

## ESTOPPEL AND RECOGNITION AGREEMENT

This Estoppel and Recognition Agreement ("Agreement") is made as of \_\_\_\_\_, 2017, by and among **CrossFirst Bank** ("Lender"), **the City of Wichita, Kansas** ("City"), **Sedgwick County, Kansas** ("County") and **MWCB, LLC**, a Kansas limited liability company ("Borrower").

WHEREAS, Borrower and City and County are parties to that certain Purchase and Sale Agreement dated March 7, 2017 ("Purchase and Sale Agreement") pertaining to certain real property legally described on **Exhibit A** attached hereto and the improvements thereon ("Property"); and

WHEREAS, Borrower has made, executed and delivered to Lender a Promissory Note in the amount of \$10,000,000.00 ("Note") in consideration for a construction loan ("Loan"), which Note is secured by, among other things, a Leasehold Mortgage and Security Agreement (which Mortgage and all amendments, renewals, modifications, replacements, substitutions, extensions and consolidations thereof and all re-advances thereunder and additions thereto approved consistent with this Agreement are referred to as the "Mortgage") on the Property; and

WHEREAS, the Loan is further secured by a Collateral Assignment of Purchase and Sale Agreement by Borrower to Lender ("Collateral Assignment"), whereby Borrower has collaterally assigned to Lender all of Borrower's right, title and interest in and to the Purchase and Sale Agreement; and

WHEREAS, Lender, Borrower, City and County desire to confirm their understanding and agreement with respect to the Purchase and Sale Agreement, Mortgage, Loan and Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender, Borrower, City and County hereby agree and covenant as follows:

1. Each of City and County (each "Purchaser") hereby represents, warrants, covenants and agrees as follows:

(a) Purchaser has received no notice from the Borrower that Purchaser is in default of the Purchase and Sale Agreement, nor that the Borrower intends to terminate the Purchase and Sale Agreement.

(b) As of the date hereof, to the best of its knowledge, Borrower is in full compliance with all of the terms and conditions of the Purchase and Sale Agreement and no condition exists which, of itself, or upon the lapse of time or giving of notice (or both), might create an event of default under the Purchase and Sale Agreement.

(c) Purchaser has no objection to and hereby consents to the Loan, the Mortgage and the Collateral Assignment. Purchaser hereby waives any event of default which might occur under the Purchase and Sale Agreement as a result of the Loan or execution of the Note, Mortgage and Collateral Assignment by Borrower.

(d) The Purchase and Sale Agreement has not been modified or amended and constitutes the entire agreement between the, City, County and Borrower with regard to the Property.

(e) Purchaser has not assigned, pledged, conveyed, transferred, sold, encumbered or mortgaged its interest in the Purchase and Sale Agreement, and there are no mortgages, deeds of trust or other security interests now encumbering Purchaser's interest in the Purchase and Sale Agreement.

(f) No third party has any option or preferential right to purchase all or any part of the Property arising out of an agreement with Purchaser.

(g) A copy of any notice given by Purchaser to Borrower in accordance with the Purchase and Sale Agreement shall be simultaneously given to the Lender or such other party as Lender may direct by written notice to Purchaser. Purchaser shall give Lender all notices as required under the Purchase and Sale Agreement to be given to Borrower. Purchaser shall afford Lender no less than an additional sixty (60) days after written notice to cure any and all defaults of Borrower under the terms of the Purchase and Sale Agreement after Borrower fails to cure a default, and, in the event that such cure requires Lender to obtain possession of the Property, Purchaser shall afford Lender a reasonable time to obtain such possession and thereafter cure such default.

(h) Any notice to Purchaser given in accordance with the Purchase and Sale Agreement may be sent to Purchaser at the address set forth herein.

(i) If the interest of Borrower in the Property and/or the Purchase and Sale Agreement shall be transferred to and owned by the Lender or another party (each, a "Successor Party") by reason of foreclosure or other proceedings brought by the Lender in lieu of or pursuant to a foreclosure, or by any other manner, and the Successor Party succeeds to the interest of Borrower in the Property and/or under the Purchase and Sale Agreement, or if the Borrower shall be adjudged bankrupt and the Borrower's obligation under the Purchase and Sale Agreement thereby disaffirmed, and the Successor Party gives written notice to Purchaser within thirty (30) days of its assumption of Borrower's interest, the Purchase and Sale Agreement shall become a direct agreement binding upon Purchaser and the Successor Party, in accordance with all of the terms, conditions and covenants of the Purchase and Sale Agreement for the balance of the term thereof remaining, with the same force and effect as if the Successor Party were the "Seller" under the Purchase and Sale Agreement, to be effective and self-operative immediately upon the Successor Party succeeding to the interest of Borrower in the Property and/or under the Purchase and Sale Agreement, without the execution of any further instrument on the part of any of the parties hereto. The respective rights and obligations of Purchaser and Successor Party upon such event shall be and are the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Purchase and Sale Agreement in this Agreement by reference by the same force and effect as if set forth at length herein. Notwithstanding anything to the contrary contained herein, in the event Lender, as Successor Party, assumes the obligation under the Purchase and Sale Agreement, Lender shall be entitled to assign its rights under the Purchase and Sale Agreement to a third party and be relieved of all liabilities and obligations under the Purchase and Sale Agreement which accrue after the date of such assignment.

(j) Purchaser shall not, without the prior written consent of Lender, amend, modify, terminate or cancel the Purchase and Sale Agreement, or accept any termination of the Purchase and Sale Agreement by Borrower. Any such purported action without such consent shall be void as against the holder of the Mortgage.

(k) This Agreement shall satisfy any and all requirements under the Purchase and Sale Agreement for providing notice to or obtaining consent of Purchaser of a mortgage encumbering the Borrower's interest in the Property and/or an assignment of the Purchase and Sale Agreement.

2. Lender represents, warrants, covenants and agrees as follows:

(a) In the event that Borrower defaults under the terms of the Mortgage, Lender agrees to provide notice of the default to Purchaser.

(b) In the event Lender becomes the Successor Party, Lender will attorn to and recognize the rights of Purchaser under the Purchase and Sale Agreement, in accordance with the terms and provisions of this Agreement.

(c) In the event Lender and Borrower modify the terms of the Mortgage extend the term of the Loan, or otherwise amend the Loan, Lender shall provide written notice to Purchaser. Notwithstanding the foregoing, Purchaser's approval is not required for modifications to the Mortgage or the Loan documents.

3. Borrower represents, warrants, covenants and agrees as follows:

(a) Borrower has received no notice from Purchaser that Borrower is in default of the Purchase and Sale Agreement, nor that the Purchaser intends to terminate the Purchase and Sale Agreement.

(b) As of the date hereof, to the best of its knowledge, Purchaser is in full compliance with all of the terms and conditions of the Purchase and Sale Agreement and no condition exists which, of itself, or upon the lapse of time or giving of notice (or both), might create an event of default under the Purchase and Sale Agreement.

(c) The Purchase and Sale Agreement has not been modified or amended and constitutes the entire agreement between the, City, County and Borrower with regard to the Property.

(d) Except to Lender, Borrower has not assigned, pledged, conveyed, transferred, sold, encumbered or mortgaged its interest in the Purchase and Sale Agreement, and there are no mortgages, deeds of trust or other security interests now encumbering Borrower's interest in the Purchase and Sale Agreement.

4. For so long as the Loan remains outstanding, the Mortgage encumbers Borrower's Leasehold interest in the Property and the Collateral Assignment encumbers Borrower's interest in the Purchase and Sale Agreement, City, County, Borrower and Lender covenant and agree as follows:

(a) In the event that the Property encumbered by Lender's Mortgage, or any part thereof, shall be damaged by fire or other hazard against which insurance is held by Borrower as required under the Purchase and Sale Agreement or Mortgage the following shall apply:

(1) In the event the total value of the damage to the Property is less than an amount equal to fifty percent (50%) of the cost to rebuild and replace the building improvements and structures for the entire Property, Lender agrees to make any casualty insurance proceeds paid to Lender available to Borrower for the restoration or repair of the Property encumbered by the Mortgage, if the following conditions are satisfied or present: (a) Borrower is required to repair or restore the Property under the Purchase and Sale Agreement, (b) no event of default (as defined in the Mortgage) has occurred and is continuing without cure, (c) there are sufficient casualty insurance proceeds to rebuild the Property and if there are not sufficient proceeds, Borrower shall deposit with Lender such additional funds as are necessary to complete the restoration and repair, (d) the Property can be rebuilt to substantially the same or better condition that pre-existed the casualty, (e) the repair and restoration of the damaged improvements commences no less than four (4) months after the casualty event, (f) there is no lawsuit filed claiming a right to such proceeds or claims made which would prevent use of the proceeds for rebuilding and restoration, and (g) Borrower carries sufficient business interruption insurance (naming Lender as the loss payee) at all times in an amount sufficient to pay the indebtedness secured by the Mortgage, and Borrower's insurer delivers to Lender sufficient assurance that the business interruption proceeds are available to be paid upon Lender's demand for same.

(2) In the event the total value of the damage to the Property is an amount equal to fifty percent (50%) or more of the cost to rebuild and replace the building improvements and structures for the entire Property, or in the event any of the conditions in (1) (a) through (1) (g) above are not satisfied, the insurance proceeds to which Lender is entitled (as provided herein) may, at the sole discretion and option of Lender, be applied to the cost of restoration of the Property and Borrower's leasehold interest therein or applied to payment of the Loan and any amounts secured by the Mortgage.

(3) To the extent insurance proceeds are to be applied to the cost of restoration of the Property as described above, such proceeds shall be retained by Lender and disbursed from time to time consistent with Lender's construction lending policies and procedures, including, without limitation, requirements that Lender be furnished with (1) satisfactory evidence of the estimated cost of completion of the restoration, repair, replacement and/or rebuilding, (2) satisfactory evidence that sufficient funds are

available to complete the proposed restoration, repair, replacement and/or rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and other reasonable evidence of cost, payment and performance as Lender may reasonably require and approve.

(4) To the extent insurance proceeds are applied by Lender to reduction of the debt owed by Borrower to Lender, Lender shall first look to the insurance proceeds paid from the Personal Property/Contents Insurance, and then to the insurance proceeds paid from the Business Interruption Insurance carried by Borrower and Lender shall not be entitled to Casualty Insurance proceeds unless proceeds made available to Lender from the Personal Property/Contents Insurance and Business Interruption Insurance are not sufficient to then retire the debt owed to Lender.

(b) Notwithstanding anything to the contrary contained herein, in the event of a casualty and damage to the building improvements, structures and contents, whether the damage is fifty percent (50%) or more or less and notwithstanding whether there is a default under the Mortgage, Lender shall be entitled to apply the proceeds from Business Interruption Insurance and Personal Property/Contents Insurance, in its sole discretion, to reduction of the debt owed by Borrower to Lender up to the outstanding balance due under the Loan. Purchaser acknowledges and agrees that Lender's rights to any Business Interruption Insurance and Personal Property/Contents Insurance up to the outstanding balance due under the Loan are prior and superior to the rights of Purchaser. Purchaser further waives and releases in favor of Lender up to the outstanding balance due under the Loan any claim to casualty insurance proceeds in excess of the insurance required under the Purchase and Sale Agreement in the event Borrower satisfies its obligations by restoring or repairing the Property, and Purchaser agrees such insurance may be made available to reduce the debt owed Lender. Subject to the rights of Purchaser under the Purchase and Sale Agreement, the acknowledgements and agreements made in this Section 4(b) by Purchaser are not intended to waive any of their rights to insurance proceeds once the Lender's outstanding balance due under the Loan has been paid in full and all remaining obligations owed to Lender by Borrower under the Loan Documents are satisfied.

5. Notices shall be in writing, by registered or certified mail, overnight delivery or hand delivery and the mailing or delivery of notices to the following addresses, or to such other place any party hereto may by notice in writing designate, shall constitute service of notice hereunder:

City: City of Wichita, Kansas  
Attn: City Manager  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

With a copy to: City of Wichita Law Department  
Attn: Contract Notification  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

County: Sedgwick County, Kansas  
Attention: Facilities Director  
525 N. Main  
Wichita, Kansas 67203

With a copy to: Sedgwick County Counselor's Office  
Attention: Contracts Notification  
525 N. Main, Ste. 359  
Wichita, Kansas 67203

Lender: CrossFirst Bank  
4707 W. 135<sup>th</sup> St.  
Leawood, Kansas 66224

With a copy to:

Jay T. Shadwick  
Duggan Shadwick Doerr & Kurlbaum LLC  
11040 Oakmont  
Overland Park, Kansas 66210

Borrower: MWCB, LLC  
833 S. East Avenue  
Columbus, KS 66725

6. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page.

7. This Agreement shall be binding upon the parties and their respective successors and assigns and shall inure to the benefit of and be enforceable by the parties and their respective successors, assigns and designees, including, but not limited to, any purchaser at a foreclosure sale or person or entity receiving a deed in lieu of foreclosure (which successors, assigns, designees, purchaser person or entity shall be deemed to be included within the term "Lender" for purposes of this Agreement).

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**CrossFirst Bank**

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

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that (s)he is the \_\_\_\_\_ of **CrossFirst Bank**, and that the foregoing instrument was signed on behalf of said entity by authority of its Board of Directors, and (s)he acknowledged said instrument to be the free act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_

My commission expires:

\_\_\_\_\_

[Signature page to Estoppel and Recognition Agreement]

City of Wichita, Kansas

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

Attest:

\_\_\_\_\_  
Name/Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that (s)he is the \_\_\_\_\_ for **the City of Wichita, Kansas**, and that the foregoing instrument was signed on behalf of said city by authority of the city council, and (s)he acknowledged said instrument to be the free act and deed of said city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

[Signature page to Estoppel and Recognition Agreement]

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

Name/Title: \_\_\_\_\_

Approved As To Form  
Misha C. Jacob-Warren



**MWCB, LLC,**  
a Kansas limited liability company  
By: **SRB Kansas, LLC,**  
a Kansas limited liability company, Managing Member

By: \_\_\_\_\_  
Steven R. Barrett, Member

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared **Steven R. Barrett**, to me personally known, who, being by me duly sworn, did say that he is the **Member** of **SRB Kansas, LLC**, a Kansas limited liability company, as a **Managing Member** of **MWCB, LLC**, a Kansas limited liability company, and that said instrument was signed on behalf of said company by authority of its members, and he acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid on the day and year first above written.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_

My commission expires:

\_\_\_\_\_

[Signature page to Estoppel and Recognition Agreement]

## EXHIBIT A