

**FOURTH AMENDMENT
TO PURCHASE AND SALE AGREEMENT**

WHEREAS, the Delray Beach Community Redevelopment Agency, a Florida public body corporate and politic created pursuant to Section 163.356, Florida Statutes, (the “Seller”) and BH3 Management, LLC, a Florida limited liability company, (the “Purchaser”) entered into that certain Purchase and Sale Agreement dated April 22, 2019 (the “Agreement”) concerning real property located in Delray Beach, Palm Beach County, Florida (the “Property”); and

WHEREAS, the Agreement was amended by that certain First Amendment to Purchase and Sale Agreement (“First Amendment”) which extended the date in section 1.14(f) to September 1, 2019 and extended the commencement date of the restrictive covenant referenced in section 1.17(e) to September 1, 2019; and

WHEREAS, the Agreement was amended by that certain Second Amendment to Purchase and Sale Agreement (“Second Amendment”) which extended the Application Date and extended the date for the execution of the Public Benefits Commitment; and

WHEREAS, the Agreement was amended by that certain Third Amendment to Purchase and Sale Agreement (“Third Amendment”) regarding Seller’s intent to enter into a new lease agreement with Emanuel Jackson Sr. Project, Inc; and

WHEREAS, the Purchaser requested that significant changes to the scope of the Project, now known as Fabrik Development and as set forth in Exhibits A Renderings and Site Plan, and resulting in an extension of the existing deadlines; and

WHEREAS, on January 26, 2021, Seller approved of the changes to the scope of the Project, Fabrik Development as set forth in Exhibits A Renderings and Site Plan; and

WHEREAS, the CRA as the Seller deems it in the best interest of the Delray Beach Redevelopment Agency to amend to the Agreement (“Fourth Amendment”) to allow the Purchaser the opportunity to develop the Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

- 1) The Whereas clauses set forth above are hereby ratified and confirmed.
- 2) Section 1.1 is hereby amended as follow:

Application Date means the date which is one hundred and eighty (180) calendar days subsequent to the execution date of the Fourth Amendment by the SELLER, by which PURCHASER must submit applications for all governmental approvals (as defined herein) to the City of Delray Beach and any other governmental entity required to approve the Project whereby the SELLER shall fully cooperate and execute any and all application and other documents in connection with preparing and submitting the Applications.

3) Section 1.2 is hereby amended as follows:

1.2 Approval Date means that date which is on or before December _____, 2021 on which all governmental approvals including but not limited to the Site Plan approval and Conditional Use approval, necessary for the development and construction of the Project, are issued to the PURCHASER by the applicable governmental authorities and any appeal period (which shall run if no appeal is filed within thirty (30) days) after the date of issuance with respect to such issuance has expired or, if appealed, such issuance to the PURCHASER is confirmed on appeal such that the Site Plan approval, conditional use approval, and any other approval excluding building permits necessary for the development and construction of the Project are final and not appealable.

4) Section 1.7 is hereby amended as follows:

1.7 Earnest Money means the two hundred and fifty thousand and 00/100 (\$250,000.00) Dollars referenced in section 1.18, and seven hundred and fifty thousand and 00/100 (\$750,000.00) Dollars referenced in section 2.1(a), which sum shall be delivered from PURCHASER to Escrow Agent pursuant to Section 2.1, shall have the meaning set forth in Section 2.1. The PURCHASER and SELLER do hereby acknowledge that the total Earnest Money of One Million (\$1,000,000.00) Dollars shall be subject to Section 2.1.

5) Section 1.14 is hereby amended as follows:

1.14 Project means the comprehensive redevelopment project dated October 26, 2018 submitted by BH3 (hereinafter the "RFP Submittal") in response to the Request for Proposal (hereinafter the "RFP") issued by the SELLER, its presentation to the SELLER on January 29, 2019, and as amended and approved by the SELLER, on January 26, 2021, in accordance with Exhibit A Renderings and Site Plan. Notwithstanding the components detailed and specifically set out in the RFP Submittal, the Project shall include the following components provided, however, that any variance in said components greater than ten percent (10%) shall require the approval of SELLER, which approval shall not be unreasonably withheld:

- a) Grocer: Up to thirty thousand (30,000) SF of grocery store space. The development timeline for the grocery store is outlined in Exhibit B and incorporated into the Agreement for use on that portion of the 600 Block.
- b) For Sale Residential Units: Five (5) workforce/affordable two-story townhomes. All for-sale residential units will be workforce/affordable units in accordance with applicable federal, state and local housing laws including income category and sale prices, as amended.
- c) Residential Rental Units: Sixty-four (64) residential rental units that are designed to consist of:
 - 1. Approximately twenty-six (26) one-bedroom/one bathroom units;
 - 2. Approximately thirty (30) two-bedroom units/two bathroom units;
 - 3. Approximately eight (8) three-bedroom units/two bathroom units; and
 - 4. All multifamily units will be workforce/affordable units in accordance with applicable federal, state and local housing laws including income categories and proposed rents, as

amended, in accordance with Exhibit C and incorporated into the Agreement. Income categories and rental rates outlined in Exhibit C are subject to Palm Beach County's Workforce Housing Program regulations, as amended, for income and rental rates restrictions.

d) Residential Amenity Space: Approximately three thousand, one-hundred eighty-nine (3,189) SF including internal green space, club room and fitness center.

e) Retail/Food and Beverage: Approximately twenty-three thousand five hundred (23,500) SF

f) Professional Office: Approximately twenty-two thousand six hundred thirty (22,630) SF

g) Parking Spaces: the amount approved as part of the site plan plus PURCHASER shall provide:

1. Twenty-four (24) parking spaces; and

2. Parking Fund Contribution of \$200,000.00 that will be remitted to the SELLER, within fifteen (15) days of the City of Delray Beach's issuance of the temporary certificate of occupancy for the 600, 700 and 800 Blocks, which shall be used at the sole discretion of the SELLER for public parking improvements within the CRA district.

PURCHASER agrees to provide SELLER with its work product including but not limited to architectural site plan, floor plans, building elevations, design development documents, building massing and elevations, exterior materials and color schemes, fenestrations, detailed description of all building systems, construction documents, developer plans and specifications ("BH3 Work Product") for any block wherein PURCHASER does not adhere to the contractual provisions of the Agreement and the terms of the Fourth Amendment to the Agreement.

6) Section 1.17 is hereby amended as follows:

1.17 Public Benefits Commitment. As an inducement to the SELLER to enter into this Agreement for the benefit of the Project, and in the interest of furthering the goals of the SELLER and PURCHASER (for itself and its successor and assigns, if any), PURCHASER hereby makes the following commitment for the public benefit during the Term of this Agreement and shall execute a Public Benefits Agreement that shall survive Closing, within one hundred and eighty (180) days of the execution date of the Fourth Amendment by the SELLER:

[The remainder of the original terms of Agreement for this section remains the same]

7) Section 1.18 is hereby amended as follows:

1.18 Penalties for Non-Compliance with Public Benefits Commitment: To ensure compliance with PURCHASER's public benefits commitments more fully described in Section 1.17, the SELLER and PURCHASER agree that the Earnest Money, the amount of two-hundred and fifty thousand and 00/100 (\$250,000.00) Dollars, shall be delivered by PURCHASER to Escrow Agent within three (3) business days from the effective date and shall be held by the Escrow Agent to repay PURCHASER the Earnest Money based on documented completion of the public commitments expressed in Sections 1.17(a)-(d) and further expressed in a separate Public Benefits Agreement to be executed within one hundred and eighty (180) days of the

execution date of the Fourth Amendment by the SELLER. Subject to the terms of this Agreement, should PURCHASER fail to meet the public benefits commitments found in Section 1.17(a)-(d), PURCHASER shall forfeit its earnest money as expressed in a separate Public Benefits Agreement and be debarred from the CRA for a period of five (5) years.

8) Section 1.20 is hereby amended as follows:

1.20 Site Plan means an illustrative site plan which includes, as a minimum, the location of the proposed mixed use buildings, parking lots, parking garages, office space, grocery store, retail space, green space and sixty-four (64) residential, rental units, five (5) for-sale townhomes, which constitute the Project and the public streets surrounding the Property and which illustrates the proposed off street parking, sidewalks and major landscape features, as set forth in Exhibits A Renderings and Site Plan, and incorporated into the Agreement, and any modifications to Exhibit A must be approved by SELLER prior to making the changes.

9) Section 1.21 is hereby amended as follows:

1.21 Termination Date means that, provided SELLER has fully complied with its contractual obligations herein and no delays due to Force Majeure (as defined herein) has occurred the Termination Date shall be the date which is 730 calendar days subsequent to the execution of the Fourth Amendment.

10) Section 2.1 is hereby amended as follows:

2.1 Earnest Money. PURCHASER agrees to tender two hundred fifty thousand and 00/100 (\$250,000.00) Dollars as Earnest Money and shall deposit with GOREN, CHEROF, DOODY AND EZROL, P.A. (hereinafter the "Escrow Agent"), which Earnest Money shall be placed in an interest bearing escrow account due at the execution of this Agreement.

Within five (5) calendar days of the execution date of the Fourth Amendment by the SELLER:

a) PURCHASER shall tender an additional Seven Hundred Fifty Thousand and 00/100 (\$750,000.00) and shall deposit the additional Earnest Money with GOREN, CHEROF, DOODY and EZROL, P.A. (hereinafter the "Escrow Agent"), which additional Earnest Money shall be placed in the previously created interest bearing escrow account by the Escrow Agent for the total Earnest Money of One Million and 00/100 (\$1,000,000.00) Dollars.

b) In the event PURCHASER shall fail to meet the Application Date as defined by the Fourth Amendment, there being no cure period as provided for in Section 10 of the Agreement, the entire One Million (\$1,000,000.00) Dollar Earnest Money shall be forfeited by the PURCHASER and shall be tendered to the SELLER.

c) In the event the PURCHASER is in full compliance with the terms of this Agreement and all subsequent Amendments, the entire One Million (\$1,000,000.00) Dollar Earnest Money shall be allocated and structured as follows:

- i. \$250,000.00 to secure PURCHASER'S adherence to the Public Benefits Commitment for local inclusion and participation, living wages for skilled and unskilled construction, and job fairs for the Project. This portion of the Earnest Money remains held in escrow for the benefit of the SELLER until PURCHASER is issued a temporary certificate of occupancy for the 600, 700 and 800 Blocks.
- ii. \$100,000.00 shall be released to PURCHASER upon the Approval Date as set forth in section 1.2. SELLER will remit the \$100,000.00 within fifteen (15) days of receiving verification of all the governmental approvals for the Project as set forth in section 1.2;
- iii. \$325,000.00 shall be released to PURCHASER upon issuance of temporary certificates of occupancy for both the 700 Block and 800 Block as set forth in Exhibit A, Renderings and Site Plan. SELLER will remit the \$325,000.00 within fifteen (15) days of receipt of a copy of the temporary certificate of occupancy for the 700 Block and 800 Block; and
- iv. \$325,000.00 shall be released to PURCHASER upon issuance of temporary certificate of occupancy for a Grocery Store to be constructed on the 600 Block as set forth in Exhibit A, Renderings and Site Plan. SELLER will remit the \$325,000.00 within fifteen (15) days of receipt of a copy of the temporary certificate of occupancy for the 600 Block

11) Section 1.23 is created as follows:

1.23 Project Phasing. PURCHASER shall contemporaneously submit applications for all governmental approvals to the City of Delray Beach and any other governmental entity required to approve the Project as set forth in section 1.1. and in accordance to Exhibit A Renderings and Site Plan. Construction, in accordance with Exhibit A Renderings and Site Plan, will commence as follows:

- a) 600 Block – as outlined in Exhibit B
- b) 700 Block – within sixty (60) calendar days of PURCHASER'S receipt of the first building permit for the Project
- c) 800 Block - within one hundred and twenty (120) calendar days of PURCHASER'S receipt of the first building permit for the Project

12) Section 1.10 is hereby amended as follows:

1.10 Force Majeure: Force Majeure Events include, without limitation, floods, storms, hurricanes, and other acts of God (including reasonable preparation therefore); war, terrorism, riots, civil commotion, fire, and other casualty; strikes, lockouts, labor disputes, and any inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market; acts of the other party; delays in obtaining permits and approvals from regulatory authorities; and all other causes and circumstances similar to the foregoing. PURCHASER shall hereby waive any rights it has to assert force majeure related to events

that pre-date the full execution of the Fourth Amendment. PURCHASER has not waived any rights it has to requests force majeure extensions due to any force majeure related events that has directly caused any delay(s) in PURCHASER'S ability to obtain permits and approvals for this Project from the City of Delray Beach, after the date the Fourth Amendment is fully executed. Force Majeure extensions must be approved by the CRA Board of Commissioners and shall not be unreasonably withheld.

13) Section 9 is hereby amended as follows:

9. TERMINATION

Provided SELLER is not in default, subject to section 1.21 herein, in the event the closing does not occur solely because of PURCHASER's failure to close after the Permit Date, but in any event no later than the Termination Date as defined herein, the SELLER shall have the right to terminate this Agreement and return the Earnest Money, subject to section 2.1, to the Purchaser.

14) All other terms and provisions of the Agreement and the three (3) previously approved amendments not otherwise modified by this Fourth Amendment are hereby ratified and confirmed, and shall remain in full force and effect.

In the event of any inconsistencies between this Fourth Amendment, the Third Amendment, the Second Amendment, the First Amendment and the Agreement, the provisions contained in this Fourth Amendment shall prevail. In any other respects, the Agreement remains unchanged.

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment as of the dates indicated below:

WITNESS:

Witness

Witness

WITNESS:

Witness

Witness

PURCHASER:

BH3 Management, LLC

By: _____

Title: _____

Date: _____, 2021

SELLER:

Delray Beach Community Redevelopment Agency

By: _____

Title: _____

Date: _____, 2021

APPROVED TO FORM:

By:

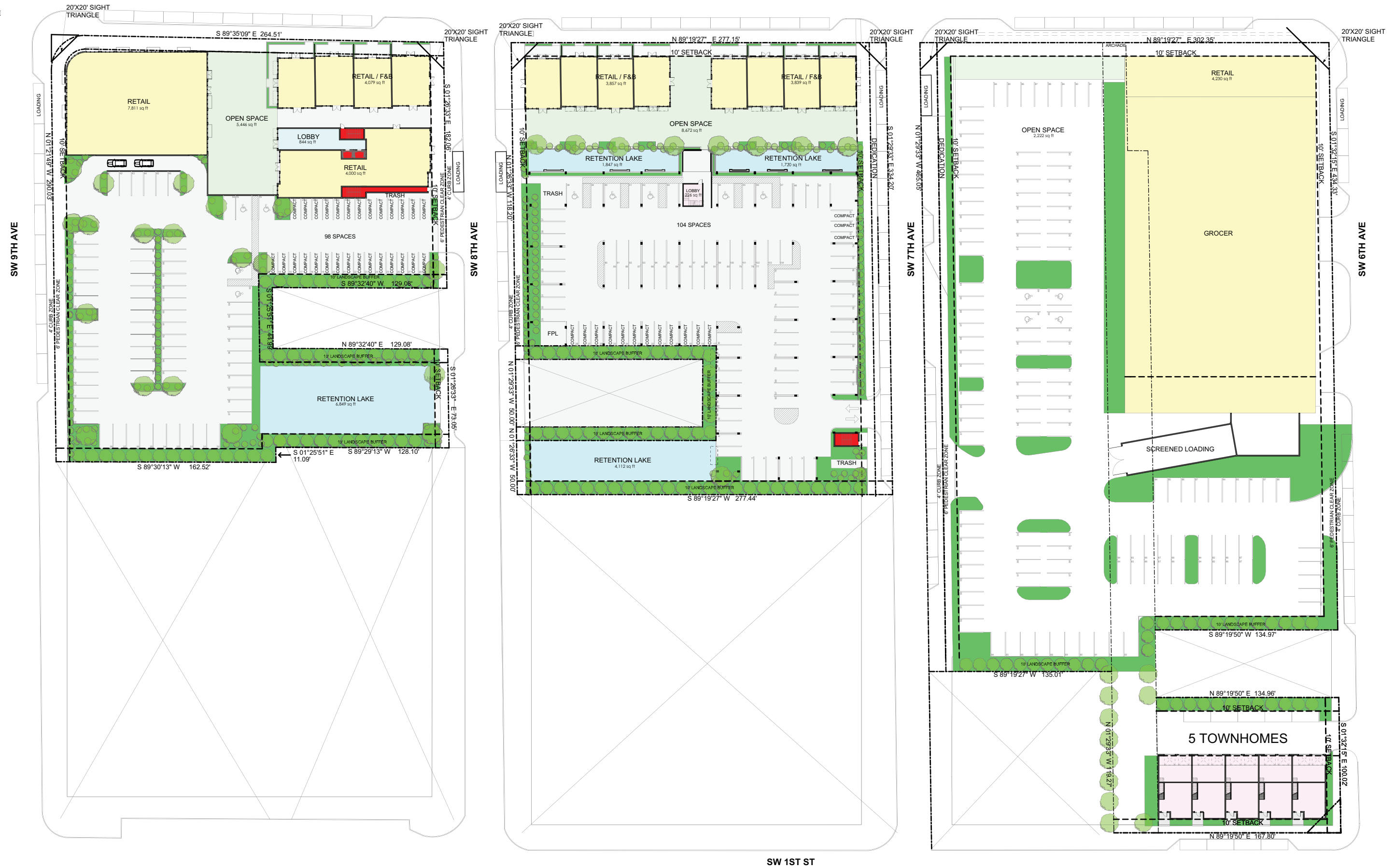
EXHIBIT A
RENDERINGS AND SITE PLAN



BH3 - FABRIK DELRAY

11.06.2020

CE



SITE PLAN

BH3 - FABRIK DELRAY

11.06.2020

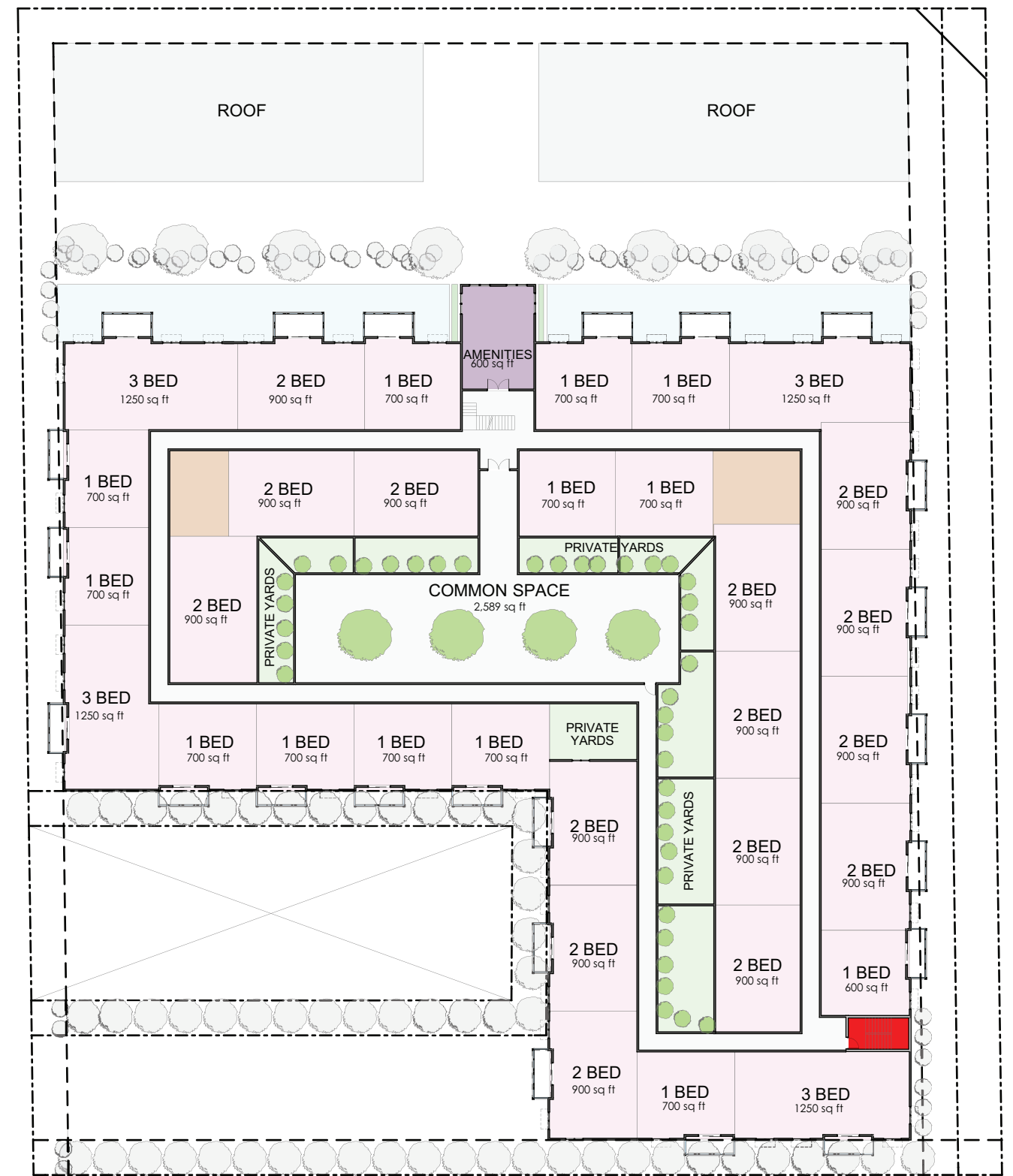
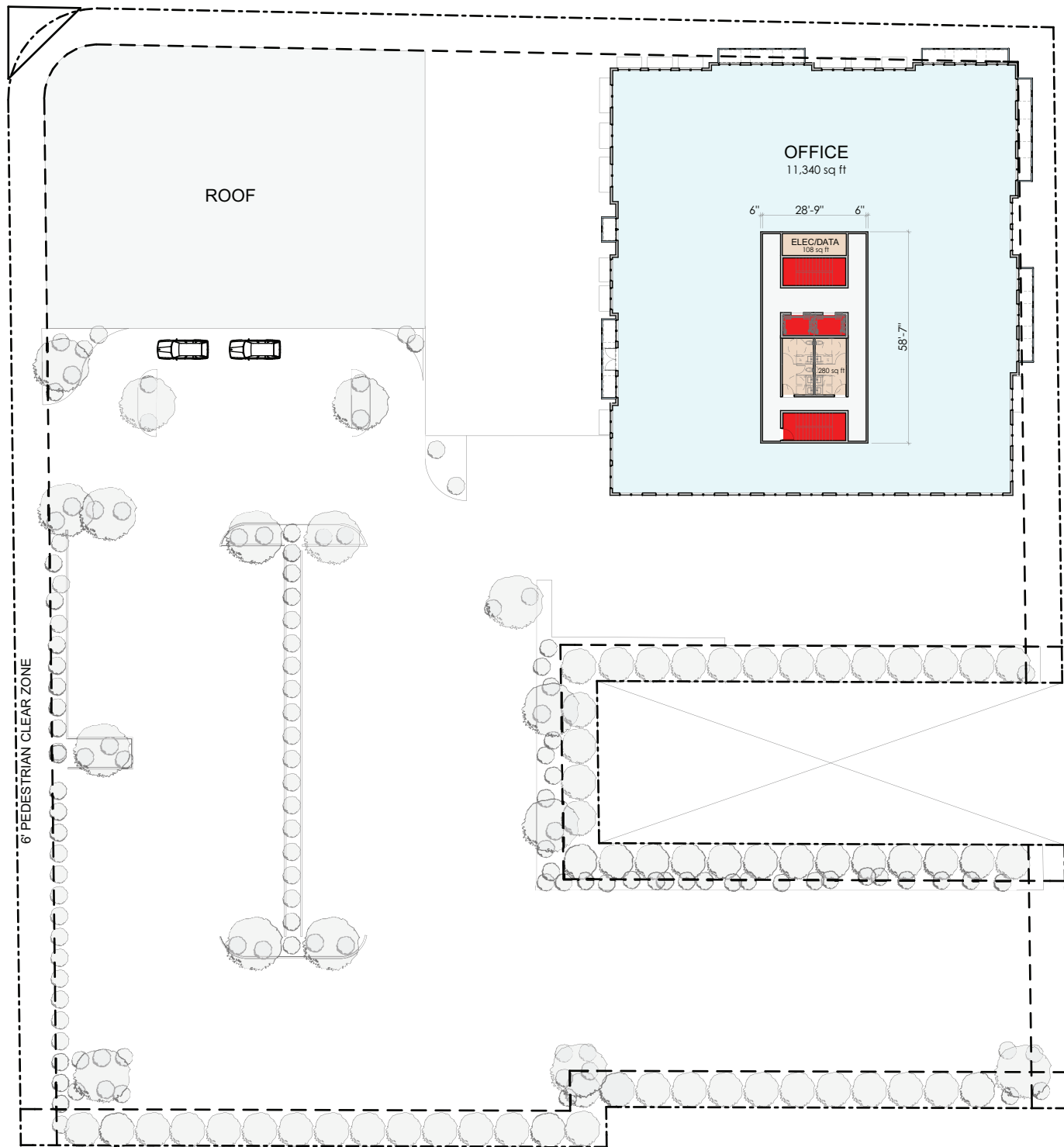


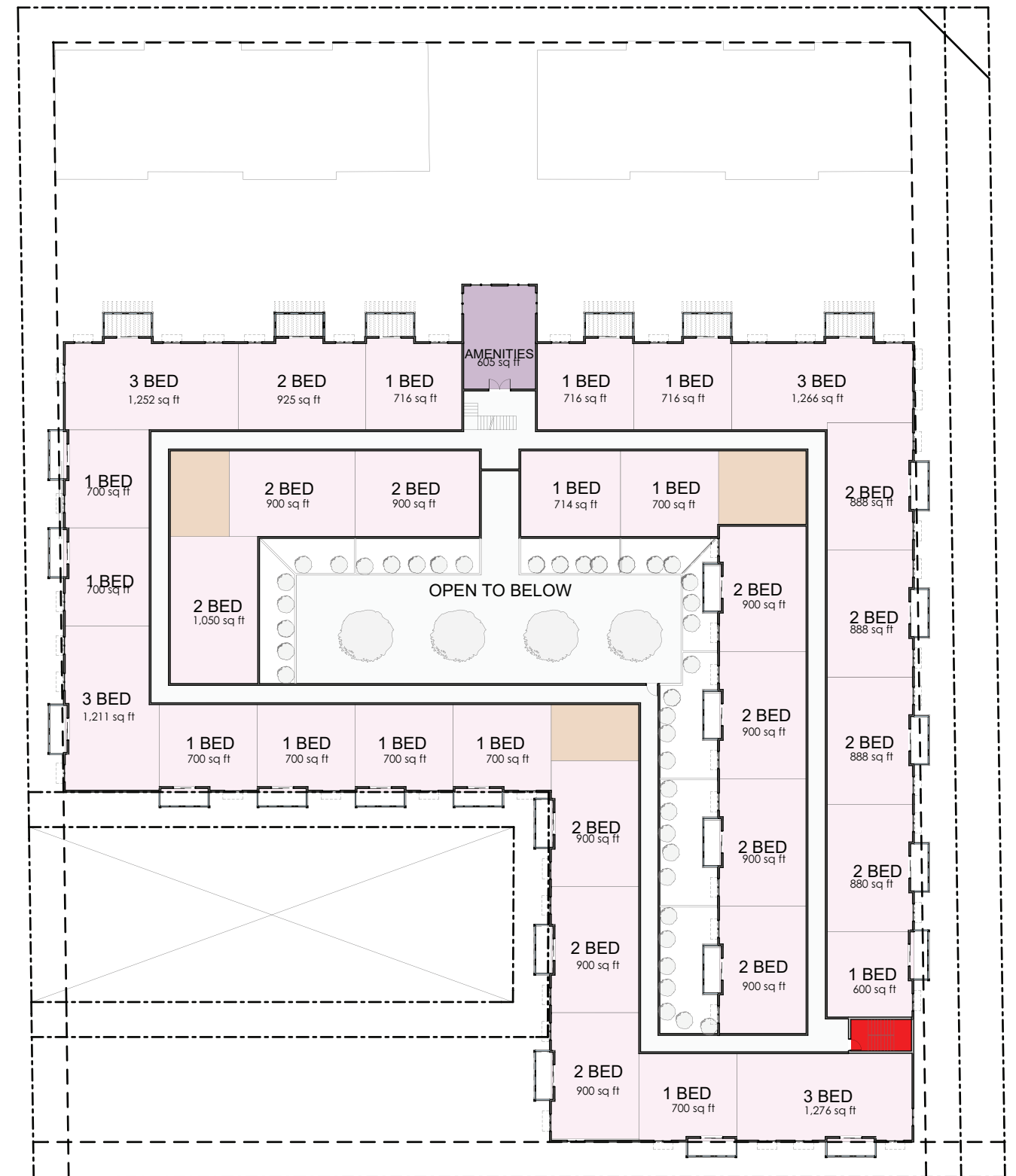
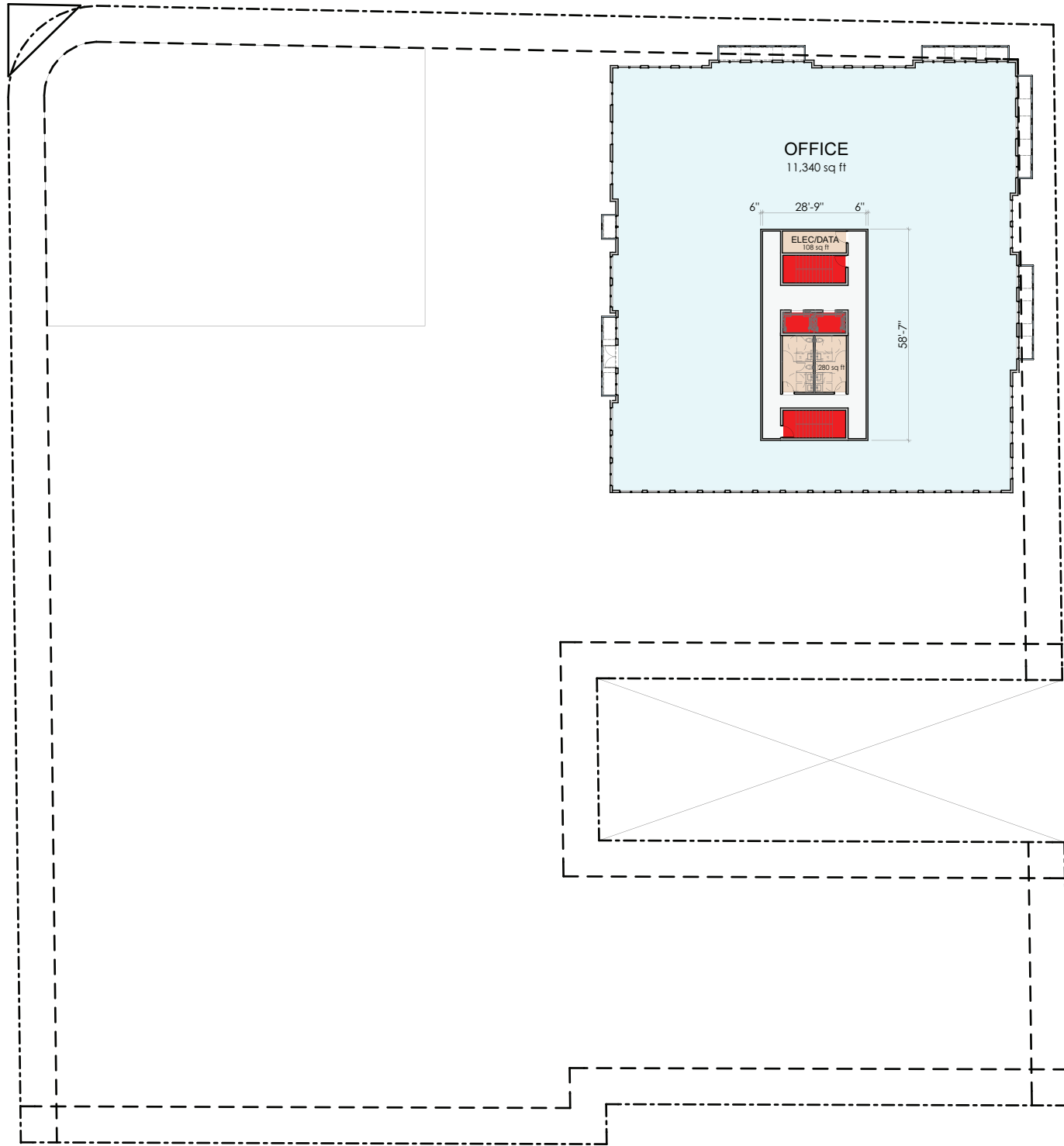


GROUND LEVEL

BH3 - FABRIK DELRAY

11.06.2020





LEVEL 3

Project GLA Allocations	GLA	%
Workforce Housing	55,200	54%
Grocer/Liquor	-	0%
Retail	12,586	12%
Restaurant	7,000	7%
Office	26,680	26%
Total	101,466	100%

Parking Code Requirement									
Property Summary	Units it Mix (%)		GLA	Parking Code	Parking Spots Per Code	Guest Parking Code			
						Code	Spots per unit	Total Spots	
Multifamily	64		55,200						
Studio Units	-	0%	-	1 per unit	0	Less than 20	.5 per unit	10	
One Bedroom Units	26	41%	18,200	1.25 per unit	33	Less than 50	.3 per unit	9	
Two Bedroom Units	30	47%	27,000	1.75 per unit	53	More than 50	.2 per unit	3	
Three Bedroom Units	8	13%	10,000	1.75 per unit	14				
Guest Parking					22				
Retail			19,586						
Grocer			-	2 per 1000 sf	0				
Retail			12,586	2 per 1000 sf	26				
Restaurant			7,000	6 per 1000 sf	42				
Office			26,680						
2nd Floor			13,340	3 per 1000 sf	45				
3rd Floor			13,340	3 per 1000 sf	45				
# of Spaces									
Parking Code Requirement (No Shared Parking)									
Residential					122				
Retail					26				
Office					90				
Restaurant					42				
Total Parking Pre-Shared Reductions					280				

Shared Parking Analysis

	Shared Parking Percentages					Number of Spots				
	Weekday			Weekend		Weekday			Weekend	
	Night Midnight to 6am	Day 9am to 4pm	Evening 6pm to Midnight	Day 9am to 4pm	Evening 6pm to Midnight	Night Midnight to 6am	Day 9am to 4pm	Evening 6pm to Midnight	Day 9am to 4pm	Evening 6pm to Midnight
Residential	100%	60%	90%	80%	90%	122	73	110	98	110
Retail	5%	70%	90%	100%	70%	1	18	23	26	18
Office	5%	100%	10%	10%	5%	5	90	9	9	5
Restaurant	10%	50%	100%	50%	100%	4	21	42	21	42
Parking Total by Delray Code						132	202	184	154	175
Shared Parking Figures										
Parking Required per Code	202									
Total Parking Provided	202									



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11.06.2020



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TOWNHOMES

BH3 - FABRIK DELRAY

11.06.2020



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EXHIBIT B

LOI TERM	Date	Notes/References
Tenant & Landlord's Acceptance of LOI	10/12/2020	
Grocer Real Estate Committee Approval	1/31/2021	This proposal is contingent upon site approval by the Grocer's Real Estate Committee and budget approval by Grocer's Real Estate Investment Committee ("Internal Approvals"). Target date for REC Approval January 31, 2021 provided staff timely responses to Grocer on design changes and with 4th amendment to PSA in hand by 12/31/20. First meeting already had with staff and received comments. Outside date for REC approval is end of Exclusivity Period.
Provide Owner's Title Insurance Policy	3/2/2021	Landlord shall provide Tenant with a copy of its current survey, as well as its current title policy or a current title commitment covering the Leased Property Tract, together with all exception and supporting documents referenced therein, within thirty (30) days of the date of approval by Grocer's Real Estate Committee.
Exclusivity Period	4/10/2021	Exclusivity for 180 calendar days from execution of LOI
Effective Date of Lease	7/30/2021	Landlord and Tenant shall work diligently and in good faith to enter into the Lease within six (6) months of the date of approval by Grocer's Real Estate Committee.
Inspection Period	11/27/2021	Tenant shall have a period of one hundred twenty (120) days from the Effective Date of the Lease within which to satisfy itself, in Tenant's sole discretion, that the Leased Property is suitable for Tenant's intended use (the "Inspection Period").
Approvals Period	11/27/2022	Tenant shall have a period of up to three hundred sixty-five (365) days following the expiration of the Inspection Period (the "Approvals Period") to obtain, in Tenant's sole satisfaction, all necessary permits, licenses, entitlements and other governmental approvals for Tenant's intended use and development of the Leased Property, including, but not limited to, site plan approval, site permits, water management permits and building permits (the "Approvals").
Approval Period Extension 1	12/27/2022	If, after the end of the Approvals Period, Tenant is unable to secure all of the necessary Approvals, Tenant shall have the right to (i) extend the Approvals Period for three (3) thirty (30) day periods, or (ii) terminate the Lease at any point prior to the expiration of the Approvals Period (as may be extended).
Approval Period Extension 2	1/26/2023	
Approval Period Extension 3	2/25/2023	
Commencement Date/Open for Business	11/27/2023	The Term of the Lease and the payment of Annual Rent thereunder shall commence on the <u>earlier</u> to occur of: (i) three hundred sixty-five (365) days from the expiration of the Approvals Period or (ii) the date Tenant opens for business.

EXHIBIT C

Workforce Housing Rental Rates*

Unit Type	<60%		60%-80%		81%-120%			
	No. Units	Avg. Rent	No. Units	Avg. Rent	No. Units	Avg. Rent		
1 Bedroom	2	\$ 988	3	\$ 1,153	21	\$ 1,648		
2 Bedroom	3	\$ 1,186	5	\$ 1,384	22	\$ 1,978		
3 Bedroom	0	\$ 1,370	0	\$ 1,598	8	\$ 2,284		
Total	5		8		51		64	Total Apartments

*Subject to Palm Beach County's Workforce Housing Program regulations on income and rental rate restrictions