

**SECOND AMENDMENT TO  
LAND DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO LAND DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Amendment**") is dated as of July 10, 2013, between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**District**") and (ii) STANTON-EASTBANC LLC, a District of Columbia limited liability company ("**Developer**").

**RECITALS:**

A. District and Developer entered into that certain Land Disposition and LDDA, dated October 27, 2010 ("**Original LDDA**"), as amended by the First Amendment to Land Disposition and Development Agreement, dated November 14, 2011 (the "**First Amendment to LDDA**," and together with the Original LDDA, as the same may be further amended or assigned from time to time, referred to as the "**LDDA**"). References to section numbers in the LDDA which are being amended hereby are references to section numbers in the Original LDDA unless the context dictates otherwise;

B. The Zoning Commission issued its order ("**PUD Order**") with respect to the Project but the PUD Order is subject to appeals in the matters of (i) Christopher Howell, et al., v. District of Columbia Zoning Commission and Stanton-EastBanc LLC, et al., Case No. 13-AA-366 through 13-AA-378 (D.C. Ct. of Appeals), and (ii) Bobbie Krengel v. District of Columbia Zoning Commission and Stanton-EastBanc LLC, et al., Case No. 13-AA-487 (D.C. Ct. of Appeals) (collectively, "**PUD Appeal**").

C. In exchange for certain assurances from Developer, District and Developer have elected to waive certain conditions precedent to their respective obligations to convey and accept Lot 802 in Square 901 via Special Warranty Deed of even date herewith (the "**Special Warranty Deed**") and convey and accept Lots 803 and 804 in Square 901 via Ground Lease and to defer the fulfillment of certain conditions to a future date on which a subsequent closing will be held ("**Finance Closing**") upon certain conditions, including the inclusion of a Right of Reverter in the Special Warranty Deed and right to terminate the Ground Lease as more specifically provided in such documents.

D. District and Developer have agreed to execute a "**Quitclaim Deed**" and "**Termination of Ground Lease**" at the Land Closing, which documents will perfect the reverter and the termination of the Ground Lease, if applicable, and will be held in escrow by the Escrow Agent in accordance with an Escrow Agreement dated of even date herewith as additional security to ensure the expeditious development of the Property.

E. District and Developer have agreed to make certain modifications to the LDDA and now desire to enter into this Amendment to evidence such modifications.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Recitals and Definitions. The foregoing recitals are incorporated herein by reference. Capitalized terms not otherwise defined in this Amendment shall have the meanings ascribed to them in the LDDA. For all purposes of the LDDA, "Closing" shall mean "Land Closing" unless "Finance Closing" is specified.

2. Conditions Precedent to Closing.

(a) Developer Conditions Precedent. District and Developer agree that, at the Land Closing, District will assign to Developer District's right, title, and interest in and all obligations and benefits accruing under all leases, licenses, and other occupancy agreements affecting the Property pursuant to the Assignment and Assumption Agreement of even date herewith. Accordingly, Developer waives the requirement in Section 2.7 of the Original LDDA that District terminate such agreements as of the Land Closing, and acknowledges that for purposes of the Land Closing all of the conditions precedent to Developer's obligation to close pursuant to Section 5.1.1 of the Original LDDA have either been satisfied or waived by Developer.

(b) District's Conditions Precedent. District acknowledges that for purposes of the Land Closing all of the conditions precedent to District's obligation to close pursuant to Section 5.2.1 of the LDDA or otherwise have either been satisfied or postponed to the Finance Closing by District. In particular and not in limitation of the foregoing, District waives the condition set forth in Section 4.9, 5.2.1(e), (f), (l), (m), (o), (q), and (r) as of the Land Closing and has deferred the fulfillment of those conditions in accordance with the Construction and Use Covenant attached hereto as Exhibit A.

(c) Acknowledgment and Waiver. The Parties acknowledge and agree that Property has special importance to the District and the District has agreed to proceed with the Land Closing prior to Developer's satisfaction of all of the District's usual conditions in order to facilitate the development of the Improvements based upon Developer's investment of a significant sum of money, time and resources into the redevelopment of the Property and the significant community support and good will Developer has achieved in connection therewith, and Developer's additional assurances contained herein. Accordingly, Developer acknowledges and agrees that the additional restrictions on Transfers as well as District's reservation of reverter in the Deed and automatic termination of the Ground Lease pursuant to Section 9.6 of the Ground Lease do not constitute an unreasonable restraint on Developer's right to transfer or otherwise alienate the Property or Developer's rights under the agreements with District and the Developer is proceeding with the redevelopment of the Property at its sole risk and expense. Developer hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions and reservations, including any claim that such restrictions constitute an unreasonable restraint on alienation, as well as claims for costs and expenses that the Developer has incurred or will incur in the future.

3. Closing.

(a) Closing Date. The parties agree to conduct the Land Closing on or about July 12, 2013.

(b) Closing Deliveries. Developer will not be required to deliver the documents listed at Section 6.2.2(e), (f) and (j) of the Original LDDA or the Final Project Budget and Funding Plan at the Land Closing but will be required to show District evidence that such documents have been executed, and if required, recorded, as of the Finance Closing. Each party waives all requirements that documents be delivered to such party for review a certain number of days prior to the Land Closing. District will have the right, in its discretion, to waive the delivery of any other document at the Land Closing or condition precedent to District's obligation to proceed with Land Closing and defer to the Finance Closing the delivery of such document or documents or satisfaction of such condition precedent.

(c) Development Prior to Finance Closing. Developer may undertake site remediation, including removal of Hazardous Materials, demolition, and related preparation work after the Land Closing and prior to the Finance Closing so long as Developer (i) notifies District at least ten (10) business days before commencing such work; (ii) has all necessary permits for such work; and (iii) has obtained Builders Risk Insurance in accordance with the Construction and Use Covenant (to the extent applicable); (iii) anticipates that Commencement of Construction will occur within one hundred eighty (180) days from the commencement of the demolition; and (iv) has provided the Flea Market Operators with no less than sixty (60) days notice to vacate.

(d) Controlling Documents. In the event of any inconsistency among the terms of the LDDA, as amended by this Second Amendment, and the Deed, Ground Lease and Construction and Use Covenant ("Recorded Documents"), the terms of the Recorded Documents will control.

(e) Finance Closing. Developer will undertake the Finance Closing on a date designated by Developer upon thirty (30) days' notice to District. At the Finance Closing:

(i) Developer will provide evidence to District that Developer has obtained the demolition, sheeting and shoring permit(s) for the Improvements to satisfy the requirements of Section 5.2.1(m) of the Original LDDA;

(ii) Developer will execute the construction loan documents to satisfy District's requirement set forth in Section 5.2.1(o) of the Original LDDA;

(iii) Developer will execute and/or provide such other items and documents as may be further required in accordance with the Construction and Use Covenant attached hereto as Exhibit A.

(f) Reciprocal Easement Agreement. Developer will not be required to deliver the documents listed in Section 4.7.7 of the Original LDDA until after Commencement of Construction, as set forth in Section 10.8 of the Ground Lease.

4. Amendment to Exhibits.

(a) The "Affordability Covenant" attached as Exhibit C to the Original LDDA is hereby deleted in its entirety and replaced by the Affordable Housing Covenant attached hereto as Exhibit A.

(b) The "Construction and Use Covenant" attached as Exhibit E to the Original LDDA is hereby deleted in its entirety and replaced by the Construction and Use Covenant attached hereto as Exhibit B.

(c) The "Deed" attached as Exhibit G to the Original LDDA is hereby deleted in its entirety and replaced by the Deed attached hereto as Exhibit C.

(d) The "Retail Plan" means that plan attached hereto as Exhibit D.

(e) The "Milestone Schedule" attached as Exhibit L to the Original LDDA and referred to in the Deed, Ground Lease and Construction and Use Covenant is hereby deleted in its entirety and replaced by the Milestone Schedule attached hereto as Exhibit E.

(f) The "Ground Lease" attached as Exhibit N to the Original LDDA is hereby deleted in its entirety and replaced by the Ground Lease attached hereto as Exhibit F.

(g) The "Project Funding Plan" attached as Exhibit Q to the Original LDDA and the "Project Budget" attached as Exhibit R to the Original LDDA are hereby replaced by the Project Budget and Funding Plan attached hereto as Exhibit G.

5. ADU Funding Gap. The Parties acknowledge and agree that that the District will have no obligation to provide financial assistance to Developer to finance the North Parcel.

6. Return of Letter of Credit – Event of Reversion or Ground Lease Termination. In the event the reverter contained in Appendix A to the Deed and the automatic termination of the Ground Lease under Section 9.2.2(ii) of the Ground Lease become effective, District shall return the Letters of Credit to Developer within ten (10) days after the effective date of such reversion and termination.

7. Extensions of Outside Date to Obtain Final PUD Order. District acknowledges that Developer is one of the premier developers of historic properties, and properties in historic districts, in the District of Columbia metropolitan area and the zoning and permitting process undertaken by Developer in accordance with its obligations under the LDDA was complex and arduous. In recognition of Developer's election to continue its investment of money, time and other resources in the redevelopment of the Property after the date hereof, Developer and District agree as follows:

(a) Notice to District. In the event that Developer anticipates that it will not be able to obtain a Final PUD Order (as such term is defined in the Construction and Use Covenant) by the Outside Date set forth on the Milestone Schedule, (i.e. January 12, 2015), the Developer may, but shall not be obligated to, provide the District a written document no later than December 15, 2014 that describes the measures that Developer has taken to obtain a Final

PUD Order and the factors that have prevented (and may continue to prevent) the Developer from obtaining the Final PUD Order as of that date, and, if appropriate, requests an extension of the Outside Date.

(b) Meeting with District Officials. Within ten (10) days of the receipt of the letter from the Developer under Section 7(a), the appropriate District and Developer officials shall meet (i) to discuss the challenges that have delayed the receipt of the Final PUD Order and whether the development program set forth in the PUD Order is continues to be feasible; (ii) examine the facts and circumstances with regard to the status of the PUD Appeal (and any other challenges that have prevented the Developer from securing a Final PUD Order); (iii) discuss other material issues related to said PUD Appeal that exist and will likely exist on the Outside Date that may impact the Developer's ability to proceed with the development of the Property in accordance with the development program set forth in the PUD Order; and (iv) a potential plan for how District and Developer can collectively collaborate to achieve the redevelopment of the Property in a manner mutually acceptable to Developer and District.

(c) Extensions to Obtain Final PUD Order Under Current Terms. If, after conferring under Section 7(b), Developer requests an extension of time to obtain the Final PUD Order, and District, in its reasonable discretion, determines that Developer has been diligently pursuing the Final PUD Order and that it is feasible that Developer will obtain the Final PUD Order by July 12, 2015 (which is six (6) months beyond the Outside Date), District will notify Developer in writing that the "Outside Date" for Developer to obtain the Final PUD Order is extended until July 12, 2015.

(d) Renegotiation Period Extension. If, after conferring under Section 7(b), the District and Developer agree (each in their sole discretion) that the pending PUD Appeal or other challenges may prevent the Developer from obtaining a Final PUD Order, and as a result, the development program contemplated by the PUD Order may no longer be feasible, District (as determined in its sole discretion) will notify Developer no less than ten (10) business days prior to the Outside Date of its (i) willingness to consider a revised development program and alternative consideration structure, and (ii) of length of the period for which the "Outside Date" will be extended (which, in the District's discretion, will not be less than three (3) months, but not greater than twelve (12) months (the "**Renegotiation Period**")), to enable District and Developer to discuss a new or revised development program for the Property, and an alternative consideration structure to enable the expeditious redevelopment of the Property. Notwithstanding anything to the contrary, in the event that District extends the Outside Date during the Renegotiation Period, Developer may, at its sole cost and expense, continue to pursue a Final PUD Order during the Renegotiation Period.

(e) Renegotiation Period.

(1) Within the first thirty (30) days of the Renegotiation Period, the Developer shall submit the following documentation to the District, for its consideration:

(i) New or revised development program;

(ii) Reasons that Developer believes it will obtain final, unappealable approval of the new or revised development program from the Zoning Commission and other appropriate government authorities within a reasonable period of time;

(iii) Economic terms based upon the then fair market value of the Property, as supported by an appraisal based upon the highest and best use dated within sixty (60) days of the Developer's submission of its proposal for the District's consideration; and

(2) During the Renegotiation Period, the District and Developer will work to reach mutually acceptable (as determined in each sole and absolute discretion) material terms and conditions for:

(1) revised development program;

(2) the then fair market value of the Property and consideration to be paid based upon the then fair market value of the Property; and

(3) a reasonable period of extension of the date by which the reverter in the Deed and automatic termination under Section 9.6 of the Ground Lease become effective.

(f) Notwithstanding District's election to entertain a revised development program and an alternative consideration structure during the Renegotiation Period, if District and Developer are unable to reach mutually acceptable material terms based upon Developer's proposed revised development program and alternative consideration structure in writing on or before the last day of the Renegotiation Period, Developer shall have no recourse against District. Absent written instrument executed by the District that specifically extends the Outside Date to enable the Developer additional time to secure the Final PUD Order or during the Renegotiation Period, the Outside Date for obtaining the Final PUD Order shall not be extended beyond July 12, 2015 or, if a Renegotiation Period is granted by the District, beyond January 12, 2016.

8. Utilities. The District will remain responsible for water and/or sewer services or other utility charges associated with the Property that accrued prior to the Closing Date. The Developer shall be responsible for transferring the utilities into its name as of the Closing Date.

9. Miscellaneous. Except as modified and amended hereby, all other terms and conditions of the LDDA are hereby ratified and affirmed in all respects. The parties agree that the LDDA, as modified hereby, remains in full force and effect. This Amendment shall be governed and construed in accordance with the laws of District of Columbia (without reference to conflicts of law principles). The individuals executing this Amendment on behalf of District and Developer, respectively, have full power and authority to execute and deliver this Amendment. This Amendment may be executed in several counterparts all of which shall constitute one agreement, binding on the parties hereto, notwithstanding that each party is not a signatory on the same counterpart. Fax or PDF copies of this Amendment and fax or PDF signatures thereon, shall have the same force, effect and legal status as originals.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date and year first above written.

**DEVELOPER:**

STANTON-EASTBANC LLC, a District of  
Columbia limited liability company

By: Eastbanc, Inc., co-managing member

By: \_\_\_\_\_

Name: Anthony M. Lanier

Title: President

By: Stanton Development Corp., co-managing  
member

By: \_\_\_\_\_

Name: Kenneth H. Golding

Title: President

**DISTRICT:**

DISTRICT OF COLUMBIA, by and through the  
office of the Deputy Mayor for Planning of  
Economic Development

By: \_\_\_\_\_

Name: Victor L. Hoskins

Title: Deputy Mayor for Planning and Economic  
Development

APPROVED FOR LEGAL SUFFICIENCY

Office of the Attorney General for the District of Columbia

By: \_\_\_\_\_

Emily K. Morris

Assistant Attorney General

**EXHIBIT A**

**Affordable Housing Covenant**



## **EXHIBIT B**

### **Construction and Use Covenant**

## **EXHIBIT C**

Deed

## **Exhibit D - Retail Plan**

### **Hine School Redevelopment Project**

Prepared by Stanton-EastBanc

June 3, 2013

This document seeks to summarize the objectives, strategies and parameters of the retail plan and the status of the Developer's many meetings and discussions with stakeholders.

This Retail Plan outlines the retail requirements in the LDDA followed by a description of the retail space in the proposed project, the developer's goals, merchandising strategy, and follow up steps.

#### Land Disposition and Development Agreement (LDDA) Requirements:

The LDDA executed between the Developer and the District of Columbia requires that:

1. At least 20% of the retail square footage in the Hine project be reserved for "non---national tenants" (defined as retail tenants with fewer than six (6) locations operating under the same name and ownership and the owner's principal place of business is within the Washington, D.C. metropolitan area) at market rates and,
2. A minimum of 1,000 square feet of the Project retail square footage for unique small retailers that are located only at the Project at rents that are equal to or less than 75% of market rents.

#### Zoning/PUD Requirements:

The Developer is proposing to build approximately 39,387 square feet of retail space at ground level and an additional approximately 22,127 square feet below ground for a total of approximately 61,515 square feet. The retail space will front every street in the project except for 8th Street and part of C Street. At least 20% will be leased to non---national tenants, 1,000 square feet of which will be leased to unique tenants at below---market rates.

In addition to the "brick and mortar" retail space in the PUD, C Street and the Plaza will host weekend markets for approximately 68 retail tent vendors. The Developer has agreed with ANC 6b to

1. Not place any retail entrances on 8th Street
2. Place only low---impact retail, commercial, professional, or child---care entrances into the building on D Street.

3. Place below grade entrances for the South Building on Pennsylvania Avenue
4. Restrict restaurant entrances and outdoor seating operated by restaurants in the North building to an area west of the line in Exhibit E of the MOA between ANC 6b and the Developer.
5. Prohibit tenants from applying for nightclub licenses as nightclubs as they are defined in the ABC statute in the DC Code, and for the Developer to participate in liquor license application negotiations between its commercial tenants and ANC 6b.

### Goals

The Developer wants to integrate the new retail space at Hine into the existing Capitol Hill retail framework of a mixture of small and medium specialized retailers that provide goods and services to local residents and employees during the week and to a broader community that supports Eastern Market, during the weekends. In order to create an interesting streetscape it is essential to design good retail storefronts that allow for individual retailers to express themselves to the public, and a sufficient number of individual retail spaces to draw shoppers to the area for multiple reasons, and to provide the opportunity for people to accomplish multiple shopping tasks in each trip. This will help pedestrians see the visual connection between the Eastern Market and Barracks Row shopping sub---districts, and encourage them to cross---shop these two areas.

Finally, the Developer will focus on ensuring that a mixture of retail types sizes, and products help sustain occupancy through both high and low economic cycles. The ideal retail size is 2,500 --- 5,000 square feet on average, with some spaces as small as 500 square feet and the possibility of a single larger sized below---grade space.

### Merchandising and Leasing Strategy

Much of the appeal of the Eastern Market is that it is a food destination. The Developer believes that the Hine Project can and should include additional food-related retailers including fine dining, and family fast casual cafes that would provide affordable places to grab a quick, high quality meal without a lot of cost; family and pet friendly outdoor seating cafes by local chefs and restaurateurs, keeping in mind which regional cuisine is already offered along 7th Street and attempting to avoid duplicating uses or menus.

Specialty culinary food purveyors such as a Wine and cheese shop, spice shops, chocolates, specialty teas and coffees, and New York deli type retailers would compliment the restaurants, market, and retailers across 7th Street. The ideal size for the type of restaurants envisioned is less than 4,000 square feet while the ideal size for food related purveyor's ranges from 400 to 1,500 square feet. Additionally,

the community has asked the Developer to reach out to small supermarkets offering products that are complimentary to, rather than competitive with Eastern Market. The Developer has, and will continue to, reach out to such businesses to gauge interest and ensure that the development can physically accommodate their needs.

The community has also asked the Developer to consider leasing to retailers serving the needs of families with children. The Developer sees this as a sector that has strong demographic support on Capitol Hill and is reaching out to children's clothing retailers, sporting goods, and child---oriented service providers that can compliment the existing classic children's book store, bicycle shops, daycare centers, and schools on the Hill.

Several other traditional retail categories are under---represented on the Hill including women's boutique fashion shops (local and regional) selling recognizable labels as well as footwear and handbag accessories. There is also room for a select number of national retailers who would fill the needs of the female worker demographic without having much of an impact on the local mom/ pop fashion shops already present.

The Developer also believes that a good traditional and casual men's ready to wear shop, athletic apparel and footwear, cosmetics, jewelry and accessories/ gifts, a paper product shop for invitations and such could do well in this location. Home furnishings and tabletop accessories are also a category that can be supported by the Hill community.

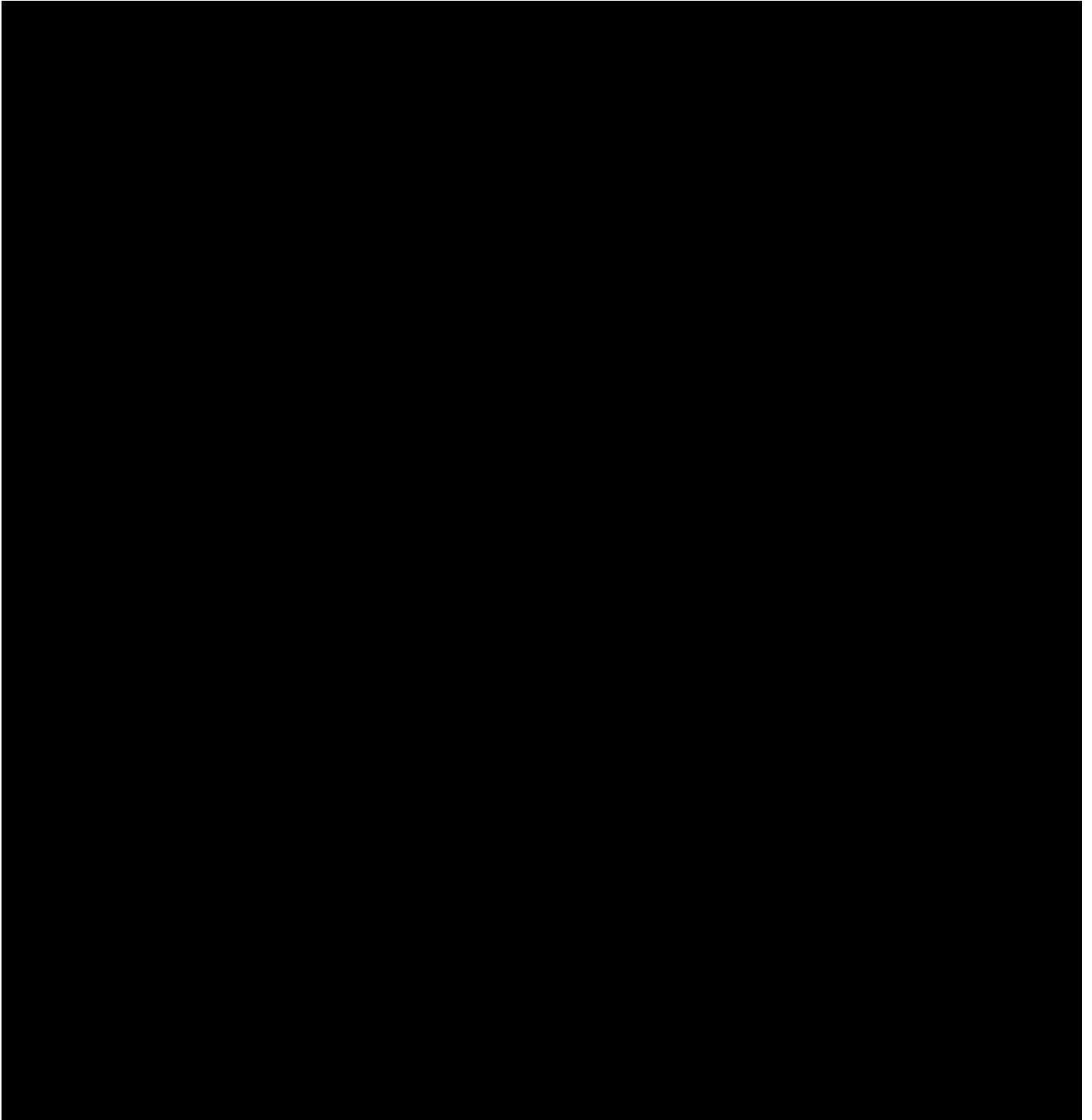
Finally, the Developer would consider filling a small number of spaces with basic community services such as an ATM, dry cleaner, or mobile shop depending on local needs at the time that the project delivers in late 2015.

#### Market Driven Plan Update

Retail leasing takes place in a constantly ---evolving market place where the hot retail concept of today is out of fashion within two years. The Developer notes that except for the possibility of creating build to suit spaces for large national credit tenants, there will be no leases likely to be signed for the Hine project until mid-2014 or later. This is especially true for the smaller local tenant types that the community desires. Much of the eventual leasing will be done in the context of what exists and what is missing (and demanded) on the Hill in 2015 and beyond. To some extent this will be influenced by retail leasing at the Yards, on H Street, and even at City Center. The Developer will continue to test the leasing market for the Hine site and keep this plan updated as it proceeds with the development.

## **EXHIBIT E**

### **Milestone Schedule**

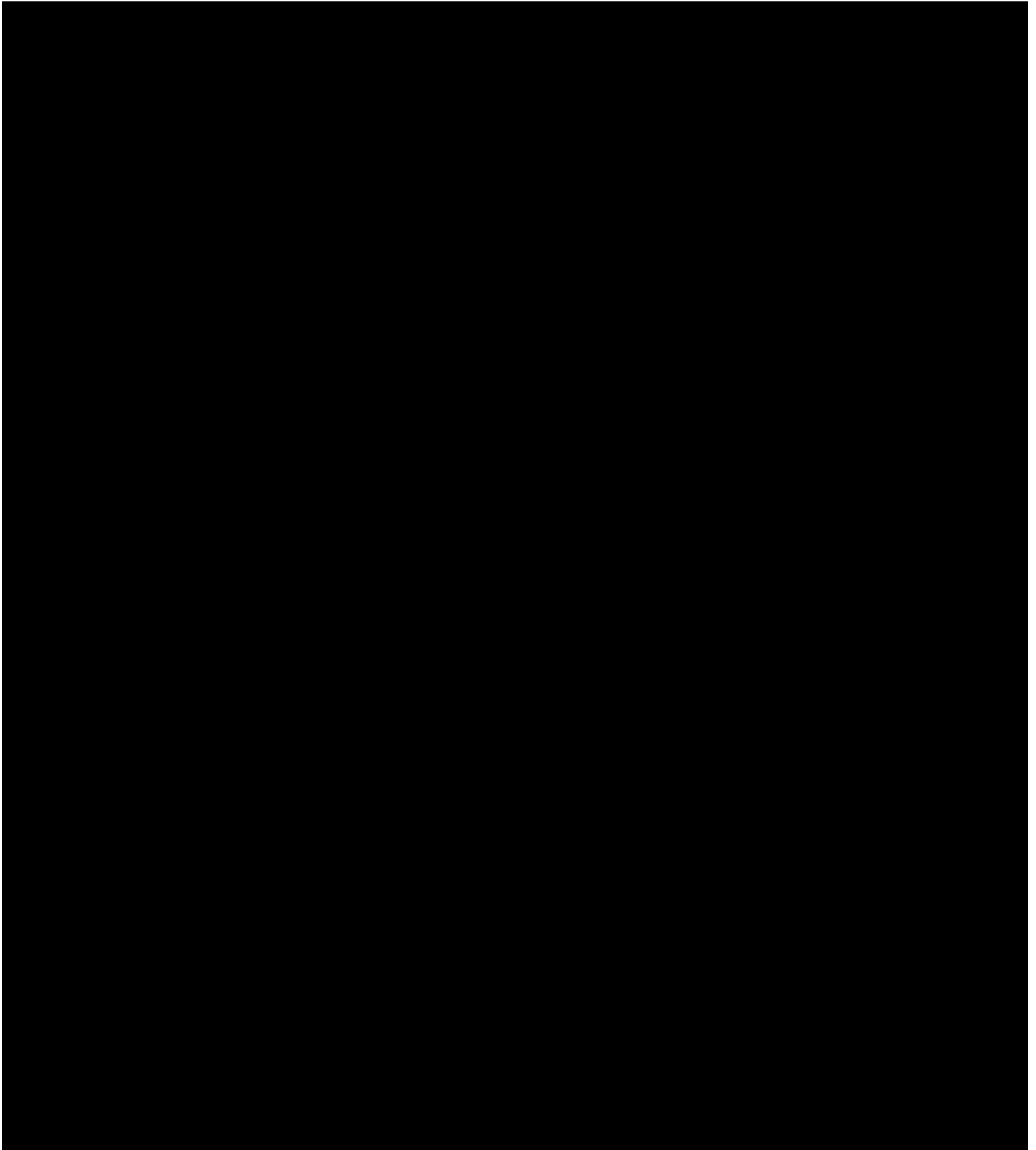


**EXHIBIT F**

Ground Lease

**Exhibit G: Project Funding Plan**  
**Hine Jr. High School Redevelopment Project**

7/11/13





**Exhibit G: Project Funding Plan**  
**Hine Jr. High School Redevelopment Project**

7/11/13

| <b>Sources and Uses: Hine South Parcel and North Retail</b> |       |                    |
|---|-------|--------------------|
| <b>Sources</b>  |       |                    |
| Debt  | 61.8% | 117,989,567        |
| Equity  | 34.4% | 65,600,000         |
| Project Operating Cash                                      | 3.8%  | 7,347,597          |
| <b>Total</b>  |       | <b>190,937,163</b> |
| <b>Uses</b>   |       |                    |
| Residential South   | 43.7% | 83,394,527         |
| Retail South  | 9.4%  | 17,975,714         |
| Retail North  | 2.9%  | 5,553,637          |
| Office  | 34.0% | 64,988,140         |
| Parking   | 10.0% | 19,025,145         |
| <b>Total</b>  |       | <b>190,937,163</b> |

| <b>Sources and Uses: Hine North LIHTC</b> |        |                   |
|---|--------|-------------------|
| <b>Sources</b>                            |        |                   |
| First Trust Proceeds                      | 17.2%  | 2,198,364         |
| LIHTC Equity                              | 30.3%  | 3,870,519         |
| Sponsor Loan                              | 52.5%  | 6,706,771         |
| <b>Total</b>                              |        | <b>12,775,654</b> |
| <b>Uses</b>                               |        |                   |
| Residential North                         | 100.0% | 12,775,654        |
| <b>Total</b>                              |        | <b>12,775,654</b> |