

## ESTOPPEL AND AGREEMENT

November \_\_, 2013

To: UBS REAL ESTATE SECURITIES INC., a Delaware corporation, its successors and assigns ("**Lender**")

From: THE CITY OF GAHANNA, OHIO, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio ("**City**" or "**Ground Lessor**")

- Agreements:
1. Lease Agreement – Building B by and between Ground Lessor and Creekside Development Partners LLC, dated as of April 28, 2006; Memorandum of Lease Recorded: June 7, 2006 in the Recorder's Office, Franklin County, Ohio as Instrument No. 200606070110487 ("**Ground Lease B**")
  2. Lease Agreement – Building C by and between Ground Lessor and Creekside Development Partners LLC, dated as of April 28, 2006; with a Memorandum of Lease recorded June 7, 2006 in the Recorder's Office, Franklin County, Ohio as Instrument No. 200606070110489 ("**Ground Lease C**"; together with Ground Lease B, the "**Ground Leases**";
  3. Development Agreement by and between the City and Gahanna-Creekside Investments LLC, dated November 8, 2004 as mended by that certain First Amendment to Development Agreement, dated as of October 22, 2009 and as further amended by that certain Supplement to Development Agreement, dated as of December 31, 2005 (collectively, the "**Development Agreement**")
  4. Reciprocal Easement Agreement by and between the City and Gahanna-Creekside Investment LLC, dated as of April 28, 2006, recorded in Recorder's Office, Franklin County as Instrument No. 200605040085263, as amended by that First Amendment to Reciprocal Easement Agreement recorded in Instrument No. 200606230123036 and as further amended by that certain Second Amendment to Reciprocal Easement Agreement recorded in Instrument No. 201009280126395 (collectively, the "**REA**")

Ladies and Gentlemen:

Reference is made to Ground Lease B, Ground Lease C, the REA and the Development Agreement (collectively the "**Estoppel Documents**"). Capitalized terms used but not otherwise defined herein have the meanings given in the respective Agreements.

WHEREAS, Creekside Equity Partners LLC ("**Tenant**" or "**Borrower**") is desirous of obtaining a loan (the "**Loan**") from Lender, which such Loan shall be secured by an Open-End Fee and Leasehold Mortgage and Security Agreement given by Borrower to Lender (the "**Security Instrument**") encumbering Borrower's leasehold interest in that certain property more particularly described on Exhibit A (the "**Leasehold Estate**") and Borrower's fee estate more particularly described on Exhibit B (the "**Fee Estate**"), each attached hereto and evidenced by, among other things, that certain Loan Agreement, by and between Borrower and Lender (the "**Loan Agreement**"; the Security Instrument, the Loan Agreement, and all other documents executed and/or delivered in connection with the Loan are referred to herein, collectively, as the "**Loan Documents**");

WHEREAS, Lender is unwilling to make the Loan unless the undersigned makes the representations, covenants and agreements set forth in this Estoppel and Agreement (this "**Agreement**");

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby represents, covenants and agrees this [\_\_\_\_\_] day of November, 2013 as follows:

(I) With respect to the Estoppel Documents, the undersigned hereby certifies as follows:

(A) Each of the Estoppel Documents is in full force and effect and has not been modified, changed, altered or amended in any respect. A true, correct and complete copy of the Estoppel Documents is attached hereto as Exhibit C through Exhibit E.

(B) There is no pending notice of default alleging a default by any party under the Estoppel Documents. To the knowledge of the undersigned, (i) no party under the Estoppel Documents is in default under the Estoppel Documents and (ii) no event has occurred and is continuing which, with the giving of notice or the passage of time, or both, would constitute a default under the Estoppel Documents.

(C) (1) The undersigned has not assigned, conveyed, transferred, sold, encumbered or mortgaged its interest under the Estoppel Documents or the fee estate subject to the Estoppel Documents and (2) except as set forth in Section 24 of each of the Ground Leases, no third party has an option or preferential right to purchase all or any part of the fee interest of the undersigned subject to the Ground Leases.

(D) The Estoppel Documents shall not to modified, amended, terminated or canceled without the prior written consent of Lender and any such modification, amendment, termination or cancellation shall not be binding without such prior written consent of Lender.

(II) With respect to the Ground Leases:

(A) Ground Lessor hereby certifies as follows:

(a) Ground Lessor is the owner of the fee estate subject to the Ground Leases and is the Ground Lessor under the Ground Leases, and Tenant is the owner of the leasehold estate subject to the Ground Leases and is the Tenant under the Ground Leases;

(b) The Completion Date under the Ground Leases occurred on June 1, 2008.

(c) The Initial Term of the Ground Leases commenced on August 1, 2007 and shall end on August 31, 2106. Further, as more fully set forth in Section 4 of the Ground Leases, Tenant has a perpetual right, privilege and option to extend the Initial Term of the Ground Leases for successive terms of ninety-nine (99) years each, upon the same terms and conditions contained in the Ground Leases (except as set forth in Section 4 of each Ground Lease).

(d) Ground Lessor acknowledges that, upon any transfer of the Leasehold Estate of Tenant pursuant to Lender's exercise of its remedies under the Loan Documents, the transferee would constitute a "Lender Assignee".

(e) Tenant does not make any type of escrow deposits with Ground Lessor, and Ground Lessor does not hold any type of deposit from Borrower (for security or otherwise).

(f) Ground Lessor hereby consents to the Loan by Lender and confirms that Lender is a "Lender" under the each Ground Lease.

(B) Ground Lessor hereby agrees that Tenant shall have the right to assign or sublet Tenant's interest under each Ground Lease to Lender, its successors or assigns of the Loan and the Loan Documents, in accordance with the terms of each Ground Lease; provided, however, Ground Lessor further agrees that (i) any of Lender or Lender's successors and assigns of the Loan and the Loan Documents (including any subsidiary or affiliate thereof) shall, without Ground Lessor's prior consent, have the right to succeed to the interest of Tenant under the Ground Leases (whether by foreclosure, deed in lieu of foreclosure or otherwise (any of the foregoing, a "**Foreclosure**")) and (ii) Ground Lessor's consent shall not be required for the first transfer of the Property following a Foreclosure.

(C) Ground Lessor hereby covenants and agrees that, in the event that (i) any Ground Lease is terminated for any reason including, without limitation, as a result of a rejection of such Ground Lease in a bankruptcy proceeding, or (ii) Lender effects a foreclosure of Tenant's interest in any Ground Lease, or accepts a deed in lieu of such foreclosure, upon Lender's request, Ground Lessor shall enter into a new ground lease with Lender and such new ground lease shall be upon the same terms and conditions of the unexpired term of the applicable Ground Lease immediately prior to such termination.

(D) Ground Lessor hereby agrees that Lender shall have the right, pursuant to the terms of the Ground Leases, to exercise any option to renew the term of the Ground Leases if the Tenant shall fail to exercise any such option.

(III) With respect to the Development Agreement and the REA, the City hereby certifies, acknowledges and covenants as follows:

(a) There are no fees, dues, charges and/or assessments payable by Borrower to the City in default under the Development Agreement or the REA.

(b) Notwithstanding anything to the contrary contained in the REA, the City hereby agrees that the REA shall not terminate upon a casualty or a condemnation to the Project Facilities and the City shall elect to restore any of the Project Facilities owned by the City, provided that the Borrower elects to restore or rebuild any damage to the Surface Improvements, if any. Without limiting the generality of the foregoing, in the event of a casualty and/or a condemnation that affects any portion of the Underground Site, the City hereby covenants and agrees that the City shall promptly repair and restore any and all Structural Supports located within the Underground Site, including, without limitation, all Structural Support within the Underground Garage to the condition that existed prior to such casualty and/or condemnation so that the easement granted to the Surface Improvements, including, without limitation, the Structural Support easement granted pursuant to Section 2.5 of the REA, shall remain in full force and effect provided that the Borrower elects to restore or rebuild any damage to the Surface Improvements, if any.

(c) In event of a casualty and/or a partial condemnation that affects any portion of the Surface Improvement, the City hereby covenants and agrees that such casualty and/or partial condemnation shall not cause a termination of the REA provided the owner of the Surface Improvement has elected to rebuild and/or restore such Surface Improvements, and such Surface Improvement shall be deemed to exist as Site separate from the Subterranean Site pursuant to Section 2.1.3. of the REA.

(d) The City acknowledges and agrees that, in the event that (i) the REA is terminated for any reason including, without limitation, as a result of a rejection of the REA in a bankruptcy proceeding, or (ii) Lender effects a foreclosure of Borrower's interest in the Leasehold Estate and/or the Fee Estate, or accepts a deed in lieu of such foreclosure, upon Lender's request, the City shall enter into a new agreement with Lender and such new agreement shall be upon the same terms and conditions as the REA immediately prior to such termination.

(IV) The City hereby covenants and agrees that the Development Agreement, including, without limitation, Section 13.13 thereof is subject and subordinate to the Loan and the Loan Document and the City shall have no right to exercise its right of first refusal under the Development Agreement until such time as all obligations secured by the Security Instrument have been fully satisfied or, if the Loan Documents permit, the Loan has been fully defeased in accordance with the terms and conditions of the Loan Documents. The City further acknowledges and agrees that, notwithstanding anything to the contrary in the Development Agreement, any of the Loan Documents, or this Agreement, none of the following events

("Remedial Actions") shall be deemed to constitute an offer to purchase the Property or any portion thereof for purposes of Section 13.13 of the Development Agreement and the City shall have no preferential right to purchase all or any portion of the Fee Estate or other rights under Section 13.13 of the Development Agreement as a result of: (a) the judicial or nonjudicial foreclosure of the Security Instrument; (b) the delivery of a deed in lieu of judicial or nonjudicial foreclosure of the Security Instrument; (c) the exercise of any other rights and remedies of Lender under the Loan Documents, (d) any offer, notice, pleading, agreement, transaction or other event or condition of any kind arising out of or relating to any of the events referred to in foregoing clauses (a), (b) or (c); or (e) the first subsequent transfer following any of the events referred to in foregoing clause (a), (b), (c) or (d) to a new owner. In addition, the City acknowledges and agrees that, notwithstanding anything to the contrary in the Development Agreement, nothing contained therein shall be deemed to restrict in any way Lender's pursuit of any of the Remedial Actions.

(V) The undersigned hereby covenants and agrees that the undersigned shall deliver to Lender at the address set forth below (or such other address as may be designated by Lender) written notice of any default by Tenant or Borrower under the Estoppel Documents simultaneously with sending such notice to Tenant or Borrower and that no notice of default given to Tenant or Borrower, and no exercise of any remedy by the undersigned as a result of any such default, including, without limitation, any termination of any Ground Lease or the REA, shall be effective unless such notice shall have been delivered to Lender. The undersigned hereby covenants and agrees that Lender shall have the right, but not the obligation, to cure any default by Tenant or Borrower under the Estoppel Documents and Lender shall be afforded (a) thirty (30) days to cure any such default, (b) in the event that any such default cannot, with reasonable diligence, be cured within such thirty (30) day period, such longer time as may be required to complete such cure, provided Lender notifies the undersigned of its intention to cure such default and Lender promptly commences and diligently pursues such cure to completion, and (c) in the event that such default is incapable of cure by Lender, such time as may be required for Lender to gain possession of Tenant's or Borrower's interest in the Leasehold Estate and/or the Fee Estate pursuant to the terms of the Security Instrument and the other Loan Documents, provided Lender notifies the undersigned of its intention to cure such default and Lender promptly commences and diligently pursues such cure to completion. All notices to Lender under this Agreement shall be sent to:

UBS Real Estate Securities Inc.  
1285 Avenue of the Americas  
New York, New York 10019  
Attention: U.S. Real Estate Finance -Transaction  
Management- Henry Chung  
Facsimile No.: (212) 821-2848

with a copy to:

Alston & Bird LLP  
90 Park Avenue  
New York, New York 10016  
Attention: Stephen J. Cerniglia, Esq.  
Facsimile No.: (212) 210-9444

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and year first above written.

THE CITY OF GAHANNA, OHIO,  
an Ohio municipal corporation

By: \_\_\_\_\_  
Name:  
Title:

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF FRANKLIN        )

The foregoing instrument was acknowledged before on this \_\_\_\_ day of \_\_\_\_\_, 2013 by \_\_\_\_\_, the \_\_\_\_\_ of the City of Gahanna, Ohio, an Ohio municipal corporation (the "City"), on behalf of the City.

**Exhibit A**

[LEASEHOLD ESTATE]

**Exhibit B**

[FEE ESTATE]



**Exhibit C**

[GROUND LEASE B]

**Exhibit D**

[GROUND LEASE C]

**Exhibit E**

[REA]

