

Recording Requested By
And When Recorded Mail To:

U.S. Bank National Association
MK-WI-JSN
777 E. Wisconsin Avenue
Milwaukee, WI 53202
Attention: James S. Newgard

Space Above For Recorder's Use

GROUND LESSOR'S CONSENT AGREEMENT

This Ground Lessor's Consent Agreement (the "Agreement") is dated for reference purposes as of September _____, 2011, by and among CITY OF TEMPE, an Arizona municipal corporation (the "Ground Lessor"), VALLEY OF THE SUN YOUNG MEN'S CHRISTIAN ASSOCIATION, an Arizona non-profit corporation (the "Borrower"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association.

Factual Background

A. Ground Lessor owns certain real property in the County of Maricopa, State of Arizona, more particularly described in the attached **Exhibit A** (the "Property"). Ground Lessor has entered into that certain Lease Agreement dated September 26, 1983, (as amended or supplemented from time to time, the "Ground Lease") wherein Ground Lessor is the current ground lessor and Borrower is the current ground lessee, as described in a Memorandum of Lease recorded December 30, 2010, as Instrument No. 20101142297, Official Records of Maricopa County, Arizona, relating to the Property, and certain improvements existing or to be constructed thereon (collectively, the "Facility").

B. Pursuant to that certain Trust Indenture dated as of October 1, 2008 (as amended, restated, renewed, replaced, supplemented or otherwise modified from time to time, the "Indenture") between THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF MARICOPA, a nonprofit corporation designated as a political subdivision of the State of Arizona, or any successor to its rights and obligations under the Indenture (the "Issuer"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association (acting in its capacity as the trustee under the Indenture) (the "Trustee"), Issuer has issued it's \$30,000,000 The Industrial Development Authority of the County of Maricopa Variable Rate Demand Revenue Bonds (Valley of the Sun YMCA) Series 2008, described more fully in the Indenture (the "Bonds"), and pursuant to that certain Loan Agreement executed between Issuer and Borrower dated as of October 1, 2008 (as amended, restated, renewed, replaced, supplemented, or otherwise modified from time to time, the "Loan Agreement"), Issuer agreed to fund a loan (the "Loan") to Borrower using certain Bond Proceeds, a portion of which have been used to enhance the Facility. In connection with the issuance of the Bonds, and as a material condition thereto, pursuant to that certain Reimbursement Agreement as of October 1, 2008 (as amended, restated, renewed, replaced, supplemented, or otherwise modified from time to time, the "Reimbursement Agreement") between U.S. BANK NATIONAL ASSOCIATION, a national banking association (together with its successors, assigns and any other bank or banks that issue a replacement of a credit facility in support of the Bonds, hereinafter, the "Bank") and Borrower, Bank, for the account of Borrower has issued a letter of credit (as amended, restated, renewed, replaced, supplemented, or otherwise modified from time to time, the "Letter of Credit") to the Trustee under the Indenture in the original stated amount of Thirty Million Two Hundred Eighty-Seven Thousand Six Hundred Seventy-Two and No/100 Dollars

(\$30,287,672.00). By its terms, the Loan will not be fully repaid until 2038 which is beyond the existing Term of the Lease.

C. The obligations of Borrower to Bank under the Reimbursement Agreement, including without limitation all obligations to pay fees, reimburse costs and expenses, reimburse for amounts drawn on the Letter of Credit and deliver cash collateral, are secured by the Security Documents (as such term is defined in the Indenture), which includes a Construction Leasehold Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing (as amended, restated, renewed, replaced, supplemented, or otherwise modified, the "**Deed of Trust**") encumbering Lessee's Rights of Borrower in the Property. The term "**Lessee's Rights**" herein means all of the Borrower's right, title, and interest under the Lease, including all possessory rights in the Property and all rights and interests of the Borrower in all improvements now existing or hereafter located on the Property (the "**Improvements**"). The Letter of Credit, the Reimbursement Agreement, the Deed of Trust and other Security Documents, and all other documents and instruments identified in the Reimbursement Agreement as Credit Documents are collectively referred to herein as the "**Credit Documents**."

D. It is a requirement of the Letter of Credit that the Ground Lessor consent to the lien of the Deed of Trust and assignment of Borrower's rights under the Ground Lease pursuant thereto, and agree to the terms and conditions of this Agreement, including non-disturbance of the ground lessee's right under the Ground Lease following a foreclosure under the Deed of Trust, deed or assignment in lieu of foreclosure, or similar action. Ground Lessor is willing to agree to such non-disturbance provision and other conditions, provided that Bank agrees to an attornment provision, all as set forth more fully below.

E. It is the intent and understanding of the parties hereto that so long as Borrower remains the ground lessee under the Ground Lease, the Facility shall be operated by Borrower or another affiliate of the Young Men's Christian Association of the United States (collectively "**YMCA**"), and shall contain a full service YMCA Branch. In the unlikely event of a Foreclosure Transfer (as such term is defined below), it is the intent and understanding of the parties hereto that the Facility will no longer be operated by YMCA and could not contain a full service YMCA Branch, but rather the Facility will be operated by the Purchaser (as such term is defined below) as a social/recreation center to benefit the health, education and welfare of the citizens and visitors to the City of Tempe (the "**Public Purpose**"), on the terms set forth in the Ground Lease. The parties desire to clarify any terms and conditions of the Ground Lease as to the above-described intent, and agree that the Ground Lease shall be interpreted taking into account such intent.

Agreement

THEREFORE, the parties agree as follows:

1. **Definitions.** The following capitalized words and terms shall have the meanings set forth in the "Factual Background" section above, or if not defined therein, shall have the following meanings when used in this Agreement.

"**Event of Default**" shall have the meaning set forth in **Section 18** of the Ground Lease.

"**Foreclosure Transfer**" means any transfer of Borrower's leasehold interest under the Ground Lease, including all Lessee's Rights, by foreclosure, trustee's sale, or other action or proceeding for the enforcement of the Deed of Trust, or by deed or assignment in lieu thereof.

"Post-Foreclosure Transfer" means any transfer of the Property or any portion thereof by a Purchaser occurring after a Foreclosure Transfer.

"Purchaser" means any transferee, including Bank, of the interest of Borrower in the Property as a result of any Foreclosure Transfer.

"Unmatured Event of Default" means an event that, with notice or the passage of time, or both, could become an Event of Default under the Ground Lease.

2. **Consent of Ground Lessor.** Ground Lessor hereby consents to (i) the lien of the Deed of Trust upon the Borrower's interests under the Ground Lease, including all Lessee's Rights, and (ii) the assignment of Borrower's leasehold interest under the Ground Lease, including all Lessee's Rights, pursuant to any Foreclosure Transfer, provided, however, that except as otherwise specifically provided herein, or otherwise agreed in writing by Ground Lessor, any Purchaser pursuant to a Foreclosure Transfer shall take such Borrower's leasehold interest under the Ground Lease, including all Lessee's Rights, subject to the terms and conditions of the Ground Lease. Ground Lessor agrees that this consent shall constitute Ground Lessor's written consent to the lien of the Deed of Trust and to any Foreclosure Transfer as may be required pursuant to the Ground Lease. Ground Lessor agrees that Bank may complete a Foreclosure Transfer in accordance with applicable law without the further consent of Ground Lessor.

3. **No Lien on Ground Lessor's Interest.** The Bank confirms and agrees that (a) the Deed of Trust does not encumber or create a lien on the fee interest of Ground Lessor in the Property or on any interest of the Ground Lessor as "Lessor" or "Ground Lessor" under the Ground Lease; and (b) the Ground Lessor shall not be personally liable for the payment or performance of any of the obligations of Borrower under the Reimbursement Agreement, the Deed of Trust, or any other Credit Documents.

4. **Nondisturbance.** Ground Lessor agrees that the enforcement of the Deed of Trust shall not terminate the Ground Lease or disturb any Purchaser, including Bank if it should be the Purchaser, in obtaining the right of, and continuing as, Ground Lessee (as successor in interest to the Borrower) in the possession and use of the Property, unless after such foreclosure, such Purchaser fails to cure any default under the Ground Lease in accordance with the terms of the Agreement. This nondisturbance applies to any option to extend or renew the Ground Lease term which is set forth in the Ground Lease as of the date of this Agreement, or which is later entered into between Ground Lessor and Borrower with the consent of Bank. This nondisturbance shall be effective and self-operative without the execution of any further instruments upon Purchaser's succeeding to the interest of the ground lessee under the Ground Lease. Upon completion of any foreclosure or trustee's sale proceedings by Bank under the Deed of Trust (or completion of an assignment of the Lease in lieu of foreclosure), Ground Lessor will recognize Bank, or any other successor thereby to ground lessee's interest in the Ground Lease, as the ground lessee under the terms of the Ground Lease for all purposes thereunder and for the remaining term thereof.

5. **Attornment.** Subject to Section 4 above, if any Transfer of the Property should occur, any Purchaser, including Bank if it should be the Purchaser, shall and hereby does attorn to Ground Lessor as the landlord under the Ground Lease, and Purchaser shall be bound to Ground Lessor under all of the terms, covenants and conditions of the Ground Lease for the balance of the Ground Lease term and any extensions or renewals of it which may then or later be in effect under any validly exercised extension or renewal option contained in the Ground Lease, all with the same force and effect as if Purchaser had been the original ground lessee under the Ground Lease.

6. **Notices of Default; Material Notices; Bank's Rights to Cure Default.** Ground Lessor shall send a copy of any notice of default or similar statement with respect to the Ground Lease to Bank at the same time such notice or statement is sent to Borrower. Additionally, Borrower agrees to send a copy of any notice of default or similar statement received by Borrower from Ground Lessor with respect to the Ground Lease to Bank within five (5) days after the notice or statement is received by Borrower. In the event of any act or omission by Borrower which would give Ground Lessor the right to terminate the Ground Lease, Ground Lessor shall not exercise any such right or make any such claim until it has given Bank written notice of such act or omission and has given Bank either thirty (30) days to cure the default if the default is monetary or a reasonable time for Bank to cure the default if the default is non-monetary, including a reasonable time to gain possession of the Property to effectuate such cure, if necessary. Nothing in this Agreement, however, shall be construed as a promise or undertaking by Bank to cure any default of Borrower. If Bank is prohibited, by any process or injunction issued by any court or by any bankruptcy or insolvency proceeding involving Borrower, from obtaining possession of the Property in order to cure a non-monetary default by Borrower under the Ground Lease which requires possession to cure, Ground Lessor agrees that Ground Lessor will not terminate the Ground Lease during such prohibition so long as Bank timely cures any monetary defaults of Borrower under the Ground Lease, and diligently and continuously pursues all steps necessary to secure the removal or lifting of such prohibition at the earliest feasible date. If the nature of a default is a past act of Borrower, whereby the happening of the event triggers the default, such shall not be considered a "non-curable" default, but shall be considered a non-monetary default, and Bank shall be deemed to have "cured" such default if Bank proceeds within the time periods set forth herein to cause such event to cease, or gains possession of the Property, and thereafter complies with the terms and conditions of the Ground Lease. The foregoing (i) is intended to allow Bank to cure any default in order to protect its collateral interest in the Ground Lease, and (ii) is specifically intended to apply to all covenants and conditions under the Ground Lease. The cure rights and other protections granted to Bank in this Section and in any other Sections hereof are in addition to, and not in limitation of, any such rights and protections granted to Bank in the Ground Lease.

7. **Limitation on Bank's Performance.** Nothing in this Agreement shall be deemed or construed to be an agreement by Bank to perform any covenant of Borrower as ground lessee under the Ground Lease, unless and until Bank becomes a Purchaser and succeeds to the rights and obligations of ground lessee under the Ground Lease. Ground Lessor agrees that if Bank becomes Purchaser then, upon subsequent transfer of the Property by Bank to a new owner, Bank shall have no further liability under the Ground Lease after the date of said transfer.

8. **Limitation on Liability.** No Purchaser who acquires title to the Property shall have any obligation or liability beyond its interest in the Property.

9. **Acknowledgments, Clarifications and Agreements Regarding Ground Lease.** Ground Lessor and Borrower represent and warrant to Bank, and agree as follows:

9.1 **Amendment of Ground Lease.** The parties acknowledge that Ground Lessor and Borrower have negotiated certain amendments to Ground Lease that are set forth in a document entitled Amendment No. 2 to Lease Agreement, a copy of which has been provided to Bank, which modifies **Sections 3, 8, and 15** of the Ground Lease and adds new **Sections 21, 22 and 23** to the Ground Lease ("**Amendment No. 2**"). Ground Lessor, subject to the formal approval and authorization of its governing body, and Borrower agree that the Ground Lease shall be amended as provided in Amendment No. 2. Upon Bank's written request, Ground Lessor and Borrower agree to execute a Memorandum of Amendment to Ground Lease, in recordable form acceptable to Bank in its reasonable discretion.

9.2 Clarification Regarding Uses after a Foreclosure Transfer. In the event of a Foreclosure Transfer:

(a) **Bank Transferees; Allowed Uses.** If Bank is the Purchaser, Bank shall act in good faith and with diligence to find an assignee or transferee to purchase the Lessee's Rights from Bank (a "Bank Transferee") that has the reasonable capacity to meet the requirements of **Section 3** of the Ground Lease, which provide that the Property shall be used for the Public Purpose, including activities that promote the health, education and welfare of the residents of the City and its surrounding areas (the "Allowed Use"), and that agrees to assume, be subject to, and be bound by the terms of the Ground Lease. It is hereby clarified that if, after reasonable efforts by Bank, a Bank Transferee cannot be found that meets the Allowed Use requirements set forth above, then after notice by Bank to Ground Lessor, Bank and Ground Lessor will meet in person or by conference telephone to discuss potential Bank Transferees that might be acceptable to Ground Lessor and will mutually cooperate to find a Bank Transferee that would be able to meet the requirements of **Section 3** of the Ground Lease and would agree to assume, be subject to and be bound by the terms of the Ground Lease. It is the intention of the parties to use their best mutual efforts to find a Bank Transferee reasonably acceptable to Ground Lessor, and that Ground Lessor will not unreasonably withhold its consent to a Bank Transferee meeting the requirements described above.

(b) **Permitted Transferees.** Whenever in the Ground Lease, the term "Y.M.C.A." or "YMCA" is used, it is hereby clarified to mean Borrower or any permitted assignee or transferee under the Ground Lease (a "Permitted Transferee"), including any Purchaser by virtue of a Foreclosure Transfer or any Bank Transferee.

(c) **Right of First Refusal.** In the event Bank is the Purchaser by virtue of a Foreclosure Transfer, the Bank (i) shall not complete a sale of the Lessee's Rights to a proposed Bank Transferee (a "Proposed Bank Transferee") without first offering said Lessee's Rights to Ground Lessor pursuant to an written offer (an "Offer") containing the terms and conditions described below, and (ii) if Bank enters into any written agreement to sell the Lessee's Rights to a Proposed Bank Transferee, such written agreement shall be subject to the Ground Lessor's right of first refusal described in this subsection (c). Such Offer delivered by Bank to Ground Lessor shall be in writing, must be on terms and conditions substantially similar to those proposed for the sale of the Lessee's Rights to a Proposed Bank Transferee as set forth in **Section 9.2(a)** above, and must clearly set out the following information:

- (1) the name of the Proposed Bank Transferee;
- (2) the purchase price proposed for the sale of the Lessee's Rights to the Proposed Bank Transferee;
- (3) the method of paying the purchase price;
- (4) the amount of any earnest money deposit(s);
- (5) the time and location for the close of escrow; and
- (6) the other material terms and conditions of the proposed sale of Lessee's Rights.

Ground Lessor will have until 5:00 p.m. on the 30th calendar day following receipt of the such Offer from Bank as set forth above to accept or reject the Offer (the "Acceptance Period"), and if Ground Lessor

accepts the Offer, Ground Lessor must thereafter close escrow upon the terms set forth in the Offer no later than the date and time set forth in the Offer. If Ground Lessor rejects the Offer or fails to accept the Offer prior to the expiration of the Acceptance Period, the Offer will be considered rejected unequivocally and unconditionally, and the Bank may sell the Lessee's Rights to a Bank Transferee otherwise acceptable pursuant to Section 9.2(a) above, on substantially similar terms and conditions as set forth in the Offer. If the Ground Lessor rejects or fails to accept the Offer, or if Ground Lessor accepts the Offer and fails to timely close the purchase of the Lessee's Rights from Bank upon the terms set forth in the Offer, then Lender will have no further obligations under this Section 9.2(c).

9.3 Borrower's Termination of Ground Lease. Notwithstanding anything in the Ground Lease to the contrary, Borrower shall not have the right to voluntarily terminate, allow termination of, or consent to termination of the Ground Lease for any reason whatsoever, without the prior written consent of Bank. Ground Lessor understands that Bank would not have entered into the Credit Documents or issue the Letter of Credit without Borrower's agreement set forth in the foregoing sentence, and therefore if Borrower attempts to effect such a termination in violation of Borrower's agreement contained in Section 9.2, Ground Lessor shall not accept or allow any such voluntary termination, or consent to any such termination, of the Ground Lease without the prior written consent of Bank.

10. Bank Not Obligated. Bank, if it becomes the Purchaser or if it takes possession under the Deed of Trust, and any other Purchaser, shall not (a) be liable for any damages or other relief attributable to any act or omission of any prior lessee under the Ground Lease including Borrower (excepting the cure of existing defaults under the Ground Lease to the extent that such Purchaser has knowledge of such defaults); or (b) be bound by any modification or amendment of or to the Ground Lease unless the amendment or modification shall have been approved in writing by Bank.

11. Mortgagee Protection Provisions. Bank shall be deemed to be a third party beneficiary of the Ground Lease with respect to any and all provisions of the Ground Lease which benefit a lender ("**Mortgagee Protection Provisions**"). Upon Bank's succession to the interest of ground lessee under the Ground Lease, all of Ground Lessor's representations and warranties under the Lease shall be deemed remade by Ground Lessor to Bank as of the applicable date, except as they may be modified at that time to reflect any change in factual circumstances. This section is intended to supplement and not to limit any Mortgagee Protection Provisions in the Lease.

12. Insurance and Condemnation Provisions. Notwithstanding anything to the contrary in the Ground Lease, in the event of any damage to or destruction of the Property or any portion thereof or interest therein, upon the request of Bank, the proceeds of Borrower's insurance shall be deposited with Bank and shall be applied in accordance with the applicable provisions of the Bank's Deed of Trust. It is understood and acknowledged that the failure to apply the insurance proceeds to repair and reconstruction of the Property shall not limit, restrict or in any way waive Borrower's obligation to repair and reconstruct the Property following an event of damage and destruction as more specifically provided in the Ground Lease. Notwithstanding anything to the contrary in the Ground Lease, in the event of any condemnation of the Property, or any portion thereof or any interest therein, upon the request of Bank, the proceeds of the condemnation award shall be deposited with Bank, who shall act as the apportion and apply the condemnation proceeds in accordance with the terms of the Ground Lease. Ground Lessor acknowledges that, except as otherwise provided in the Ground Lease, Borrower's interest in its portion of any condemnation proceeds to which it is entitled under the Ground Lease shall be applied in accordance with the applicable provisions of the Deed of Trust and the Loan Documents. Nothing herein shall be construed to effect, in any way, any separate insurance or condemnation proceeds payable to Ground Lessor based upon Ground

Lessor's fee interest in the Property, or otherwise separate insurance or condemnation proceeds from those proceeds attributable to Borrower's leasehold estate in the Property and interest in the Improvements.

13. Ground Lessor's Covenants. Ground Lessor agrees that during the term of the Ground Lease, without Bank's prior written consent, Ground Lessor shall not:

13.1 cancel, terminate, or surrender the Ground Lease, except at the normal expiration of the Ground Lease term or as provided in **Section 6** above; or

13.2 enter into any amendment, modification, or other agreement materially affecting the Ground Lease; or

13.3 consent to any sale, assignment, or transfer of any interest in the Ground Lease by Borrower without the prior written consent of Bank; or

13.4 further encumber the Property in any manner which would constitute a priority interest over Bank's interest in the Property unless Ground Lessor delivers to Bank a copy thereof and a subordination agreement in recordable form and otherwise in form and substance acceptable to Bank which subordinates said encumbrance to the Ground Lease and Bank's Deed of Trust.

14. Ground Lessor's Estoppel Certificate.

14.1 True and Complete Ground Lease. Ground Lessor represents and warrants to Bank that **Exhibit B** accurately identifies the Ground Lease and all amendments, supplements, side letters and other agreements and memoranda pertaining to the Ground Lease, the leasehold estate and/or the Property.

14.2 No Default. As of the date of this Agreement, Ground Lessor represents and warrants that to the best of Ground Lessor's knowledge there exist no events of default or events that with notice or the passage of time or both would be events of default under the Ground Lease on either the Ground Lessor's part or the Borrower's. Ground Lessor represents and warrants that the Ground Lease is in full force and effect as of the date of this Agreement.

14.3 No Other Leases. To the best of Ground Lessor's knowledge and belief, as of the date of this Agreement, there are no leases, options or other agreements regarding transfer of any interest in, or otherwise materially affecting the Property other than the Ground Lease.

14.4 No Advance Payments. No rent or other sums payable under the Lease have been paid in advance. No adjustment or credit is allowed or contemplated.

14.5 No Prior Assignments. Ground Lessor has not received notice of any prior assignment, hypothecation or pledge of Borrower's interest in the Lease.

14.6 No Pending Litigation/Violations. Ground Lessor has not received notice of any litigation pending, proposed or threatened against or in connection with the Property or the Ground Lease. Ground Lessor has not sent, or to the best of Ground Lessor's knowledge and belief, received any written notice that the Property, or any part thereof, is in violation of any laws, ordinances or regulations which could materially affect any of Borrower's rights or materially increase any of Borrower's obligations under the Ground Lease.

14.7 Hazardous Substances. Ground Lessor represents and warrants that it has not used, generated, released, discharged, stored or disposed of any Hazardous Substances on, under, in or about the Property other than Hazardous Substances used in the ordinary and commercially reasonable course of Ground Lessor's business in compliance with all applicable laws. Except for such legal and commercially reasonable use by Ground Lessor, Ground Lessor has no actual knowledge that any Hazardous Substance is present or has been used, generated, released, discharged, stored or disposed of by any party on, under, in or about the Property. As used herein "Hazardous Substance" means any substance, material or waste (including petroleum and petroleum products), which is designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is similarly designated, classified or regulated under any federal, state or local law, regulation or ordinance.

15. Integration; Etc. This Agreement integrates all of the terms and conditions of the parties' agreement regarding the Ground Lessor's consent to the Ground Lease, attornment, nondisturbance, and the other matters contained herein. This Agreement supersedes and cancels all oral negotiations and prior and other writings with respect to such attornment, non-disturbance and other matters contained herein. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including the Ground Lease, the terms, conditions and provisions of this Agreement shall prevail. This Agreement may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest. This Agreement may be executed in counterparts, each of which is an original but all of which shall constitute one and the same instrument.

16. Bankruptcy Considerations. As used in this Agreement, the "Bankruptcy Code" shall mean 11 U.S.C. §§ 101 et seq., as modified and/or recodified from time to time. Notwithstanding anything to the contrary contained herein with respect to the Ground Lease:

16.1 Ground Lessor understands and acknowledges that (i) the Borrower's leasehold interest under the Lease and the leasehold improvements will serve as a portion of the Banks primary collateral security for the Reimbursement Agreement; (ii) the Bank is relying on obtaining a first position lien on the leasehold estate and the ability to obtain the benefit of the full leasehold term in the event Bank must exercise its rights to its collateral security; (iii) it is the intention and agreement of the Ground Lessor to allow Bank to realize upon the Ground Lease as collateral security for the Loan, to allow Bank notice and the opportunity to cure any default under the Ground Lease before exercising any rights to terminate the Ground Lease as described in **Section 6** above, and to allow Bank to obtain the benefit of the full leasehold term so long as Bank cures any defaults as described in **Section 6** above; and (iii) but for the provisions contained in this Section, Bank would not have entered into the Reimbursement Agreement with Borrower.

16.2 Ground Lessor agrees that it shall not reject the Ground Lease and/or treat the Ground Lease as terminated by any election made under Section 365(h) of the Bankruptcy Code of 1978 or under any similar law or right of any nature. Notwithstanding the foregoing, in the event that the Ground Lease is treated as terminated by any election made under Section 365(h) of the Bankruptcy Code of 1978 or under any similar law or right of any nature, Ground Lessor (i) agrees and acknowledges that the pursuant to Section 365(h)(1)(A)(ii) of the Bankruptcy Code of 1978 or under any similar law or right of any nature, the Borrower's rights under the Ground Lease shall not be terminated unless and until (1) an event has occurred under the lease which would allow termination by Ground Lessor, and (2) Bank shall have been given notice and the right to cure any such default as set forth in **Section 6** above, and Bank shall have failed to cure any such default within the time for cure set forth in that section. In the event the Ground Lease is terminated in violation of the terms hereof, whether by voluntary act of the Ground Lessor, by operation of law, or otherwise, upon Bank's request, Ground Lessor agrees to promptly enter into a new ground lease (a "**Replacement Ground Lease**") directly with Bank for the remainder of the term set forth in the current Ground Lease and

upon the same terms and conditions as the current Ground Lease; provided, however, that Bank shall cure all monetary and non-monetary defaults under the Ground Lease within the time frames set forth in Section 6 above. It is the specific intention of the parties that the Bank shall be allowed to have the benefits of the Ground Lease notwithstanding any election made Section 365(h) of the Bankruptcy Code of 1978 or under any similar law or right of any nature.

16.3 Ground Lessor understands and acknowledges that the lien of the Deed of Trust attaches to all of Borrower's rights under Subsection 365(h) of the Bankruptcy Code. Ground Lessor agrees that it shall not acquiesce in any attempted rejection or termination by the Borrower, without the Bank's prior written consent.

17. Non-Merger of Leasehold. There shall be no merger of the Ground Lease or of the leasehold estate with the fee estate in the Property or any part thereof, by reason of the fact that the same person may acquire or hold, directly or indirectly the Ground Lease or any leasehold estate created or any interest in the Ground Lease or in such leasehold estate and the fee estate in the Property or any interest in such fee estate.

18. Notices. All notices given under this Agreement shall be in writing and be given by personal delivery, overnight receipted courier (such as UPS or Federal Express) or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below its signature. Notices shall be effective upon the first to occur of receipt, when proper delivery is refused, or the expiration of forty-eight (48) hours after deposit in registered or certified United States mail as described above. Addresses for notice may be changed by any party by notice to any other party in accordance with this Section.

19. Attorneys' Fees. If any lawsuit or arbitration is commenced which arises out of or relates to this Agreement, the prevailing party shall be entitled to recover from each other party such sums as the court or arbitrator may adjudge to be reasonable attorneys' fees, including the costs for any legal services by in-house counsel, in addition to costs and expenses otherwise allowed by law.

20. Counterparts; Facsimile Signatures. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The parties may use facsimile signatures which shall have the same legal import and effect as manually subscribed signatures.

21. Miscellaneous Provisions. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Agreement is governed by the applicable laws of the State of Arizona where the Property is located without regard to the choice of law rules of that State. This Agreement satisfies any condition or requirement in the Ground Lease relating to the consent required from the Ground Lessor to the Reimbursement Agreement or Deed of Trust. As used herein, the word "include(s)" means "include(s) without limitation," and the word "including" means "including but not limited to." Bank, at its sole discretion, may but shall not be obligated to record this Agreement.

22. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, EACH PARTY HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY OR OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION BASED UPON OR ARISING UNDER THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DISCUSSIONS, DEALINGS, OR ACTIONS OF SUCH PARTIES OR EITHER OF THEM (WHETHER ORAL OR WRITTEN) WITH RESPECT THERETO, OR TO THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREINAFTER ARISING, AT LAW

OR IN EQUITY, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY HEREBY CONSENTS AND AGREES THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY A TRIAL COURT WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY HEREOF WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF THIS AGREEMENT AND EACH OTHER DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK IN MAKING THE LOAN. EACH PARTY FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

23. Conflicts of Interest. The Ground Lessor may terminate this Agreement pursuant to A.R.S. §38-511. No officer or employee of either party shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, that is prohibited by law.

24. Nonliability of Ground Lessor Officials and Employees. No official, employee, or representative of Ground Lessor shall be personally liable to any party, or to any successor in interest to any party, in the event of any breach or default by Ground Lessee, Bank or any permitted transferee, or for any amount which may become due, or with respect to any obligation of Bank or Ground Lessee, or otherwise under the terms of or related to this Agreement or the Ground Lease.

25. Non-Waiver of Liability. The Ground Lessor as a public entity supported by public funds, may not waive any lawful or legitimate right to recover monies lawfully due. In the event Bank is the Purchaser by virtue of a Foreclosure Transfer, for the period of time that Bank has ownership of the Lessee's Rights, Bank acknowledges and agrees that, except as otherwise set forth herein, thereafter it shall not demand any limitation on the part of Ground Lessor to limit or waive any right the Ground Lessor may have in law or in equity, to recover damages in any applicable jurisdiction.

26. Severability. Any term or provision of this Agreement which now or hereafter is declared contrary to any law, regulation, ordinance or requirement of any governmental authority, whether now in force or enacted in the future, or which is otherwise invalid, shall be deemed stricken from this Agreement, and shall not impair or invalidate the remaining portion of the applicable provision or the remainder of this Agreement.

NOTICE: THIS AGREEMENT CONTAINS PROVISIONS WHICH ALLOW THE PERSON OBLIGATED ON YOUR LEASE TO OBTAIN A LOAN OR OTHER CREDIT FACILITY, A PORTION OF WHICH MAY BE EXPENDED FOR PURPOSES OTHER THAN IMPROVEMENT OF THE PROPERTY.

"BANK"

U.S. BANK NATIONAL ASSOCIATION,
a national banking association

Address for notices to Bank:

U.S. Bank National Association
MK-WI-JSN
777 E. Wisconsin Avenue
Milwaukee, WI 53202
Attention: James S. Newgard

By: James S. Newgard
Name: James S. Newgard
Title: Vice President

STATE OF Wisconsin)
County of Milwaukee) ss.

On this 12 day of September, 2011, before me, Laura K. Hayek, a Notary Public in and for said State, personally appeared James S. Newgard, the Vice President of US Bank NA, personally known or me or proved to me on basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



Laura K. Hayek

**EXHIBIT A
PROPERTY DESCRIPTION**

That part of the Southeast quarter of Section 10, Township 1 South, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the East quarter corner of said Section 10;

Thence North 89 degrees 52 minutes 30 seconds West along the mid-section line and Western Canal South right-of-way line 55 feet to a point on the West right-of-way line of Rural Road and the True Point of Beginning;

Thence continuing North 89 degrees 52 minutes 30 seconds West along the mid-section line and Western Canal South right-of-way line 327.00 feet;

Thence South 00 degrees 03 minutes 00 seconds East parallel with the East line of the said Southeast quarter 287.59 feet to a point on the North right-of-way line of Divot Drive;

Thence South 89 degrees 43 minutes 50 seconds East along said North right-of-way line 327.00 feet to a point on the West right-of-way line of Rural Road;

Thence North 00 degrees 03 minutes 00 seconds West along said West right-of-way line and being parallel with the East line of the said Southeast quarter 288.41 feet to the Point of Beginning.

Street Address of Property

7070 S. Rural Road
Tempe, AZ 85283-4700

Exhibit A to Ground Lessor's Consent Agreement

YMCA XIV_GCA_GROUND LESSOR'S CONSENT AGR_AZ
#041111V2F (REV. 08/25/11)

BORROWER: VALLEY OF THE SUN YMCA
TEMPE PROPERTY

**EXHIBIT B
IDENTIFY LEASE AND LIST ALL AMENDMENTS
AND SUPPLEMENTS**

1. Lease Agreement #1600 dated September 26, 1983 (unrecorded).
2. Amendment to Lease (contract no. 89-56) dated March 29, 1989 (unrecorded).
3. Memorandum of Lease dated as of November 15, 2010 and recorded December 30, 2010 as Document 20101142297 in the Office of the Maricopa County Recorder.
4. Amendment No. 2 to Lease Agreement dated _____, 2011.
5. Memorandum of Amendment to Lease Agreement dated as of _____, 2011 and recorded _____, 2011 as Document _____ in the Office of the Maricopa County Recorder.
6. This Ground Lessor's Consent Agreement dated as of _____, 2011 and recorded _____, 2011 as Document _____ in the Office of the Maricopa County Recorder.

Exhibit B to the Ground Lessor's Consent Agreement

YMCA XIV_GCA_GROUND LESSOR'S CONSENT AGR_AZ
#041111V2F (REV. 08/25/11)

BORROWER: VALLEY OF THE SUN YMCA
TEMPE PROPERTY