION 1, TOWNSHIP 29 SOUTH, RANGE 36 EAST
BREVARD COUNTY, FLORIDA

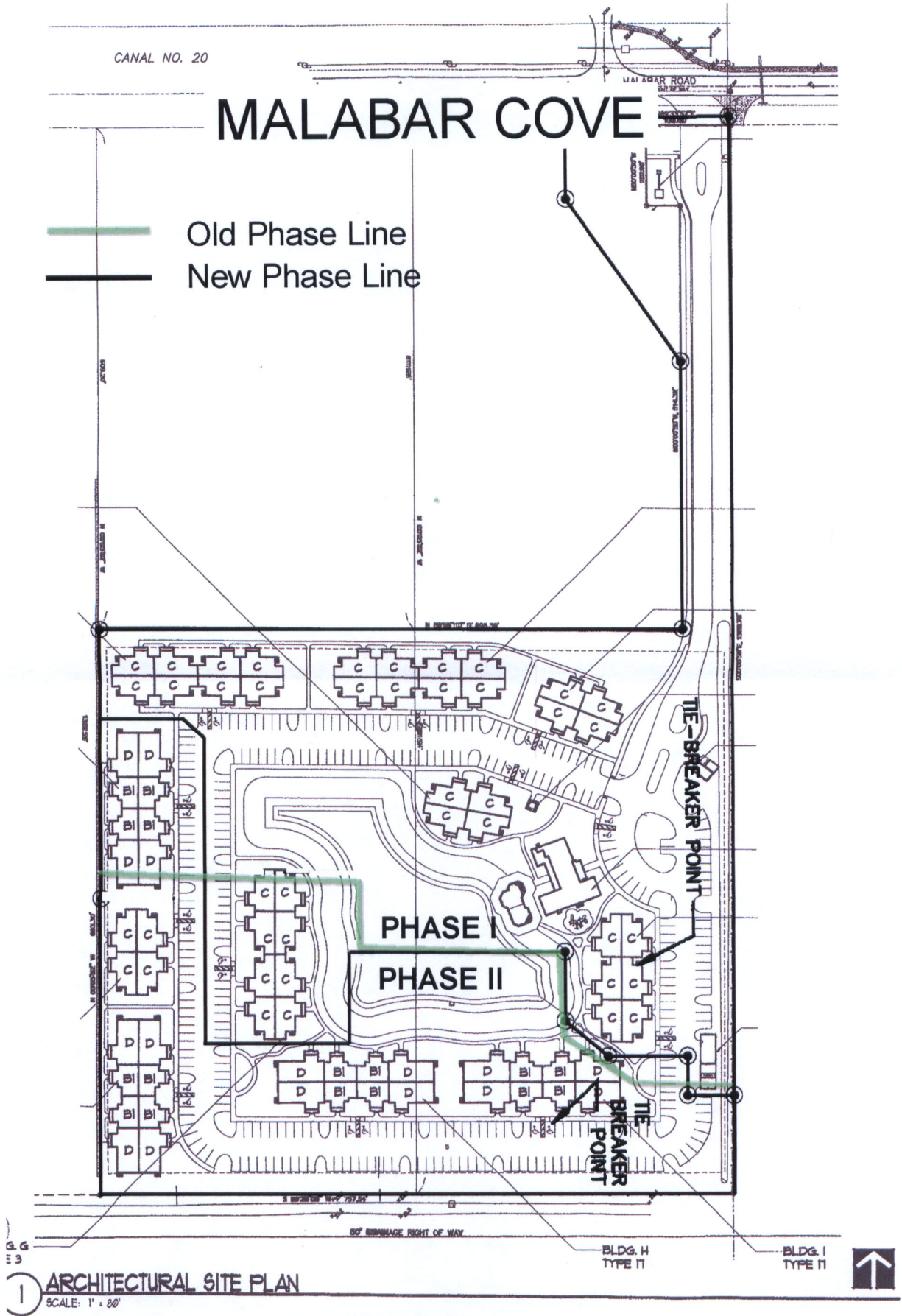
15 EAST PLANT STREET
WINTER GARDEN, FLORIDA 32787
PHONE 888-685-6709 / 407-898-7891

ALLEN COMPANY

CANAL NO. 20

MALABAR COVE

— Old Phase Line
— New Phase Line



G.G.
E.3

1 ARCHITECTURAL SITE PLAN
SCALE: 1" = 80'

BLDG. H
TYPE II

BLDG. I
TYPE II

