

AMENDMENT NO. 3
TO LEASE AGREEMENT
[C2016-___]

This Amendment No. 3 to Lease Agreement (“**Amendment**”) is made and entered into as of the ___ day of **February, 2016**, by and between the **CITY OF TEMPE**, an Arizona municipal corporation (“**City**” or “**Lessor**”), and **VALLEY OF THE SUN YOUNG MEN’S CHRISTIAN ASSOCIATION**, a non-profit Arizona corporation, formerly known as Young Men’s Christian Association of Phoenix and Valley of the Sun (“**YMCA**” or “**Lessee**”).

RECITALS

A. The parties entered into that certain Lease Agreement for the real property located at 7070 South Rural Road, Tempe, Arizona (the “**Property**”), on or about **September 26, 1983**, as amended on **March 29, 1989** (Contract No. **89-56**) and further amended on **September 22, 2011** (Contract No. **2011-140**) by that certain Amendment No. 2 to Lease Agreement (the “**Second Amendment**”) (the original Lease Agreement, collectively with such amendments, this Amendment and any subsequent amendment or addendum, the “**Lease**”) for the purposes of constructing and operating a multi-purpose YMCA branch facility (the “**Facility**”) for the enhancement of the community and the promotion of the health, education and welfare of the residents of the City, and have found the result to be mutually beneficial to YMCA and to the City. A Memorandum of Lease was recorded **December 30, 2010** as Instrument 20101142297 in the office of the Maricopa County Recorder.

B. The Second Amendment refers to specific financing that had been extended to Lessee by U.S. Bank National Association (“**US Bank**”), which financing is now being replaced with new financing being extended to Lessee by **KS STATEBANK**, a Kansas banking institution (the “**Bank**”). The parties desire to amend and conform the Lease in order to take into account such new financing.

C. Specifically, the Bank is extending one or more loans in the aggregate original principal amount of Eighteen Million Two Hundred Fifty Thousand and 00/100 United States Dollars (**US\$18,250,000.00**) (collectively, the “**Loan**”) to Lessee pursuant to that certain Loan and Security Agreement between by Lessee, as “**Borrower**,” and Bank dated as of **February __, 2016** (as amended, restated, renewed, replaced, supplemented, or otherwise modified, the “**Loan Agreement**”).

D. The obligations of YMCA to the Bank under the Loan Agreement, including without limitation all obligations to repay the Loan, pay fees, and reimburse costs and expenses are secured by the Security Documents (as such term is defined in the Loan Agreement), which includes a Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (as amended, restated, renewed, replaced, supplemented, or otherwise modified, the “**Deed of Trust**”) encumbering the “**Lessee’s Rights**” of YMCA in the Property. The term “**Lessee’s Rights**” herein means all of the YMCA’s right, title, and interest under the Lease, including all possessory rights in the Property and all rights and interests of the YMCA in all improvements now existing or hereafter located on the Property (the “**Improvements**”). The Loan Agreement, the Deed of Trust and other Security Documents, and all other documents and

instruments identified in the Loan Agreement as the Loan Documents are collectively referred to herein as the “**Credit Documents.**”

E. It is a requirement of the Loan Agreement that the City consent to the lien of the Deed of Trust and assignment of YMCA’s rights under the Lease pursuant thereto, and agree to the terms and conditions of a separate Ground Lessor’s Consent Agreement (the “**Consent Agreement**”), which is being executed contemporaneously with this Amendment by the City, YMCA, and Bank, and to certain rights of Bank contained therein in the event of a breach of, non-compliance with, or any other manner of default by YMCA under the Lease.

F. The parties intend that the following shall be integrated into the Lease and that this Amendment be given the full force and effect of law as a part of the Lease.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Recitals set forth in this Amendment, including all defined terms, are hereby incorporated into the Lease.
2. Modifications to Second Amendment. The Second Amendment is hereby amended **(i)** to delete **Recitals B, C, D and E**, which shall have no further force or effect (having been replaced by the information set forth in **Recitals C, D and E** of this Amendment); and **(ii)** all references in the Second Amendment, including any references in sections of the Lease itself as amended or added by the Second Amendment, to **(a)** “**Bank**” shall mean and refer to the Bank as defined in **Recital B** above; **(b)** the “**Deed of Trust**” shall mean and refer to the Deed of Trust as defined in **Recital D** above; **(c)** the “**Credit Documents**” shall mean and refer to the Credit Documents as defined in **Recital D** above; and **(d)** the “**Consent Agreement**” shall mean and refer to the Consent Agreement as defined in **Recital E** above.
3. Effect as an Amendment. Except as specifically amended hereby, the remaining terms and provisions of the Lease, as previously amended, shall remain in full force and effect and are hereby ratified and affirmed. The sole purpose of this Amendment is to reflect the new financing obtained by Lessee, and to vest in KS StateBank all of the rights, powers, and privileges previously held by U.S. Bank under and pursuant to the Second Amendment.

[Signatures appear on the following page.]

Agreed to this ____ of **February, 2016**, by and between:

Valley of the Sun Young Men's Christian Association, an Arizona non-profit corporation, formerly known as Young Men's Christian Association of Phoenix and Valley of the Sun:

By: _____

Name:

Title:

CITY OF TEMPE, an Arizona municipal corporation

Signature:

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney