

REQUEST FOR BONDHOLDER VOTE

Regarding the Sale of the YMCA Building

**City of Topeka, Kansas
Economic Development Refunding Revenue Bonds
Series 2011A (YMCA Project)
CUSIPs: 890574AT3, 890574AU0, 890574AW6, 890574AX4
(Collectively, the “Bonds”)**

Voting Record Date: July 22, 2024

Expiration Date: 5:00 PM (Central Time) on August 16, 2024, unless extended.

BACKGROUND

Throughout 2023, CoreFirst Bank & Trust as Trustee (“Trustee”) under the Trust Indenture (“Indenture”) dated as of September 1, 2011, between the Trustee and the City of Topeka, Kansas, authorizing the Issuance of the Economic Development Refunding Revenue Bonds Series 2011A (YMCA Project) in the maximum amount of \$7,055,00 (the “Series 2011A Bonds”) marketed the real property that was subject to the lease upon which payment of the Indenture is based. On March 1, 2024, the Trustee filed a Petition for Declaratory Judgment with the District Court for Shawnee County, Kansas, seeking permission to sell the real property on the terms specified in the Petition for Declaratory Judgment. The lessee, The Young Men’s Christian Association of Topeka, Kansas (“YMCA”), rejected efforts to conduct a ballot of the bondholders, and instead filed an Answer and a Motion for Judgment on the Pleadings. The Trustee has responded to the Motion for Judgment on the Pleadings. The YMCA has until July 19, 2024, to file a reply. The matter is set for a hearing at 9:00am on August 27, 2024, in Division 6, at the Shawnee County Courthouse, 200 SE 7th, Topeka, Kansas.

At this time, the Trustee believes that a ballot of the bondholders should commence.

The ballot results will be filed with the District Court for Shawnee County, Kansas.

For background purposes, the Trustee is including:

1. The Petition for Declaratory Relief by the Trustee;
2. The Answer filed by the YMCA;
3. The Motion for Judgment on the Pleadings by the YMCA;
4. The Response to the Motion for Judgment on the Pleadings by the YMCA; and
5. The Notice of Hearing.

How to Vote

Any Bondholder wishing to provide their vote may direct their respective direct or indirect custodial representative (each, a “DTC Participant”) to execute a Master Ballot (forms of which are being provided separately to the DTC Participants by the Information and Tabulation Agent) on such Bondholder’s behalf and cause such Master Ballot to be delivered to the Information and Tabulation Agent no later than the Expiration Date.

Each DTC Participant has been authorized, by DTC’s Omnibus Proxy from DTC, to provide their client’s instruction to approve or reject with respect to the CUSIP number(s) and principal amount of the Bonds specified at such DTC Participants’ name in such Omnibus Proxy or DTC Security Position Report as of the Record Date (July 17, 2024), and constituting the principal amount of the Bonds shown as custodied by such DTC Participant on the books of DTC as of the Record Date.

The Information and Tabulation Agent will accept and record only properly executed Master Ballots from those parties listed as a holder (generally, the DTC Participants) in the Omnibus Proxy or DTC Security Position Report as of the Record Date. If DTC or its nominee has authorized a proxy (a DTC Participant) to execute a Master Ballot form, then the Master Ballot form must be executed by the applicable DTC Participant. If any of the Bonds are not held by DTC or a DTC Participant, then the Master Ballot must be executed in the name of the Bondholder. However, it is believed that all the Bonds are held by DTC or a DTC Participant.

The Bondholders’ respective DTC Participant should deliver the executed Master Ballot to the Information and Tabulation Agent no later than the Expiration Date (or such later date to which the Information and Tabulation Agent, in its sole discretion, may extend such expiration), via e-mail to the following:

Globic Advisors
Attn: Robert Stevens
485 Madison Ave, 7th Floor, New York, NY 10022
Telephone: (212) 227-9622
Document Site: www.globic.com/ymcatopeka
Email: rstevens@globic.com

All properly executed Master Ballots will become irrevocable upon acceptance by the Information and Tabulation Agent.

Questions regarding the processing of your vote may be directed to Robert Stevens at 212-227-9622 or via e-mail at rstevens@globic.com. In order to ensure a timely response, all questions or requests for additional information must be received by the Information and Tabulation Agent no later than 5:00 pm EST on August 16, 2024.

The Trustee expressly reserves the right to extend the Expiration Date, from time to time, for such period(s) as it may determine in its sole discretion. The vote may also be terminated by the Trustee, in its sole discretion, at any time prior to the Expiration Date.

If this Request for Bondholder Vote are modified prior to the Expiration Date in a manner determined by the Trustee to constitute a material change to the terms of the vote, the Trustee will promptly disseminate additional materials and, if necessary, in the Trustee's sole discretion, extend the Expiration Date.

Any such amendment or termination of the Request for Bondholder Vote change to the Record Date, or extension of the Expiration Date will be followed as promptly as practicable by written notice made available to the Bondholders on EMMA.

ALL OF THE INFORMATION, TERMS AND CONDITIONS RELATING TO THE REQUEST FOR BONDHOLDER VOTE ARE SET FORTH IN THIS REQUEST FOR BONDHOLDER VOTE. YOU SHOULD READ THE DOCUMENT THOROUGHLY IN ORDER TO MAKE AN INFORMED DECISION REGARDING YOUR VOTE.

Neither the Master Trustee nor the Information and Tabulation Agent, makes any recommendation as to whether the Bondholders should provide their approval or rejection. Each Bondholder must make its own decision as to whether or not to vote.

Nothing in this Request for Bondholder Vote constitutes or pertains to an offer to purchase or sell any of the Bonds.

Dated: July 22, 2024

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

COREFIRST BANK & TRUST, as Trustee,)	
)	
Plaintiff,)	Case No. 2024-CV-_____
)	Div. ____
v.)	
)	
BONDHOLDERS 1-100, and THE YOUNG)	
MEN’S CHRISTIAN ASSOCIATION OF)	
TOPEKA, KANSAS,)	
)	Title to Real Estate Involved
)	
Defendants.)	
)	

(Pursuant to K.S.A. Ch. 60)

PETITION FOR DECLARATORY JUDGMENT

COMES NOW plaintiff CoreFirst Bank & Trust as Trustee (“Trustee”) under the Trust Indenture (“Indenture”) dated as of September 1, 2011, between the Trustee and the City of Topeka, Kansas, authorizing the Issuance of the Economic Development Refunding Revenue Bonds Series 2011A (YMCA Project) in the maximum amount of \$7,055,00 (the “Series 2011A Bonds”), and for its petition for declaratory judgment pursuant to KSA 60-1701 et seq., states as follows:

1. Trustee is, and at all times mentioned herein was, a state banking organization with Trust Powers duly authorized and existing under the laws of the state of Kansas, with its principal place of business located at 3035 S Topeka Blvd., Topeka, Kansas, 66611.
2. All the names and capacities of Bondholders whether individual, corporate, associate or otherwise are unknown to Trustee at this time, and accordingly it files this lawsuit in this manner. Upon the filing of the petition, Trustee will have the Bondholders determined as of the

date of the filing of the petition. Trustee will amend its petition when the true names and capacities of the Bondholders, or their agents, have been ascertained.

3. Defendant The Young Men’s Christian Association of Topeka, Kansas is a Kansas corporation that may be served at 3635 SW Chelsea Drive, Topeka, Kansas, 66614.

4. Payment of the Indenture was based on a certain Lease (“Lease”) between the City of Topeka, Kansas and The Young Men’s Christian Association of Topeka, Kansas (“YMCA”).

5. By the spring of 2020, the YMCA was in default under the Lease and the Indenture was in default. A copy of the Indenture is attached hereto as Exhibit A.

6 In May of 2020, pursuant to the direction of over 25% of the bondholders, the Trustee gave notice of an event of default to the YMCA and gave notice to the YMCA that the Trustee would proceed to enforce the rights and remedies granted the Trustee under the Indenture.

7. Subsequently, on May 20, 2020, the YMCA filed a petition for relief under Subchapter V of Chapter 11 of the United States Bankruptcy Code. The case was dismissed on November 3, 2021, and the Subchapter V Trustee was dismissed on February 1, 2022

8. After the dismissal of the bankruptcy case, the Lease was terminated pursuant to an agreement between the YMCA and the Trustee, and the Trustee proceeded to attempt to sell the real estate (“Real Estate”) subject to the Lease

9. The trustee had an appraisal for the Real Estate completed in the summer of 2022. The appraisal, effective June 30, 2022, opined a value of \$1,840,000.00.

10. The Trustee subsequently engaged two separate real estate brokers to market and sell the Real Estate. The first broker was Kansas Commercial Real Estate Services, Inc. (“KS Commercial”). The Trustee’s agreement with KS Commercial lasted from August 2022 to February of 2023. During this time, the highest offer submitted was \$825,000.00.

11. Upon the expiration of the agreement with KS Commercial, the Trustee entered into a sales listing agreement with CBRE, Inc. (“CBRE”). This agreement started in February of 2023 and has been extended under a 2nd extension agreement to August 12, 2024.
12. In the fall of 2023, CBRE informed parties who had shown interest in the Real Estate to submit their highest and best offers by December 1, 2023.
13. As of the December 1, 2023 deadline, two parties had submitted offers. The first offer was from Darling Basketball Academy Youth Foundation, for \$650,000.00. The second offer was from the YMCA for \$825,000.00. Both Darling Basketball Academy Youth Foundation and the YMCA are prepared to close upon acceptance of their respective offers.
14. On February 21, 2024, the Trustee received notice from CBRE that another party, Huston Properties, LLC, had made an offer for \$900,000. This offer is contingent on a 90-day due diligence period, which can be unilaterally extended for thirty (30) days, and on obtaining financing for the purchase price and expected capital improvements. The offer was terminable at will during the due diligence period. The principal of Huston Properties, LLC had been previously informed of the December 1, 2023, deadline and had not submitted an offer. The language of the offer stated that it expired on February 28, 2024.
15. Pursuant to KSA 16-1701, et seq., and in particular, KSA 60-1706(b), the Trustee seeks a Declaratory Judgment directing it to sell the Real Estate to the YMCA or any other person or entity for a gross sales price of \$825,000.00 or more.

WHEREFORE, the Trustee respectfully requests a Declaratory Judgment directing it to sell the Real Estate to the YMCA or any other person or entity for a gross sales price of \$825,000.00 or more, and for such other and further relief as may be just and proper under Article 17 of Chapter 60 of the Kansas Statutes Annotated.

Respectfully submitted,

/s/ R. Patrick Riordan

R. Patrick Riordan, #15518

RIORDAN, FINCHER

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Attorneys for plaintiff

CITY OF TOPEKA
Contract No. 41530

260811 F

THE CITY OF TOPEKA, KANSAS

AS ISSUER

AND

COREFIRST BANK & TRUST
TOPEKA, KANSAS

AS TRUSTEE

TRUST INDENTURE

DATED AS OF SEPTEMBER 1, 2011

\$7,055,000
ECONOMIC DEVELOPMENT REFUNDING REVENUE BONDS
SERIES 2011A
(YMCA PROJECT)

EXHIBIT A

TRUST INDENTURE

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TRUST INDENTURE

THIS TRUST INDENTURE, dated as of the 1st day of September, 2011, (the “Indenture”) between the **CITY OF TOPEKA**, a municipal corporation duly organized and existing under the laws of the State of Kansas, (the “Issuer”) and **COREFIRST BANK & TRUST, TOPEKA, KANSAS**, a banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under and by virtue of the laws of the State of Kansas, with its principal office located in the City of Topeka, Kansas, as trustee (the “Trustee”);

WITNESSETH:

WHEREAS, the Issuer is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended, (the “Act”) to acquire, construct, improve and equip certain facilities (as defined in the Act) for the promotion and advancement of physical and mental health, commercial, industrial, manufacturing and recreational purposes, and to enter into leases and lease-purchase agreements with any person, firm or corporation for said facilities, and to issue revenue bonds for the purpose of both paying the cost of any such facilities and refunding any previous issue or issues of such revenue bonds as are outstanding; and

WHEREAS, pursuant to such authorization, the Issuer’s Governing Body adopted an Ordinance on August 16, 2011, authorizing the Issuer to issue its Economic Development Refunding Revenue Bonds, Series 2011A (YMCA Project), in the maximum principal amount of \$7,055,000 (the “Series 2011A Bonds”), for the purpose of currently refunding and redeeming the Issuer’s outstanding Economic Development Revenue Bonds, Series 2000A, (YMCA Project) dated August 1, 2000, maturing and/or payable on and after September 1, 2012, (i.e., \$7,105,000) (the “Refunded Bonds”) which were issued to (1) finance the construction, furnishing and equipping of a new 38,000 square foot recreational health center at S.W. 37th and Chelsea in the City of Topeka, Kansas, (2) fund a deposit to a debt service reserve fund for the Refunded Bonds, and (3) pay certain expenses in relation to the issuance of the Refunded Bonds (the “Project,” as hereinafter more fully described), and authorizing the Issuer to lease the Project to the Young Men’s Christian Association of Topeka, Kansas, a Kansas not-for-profit corporation (the “Association”); and

WHEREAS, pursuant to such Ordinance, the Issuer is authorized (i) to execute and deliver this Indenture for the purpose of issuing and securing the Series 2011A Bonds and any Additional Bonds (collectively the “Bonds”), as hereinafter provided, and (ii) to enter into a Lease of even date herewith (the “Lease”), between the Issuer and the Association, under which the Issuer shall continue to lease the Project to the Association, in consideration of rentals which are intended to be sufficient to provide for the payment of the principal of, premium, if any, and interest on the Bonds as the same become due; and

WHEREAS, all things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding limited obligations of the Issuer, and to constitute this Indenture a valid and legally binding pledge and assignment of the Trust Estate herein made for the security of the payment of the principal of, premium, if any, and

interest on the Bonds issued hereunder, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

GRANTING CLAUSES

That the Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on all of the Bonds issued and outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign unto the Trustee and its successors and assigns forever, the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the "Trust Estate"), to wit:

(a) The real estate situated in Shawnee County, Kansas, described in Schedule I attached hereto and constituting a part of the Project as referred to in the recitals to this Indenture, together with all buildings, additions and improvements and machinery and equipment now or hereafter located thereon and purchased with the proceeds of the Bonds and with the tenements, hereditaments, appurtenances, rights, privileges and immunities thereunto belonging or appertaining.

(b) All right, title and interest of the Issuer in, to and under the Lease (except the Issuer's right to indemnity thereunder), and all rents, revenues and receipts derived by the Issuer from the Project including, without limitation, all Rental Payments derived by the Issuer under and pursuant to and subject to the provisions of the Lease (except for the rights of the Issuer to receive moneys for its own account under the Lease) and any payments made by the Association to meet the rebate requirements of Section 148(f) of the Code; provided that the pledge and assignment hereby made shall not impair or diminish the obligations of the Issuer under the provisions of the Lease.

(c) All moneys and securities (except rebatable arbitrage, whether or not held in the Rebate Fund) from time to time held by the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the Issuer or by anyone in its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned, or agreed or intended so to be, to the Trustee and its successors in trust and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of all Owners from time to time of the Bonds issued and Outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

PROVIDED, HOWEVER, that if the Issuer shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on all the Bonds, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, or shall provide for the payment thereof (as provided in **Article XIII** hereof), and shall pay or cause to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant with the Trustee and with the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to the words and terms defined elsewhere in this Indenture and the Lease, the following words and terms as used in this Indenture and the Lease shall have the following meanings, unless some other meaning is plainly intended:

“**Act**” means K.S.A. 12-1740 to 12-1749d, inclusive, as amended.

“**Additional Bonds**” means any Bonds issued in addition to the Series 2011A Bonds pursuant to **Section 209** of this Indenture.

“**Additional Indebtedness**” means any Indebtedness incurred or assumed by the Association subsequent to the date this Indenture and the Lease are executed and delivered.

“**Additional Rent**” means all fees, charges and expenses of the Trustee; all Impositions; all amounts required under **Article IV** of the Lease; all other payments of whatever nature which Association has agreed to pay or assume under the provisions of the Lease; and all expenses (including reasonable attorneys’ fees) incurred by the Issuer or the Trustee in connection with the enforcement of any rights under this Indenture or the Lease. The fees, charges and expenses of the Trustee shall include all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds except (a) the reasonable fees and expenses in

connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed or (b) any tax or other government charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds.

“Affiliate” means any corporation (whether for-profit or not-for-profit), partnership or association which “controls,” or is “controlled” by, or is under common “control” with, the Association. For purposes of this definition, an entity “controls” another entity when the first entity possesses or exercises directly, or indirectly through one or more other affiliates or related entities, not less than 50% of the power to direct the management and policies of the other entity, whether through the ownership of voting rights, membership, the power to appoint members or directors, by contract or otherwise.

“Arbitrage Investment and Rebate Instructions” means the Arbitrage Investment and Rebate Instructions included in the Tax Compliance Agreement in the transcript of proceedings pertaining to the Series 2011A Bonds which Arbitrage Investment and Rebate Instructions contain direction regarding the investment of proceeds of the Tax-Exempt Bonds and the computation and payment of rebatable arbitrage under Section 148(f) of the Code.

“Association” shall mean the Young Men’s Christian Association of Topeka, Kansas, a Kansas not-for-profit corporation, and its successors and assigns and any surviving, resulting or transferee corporation as provided in **Section 5.12** of the Lease.

“Association Representative” shall mean the Chairman, any Vice Chairman, the President or Chief Executive Officer of the Association, or other person or persons at the time designated to act on behalf of the Association in matters relating to the Lease and this Indenture as evidenced by a written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person or persons and signed on behalf of the Association by its Chairman, any Vice Chairman, President or Chief Executive Officer. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Association Representative.

“Bankruptcy Code” means Title 11 of the United States Code, as amended.

“Basic Rent” means the monthly pro rata amount equal to the sum of one-sixth of the next maturing installment of interest on the Bonds plus one-twelfth of the next maturing principal of the Bonds which amount, when added to Basic Rent Credits, is sufficient to pay, on any Payment Date, all principal of, redemption premium, if any, and interest on the Bonds which is due and payable on such Payment Date.

“Basic Rent Credits” means all funds on deposit in the Principal and Interest Payment Account and available for the payment of principal of, redemption premium, if any, and interest on the Bonds on any Payment Date.

“Basic Term” means that term commencing as of the date of the Lease and ending on September 1, 2032 subject to prior termination as specified in the Lease, but to continue thereafter until all of the principal of, redemption premium, if any, and interest on all outstanding

Bonds shall have been paid in full or provision made for their payment in accordance with the provisions of the Indenture.

“Beneficial Owner” means any Owner of the Bonds and any other Person who, directly or indirectly has the investment power with respect to any of the Bonds.

“Bond Counsel” means the firm of Nichols and Wolfe Chartered, Topeka, Kansas, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to Trustee and Association.

“Bond Purchase Agreement” means the Bond Purchase Agreement among the Issuer, the Original Purchaser and the Association.

“Bond Register” means the registration books of the Issuer kept by the Trustee to evidence the registration and transfer of Bonds.

“Bond Registrar” means the Trustee when acting as such, and any other bank or trust company designated and at the time serving as bond registrar under this Indenture.

“Bondowner,” “Owner” or “Registered Owner” means the Person in whose name a Bond is registered on the Bond Register.

“Bonds” means the fully registered Series 2011A Bonds and any Additional Bonds authenticated and delivered under and pursuant to this Indenture.

“Bond Reserve Account” means the “City of Topeka, Kansas, Bond Reserve Account for Economic Development Refunding Revenue Bonds, Series 2011A (YMCA Project)” created pursuant to **Section 604** of this Indenture.

“Book Value” shall mean, when used in connection with Property of the Association, that value of such Property, net of accumulated depreciation, as it is carried on the books of account of the Association and in conformity with generally accepted accounting principles.

“Business Day” means a day which is not a Saturday, Sunday or any day designated as a holiday by the Congress of the United States or by the Legislature of the State and on which Banks in the State are not authorized to be closed.

“Capitalized Lease” means any lease of real or personal property that is capitalized on the balance sheet of the lessee under generally accepted accounting principles.

“Cede & Co.” means Cede & Co., as nominee name of The Depository Trust Company, New York, New York.

“Certificate of the Association Representative” means a written certificate signed by the Association Representative, which certificate shall be deemed to constitute a representation of, and shall be binding upon, the Association with respect to matters set forth therein.

“Change of Circumstances” means the occurrence of any of the following events:

- (1) title to, or the temporary use of, all or any part of the Project shall be condemned by any authority exercising the power of eminent domain;
- (2) the Project is damaged or destroyed, in whole or in part, by fire, theft or other casualty; or
- (3) as a result of changes in the Constitution of the State or of any legislative or administrative action by the State or any political subdivision thereof, or by the United States, or by reason of any action instituted in any court, the Lease or the Indenture shall become void or unenforceable, or impossible of performance without unreasonable delay, or in any other way, by reason of such changes of circumstances, unreasonable burdens or excessive liabilities are imposed upon Association.

“Closing Date” means the date upon which there is an exchange of the Bonds for the proceeds representing the purchase of the Bonds by the Original Purchaser.

“Code” means the Internal Revenue Code of 1986, as amended, together with the regulations promulgated thereunder by the United States Department of the Treasury.

“Commitment Indebtedness” means the obligation of any Person to repay amounts disbursed pursuant to a commitment from a credit provider to pay or refinance when due, or to purchase when tendered for purchase by the holder thereof, other Indebtedness of such Person, which other Indebtedness was incurred in accordance with the provisions of the Lease, and may include interest and any fees or costs, including costs of enforcement, indemnity, supplemental or other payments to such credit provider.

“Completion Indebtedness” means any additional Long-Term Indebtedness incurred by the Association for the purpose of financing, without materially changing the scope thereof, (a) the completion of facilities for which Long-Term Indebtedness has been incurred, or (b) the improvement, replacement or substitutions for, or additions to, facilities of the Association for which Long-Term Indebtedness has been incurred, necessitated by faulty design, damage to or destruction of such facilities, or required by enactment of legislation or the promulgation of any ruling affecting the operation of the Association by a government agency.

“Costs of Issuance” means any and all expenses of whatever nature incurred in connection with the issuance and sale of the Bonds, including but not limited to underwriting fees and expenses, underwriting discount, bond and other printing expenses, and legal fees and expenses of counsel.

“Current Value” means (a) with respect to Property, Plant and Equipment: (1) the aggregate fair market value of such Property, Plant and Equipment as reflected in the most recent written report of an appraiser acceptable to the Trustee and, in the case of real property, who is a member of the American Institute of Real Estate Appraisers (MAI), delivered to the Trustee (which report shall be dated not more than two years prior to the date as of which Current Value is to be calculated); plus (2) the Book Value of any Property, Plant and Equipment acquired

since the last such report; minus (3) the greater of the Book Value or the fair market value (as reflected in such most recent appraiser's report) of any Property, Plant and Equipment disposed of since the last such report, and (b) with respect to any other Property the fair market value of such Property as determined by a consultant not an employee of the Association.

“Debt Service” means, for the period of time for which calculated, the aggregate principal payments (whether at maturity or pursuant to sinking fund redemption requirements), interest payments and other payments required to be made during such period on the Series 2011A Bonds, any Additional Bonds, any Parity Indebtedness and other Outstanding Long-Term Indebtedness; provided, however, that for purposes of calculating such amount, principal and interest shall be excluded from the determination of Debt Service to the extent that such principal or interest is payable from an Irrevocable Deposit.

“Debt Service Reserve Requirement” means (a) with respect to the Series 2011A Bonds an amount equal to \$650,612.50 and (b) with respect to any Additional Bonds that are entitled to the benefit of the Bond Reserve Account, a sum equal to the maximum amount permitted by the Internal Revenue Code to be deposited from the proceeds of such Additional Bonds in a debt service reserve fund therefor without being subject to yield restriction under the Internal Revenue Code and without causing the interest on such Additional Bonds to be includable in gross income for federal income tax purposes; provided, however, that if the Trustee shall receive an Opinion of Bond Counsel to the effect that the Debt Service Reserve Requirement for the Bonds must be reduced in order that the amounts on deposit in the Bond Reserve Account may continue to be invested without yield restriction under the Internal Revenue Code, the Debt Service Reserve Requirement shall be reduced in conformity with said opinion.

“Default” means any event or condition the occurrence of which, with the lapse of time or the giving of notice or both, constitutes an Event of Default.

“Disclosure Agreement” means the Continuing Disclosure Agreement between the Trustee and the Association (as may be amended from time to time) to be delivered at the time of issuance and delivery of the Bonds, relating to certain matters within the scope of the SEC Rule, in accordance with its terms.

“Encumbrance” means any mortgage of, security interest in, deed of trust, lien, charge or encumbrance on, pledge of rights in or restrictions upon the use of Property.

“Event of Bankruptcy” means an event whereby the Association shall: (i) admit in writing its inability to pay its debts as they become due; or (ii) file a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Code as now or in the future amended, or file a pleading asking for such relief; or (iii) make an assignment for the benefit of creditors; or (iv) consent to the appointment of a trustee or receiver for all or a major portion of its property; or (v) be finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) suffer the entry of a final and nonappealable court order under any federal or state law appointing a receiver or trustee for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code which order, if the Association has not consented thereto, shall not be vacated,

denied, set aside or stayed within 91 days after the day of entry; or (vii) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 91 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside.

“Event of Default” means one of the following events:

- (a) Default in the due and punctual payment of any interest on any Bond;
- (b) Default in the due and punctual payment of the principal of or premium, if any, on any Bond on the stated maturity or accelerated maturity date thereof, or at the redemption date thereof;
- (c) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer in this Indenture or in the Bonds contained, and the continuance thereof for a period of 30 days after written notice thereof shall have been given to the Issuer and the Association by the Trustee, or to the Trustee, the Issuer and the Association by the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding; provided, however, if any default shall be such that it cannot be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer or the Association within such period and diligently pursued until such default is corrected; or
- (d) An “Event of Default” as set for the in **Section 8.1** of the Lease.

“Fiscal Year” means any period beginning on January 1 of any calendar year and ending on December 31 of the immediately following year or such other twelve month period selected by the Association as its fiscal year for financial reporting purposes.

“Government Securities” means direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Guaranties” means any obligations of the Association guaranteeing in any manner, whether directly or indirectly, any indebtedness or other obligation of any other Person which indebtedness or obligation would constitute Indebtedness if such Person were the Association.

“Guarantor” means the Association or that person or entity (whether one or more) who, or which, may execute and deliver the Guaranty Agreement subsequent to the date hereof.

“Guaranty Agreement” means the separate Guaranty Agreement dated as of September 1, 2011, of the Guarantor or Guarantors named therein and in favor of the Trustee for the benefit of the Bondowners, required pursuant to the provisions of this Indenture.

“Impositions” means all taxes and assessments, general and special, which may be lawfully taxed, charged levied, assessed or imposed upon or against or payable for or in respect of the Project or any part thereof, or any improvements at any time thereon or Association’s interest therein, including any new lawful taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all water and sewer charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would encumber Issuer’s title to the Project.

“Improvements” means the buildings, structures, facilities, machinery, equipment and any other property the acquisition of which was financed in whole or in part from the proceeds of the Refunded Bonds and more specifically described in Schedule I attached hereto and made a part hereof.

“Indebtedness” means Basic Rent payments, all other obligations appearing as liabilities on the balance sheet for the payment of moneys incurred or assumed by the Association, all as determined in accordance with generally accepted accounting principles consistently applied, and Guaranties, except that Indebtedness shall not include any continuing obligation of the Association to pay principal of and interest on Indebtedness that is deemed to be discharged or defeased in accordance with the terms of the instrument or instruments creating or evidencing such Indebtedness, as the case may be; provided, however, that there is delivered to the Trustee a letter from an Independent Accountant verifying the adequacy of any escrow established in connection with the discharge or defeasance of such Indebtedness.

“Indenture” means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of **Article XI** of this Indenture.

“Independent Architect” means an individual architect or a firm of architects, selected by the Association and not unacceptable to the Trustee, which individual or firm shall have no interest, direct or indirect, in the Association and, in the case of an individual, shall not be a director, officer or employee of the Association and, in the case of a firm, shall not have a partner, member, director, officer or employee who is a director, officer or employee of the Association; it being understood that an arm’s-length contract with the Association for the performance of architectural, engineer or similar services shall not in and of itself be regarded as creating an interest in or an employee relationship with such entity.

“Independent Accountant” means an individual certified public accountant or a firm of independent certified public accountants, selected by the Association and not unacceptable to the Trustee, which individual or firm shall have no interest, direct or indirect, in the Association and, in the case of an individual, shall not be a director, officer or employee of the Association and, in the case of a firm, shall not have a partner, member, director, officer or employee who is a director, officer or employee of the Association; it being understood that an arm’s-length contract with the Association for the performance of auditing, accounting or consulting services shall not in and of itself be regarded as creating an interest in or an employee relationship with such entity.

“Independent Consultant” means an individual or firm selected by the Association and not unacceptable to the Trustee, qualified to pass upon questions relating to the financial affairs of organizations engaged in like operations to those of the Association and having a favorable reputation for skill and experience in such financial affairs (which individual or firm shall have no interest, direct or indirect), in the Association and in which no employee or officer is an employee or officer of the Association or an employee or elected official of the Issuer; it being understood that an arm’s-length contract with the Association for the performance of auditing, accounting or consulting services shall not in and of itself be regarded as creating an interest in or an employee relationship with such entity.

“Independent Insurance Consultant” means an individual or firm selected by the Association and not unacceptable to the Trustee, qualified to survey risks and to recommend insurance coverage for organizations engaged in like operations to those of the Association and having a favorable reputation for skill and experience in such surveys and such recommendations, and who may be a broker or agent with whom the Association transacts business but shall not be a Person who has any interest, direct or indirect, in the Association and, in the case of an individual, shall not be a director, officer or employee of the Association and, in the case of a firm, shall not have a partner, member, director, officer or employee who is a director, officer or employee of the Association; it being understood that an arm’s-length contract with the Association for the performance of insurance brokerage or advisory services shall not in and of itself be regarded as creating an interest in or an employee relationship with such entity.

“Interest Payment Date” means March 1 and September 1 in each year thereafter, commencing as of March 1, 2012, and terminating when the principal of, redemption premium if any, and interest on the Bonds have been fully paid.

“Investment Contract” means an agreement to deposit all or any portion of the proceeds of the sale of the Bonds with a bank, with the deposits to bear interest at an agreed rate.

“Irrevocable Deposits” means cash, including proceeds of Refunding Indebtedness or other Long-Term Indebtedness, or Government Securities (including, where appropriate, the earnings or other increment to accrue thereon) that are on deposit in an irrevocable escrow or trust account with the Trustee or a third party escrow agent and are required to be applied to pay all or a portion of the principal of and interest on, as the same shall become due, any Bonds or Indebtedness which would otherwise be considered Outstanding and such amounts so required to be applied are sufficient to pay such principal and interest.

“Issuer” means the City of Topeka, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas, and its successors and assigns.

“Kansas UCC” means the Uniform Commercial Code of Kansas as from time to time amended.

“Land” means the real property described in **Schedule I** attached hereto and made a part hereof.

“Lease” means the Lease dated as of the date of this Indenture between the Issuer and the Association, as from time to time amended and supplemented in accordance with the provisions thereof and of **Article XII** of this Indenture.

“Long-Term Indebtedness” means Indebtedness having an original maturity greater than one year or renewable or extendible at the option of the debtor for a period greater than one year from the date of original issuance or incurrence thereof.

“Maximum Annual Debt Service” means the maximum amount of Debt Service as computed for the then current or any future Fiscal Year.

“Net Proceeds,” when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award with respect to which the term is used remaining after the payment of all expenses (including fees and any expenses, including attorneys’ fees, of the Issuer or the Trustee) incurred in the collection of such gross proceeds.

“Net Revenues Available for Debt Service” means, as to any period of time, Total Revenues less Total Expenses.

“Non-Recourse Indebtedness” means any Indebtedness secured by a mortgage, lien or security interest, the liability for which is limited to the Property subject to such Encumbrance with no other recourse, directly or indirectly, to the general credit of the Association or to any other Property of the Association.

“Notice Address” means:

(1) With respect to the Association:

Young Men’s Christian Association
421 Van Buren
Topeka, Kansas 66603
Attention: President/Chief Executive Officer
(785) 354-8591

(2) With respect to the Issuer:

City of Topeka, Kansas
215 SE 7th Street
Topeka, Kansas 66603
Attention: Chief Administrative Officer
(785) 368-3850

(3) With respect to the Trustee:

CoreFirst Bank & Trust
3035 S. Topeka
Topeka, Kansas 66611

Attention: Corporate Trust Department
(785) 267-8456

“Notice Representative” means:

- (1) With respect to the Association, any executive officer thereof.
- (2) With respect to the Issuer, its duly elected or appointed City Clerk.
- (3) With respect to the Trustee, any trust officer thereof.

“Original Purchaser” means, with the respect to the Series 2011A Bonds, George K. Baum & Company, Kansas City, Missouri.

“Outstanding” means, as of a particular date all Bonds heretofore issued, authenticated and delivered under this Indenture, except:

- (a) Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation pursuant to this Indenture;
- (b) Bonds for the payment or redemption of which moneys or Government Securities have been deposited in trust with the Trustee for the benefit of the Owners of the Bonds in accordance with **Article XIII** of this Indenture; and
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

“Owner” means the registered owner of any fully registered bond.

“Parity Indebtedness” means any Indebtedness of the Association issued or incurred by the Association pursuant to **Section 6.2** of the Lease and secured on a parity with the Bonds (other than with respect to the Bond Reserve Account), which obligations may be issued to any Person including Persons other than the Issuer.

“Participants” means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

“Paying Agent” means the Trustee and any other bank or trust institution organized under the laws of any state of the United States of America or any national banking association designated by this Indenture or any Supplemental Indenture as paying agent for any series of Bonds at which the principal of, redemption premium, if any, and interest on such Bonds shall be payable.

“Payment Date” means any date on which the principal of or interest on any Bonds is payable.

“Permitted Encumbrances” means Encumbrances permitted by **Section 5.10** of the Lease.

“Permitted Investments” means any of the following, if and to the extent the same are at the time legal for investment of the Issuer’s funds:

(a) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are fully and unconditionally guaranteed as to timely payment of principal and interest by, the United States of America, including without limitation obligations of any of the federal agencies set forth in clause (b) below to the extent fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America;

(b) obligations issued or guaranteed by Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Bank System, Export-Import Bank of the United States, Federal Financing Bank, Federal Land Banks, Government National Mortgage Association, Federal Home Loan Mortgage Corporation or Federal Housing Administration; or by any agency, department or instrumentality of the United States if such obligations are rated in one of the two highest rating categories by Standard & Poor’s or Moody’s;

(c) direct and general obligations of the State of Kansas, to the payment of the principal of and interest on which the full faith and credit of such State is pledged, provided that at the time of their purchase under this Indenture such obligations are rated in either of the two highest rating categories by Standard & Poor’s or Moody’s;

(d) certificates of deposit, whether negotiable or nonnegotiable, time deposits and other deposit arrangements issued by any bank or trust company organized under the laws of the United States of America or any state of the United States of America or any national banking association (including the Trustee and its affiliates), provided that such certificates of deposit, time deposits and other deposit arrangements shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit, time deposits and other deposit arrangements and shall be lodged with the Trustee, as custodian, by the bank, trust company, savings and loan association or national banking association issuing such certificates of deposit, and the bank, trust company, savings and loan association or national banking association issuing each such certificate of deposit, time deposits and other deposit arrangements required to be so secured shall furnish the Trustee an undertaking satisfactory to the Trustee that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(e) Securities of the type described in clause (a) or (b) above purchased under agreements to resell such securities to any registered broker/dealer subject to the Securities Investors Protection Corporation jurisdiction or any commercial bank, if such broker/dealer or bank has an unsecured, unsecured and unguaranteed obligation rating of “Prime-1” or “A-3” or better by Moody’s and “A-1” or “A-” or better by Standard & Poor’s, provided: (1) a master repurchase agreement or specific written repurchase agreement governs the transaction; (2) the securities are held free and clear of any lien or claims by a third party (other than as agent as hereinafter described) by the Trustee or an independent third party acting solely as agent for the Trustee which conclusion, upon the request of the Trustee, shall be confirmed by an Opinion of Counsel acceptable to the Trustee, and such agent is (a) a Federal Reserve Bank, or (b) a bank which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than \$50,000,000 and the Trustee shall have received written confirmation from such agent that it holds such securities, free and clear of any lien or claim, as agent for the Trustee, which conclusion, upon the request of the Trustee, shall be confirmed by an Opinion of Counsel acceptable to the Trustee; (3) a perfected first security interest under the Kansas UCC, or book entry procedures prescribed at 31 CFR 306.1 et seq. or 31 CFR 350.0 et seq. in such securities is created for the benefit of the Trustee, which conclusion, upon the request of the Trustee, shall be confirmed by an Opinion of Counsel acceptable to the Trustee; (4) the repurchase agreement has a term of 30 days or less, or the Trustee will value the collateral securities no less frequently than monthly and will liquidate the collateral securities if any deficiency in the required collateral percentage is not restored within two business days of such valuation; (5) the repurchase agreement matures at least ten days (or other commercially reasonable liquidation period) prior to the date on which the moneys invested therein are reasonably expected to be needed by the Trustee; and (6) the fair market value of the securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 100%;

(f) Investment agreements with banks which meet the rating criteria set forth in (c) above or investment agreements with non-bank financial institutions (1) all of the unsecured, direct long-term debt of which non-bank financial institutions which are rated by Moody’s or Standard & Poor’s is rated in one of the three highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) for obligations of that nature; or (2) if such non-bank financial institutions have no outstanding long-term debt which is rated, all of the short-term debt of which is rated by Standard & Poor’s or Moody’s in the highest rating category (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) assigned to Short-Term Indebtedness by such agency;

(g) Shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having assets of at least \$100,000,000, whose only assets are obligations described in (a) and (b) above, and which shares, at the time of purchase, are rated by Standard & Poor’s or Moody’s in one of the three highest categories (without regard to any refinement or

gradation of rating category by numerical modifier or otherwise) assigned by such agencies for obligations of that nature;

(h) Commercial paper maturing not more than 270 days from the date of issuance thereof which, at the time of purchase, is rated by Standard & Poor's and Moody's in the highest category (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) assigned by such agencies for obligations of that nature;

(i) Obligations of, or obligations fully guaranteed by, any state of the United States of America or any political subdivision thereof which obligations, at the time of purchase, are rated by Standard & Poor's or Moody's in one of the two highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) assigned by such agencies to obligations of that nature;

(j) Senior debt securities of any corporation organized under the laws of any state of the United States of America which securities, at the time of purchase, are rated by Standard & Poor's or Moody's in one of the two highest rating categories (without regard to any refinements or gradation of rating category by numerical modifier or otherwise) assigned by such agencies for obligations of that nature; and

(k) Obligations which are rated "AAA" by Standard & Poor's and "Aaa" by Moody's and which are not subject to redemption prior to maturity (except as provided in the security agreement described below) and are issued or incurred by any state, commonwealth or territory of the United States of America or any political subdivision, public instrumentality or public authority of any state, commonwealth or territory of the United States of America, which obligations are fully secured by and payable solely from an escrow fund consisting of direct obligations of, or obligations the timely payment of principal and interest on which are fully guaranteed by, the United States of America, which security is held by a corporate fiduciary pursuant to a security agreement (which may not be amended to provide for redemption on a date earlier than that originally contemplated by the parties on the date such security agreement was first executed).

"Person" means any natural person, firm, association, partnership, trust, corporation, government or any agency or political subdivision thereof or other public body.

"Principal and Interest Payment Account" means the account authorized and established with the Trustee pursuant to **Section 601** of this Indenture and designated the "City of Topeka, Kansas, Principal and Interest Payment Account for Economic Development Refunding Revenue Bonds, Series 2011A (YMCA Project)".

"Principal Payment Date" means each date on which the principal of the Bonds becomes due and payable, whether at maturity, or upon redemption or acceleration or otherwise.

“Project” means and includes the interest of Issuer in the Land and the Improvements financed with the proceeds of the Refunded Bonds together with Project Additions.

“Project Additions” means any additional improvements acquired, constructed or installed from proceeds of any additional series of Bonds authorized and issued pursuant to this Indenture.

“Project Replacement Fund” means the account authorized and established with the Trustee pursuant to **Section 609** of this Indenture and designated the “City of Topeka, Kansas, Project Replacement Fund (YMCA Project)”.

“Property,” when used in connection with a particular Person, means any and all rights, title and interests of such Person in and to any and all property whether real or personal, tangible or intangible, and wherever situated.

“Property, Plant and Equipment” means all tangible long-lived assets used by the Association as shown on the balance sheet of the Association, determined on a consolidated or combined basis in accordance with generally accepted accounting principles consistently applied.

“Purchase Money Contracts” means purchase contracts and borrowings secured by purchase money mortgages or purchase money security interests but excludes Capitalized Leases.

“Rebate Fund” means the fund authorized to be created in the custody of the Trustee pursuant to **Section 612** hereof and designated “City of Topeka, Kansas, Rebate Fund (YMCA Project.)”

“Record Date” means February 15 and August 15 in each year preceding each Interest Payment Date, or if such date is not a Business Day, the Business Day immediately preceding such date.

“Redemption Fund” means the fund authorized and established with the Trustee pursuant to **Section 501** of this Indenture and designated the “City of Topeka, Kansas, Redemption Fund (YMCA Project)”.

“Refunded Bond Ordinance” means Ordinance No. 17532 of the City of Topeka, Kansas, passed and approved on August 8, 2000, pursuant to which the Refunded Bonds were authorized and issued.

“Refunded Bond Paying Agent” means the Paying Agent for the Refunded Bonds appointed and designated pursuant to the Refunded Bond Ordinance.

“Refunded Bond Redemption Date” means September 8, 2011.

“Refunded Bonds” means the City of Topeka, Kansas, Economic Development Revenue Bonds, Series 2000A (YMCA Project) dated August 1, 2000, maturing (including term bond installments payable) on and after September 1, 2012, and currently outstanding in the principal amount of \$7,105,000.

“Refunding Costs” means (a) such portion of the proceeds of the Series 2011A Bonds as is required, when added to moneys already held by or deposited on the Closing Date with the Refunded Bond Paying Agent pledged to the payment of the Refunded Bonds, to provide sufficient funds to pay the principal, interest and redemption premium required to redeem the Refunded Bonds on the Refunded Bond Redemption Date, (b) fund the Bond Reserve Account, and (c) pay Costs of Issuance.

“Refunding Indebtedness” means any Long-Term Indebtedness issued or incurred for the purpose of providing funds to refund or refinance any other Long-Term Indebtedness of the Association.

“Rental Payments” means the aggregate of the Basic Rent and Additional Rent payments provided for pursuant to **Article III** of the Lease.

“Representation Letter” means the Blanket Issuer Letter of Representations from the City to the Securities Depository with respect to the Bonds, substantially in the form attached hereto as **Exhibit A**.

“SEC Rule” means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as may be amended from time to time.

“Securities Depository” means, initially, The Depository Trust Company, New York, New York, and its successors and assigns.

“Series 2011A Bonds” means the City of Topeka, Kansas, Economic Development Refunding Revenue Bonds, Series 2011A (YMCA Project) dated the date of issuance and delivery, in the aggregate principal amount of \$7,055,000.

“Short-Term Indebtedness” means Indebtedness having an original maturity less than or equal to one year from the date of original incurrence thereof, and not renewable or extendible at the option of the obligor thereon for a term greater than one year beyond the date of original issuance.

“State” means the State of Kansas.

“Subordinated Indebtedness” means Indebtedness that, with respect to any issue thereof, is evidenced by instruments, or issued under an indenture or other document, containing provisions for the subordination of such Indebtedness to the Series 2011A Bonds, any Additional Bonds and any Parity Indebtedness.

“Supplemental Indenture” means any indenture supplemental or amendatory to this Indenture entered into by the Issuer and the Trustee pursuant to **Article XI** of this Indenture.

“Supplemental Lease” means any agreement supplemental or amendatory to the Lease entered into by the Issuer and the Association pursuant to **Article X** of the Lease.

“Tax Compliance Agreement” means the Tax Compliance Agreement dated as of the date of this Indenture among the Issuer, the Trustee and the Association, as from time to time amended and supplemented in accordance with the provisions thereof.

“Tax-Exempt Bonds” means the Series 2011A Bonds and any Additional Bonds the interest on which, in the Opinion of Bond Counsel at the time of issuance of such series of Additional Bonds, is excluded from gross income for federal income tax purposes.

“Tax-Exempt Organization” shall mean a nonprofit organization, organized under the laws of the United States of America or any state thereof, that is an organization described in Section 501(c)(3) of the Code, is exempt from federal income taxes under Section 501(a) of the Code, and is not a “private foundation” within the meaning of Section 509(a) of the Code, or corresponding provisions of federal income tax laws from time to time in effect.

“Threshold Amount” means the greater of (i) \$500,000 or (ii) 5% of the unrestricted net assets, capital and surplus, or other equivalent accounting classification representing unrestricted net assets of the Association as of the end of the most recent completed Fiscal Year for which audited financial statements of the Association are available.

“Total Expenses” means for any period of time for which calculated total operating and non-operating expenses of the Association, determined on an actual or pro forma and consolidated or combined basis, as appropriate, in accordance with generally accepted accounting principles consistently applied other than (a) interest expense, (b) depreciation and amortization, (c) unrealized losses on investments, (d) other non-cash expenses and (e) extraordinary losses resulting from the early extinguishment of debt, the sale or other disposition of assets not in the ordinary course of business or any reappraisal, reevaluation or write-down of assets, and any other extraordinary losses or expenses.

“Total Operating Revenues” means the aggregate of operating revenues of the Association for the most recent Fiscal Year for which audited financial statements are available, less contractual allowances and allowances for bad debts, determined in accordance with generally accepted accounting principles and in such a manner that no portion of operating revenues, contractual allowances or allowances for bad debts is included more than once.

“Total Revenues” means for any period of time for which calculated, the total of all operating and non-operating revenues and gains derived by the Association during such period, determined in accordance with generally accepted accounting principles; provided, however, that no determination thereof shall take into account (v) income derived from Irrevocable Deposits, (w) unrealized gains on investments and assets limited as to use, (x) extraordinary gains resulting from the early extinguishment of debt or the sale, exchange or other disposition of property not

in the ordinary course of business, or the reappraisal, reevaluation or write-up of assets, or any other extraordinary gains, (y) gifts, grants, bequests or donations restricted as to use by the donor or grantor for a purpose inconsistent with the payment of Debt Service, and (z) insurance (other than business interruption) and condemnation proceeds. For purposes of any calculation that is made with reference to both Total Revenues and Total Expenses, any deduction or reduction from revenues otherwise required by the preceding provisions of this definition shall not be made if and to the extent that the amount of such deduction is included in Total Expenses.

“Trust Estate” means the Trust Estate described in the Granting Clauses of this Indenture.

“Trustee” means CoreFirst Bank & Trust, in the City of Topeka, Kansas, in its capacity as bond registrar and trustee and its successor or successors and any other corporation or association which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

“Unrestricted Receivables” means all receipts, revenues, income and other moneys received by or on behalf of the Association from any source and all rights to receive the same whether in the form of accounts receivable, contract rights, chattel paper, instruments, general intangibles or other rights and the proceeds thereof and of any insurance thereon; excluding, however, gifts, grants, bequests, donations and contributions to the Association, and the income and gains derived therefrom, which are specifically restricted by the donor, testator or grantor to a particular purpose which is inconsistent with their use for payments required under this Indenture or the Lease.

“Value,” as of any particular time of determination, means, with (a) respect to cash, the face value thereof, and (b) with respect to any investments, the market price of the investment, inclusive of accrued interest.

“Written Request” means, with reference to the Issuer, a request in writing signed by an Issuer Representative and, with reference to the Association, a request in writing signed by an Association Representative, or any other officers designated by the Issuer or the Association, as the case may be, to sign such Written Requests.

Section 102. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine gender. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(b) Wherever in this Indenture it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(c) All references in this instrument to designated “Articles”, “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision.

(d) The Table of Contents and the Article and Section headings of this Indenture shall not be treated as a part of this Indenture or as affecting the true meaning of the provisions hereof.

ARTICLE II

THE BONDS

Section 201. Title and Amount of Bonds. No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as “City of Topeka, Kansas, Economic Development Refunding Revenue Bonds, Series 2011A (YMCA Project),” with such other appropriate particular designation added to or incorporated in such title for the Bonds of any particular series of Additional Bonds as the Issuer may determine. The total principal amount of Bonds that may be issued hereunder is hereby expressly limited to the \$7,055,000 principal amount of Series 2011A Bonds and any Additional Bonds permitted hereunder.

Section 202. Limited Nature of Obligations.

(a) The Bonds and the interest thereon shall be limited obligations of the Issuer payable solely and only from the net earnings and revenues derived by the Issuer from the Project, including but not limited to the rents, revenues and receipts under the Lease (including, in certain circumstances, Bond proceeds and income from the temporary investment thereof and proceeds from sale of the Project, insurance and condemnation awards or payments, if any, received pursuant to the Guaranty Agreement, except for any payments made by the Trustee or Association to meet the rebate requirements of Section 148(f) of the Code), and are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners of the Bonds, as provided in this Indenture. The Bonds and the interest thereon shall not be a debt or general obligation of Issuer or the State, or any municipal corporation thereof, and neither the Bonds, the interest thereon, nor any judgement thereon or with respect thereto, are payable in any manner from tax revenues of any kind or character. The Bonds shall not constitute an indebtedness or a pledge of the faith and credit of Issuer, the State or any municipal corporation thereof within the meaning of any constitutional or statutory limitation or restriction.

(b) The full and prompt payment of the principal of, premium, if any, and interest on the Bonds has been unconditionally guaranteed by the Guarantor to the Trustee, for the benefit of the Owners of the Series 2011A Bonds, under the terms of the Guaranty Agreement. The Trustee shall enforce the Guaranty Agreement for the benefit and protection of the Bondowners so long as any of the Bonds remain Outstanding. The Trustee shall not permit

or consent to any change, amendment, modification or termination of the Guaranty Agreement except to the extent provided for therein.

(c) No provision, covenant or agreement contained in this Indenture or the Bonds, or any obligation herein or herein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit or powers of taxation. In making the agreements, provisions and covenants set forth in this Indenture, the Issuer has not obligated itself except with respect to the Project and the application of the payments, revenues and receipts therefrom as hereinabove provided. Neither the officers of the Issuer nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof.

Section 203. Denomination, Numbering and Date of Bonds.

(a) The Bonds shall be fully registered Bonds in the denomination of \$5,000 or any integral multiple thereof not exceeding the principal amount of the Bonds maturing on any Principal Payment Date. The Bonds shall be substantially in the form set forth in **Article IV** of this Indenture. The Bonds of each series of Bonds shall be numbered in such manner as the Trustee shall determine.

(b) The Bonds of each series of Bonds shall be dated as provided in this Indenture or the Supplemental Indenture authorizing the issuance of such series of Bonds. The Bonds shall bear interest from their effective date of registration on the Interest Payment Dates in each year to the Registered Owner thereof as shown on the books of the Trustee on the Record Date preceding such Interest Payment Date. The effective date of registration shall be set forth on each such Bond, such effective date of registration to be as of the Interest Payment Date next preceding the date of authentication thereof by the Trustee, unless such date of authentication shall be an Interest Payment Date, in which case the effective date of registration shall be as of such date of authentication, or unless the date of authentication shall be prior to the first Interest Payment Date for such series of Bonds, in which case the effective date of registration shall be either the date of such series of Bonds or the date such series of Bonds is issued and delivered, as provided in **Section 208(d)** of this Indenture or the Supplemental Indenture authorizing such series of Bonds; provided, however, that if payment of the interest on any Bonds of any series shall be in default at the time of authentication of any fully registered Bonds issued in lieu of Bonds surrendered for transfer or exchange, the effective date of registration shall be as of the date to which interest has been paid in full on the Bonds surrendered.

Section 204. Method and Place of Payment of Bonds. Payment of the principal and premium, if any, on all Bonds shall be made by check or draft upon the presentation and surrender of such Bonds as the same respectively become due and payable at the principal office of any Paying Agent named in the Bonds. Payment of the interest on each Bond shall be made by the Trustee on each Interest Payment Date to the person appearing as the Owner thereof on the registration books of the Issuer maintained by the Trustee as the registered owner thereof by check or draft mailed to such Owner at his address as it appears on such registration books.

Section 205. Execution and Authentication of Bonds.

(a) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its City Clerk, and shall have the corporate seal of the Issuer affixed thereto or imprinted thereon. In case any officer whose signature or facsimile thereof appears on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until delivery. Any Bond may be signed by such persons as at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although on the date of such Bond such persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit A** hereof, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purpose unless and until such Certificate of Authentication shall have been duly executed by the Trustee. Such executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized officer or employee of the Trustee, but it shall not be necessary that the same officer or employee sign the Certificate of Authentication on all of the Bonds that may be issued hereunder at any one time.

Section 206. Registration, Transfer and Exchange of Bonds.

(a) The Trustee shall keep books for the registration and for the transfer of Bonds as provided in this Indenture.

(b) Any Bond may be transferred only upon the books maintained by Trustee for the registration and transfer of Bonds upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such transfer, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture in an aggregate principal amount equal to the principal amount of such Bond, of the same series and maturity and bearing interest at the same rate.

(c) In all cases in which Bonds shall be exchanged or transferred hereunder, the Issuer shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be cancelled by the Trustee. The Issuer or the Trustee may make a charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid by the Bondowner before any such new Bond shall be delivered. Neither the Issuer nor the Trustee shall be required to make any such exchange or

transfer of Bonds on or after the Record Date preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

Section 207. Persons Deemed Owners of Bonds. The person in whose name any Bond shall be registered as shown on the registration books required to be maintained by the Trustee by this Article shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of, or on account of the principal of and premium, if any, and, interest on any such Bond shall be made only to or upon the order of the Owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Authorization of Series 2011A Bonds.

(a) There shall be initially issued and secured pursuant to this Indenture a series of Bonds in the aggregate principal amount of \$7,055,000 for the purpose of providing funds for paying the Refunding Costs which series of Bonds shall be designated the “City of Topeka, Kansas, Economic Development Refunding Revenue Bonds, Series 2011A (YMCA Project)”. The Series 2011A Bonds shall be dated the date of issuance and delivery, shall become due on the Principal Payment Dates in the years and in the respective principal amounts (subject to prior redemption as hereinafter provided in **Article III**) and shall bear interest from their effective date of registration at the rates per annum as follows:

SERIAL BONDS

<u>Maturity</u> <u>September 1</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
2016	\$235,000	4.00%
2017	245,000	4.00
2018	255,000	4.25
2019	265,000	4.50
2020	280,000	4.75
2021	290,000	5.00

TERM BONDS

2015	\$ 795,000	3.50
2026	1,725,000	6.00
2032	2,965,000	6.50

(b) Interest on the Bonds shall be payable to the Owners thereof in accordance with the provisions of **Article II** hereof.

(c) The Trustee is hereby designated as the Issuer’s Paying Agent for the payment of the principal of, premium, if any, and interest on the Series 2011A Bonds.

(d) Upon the original issuance and delivery of the Series 2011A Bonds, the effective date of registration thereof shall be the date of issuance and delivery.

(e) The Series 2011A Bonds shall be substantially in the form and manner set forth in **Exhibit A** hereof and delivered to the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

(1) An original or certified copy of the Ordinance adopted by Issuer's Governing Body authorizing the issuance of the Series 2011A Bonds and the execution of this Indenture and the Lease.

(2) An original executed counterpart of this Indenture.

(3) An original executed counterpart of the Lease.

(4) An original executed counterpart of the Guaranty Agreement.

(5) An opinion of Bond Counsel to the effect that the Series 2011A Bonds constitute valid and legally binding obligations of the Issuer and that the interest on the Series 2011A Bonds is exempt from Federal and Kansas income taxation, subject to such limitations and restrictions as shall be described therein.

(6) Such other certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of the Series 2011A Bonds.

(f) When the documents specified in subsection (e) of this Section shall have been filed with the Trustee, and when the Series 2011A Bonds shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver the Series 2011A Bonds to or upon the order of Trustee of the purchase price of the Series 2011A Bonds. The proceeds of the sale of the Series 2011A Bonds, including accrued interest and premium thereon, if any, shall be immediately paid over to the Trustee, and the Trustee shall deposit and apply such proceeds as provided in **Article V** hereof.

Section 209. Authorization of Additional Bonds.

(a) Additional Bonds may be issued under and equally and ratably secured by this Indenture on a parity with the Series 2011A Bonds and any other Additional Bonds Outstanding at any time and from time to time, upon compliance with the conditions hereinafter provided in this Section, for any of the following purposes:

(1) To provide funds to pay all or any part of the costs of repairing, replacing or restoring the Project in the event of damage, destruction or condemnation thereto or thereof.

(2) To provide funds to pay all or any part of the costs of acquisition, purchase or construction of such additions, improvements, extensions, alterations, expansions, or modifications of the Project or any part thereof as the Association may deem necessary or desirable and as will not impair the nature of the Project as a facility within the meaning and purposes of the Act.

(3) To provide funds for refunding all or any portion of the Bonds of any series then Outstanding, including the payment of any premium thereon and interest to accrue to the designated redemption date and any expenses in connection with such refunding.

(b) Before any Additional Bonds shall be issued under the provisions of this Section, the Original Purchaser shall be given written notice thereof and the Issuer's governing body shall adopt an Ordinance (i) authorizing the issuance of such Additional Bonds, fixing the amount and terms thereof and describing the purpose or purposes for which such Additional Bonds are being issued or describing the Bonds to be refunded, (ii) authorizing the Issuer to enter into a Supplemental Indenture for the purpose of providing for the issuance of and securing such Additional Bonds and, if required, (iii) authorizing the Issuer to enter into a supplemental lease with the Association to provide for Rental Payments at least sufficient to pay the principal of, premium, if any, and interest on the Bonds then to be Outstanding (including the Additional Bonds to be issued) as the same become due, for the acquisition, purchase, construction or equipping of an addition to or expansion, modification or remodeling of the Project, for the inclusion of any such addition, expansion or modification as a part of the Project, and for such other matters as are appropriate because of the issuance of the Additional Bonds proposed to be issued which, in the judgment of the Issuer, is not to the prejudice of the Issuer or the Owners of the Bonds previously issued.

(c) Such Additional Bonds shall have the same designation as the Series 2011A Bonds, except for an identifying series letter or date and the addition of the word "Refunding" when applicable, shall be dated, shall be stated to mature on Payment Dates in such year or years, shall bear interest at such rate or rates not exceeding the maximum rate then permitted by law, and shall be redeemable at such times and prices (subject to the provisions of **Article III** of this Indenture), all as may be provided by the Supplemental Indenture authorizing the issuance of such Additional Bonds. Except as to any difference in the date, the maturity or maturities, the rate or rates of interest or the provisions for redemption, such Additional Bonds shall be on a parity with and shall be entitled to the same benefit and security of this Indenture as the Series 2011A Bonds and any other Additional Bonds Outstanding at the time of the issuance of such Additional Bonds, except that the Bond Reserve Account secures only the Series 2011A Bonds, and any Additional Bonds are not entitled to the benefit and security of the Bond Reserve Account. Additional Bonds may be secured by a separate bond reserve account or comparable reserve fund or account established at the time of issuance of such Additional Bonds as provided in the Supplemental Indenture authorizing such Additional Bonds, which may be funded from the proceeds of the sale of such Additional Bonds or other available moneys.

(d) Such Additional Bonds shall be substantially in the form and executed in the manner set forth in this Article and **Exhibit A** hereof and shall be deposited with the Trustee for

authentication, but prior to or simultaneously with the authentication and delivery of such Additional Bonds by the Trustee, there shall be filed with the Trustee the following:

- (1) An original or certified copy of the Ordinance adopted by Issuer's Governing Body authorizing the issuance of such Additional Bonds and the execution of such Supplemental Indenture and the appropriate amendments or supplements to the Lease.
 - (2) An original executed counterpart of the Supplemental Indenture providing for the issuance of the Additional Bonds.
 - (3) An original executed counterpart of the amendment or supplement to the Lease, if required.
 - (4) An opinion of Bond Counsel to the effect that the issuance of such Additional Bonds will not result in the interest on any Outstanding Bonds becoming subject to Federal income taxes then in effect.
 - (5) In the case of Additional Bonds being issued to refund Outstanding Bonds, such additional documents as shall be reasonably required by the Trustee to establish that provision has been duly made for the payment of all of the Bonds to be refunded in accordance with the provisions of **Article XIII** of this Indenture.
 - (6) The written notice to the Original Purchaser.
 - (7) A certificate of an Association Representative (1) stating that no Event of Default under this Indenture or the Lease has occurred and is continuing and that no event has occurred and is continuing which with the lapse of time or giving of notice, or both, would constitute an Event of Default, and (2) stating the purpose or purposes for which such Additional Bonds are being issued and the classification of the Indebtedness under **Section 6.3** of the Lease and accompanied by the certificates, reports or opinions demonstrating compliance with the applicable tests set forth in **Section 6.3** of the Lease.
 - (8) Such other certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of such Additional Bonds.
- (e) When the documents mentioned in subsection (d) of this Section shall have been filed with the Trustee, and when such Additional Bonds shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver such Additional Bonds to or upon the order of the purchasers thereof, but only upon payment to the Trustee of the purchase price of such Additional Bonds. The proceeds of the sale of such Additional Bonds, (except Additional Bonds issued to refund Outstanding Bonds), including accrued interest and premium thereon, if any, shall be immediately paid over to the Trustee and shall be deposited and applied by the Trustee as provided in **Article V** hereof and in the Supplemental Indenture authorizing the issuance of such Additional Bonds. The proceeds (excluding accrued interest, which shall be deposited in the Principal and Interest Payment Account) of all Additional Bonds issued to refund Outstanding Bonds shall be deposited by the Trustee, after payment or making provision for payment of all expenses incident to such financing, to the credit of a special trust fund, appropriately designated, to be held in trust for the sole and exclusive purpose of paying the

principal of, premium, if any, and interest on the Bonds to be refunded, as provided in **Section 1302** hereof and in the Supplemental Indenture authorizing the issuance of such refunding Bonds.

(f) Except as provided in this Section, the Issuer will not otherwise issue any obligations ratably secured and on a parity with the Bonds.

Section 210. Temporary Bonds.

(a) Until definitive Bonds of any series are available for delivery, the Issuer may execute, and upon request of the Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, but subject to the same limitations and conditions as definitive Bonds, temporary printed, engraved, lithographed or typewritten Bonds, in the form of fully registered Bonds in denominations of \$5,000 or any integral multiple thereof, substantially of the tenor hereinabove set forth and with such appropriate omissions, insertions and variations as may be required with respect to such temporary Bonds.

(b) If temporary Bonds shall be issued, the Issuer shall cause the definitive Bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it at its principal office of any temporary Bond shall cancel the same and authenticate and deliver in exchange therefor, without charge to the Owner thereof, a definitive Bond or Bonds of an equal aggregate principal amount, of the same series and maturity and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged the temporary Bonds shall in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds to be issued and authenticated hereunder.

Section 211. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond shall become mutilated, or be lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond of like series, date and tenor as the Bond mutilated, lost, stolen or destroyed. Provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. In the event any such Bond shall have matured, instead of issuing a substitute Bond the Issuer may pay or authorize the payment of the same without surrender thereof. Upon the issuance of any substitute Bond, the Issuer and the Trustee may require the payment of an amount sufficient to reimburse the Issuer and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

Section 212. Cancellation and Destruction of Bonds Upon Payment.

(a) All Bonds which have been paid or redeemed or which the Trustee has purchased or which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity, shall be cancelled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender thereof to the Trustee. Provided, however, that any Bonds shall, if not so reissued, be cancelled by the Trustee immediately after maturity.

(b) All Bonds cancelled under any of the provisions of this Indenture shall be delivered by the Trustee to the Issuer, or, upon request of the Issuer, shall be destroyed by the Trustee. The Trustee shall execute a certificate in triplicate describing the Bonds so delivered or destroyed, and shall file executed counterparts of such certificate with the Issuer and the Association.

Section 213. Book-Entry Bonds; Securities Depository.

(a) The Bonds shall initially be registered to Cede & Co., the nominee for the Securities Depository, and no beneficial owner will receive certificates representing their respective interests in the Bonds, except in the event the Bond Registrar issues Replacement Bonds as provided in subsection (b) hereof. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, premium, if any, and interest on, the Bonds to the Participants until and unless the Bond Registrar authenticates and delivers Replacement Bonds to the beneficial owners as described in subsection (b).

(b) Subject to the requirements of the Operational Arrangements of the Securities Depository, (1) if the Issuer determines (A) that the Securities Depository is unable to properly discharge its responsibilities, or (B) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (C) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the beneficial owners of the Bonds, or (2) if the Bond Registrar receives written notice from Participants having interests in not less than 50% of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the beneficial owners of the Bonds, then the Bond Registrar shall notify the Owners of such determination or such notice and of the availability of certificates to Owners requesting the same, and the Bond Registrar shall register in the name and authenticate and deliver Replacement Bonds to the beneficial owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption; provided, that in the case of a determination under (1)(A) or (1)(B) of this subsection (b), the Issuer, with the consent of the Bond Registrar, may select a successor securities depository in accordance with **Section 2.13(c)** hereof to effect book-entry transfers. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of Replacement

Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Bond Registrar, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the Issuer, the Bond Registrar or Owners are unable to locate a qualified successor of the Securities Depository in accordance with **Section 2.13(c)** hereof, then the Bond Registrar shall authenticate and cause delivery of Replacement Bonds to Owners, as provided herein. The Bond Registrar may rely on information from the Securities Depository and its Participants as to the names of the beneficial owners of the Bonds. The cost of printing, registration, authentication and delivery of Replacement Bonds shall be paid for by the Issuer.

(c) In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the Issuer may appoint a successor Securities Depository provided the Bond Registrar and the Issuer receive written evidence with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Bond Registrar upon its receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein.

(d) The execution and delivery of the Representation Letter to DTC by the Mayor of the Issuer, with such changes, omissions, insertions and revisions as the Mayor shall deem advisable, is hereby authorized, and execution of the Representation Letter by the Mayor shall be conclusive evidence of such approval. The Representation Letter shall set forth certain matters with respect to, among other things, notices, consents and approvals by Registered Owners of the Bonds and beneficial Owners and payments on the Bonds. The Paying Agent shall have the same rights with respect to its actions there under as it has with respect to its actions under this Indenture.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption of Bonds Generally. The Series 2011A Bonds shall be subject to redemption prior to maturity in accordance with the terms and provisions of this Article. Additional Bonds shall be subject to redemption prior to maturity in accordance with the terms and provisions contained in this Article and as may be specified in the Supplemental Indenture authorizing such Additional Bonds; provided however no provision shall be made with respect to the redemption of any Additional Bonds which would result in, or constitute the creation of, a preference or priority of such Additional Bonds over the Series 2011A Bonds.

Section 302. Redemption of Series 2011A Bonds. The Series 2011A Bonds shall be subject to redemption as follows:

(a) Extraordinary Optional Redemption. In the event of a Change of Circumstances, the Series 2011A Bonds shall be subject to redemption and payment prior to the stated maturity thereof, in whole or in part, by the Issuer, upon instructions from the Association, on any date at a redemption price equal to the par value of the principal amount to be redeemed, plus accrued interest thereon to the redemption date, without premium.

(b) Optional Redemption. The Bonds maturing in the year 2015 are subject to redemption and payment prior to maturity, at the option of the Issuer, which shall be exercised upon written direction from the Association, on and after September 1, 2012, as a whole or in part at any time, at the redemption price of 100% of the principal amount thereof plus accrued interest thereon to the date fixed for redemption and payment.

Series 2011A Bonds, maturing in the year 2022 and thereafter shall be subject to redemption and payment prior to maturity, by the Issuer, upon instructions from the Association, on and after September 1, 2021, as a whole or in part at any time, at the redemption price of 100% of the principal amount thereof plus accrued interest thereon to the date fixed for redemption and payment.

(c) Sinking Fund Redemption. Each of said Series 2011A Bonds maturing on September 1, 2015, September 1, 2026 and September 1, 2032 (the "Term Bonds"), shall be subject to mandatory redemption and payment from the sinking fund (the "Sinking Fund") pursuant to the redemption schedule hereafter set out, at the principal amount thereof, plus accrued interest thereon to date fixed for redemption and payment, without premium.

As and for a sinking fund for the retirement of the Term Bonds, but subject to the provisions of the next paragraph of this Section, the Basic Rent payments specified in the Lease which are to be deposited in the Principal and Interest Payment Account created by this Indenture commencing on September 15, 2012, (the "Sinking Fund Deposits"), shall be sufficient to redeem (after credit as hereinafter provided) and the Issuer hereby agrees to redeem the following principal amounts of Term Bonds on September 1 in each of the following years:

Term Bonds Maturing September 1, 2015

<u>YEAR</u>	<u>PRINCIPAL AMOUNT</u>
2013	\$255,000
2014	265,000

(Leaving \$275,000 to mature on September 1, 2015)

Term Bonds Maturing September 1, 2026

<u>YEAR</u>	<u>PRINCIPAL AMOUNT</u>
2022	\$305,000
2023	325,000
2024	345,000
2026	365,000

(Leaving \$385,000 to mature on September 1, 2026)

Term Bonds Maturing September 1, 2032

<u>YEAR</u>	<u>PRINCIPAL AMOUNT</u>
2027	410,000
2028	445,000
2029	475,000
2030	505,000
2031	540,000

(Leaving \$590,000 to mature on September 1, 2032)

The Term Bonds to be redeemed and paid pursuant to the operation of the Sinking Fund shall be selected by lot by the Trustee from the applicable maturity in such equitable manner as it may designate. The Trustee shall each year in which the Term Bonds are to be redeemed pursuant to the terms of said Sinking Fund make timely selection of Bonds of the applicable maturity to be so redeemed and shall give notice thereof as provided in **Section 305** of this Indenture without further instructions from the Issuer or the Association.

The Trustee may, at any time after September 1, 2013, upon instructions from the Association, use moneys on hand in the Principal and Interest Payment Account to purchase Term Bonds in the open market at a price not in excess of the then applicable redemption price specified above in subsection (a) of this Section and each Term Bond so purchased shall be credited at 100% of the principal amount thereof on the obligation of the Association to make Sinking Fund Deposits with respect to the applicable maturity of the Term Bonds and the principal amount of Term Bonds of that maturity to be redeemed by operation of the Sinking Fund Deposits shall be reduced accordingly.

At its option, to be exercised on or before the Forty-fifth (45th) day next preceding any September 1 in the years 2013 to 2015, inclusive, and 2022 to 2032, inclusive, the Issuer or the Association may: (i) deliver to the Trustee for cancellation, any Term Bonds in any aggregate principal amount desired; or (ii) furnish the Trustee with funds together with appropriate instructions, for the purpose of purchasing any of said Term Bonds, from any owner thereof whereupon said Trustee shall expend such funds for such purpose to such extent as may be practical; or (iii) receive a credit in respect to the Sinking Fund obligation of the Issuer under the second preceding paragraph of this Section for any Term Bonds of such maturity, which prior to such dates have been redeemed (other than through the operation of the Sinking Fund requirements of the second preceding paragraph) and cancelled by the Trustee and not

theretofore applied as a credit against any redemption obligation under said paragraph. Each Term Bond so delivered or purchased or previously redeemed shall be credited at 100% of the principal amount thereof to the Sinking Fund Deposits designated by the Association of the corresponding maturity, and the principal amount of Term Bonds of such maturity to be redeemed by operation of the Sinking Fund Deposits shall be accordingly reduced.

If the Issuer or the Association intends to exercise the option granted by the provisions of sub-provisions (i), (ii) or (iii) of the next preceding paragraph, the Issuer or the Association will on or before the Forty-fifth (45th) day next preceding each September 1 in the years from 20__ to 20__, inclusive, furnish the Trustee with a certificate signed by the Association Representative indicating to what extent the provisions of said sub-provisions (i), (ii) or (iii) are to be complied with in respect to such Sinking Fund Deposits.

Section 303. Selection of Bonds to be Redeemed.

(a) Bonds shall be redeemed only in the principal amount of \$5,000 or integral multiples thereof. If less than all of the Outstanding Bonds of any series are to be redeemed and paid prior to maturity, such Bonds shall be redeemed in the series and maturities to be selected by the Issuer, upon instruction from the Association, and by lot within maturities, Bonds of less than a full maturity to be selected by the Trustee in such equitable manner as it may determine.

(b) In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than \$5,000 are then Outstanding, then for all purposes in connection with such redemption each \$5,000 of face value shall be treated as though it was a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all, of the \$5,000 units of face value represented by and fully registered Bond is selected for redemption, then the Owner of such Bond or his attorney or legal representative shall forthwith present and surrender such Bond to the Trustee (1) for payment of the redemption price (including the premium, if any, and interest to the redemption date) of the \$5,000 unit or units of face value called for redemption, and (2) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond of a denomination greater than \$5,000 shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the redemption date to the extent of the principal amount thereof called for redemption (and to that extent only).

Section 304. Trustee's Duty to Redeem Bonds. The Trustee shall call Bonds for redemption and payment as herein provided and shall give notice of redemption as provided in **Section 305** hereof upon receipt by the Trustee at least 45 days prior to the redemption date of a written request of the Issuer together with the consent or request of the Association, if such consent or request is required. If such consent or request is required pursuant to the provisions of this Indenture, such request shall specify the principal amount and the respective series and maturities of the Bonds to be called for redemption, the applicable redemption price or prices and the provision or provisions of this Indenture pursuant to which such Bonds are to be called for redemption.

Section 305. Notice of Redemption. Notice of the call for any redemption identifying the Bonds or portions thereof to be redeemed shall be given by the Trustee, in the name of the Issuer, by mailing a copy of the redemption notice at least 30 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed at the address shown on the registration books maintained by the Trustee; provided, however, that failure to give such notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of the Bonds. Any notice of redemption shall state the date of redemption, the place or places at which such Bonds shall be presented for payment, the series, maturities and numbers of the Bonds or portions of Bonds to be redeemed (and in the case of the redemption of a portion of any Bond the principal amount thereof being redeemed), the redemption price and shall state that interest on the Bonds described in such notice will cease to accrue from and after the redemption date.

With respect to optional redemptions, such notice may be conditioned upon moneys being on deposit with the Trustee on or prior to the redemption date in an amount sufficient to pay the redemption price on the redemption date. If such notice is conditional and either the Trustee receives written notice from the Association that moneys sufficient to pay the redemption price will not be on deposit on the redemption date, or such moneys are not received on the redemption date, then such notice shall be of no force and effect, the Trustee shall not redeem such Bonds and the Trustee shall give notice, in the same manner in which the notice of redemption was given, that such moneys were not or will not be so received and that such Bonds will not be redeemed.

The failure of any Owner of Bonds to receive notice given as provided in this Section, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bonds. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given and shall become effective upon mailing, whether or not any Owner receives such notice.

Section 306. Effect of Call for Redemption. On or prior to the date fixed for redemption, funds or Government Securities maturing on or before the date fixed for redemption shall be deposited with the Trustee in amounts sufficient to provide for payment of the Bonds called for redemption, accrued interest thereon to the redemption date and the redemption premium, if any. Upon the deposit of such funds or Government Securities, and notice having been given as provided in **Section 305** hereof, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

ARTICLE IV

FORM OF BONDS

Section 401. Forms Generally. The Series 2011A Bonds, and the Trustee's Certificate of Authentication to be endorsed thereon shall be, respectively, in substantially the forms set forth in **Exhibit A** attached to this Indenture. Any Additional Bonds, and the Trustee's Certificate of Authentication to be endorsed thereon shall also be in substantially the forms set

forth in **Exhibit A**, with such necessary or appropriate variations, omissions and insertions as are permitted or required by this Indenture or any Supplemental Indenture. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirement of law with respect thereto.

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501. Creation of Redemption Fund. There is hereby created and ordered to be established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated the “City of Topeka, Kansas, Redemption Fund (YMCA Project)” (herein called the “Redemption Fund”).

Section 502. Deposits into the Redemption Fund. The following funds shall be paid over to and deposited by the Trustee into the Redemption Fund, as and when received:

(a) The proceeds from the sale of the Series 2011A Bonds, excluding such amounts thereof required to be paid into both the Principal and Interest Payment Fund pursuant to **Section 602** and the Bond Reserve Account pursuant to Section 605 hereof.

(b) The earnings (other than Rebate Fund earnings) accrued on the investment of moneys in the Redemption Fund and required to be deposited into the Redemption Fund pursuant to **Section 702** hereof.

Section 503. Disbursements from the Redemption Fund.

(a) The moneys in the Redemption Fund shall be disbursed by the Trustee for the payment of Refunding Costs, provided that Series 2011A Bond proceeds in excess of 2% of the sale price of the Series 2011A Bonds shall not be expended for Costs of Issuance, and the Trustee hereby covenants and agrees to disburse such moneys only for such purposes. Sufficient moneys to redeem all the Refunded Bonds currently Outstanding as contemplated by the Refunded Bond Ordinance shall be disbursed by the Trustee to the Refunded Bond Paying Agent in immediately available funds forthwith upon receipt of the proceeds of the Series 2011A Bonds, but in any event before 12:00 noon local time on the Refunded Bond Redemption Date.

(b) The Trustee shall keep and maintain adequate records pertaining to the Redemption Fund and all disbursements therefrom, the Trustee shall file a statement of receipts and disbursements with respect thereto with the Issuer and the Association.

Section 504. Disposition Upon Completion of the Redemption. Upon the completion of the redemption of the Refunded Bonds and payment of all costs and expenses incident thereto, any balance remaining in the Redemption Fund shall without further authorization, be deposited in the Principal and Interest Payment Account by the Trustee; and used to pay the next maturing installment(s) of the principal of the Bonds.

ARTICLE VI

REVENUES AND FUNDS

Section 601. Creation of the Principal and Interest Payment Account. There is hereby created and ordered established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated the “City of Topeka, Kansas, Principal and Interest Payment Account for Economic Development Refunding Revenue Bonds, Series 2011A (YMCA Project)” (herein called the “Principal and Interest Payment Account”).

Section 602. Deposits into the Principal and Interest Payment Account. The Trustee shall deposit into the Principal and Interest Payment Account, as and when received, the following:

- (a) All accrued interest on the Bonds.
- (b) If required by a Supplemental Indenture authorizing the issuance of Additional Bonds, an additional amount from the proceeds of such Additional Bonds, such additional amount not to exceed the sum which, when added to the accrued interest and premium, if any, received from the sale of such Additional Bonds, will be sufficient to pay the interest accruing on such Additional Bonds during the estimated period of construction of the Project Additions financed through the issuance of such Additional Bonds.
- (c) All Rental Payments payable by the Association to the Issuer specified in **Section 3.1** of the Lease.
- (d) Any amount in the Redemption Fund to be transferred to the Principal and Interest Payment Account pursuant to **Section 504** hereof upon completion of the redemption of the Refunded Bonds.
- (e) All interest and other income (other than Rebate Fund earnings) derived from investments of Principal and Interest Payment Account moneys as provided in **Section 702** hereof.
- (f) All other moneys received by the Trustee under and pursuant to any of the provisions of the Lease when accompanied by directions from the person depositing such moneys that such moneys are to be paid into the Principal and Interest Payment Account.

Section 603. Application of Moneys in the Principal and Interest Payment Account.

(a) Except as provided in subsection (d) of this Section, moneys in the Principal and Interest Payment Account shall be expended solely for the payment of the principal of, premium, if any, and interest on the Bonds as the same mature and become due or upon the redemption thereof prior to maturity.

(b) The Issuer hereby authorizes and directs the Trustee to withdraw sufficient funds from the Principal and Interest Payment Account to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable and to make said funds so withdrawn available to the Paying Agents for the purpose of paying said principal, premium, if any, and interest.

(c) The Trustee, upon written direction of the Issuer and the Association, shall use any moneys in the Principal and Interest Payment Account to redeem all or part of the Bonds Outstanding, and to pay interest to accrue thereon prior to such redemption, in accordance with and to the extent permitted by **Article III** hereof so long as the Association is not in default with respect to any payments under the Lease and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption and past due interest in all cases when such Bonds have not been presented for payment. The Association may cause such excess money in the Principal and Interest Payment Account or such part thereof or other moneys of the Association, as the Association may direct, to be applied by the Trustee for the purchase of Bonds in the open market for the purpose of cancellation at prices not exceeding the principal amount thereof plus accrued interest thereon to the date of delivery for cancellation.

(d) Any amount remaining in the Principal and Interest Payment Account after the principal of, premium, if any, and interest on the Bonds shall have been paid in full or provision made therefor in accordance with **Article XIII** hereof, shall be paid to the Association by the Trustee.

Section 604. Creation of the Bond Reserve Account. There is hereby created and ordered established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated the “City of Topeka, Kansas, Bond Reserve Account for Economic Development Refunding Revenue Bonds, Series 2011A (YMCA Project)” (herein called the “Bond Reserve Account”).

Section 605. Deposit to the Bond Reserve Account. The Trustee shall deposit the sum of \$650,612.50 into the Bond Reserve Account from proceeds received from the sale of the Series 2011A Bonds. The Bond Reserve Account shall be maintained at a level equal to the Debt Service Reserve Requirement.

Section 606. Application of Moneys in the Bond Reserve Account. In the event funds credited to and deposited in the Principal and Interest Payment Account are insufficient to provide for payment of the principal of and interest on the Series 2011A Bonds promptly when due the Trustee shall and is hereby directed, to withdraw from the Bond Reserve Account and transfer to the Principal and Interest Payment Account such sum as shall be necessary to provide for payment of such principal and interest, on the Series 2011A Bonds, which shall be applied by Trustee in accordance with the provisions of **Section 603** hereof. The Trustee shall determine the Value of cash and Permitted Investments in the Bond Reserve Account annually as of each December 31 and at the time of any withdrawal from the Bond Reserve Account and at such other times as the Trustee deems appropriate. If on any such valuation date, the Value of cash and Permitted Investments on deposit in the Bond Reserve Account is less than the Debt Service

Reserve Requirement, or at any time any amount is withdrawn from the Bond Reserve Account for the purposes described above, the Trustee shall promptly notify the Association of such deficiency, and instruct the Association to make up such deficiency by making payment of such deficiency immediately in the case of a valuation deficiency, and in 12 equal monthly installments in the case of a withdrawal, directly to the Trustee for deposit in the Bond Reserve Account; provided, however, that if the Trustee or the Owners of not less than a majority in principal amount of Bonds then Outstanding approve a longer schedule of periodic payments, the amount of such deficiency shall be paid to the Trustee in accordance with such schedule. If at any time of valuation, the Value of cash and Permitted Investments on deposit in the Bond Reserve Account is in excess of the Debt Service Reserve Requirement, the Trustee shall transfer the amount of such excess to the Principal and Interest Account.

Section 607. Payments Due on Saturdays, Sundays and Holidays. In any case where the date of maturity of principal of, premium, if any, or interest on the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of principal, premium, if any, or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 608. Nonpresentment of Bonds. In the event that any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, or the Trustee is unable to locate the Owner for the payment accrued interest or an accrued interest check remains uncashed, if funds sufficient to pay such Bond and accrued interest shall have been made available to the Trustee, all liability of the Issuer to the Owner thereof for the payment of such Bond and accrued interest, shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond, who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond and accrued interest. If any Bond shall not presented for payment within six years following the date when such Bond becomes due, whether by maturity or otherwise, or the accrued interest cannot be paid as set out above, the Trustee upon the request of the Association shall repay to the Association the funds theretofore held by it for payment of such Bond and accrued interest, and such Bond and accrued interest shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Association, and the Owner thereof shall be entitled to look only to the Association for payment, and then only to the extent of the amount so repaid, and the Association shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 609. Creation of Project Replacement Fund. There is hereby created and ordered established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated the "City of Topeka, Kansas, Project Replacement Fund (YMCA Project)".

Section 610. Deposits into the Project Replacement Fund. The Trustee shall deposit into the Project Replacement Fund, as and when received any Net Proceeds received pursuant to **Article V** of the Lease.

Section 611. Application of Moneys in the Project Replacement Fund. Moneys held in the Project Replacement Fund shall be used and applied as provided in **Article V** of the Lease.

Section 612. Creation of Rebate Fund. There is hereby created and ordered to be established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated “City of Topeka, Kansas, Rebate Fund (YMCA Project)” (herein called the “Rebate Fund”).

Section 613. Deposits into and Application of Moneys in the Rebate Fund.

(a) There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Arbitrage Investment and Rebate Instructions. Subject to the payment provisions provided in subsection (b) below, all amounts on deposit at any time in the Rebate Fund shall be held by the Trustee in trust, to the extent required to pay rebatable arbitrage to the United States of America, and neither the Association, the Issuer nor the Owner of any Bonds shall have any rights in or claims to such money. All amounts held in the Rebate Fund shall be governed by this Section and by the Arbitrage Investment and Rebate Instructions (which is incorporated herein by reference).

(b) Pursuant to the Arbitrage Investment and Rebate Instructions, the Issuer shall remit all rebate installments and a final rebate payment to the United States. The Trustee shall have no obligation to pay any amounts required to be rebated pursuant to this Section and the Arbitrage Investment and Rebate Instructions, other than from moneys held in the Funds and Accounts created under this Indenture or from other moneys provided to it by the Association. Any moneys remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and paid to the Issuer.

(c) Notwithstanding any other provision of this Indenture, including particularly **Article 1302** hereof, the obligation to pay all rebatable arbitrage to the United States and to comply with all other requirements of this Section and the Arbitrage Investment and Rebate Instructions shall survive the defeasance of payment in full of the Bonds.

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701. Moneys to be Held in Trust. All moneys deposited with or paid to the Trustee for the account of any Fund under any provision of this Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Lease and, until used or applied as so provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any

Paying Agent shall be under any liability for interest on any moneys received hereunder except interest earned on investments made pursuant to **Section 702** of this Indenture and such other interest as may be agreed upon.

Section 702. Investment of Moneys in Funds. Moneys held in each of the funds and accounts hereunder (including the Rebate Fund) shall be separately invested and reinvested by the Trustee upon instruction from the Association in Permitted Investments which mature or are subject to redemption by the Owner prior to the date such funds will be needed; provided, however, that such moneys shall not be invested in such manner as will violate the provisions of **Section 704** hereof. Any such Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund or account in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Permitted Investments shall be credited to and accumulated in such Fund, and any loss resulting from such Permitted Investments shall be charged to such Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Permitted Investments whenever the cash balance in any fund or account is insufficient for the purposes of such fund or account. In determining the balance in any fund or account, investments in such fund or account shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or short-term investment department. Trustee shall make no investments which would violate the applicable provisions of Sections 103 and 148 of the Code and the regulations promulgated thereunder and Trustee shall maintain adequate records to evidence that such compliance has been made.

Section 703. Record Keeping. The Trustee shall maintain records designed to show compliance with the provisions of this Article and with the provisions of **Article VI** for at least six years after the payment of all of the Outstanding Bonds.

Section 704. Tax Covenants.

(a) The Issuer agrees that so long as any of the Series 2011A Bonds remain Outstanding, it will not (to the extent within its power or direction) use any money on deposit in any fund or account maintained in connection with the Series 2011A Bonds, whether or not such money was derived from the proceeds of the sale of the Series 2011A Bonds or from any other source, in a manner that would cause the Bonds to be “arbitrage bonds,” within the meaning of Section 148 of the Code. In the event the Issuer is made aware that it is necessary to restrict or limit the yield on the investment of moneys held by the Trustee pursuant to this Indenture, or to use such moneys in any certain manner to avoid the Series 2011A Bonds being considered “arbitrage bonds,” the Issuer shall (to the extent within its power or direction) deliver to the Trustee a written certificate to such effect and appropriate instructions specifying the investments to be made.

(b) The Issuer shall not (to the extent within its power or direction) use or permit the use of any proceeds of Series 2011A Bonds or any other funds of the Issuer, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Series 2011A Bonds being treated other than as an obligation described in Section 103(a) of the Code.

(c) The Issuer will not (to the extent within its power or direction) use any portion of the proceeds of any of the Series 2011A Bonds, including any investment income earned on such proceeds, directly or indirectly, (i) in a manner that would cause any Series 2011A Bond to be a “private activity bond” (other than qualified §501(c)(3) bonds) within the meaning of Section 141(a) of the Code, or (ii) to make or finance loans to Persons who are not Tax-Exempt Organizations, as defined in the Lease. For purposes of the preceding sentence, a loan to an organization described in Section 501(c)(3) of the Code for use with respect to an unrelated trade or business, determined according to Section 513(a) of the Code, constitutes a loan to a person who is not a Tax-Exempt Organization.

(d) The Trustee shall maintain all records of investments, at least every year make appropriate determinations of yields on investments, and, if required, remit all required amounts to the United States at least every five years and upon retirement of the Bonds, all as set forth and regulated by Section 148(f) of the Internal Revenue Code and Sections 1.148-1 through 1.148-11, inclusive, of the Internal Revenue Service Regulations.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801. Payment of Principal of, Premium, if any, and Interest on the Bonds.

The Issuer covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project as described herein, promptly pay or cause to be paid the principal of, premium, if any, and interest on the Bonds as the same become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof, and to this end the Issuer covenants and agrees that it will use its best efforts to cause the Project to be continuously leased as a revenue and income producing undertaking, and that, should there be a default under the Lease with the result that the right of possession of the Project is returned to the Issuer, the Issuer shall fully cooperate with the Trustee and with the Bondowners to protect the rights and security of the Bondowners and shall diligently proceed in good faith and use its best efforts to secure another tenant for the Project to the end that at all times sufficient rents, revenues and receipts will be derived by Issuer from the Project to provide for payment of the principal of, premium, if any, and interest on the Bonds as the same become due and payable. If the Issuer is unable to procure a new tenant who will enter into such a lease, the Issuer may take such good faith action as shall be in the best interests of the Bondowners which may include the sale of the Project, and if the Project is sold, after deducting all costs of the sale, any moneys derived from such sale shall be used for the purpose of paying the principal of and interest and redemption premium, if any, on the Bonds. Nothing herein shall be construed as requiring the Issuer to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 802. Authority to Execute Indenture and Issue Bonds. The Issuer covenants that it is duly authorized under the Constitution and laws of the State of Kansas to execute this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable limited obligations of the

Issuer according to the import thereof. The Issuer further covenants that it has taken, will take or will cause to be taken, in a timely manner prior to the Refunded Bond Redemption Date, such action as is required by the Refunded Bond Ordinance in order to redeem all Refunded Bonds currently outstanding on such date.

Section 803. Performance of Covenants. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its governing body pertaining thereof.

Section 804. Instruments of Further Assurance. The Issuer covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to secure the payment of the principal of, premium, if any, and interest on the Bonds. The Issuer covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

Section 805. Maintenance, Taxes and Insurance. The Issuer represents that pursuant to the provisions of **Articles VI, VII and X** of the Lease, the Association has agreed to cause the Project to be maintained and kept in good condition, repair and working order, to pay, as the same respectively become due, all taxes, assessments and other governmental charges at any time lawfully levied or assessed upon or against the Project or any part thereof, and to keep the Project constantly insured to the extent provided for therein, all at the sole expense of Association.

Section 806. Inspection of Project Books. The Issuer covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 807. Enforcement of Rights Under the Lease. The Issuer covenants and agrees that it shall enforce all of its rights and all of the obligations of the Association (at the expense of the Association) under the Lease to the extent necessary to preserve the Project in good order and repair, and to protect the rights of the Trustee and the Bondowners hereunder with respect to the pledge and assignment of the rents, revenues and receipts coming due under the Lease. The Issuer agrees that the Trustee as assignee of the Lease in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Association under and pursuant to the Lease for and on behalf of the Bondowners, whether or not the Issuer is in default hereunder.

Section 808. Possession and Use of Project. So long as not otherwise provided in this Indenture, the Association shall be suffered and permitted to possess, use and enjoy the Project and appurtenances so as to carry out its obligations under the Lease.

Section 809. Continuing Disclosure.

(a) The Lease provides that the Association will furnish to the Trustee certain matters delineated in the Disclosure Agreement for purposes of complying with the SEC Rule. The Trustee hereby covenants with the Issuer, the Original Purchaser and the Beneficial Owners to provide such information as is required by the SEC Rule and as further set forth in the Disclosure Agreement. Such covenants shall be for the benefit of and enforceability by the Original Purchaser and the Beneficial Owners.

(b) In the event the Association fails to comply in a timely manner with its covenants contained in the preceding section, the Original Purchaser and/or any Beneficial Owner may make demand for such compliance by written notice to the Association. In the event the Association does not remedy such noncompliance within 10 days of receipt of such written notice, the Original Purchaser or any Beneficial Owner may in its discretion, without notice or demand, proceed to enforce compliance by a suit or suits in equity for the specific performance of such covenant or agreement contained in the preceding section or for the enforcement of any other appropriate legal or equitable remedy, as the Original Purchaser and/or any Beneficial Owner shall deem effectual to protect and enforce any of the duties of the Association under such preceding section. The Original Purchaser or Beneficial Owners shall provide a copy of any such demand or notice to the Issuer and the Trustee.

ARTICLE IX

REMEDIES ON DEFAULT

Section 901. Acceleration of Maturity in Event of Default.

(a) If an Event of Default shall have occurred and be continuing, the Trustee may, and upon the written request of the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding shall, by notice in writing delivered to the Issuer and the Association, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable.

(b) If, at any time after such declaration, but before the Bonds shall have matured by their terms, all overdue installments of principal and interest on the Bonds, together with the reasonable and proper expenses of the Trustee, and all other sums then payable by the Issuer under this Indenture shall either be paid or provision satisfactory to the Trustee shall be made for such payment, then and in every such case the Trustee shall, but only with the approval of the Owners of not less than 50% in aggregate principal amount of the Bonds Outstanding, rescind such declaration and annul such default in its entirety.

(c) In case of any rescission, then and in every such case the Issuer, the Trustee and the Bondowners shall be restored to their former position and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 902. Exercise of Remedies by the Trustee.

(a) If an Event of Default shall have occurred and be continuing, the Trustee shall pursue and exercise any available remedy at law or in equity by suit, action, mandamus or other proceeding or exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondowners to enforce the payment of the principal of, premium, if any, and interest on the Bonds then Outstanding, and to enforce and compel the performance of the duties and obligations of the Issuer as herein set forth.

(b) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owners of the Bonds, and any recovery of judgment shall, be for the equal benefit of all the Owners of the Outstanding Bonds.

Section 903. Limitation on Exercise of Remedies by Bondowners. No Owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (i) a default has occurred of which the Trustee has knowledge, (ii) such default shall have become an Event of Default, (iii) the Owners of 25% in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and (iv) the Trustee shall thereafter fail or refuse to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; and such knowledge and request are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondowner to payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the Issuer to pay the principal of, premium, if any, and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

Section 904. Right of Bondowners to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, the Owners of 50% in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

Section 905. Remedies Cumulative. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Bondowners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondowners hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Trustee or by the Bondowners, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Section 906. Waivers of Events of Default. The Trustee may in its discretion waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on Bonds, and shall do so upon the written request of the Owners of at least 50% in aggregate principal amount of all the Bonds then Outstanding. In case of any such waiver or rescission, or in case any proceedings taken by the Trustee under this Indenture on account of any such default shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Bondowners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 907. Application of Moneys Collected. Any moneys collected by the Trustee pursuant to this Article (after the deductions for payment of costs and expenses of proceedings resulting in the collection of such moneys), together with any other sums then held by the Trustee as part of the Trust Estate, shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Bonds and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

- (a) **First:** To the payment of all amounts due the Trustee under **Section 1002** of this Indenture;

- (b) **Second:** To the payment of the whole amount then due and unpaid upon the Outstanding Bonds and any Parity Indebtedness for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected by the Trustee or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Bonds and Parity Indebtedness) on overdue principal (and premium, if any) and on overdue installments of interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon such Bonds and Parity Indebtedness, then to the payment of such principal and interest, without any preference or priority, ratably according to the aggregate amount so due.
- (c) **Third:** To the payment of the remainder, if any, to the Association or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Owner of any unpaid Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

ARTICLE X

THE TRUSTEE

Section 1001. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts in the manner in which a corporate trustee ordinarily would perform said trusts under a corporate indenture, and the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs, and upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee's duties and responsibilities shall include those expressly set forth in this Trust Indenture, the Lease, and Guaranty Agreement; and shall further include those rights, duties, responsibilities, and obligations which are reserved to or imposed upon the Issuer under this Trust Indenture and the Lease, excepting only such of those rights, duties,

responsibilities, and obligations as may only be properly and lawfully exercised by or imposed upon the Issuer.

Upon the occurrence of an Event of Default the Trustee shall be and is hereby authorized to bring appropriate action for judgment or such other relief as may be appropriate and such action may be in the name of the Trustee or in the name of the Issuer and Trustee jointly; but in such case, the Issuer shall have no obligation for any fees and expenses of such action except out of any funds which might come into the hands of the Issuer by reason of the ownership of the Project and this Trust Indenture and the Lease. In addition, the Trustee may file such proof of claim and such other documents as may be necessary and advisable in order to have the claims of the Trustee and the Owners of the Bonds relative to the Bonds or the obligations relating thereto allowed in any judicial proceeding.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys or receivers. The Trustee shall be entitled to rely upon the opinion or advice of counsel, who may be counsel to the Trustee, Issuer or the Association, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof.

(c) The Trustee, in its individual or any other capacity, may become the owner or pledge of Bonds with the same rights which it would have it if were not Trustee.

(d) The Trustee may rely and shall be protected in acting or refraining from acting upon any ordinance, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture believed by it to be genuine and correct and to have been signed, presented or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent is the Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in substitution thereof.

(e) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by the Authorized Issuer Representative as sufficient evidence of the facts therein contained, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(g) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect any and all of the Project and all books, papers and records of the Issuer and Association pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired.

(h) The Trustee shall not be required to give any bond or surety with respect to the execution of its trusts and powers hereunder or otherwise with respect to the Project.

(i) The Trustee shall have the right, but shall not be required, to demand, with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purpose of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

Section 1002. Fees, Charges and Expenses of the Trustee. The Trustee shall be entitled to payment of or reimbursement for reasonable fees for its ordinary services rendered hereunder and all reasonable advances, agent and counsel fees and other ordinary expenses reasonably and necessarily made or incurred by the Trustee in connection with such ordinary services and, in the event that it should become necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for reasonable fees and charges of the Trustee as Paying Agent for the Bonds. The Trustee agrees that the Issuer shall have no liability for any fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Association for the payment of all fees, charges and expenses of the Trustee and any Paying Agents as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment prior to payment of principal of, redemption premium, if any, or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing advances, fees, costs and expenses incurred.

Section 1003. Notice to Bondowners if Default Occurs. If an Event of Default occurs the Trustee shall give written notice thereof to the last known Owners of all Bonds then Outstanding, as shown by the bond registration books required to be maintained by the Trustee and kept at the principal office of the Trustee.

Section 1004. Intervention by the Trustee. In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Bondowners, the Trustee may intervene on behalf of the Bondowners and shall do so if requested in writing by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding.

Section 1005. Successor Trustee Upon Merger, Consolidation or Sale. Any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 1006. Resignation of Trustee. The Trustee may resign by an instrument in writing delivered by registered or certified mail to the Issuer and the Association to take effect not sooner than ninety (90) days after its delivery, whereupon the Issuer, with the consent of the Association, shall immediately, in writing, designate a successor Trustee; provided, however, that the Trustee's resignation shall not become effective unless and until a successor Trustee is approved and qualified.

Section 1007. Removal of Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee, executed by the Issuer and the Association.

Section 1008. Qualifications of Successor Trustee. Every Successor Trustee appointed pursuant to the provisions of this Article shall be a trust company or bank in good standing and qualified to accept such trust having a reported capital and surplus of not less than \$50,000,000.

Section 1009. Vesting of Trusts in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Association an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

Section 1010. Right of Trustee to Pay Taxes and Other Charges. In case any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease or in case any amount required to be rebated to the United States pursuant to the provisions of Section 148(f) of the Code is not paid when due, the Trustee may pay such tax, assessment or governmental charge or insurance premium or rebate amount, without prejudice, however, to any rights of the Trustee or the Bondowners hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment at a rate per annum equal

to the Trustee's published prime rate in effect at the time, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of, premium, if any, or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

Section 1011. Trust Estate May be Vested In Co-trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) In the event that the Trustee appoints an additional individual or institution as a co-trustee or separate trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the Issuer be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, then any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

(d) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

Section 1012. Annual Accounting. The Trustee shall render an annual accounting to the Issuer, the Association and to any Bondowner requesting the same in writing and remitting the Trustee's reasonable charges for preparing such copies, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 1013. Recordings and Filings. The Trustee shall cause this Indenture and all Supplemental Indentures, the Lease and all amendments to the Lease or appropriate memoranda thereof and all appropriate financing and continuation statements and other security instruments to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Owners of the Bonds and the rights of the Trustee hereunder.

Section 1014. Performance of Duties under the Lease and Guaranty Agreement. The Trustee hereby accepts and agrees to perform all duties and obligations assigned to it under the Lease and the Guaranty Agreement.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101. Supplemental Indentures Not Requiring Consent of Bondowners. The Issuer and the Trustee may from time to time, without consent of or notice to any of the Bondowners, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture or to make any other change not prejudicial to the Bondowners;
- (b) To grant to or confer upon the Trustee for the benefit of the Bondowners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondowners or the Trustee or either of them;
- (c) To more precisely identify the Project or to substitute or add additional property thereto;
- (d) To subject to this Indenture additional revenues, properties or collateral; and
- (e) To issue Additional Bonds as provided in **Section 209** hereof or to provide for the issuance of Parity Indebtedness in accordance with **Section 6.2** of the Lease.
- (f) To provide for the issuance of coupon Bonds and the exchange of fully registered Bonds for coupon Bonds upon such terms and conditions as the Issuer and Trustee shall determine provided, however, that no such amendments shall become effective unless and until Trustee shall have received an opinion of Bond Counsel in the form and substance satisfactory to Trustee, to the effect that the issuance of such coupon Bonds or the exchange of Bonds for such coupon Bonds will not cause the interest on the Bonds to be includible in the gross income of the recipients thereof under the provisions of the Code.
- (g) To conform the provisions of this Indenture to the provisions of the Code as the same now exists or may be hereafter amended.

Section 1102. Supplemental Indentures Requiring Consent of Bondowners.

(a) Exclusive of Supplemental Indentures described in **Section 1101** hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the interest on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, (4) a change in the date on which any series of Bonds may be optionally called for redemption, or (5) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture.

(b) Any provision of this Indenture or the Bonds may be amended with the written consent of the Owners of 100% in aggregate principal amount then Outstanding.

Section 1103. Association's Consent to Supplemental Indentures. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article which affects any rights of the Association shall not become effective unless and until the Association shall have consented in writing to the execution and delivery of such Supplemental Indenture, provided that receipt by the Trustee of an amendment to the Lease executed by the Association in connection with the issuance of Additional Bonds under **Section 209** hereof shall be deemed to constitute consent of the Association to the execution of a Supplemental Indenture pursuant to **Section 209** hereof. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such Supplemental Indenture (other than a Supplemental Indenture proposed to be executed and delivered pursuant to **Section 209** hereof) together with a copy of the proposed Supplemental Indenture to be mailed to the Association at least 15 days prior to the proposed date of execution and delivery of any such Supplemental Indenture.

ARTICLE XII

LEASE AMENDMENTS

Section 1201. Lease Amendments. The Lease provisions may be amended to the extent and upon the terms and conditions provided therein.

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301. Satisfaction and Discharge of the Indenture.

(a) When the principal of, premium, if any, and interest on all the Bonds shall have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 1302** hereof, and provision shall also be made for paying all other sums payable hereunder, including the fees and expenses of the Trustee and the Paying Agents to the date of retirement of the Bonds and the rebate of all amounts owing to the United States as required by this Indenture or the Tax Compliance Agreement then the right, title and interest of the Trustee under this Indenture shall thereupon cease, determine and be void, and thereupon the Trustee shall cancel, discharge and release this Indenture and shall execute, acknowledge and deliver to the Issuer such instruments of satisfaction and discharge or release as shall be requisite to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the Issuer any property at the time subject to this Indenture which may then be in its possession, except amounts in the Principal and Interest Payment Account required to be paid to the Association under **Section 603(d)** hereof and except funds or securities in which such funds are invested and held by the Trustee for the payment of the principal of, premium, if any, and interest on the Bonds or of rebate payments to the United States.

(b) The Issuer is hereby authorized to accept a certificate by the Trustee that the principal of, premium, if any, and interest due and payable upon all of the Bonds then Outstanding and all amounts required to be paid to the United States have been paid or such payment provided for in accordance with **Section 1302** hereof as evidence of satisfaction of this Indenture, and upon receipt thereof shall cancel and erase the inscription of this Indenture from its records.

Section 1302. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Indenture when payment of the principal of and the applicable premium, if any, on such Bonds, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) moneys sufficient to make such payment or (2) Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed prior to the stated maturities thereof, no deposit under clause (ii) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed prior to their respective stated maturities, proper

notice of such redemption shall have been given in accordance with **Article III** of this Indenture or irrevocable instructions shall have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other Section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds (including premium thereon, if any) and interest thereon shall be applied to and used solely for the payment of the particular Bonds (including premium thereon, if any) and interest thereon with respect to which such moneys and Government Securities have been so set aside in trust.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Consents and Other Instruments by Bondowners.

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(1) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(2) The fact of ownership of Bonds and the amount or amounts, number and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the Issuer maintained by the Trustee.

(b) In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Association or any affiliate of the Association shall be disregarded and deemed not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. For purposes of this paragraph, the word "affiliate" means any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Association; and for the purposes of this definition, "control" means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the

pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Association or any affiliate of the Association.

Section 1402. Limitation of Rights Under the Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be inferred from this Indenture or the Bonds is intended or shall be construed to give any person other than the parties hereto, and the Owners of the Bonds, any right, remedy or claim under or with respect to this Indenture, and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Owners of the Bonds as herein provided.

Section 1403. Notices. Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Indenture shall be in writing and shall be deemed duly given or filed if the same shall be duly mailed by registered or certified mail, postage prepaid, to the Notice Representative.

All notices given by certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Association to the other shall also be given to the Trustee. The Issuer, the Trustee and the Association may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 1404. Severability. If any provision of this Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

Section 1405. Execution in Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1406. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

IN WITNESS WHEREOF, Issuer has caused this Indenture to be signed in its name and behalf by the Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and to evidence its acceptance of the trusts hereby created, Trustee has caused this Indenture to be signed in its name and behalf and its official seal to be hereunto affixed and attested by its duly authorized officers, all as of the date first above written.

EXHIBIT A

Unless this certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

FACE OF THE BOND

No. _____ \$ _____

UNITED STATES OF AMERICA
STATE OF KANSAS
CITY OF TOPEKA
ECONOMIC DEVELOPMENT REFUNDING REVENUE BOND
SERIES 2011A (YMCA PROJECT)

Rate of Interest: _____ Maturity Date: September 1, 20____ Dated Date: September __, 2011
CUSIP: _____

Registered Owner: _____

Principal Amount: _____ Dollars

The City of Topeka, a municipal corporation of the State of Kansas (the "Issuer"), for value received, promises to pay, but solely from the sources hereinafter referred to, to the registered owner identified above, or registered assigns, upon the presentation and surrender of this Bond, the principal sum identified above on the maturity date shown, in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, at the principal offices of CoreFirst Bank & Trust, in the City of Topeka, Kansas, (the "Paying Agent" and "Trustee") and in like manner to pay the registered owner ("Owner") hereof, by check or draft mailed to the Owner at his address as it appears on the bond registration books of the Issuer kept by the Trustee under the within mentioned Indenture, interest on said principal sum from the effective date of registration of this Bond (which date is set forth on this Bond) at the rate of interest shown above per annum (computed on the basis of a 360-day year of twelve 30-day months) payable semiannually on March 1 and September 1 in each year, commencing on March 1, 2012, until said principal sum is paid.

Reference is hereby made to the further provisions of this Bond set forth on the reverse side hereof and such further provisions shall for all purposes have the same effect as if set forth on the face hereof.

It is hereby certified and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law.

In witness whereof, Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk and its official seal to be affixed hereto or imprinted hereon, and has caused this Bond to be dated as of September 7, 2011.

CITY OF TOPEKA, KANSAS

(Seal)

By _____
William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

=====

(FORM OF TRUSTEE’S CERTIFICATE OF AUTHENTICATION)

This Bond is one of the City of Topeka, Kansas, Economic Development Refunding Revenue Bonds, Series 2011A (YMCA Project) described in the within-mentioned Trust Indenture. The effective date of registration of this Bond is _____.

COREFIRST BANK & TRUST
Topeka, Kansas,
Trustee

By _____
Authorized Signature

=====

REVERSE OF THE BOND

This Bond is one of a duly authorized series of Bonds of the Issuer designated “City of Topeka, Kansas, Economic Development Refunding Revenue Bonds, Series 2011A, (YMCA Project)” in the aggregate principal amount of \$7,055,000 (the “Bonds”), issued for the purpose of providing funds to refund and redeem prior to their maturities all of the Issuer’s outstanding Economic Development Revenue Bonds, Series 2000A (YMCA Project) dated August 1, 2000, maturing on and after September 1, 2012, issued to pay the cost of constructing, furnishing and equipping a new 38,000 square foot recreational health center at S.W. 37th and Chelsea in the City of Topeka, Kansas (the “Project”), leased by the Issuer to Young Men’s Christian Association of Topeka, a Kansas not-for-profit corporation (the “Association”), under the terms

of a Lease dated as of September 1, 2011, between the Issuer and the Association (said Lease, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Lease"), all pursuant to the authority of and in conformity with the provisions, restrictions and limitations of the Constitution and statutes of the State of Kansas, including particularly K.S.A. 12-1740 to 12-1749d, inclusive, as amended, and pursuant to proceedings duly had by the Governing Body of the Issuer.

The Series 2011A Bonds are issued under and are equally and ratably secured and entitled to the protection of the Trust Indenture, dated as of September 1, 2011 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Indenture"), between the Issuer and the Trustee. Subject to the terms and conditions set forth therein, the Indenture permits the Issuer to issue Additional Bonds (as defined therein) secured by the Indenture ratably secured and on a parity with the Series 2011A Bonds. Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the owners of the Bonds, and the terms upon which the Bonds are issued and secured.

REDEMPTION OF BONDS

Extraordinary Optional Redemption. In the event of a Change in Circumstances (as defined in the Indenture), the Series 2011A Bonds are subject to redemption and payment prior to maturity thereof, in whole or in part, by the Issuer, upon instructions from the Association, on any date at a redemption price equal to the par value of the principal amount thereof, plus accrued interest thereon to the redemption date, without premium.

Optional Redemption. The Bonds maturing in the year 2015 are subject to redemption and payment prior to maturity, at the option of the Issuer, which shall be exercised upon written direction from the Association, on and after September 1, 2012, as a whole or in part at any time, at the redemption price of 100% of the principal amount thereof plus accrued interest thereon to the date fixed for redemption and payment.

The Series 2011A Bonds maturing in the year 2022 and thereafter are also subject to redemption and payment prior to maturity by the Issuer, upon instructions from the Association, on and after September 1, 2021, in whole or in part at any time, at the redemption price of 100% of the principal amount thereof plus accrued interest thereon to the date fixed for redemption and payment.

Sinking Fund Redemption. Each of said Series 2011A Bonds maturing on September 1, 2015, September 1, 2026, and September 1, 2032 (the "Term Bonds"), shall be subject to mandatory redemption and payment from the Sinking Fund described in the Indenture pursuant to the redemption schedule set out in the Indenture, at the principal amount thereof, plus accrued interest thereon to date fixed for redemption and payment, without premium.

As and for a sinking fund for the retirement of the Term Bonds, but subject to the provisions of the Indenture, the Basic Rent payments specified in the Lease which are to be deposited in the Principal and Interest Payment Account created by the Indenture commencing on September 15, 2012, (the "Sinking Fund Deposits"), shall be sufficient to redeem (after credit

as hereinafter provided) and the Issuer agrees to redeem the Term Bonds on September 1 in the years specified in the Indenture.

In the event any of the Bonds are called for redemption as aforesaid, notice thereof identifying the Bonds to be redeemed will be given by mailing a copy of the redemption notice at least 30 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed at the address shown on the registration books maintained by the Trustee; provided, however, that failure to give such notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds. All Bonds so called for redemption will cease to bear interest on the specified redemption date and shall no longer be secured by the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture.

The Series 2011A Bonds and the interest thereon are limited obligations of the Issuer payable exclusively out of the revenues derived by the Issuer from the Project, including but not limited to the rents, revenues and receipts under the Lease, and are secured by a pledge of the Project and a pledge and assignment of such rents, revenues and receipts, including all rentals and other amounts to be received by the Issuer under and pursuant to the Lease, all as provided in the Indenture. The Bonds and the interest thereon do not constitute a debt or general obligation of Issuer, the State of Kansas or any municipal corporation thereof, and are not payable in any manner by taxation. The Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Pursuant to the provisions of the Lease, Rental Payments are to be paid by the Association directly to the Trustee for the account of the Issuer and deposited in a special trust account created by the Issuer and designated "City of Topeka, Kansas, Principal and Interest Payment Account for Economic Development Refunding Revenue Bonds, Series 2011A (YMCA Project)". The full and prompt payment of the principal of, redemption premium, if any, and interest on the Bonds is unconditionally guaranteed by the Association to the Trustee for the benefit of the Owners of the Bonds, under the terms of a separate Guaranty Agreement dated as of September 1, 2011.

The Owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable prior to the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and under the circumstances permitted by the Indenture.

This Bond is transferable, as provided in the Indenture, only upon the registration books of the Issuer kept for that purpose at the above mentioned office of the Trustee by the Owner hereof in person or by his duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the Owner or his duly authorized attorney, and thereupon a new Bond or Bonds and in the same aggregate principal amount, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The Association has agreed to pay as Additional Rent under the Lease all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds except (a) the reasonable fees and

expenses in connection with the replacement of the Bond or Bonds mutilated, stolen, lost or destroyed or (b) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds. The Issuer, the Trustee and any Paying Agent may deem and treat the person in whose name this Bond is registered as the absolute Owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

=====

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Type Name and Address of Transferee

the within Bond and all rights thereunder, and hereby authorizes the transfer of the within bond on the books kept by the Trustee for the registration and transfer of Bonds.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

[Seal of Bank]

By _____

Title: _____

(signature)
City Clerk of the City of
Topeka, Kansas

SCHEDULE I

SCHEDULE I TO THE INDENTURE OF TRUST
OF THE CITY OF TOPEKA, KANSAS, AND
COREFIRST BANK & TRUST, TOPEKA,
KANSAS, AS TRUSTEE, DATED AS OF
SEPTEMBER 1, 2011, AND TO THE LEASE
DATED AS OF SEPTEMBER 1, 2011, BY AND
BETWEEN SAID CITY AND YOUNG MEN'S
CHRISTIAN ASSOCIATION OF TOPEKA,
KANSAS

PROPERTY SUBJECT TO LEASE

The following described real estate located in Shawnee County, Kansas, to wit:

TRACT:

Lot 1, and part of Lot 2 described as follows: Beginning at the southwest corner of said Lot 2; thence north 89°48'30" E, 472.53 feet; thence north 48°59'46" W, 64.60 feet; thence north 90°00'00" W, 423.92 feet; thence south 00°11'30" E, 43.97 feet to the point of beginning, all in Block A, Southbrook Subdivision No. 3, in the City of Topeka, Shawnee County, Kansas.

Together with all improvements constructed thereon.

ELECTRONICALLY FILED
2024 Jun 14 PM 4:30
CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: SN-2024-CV-000152
PII COMPLIANT
IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 6

COREFIRT BANK & TRUST, as Trustee,
Plaintiff,

Case No. SN-2024-CV-000152

v.

BONDHOLDERS 1-100, and THE YOUNG
MEN'S CHRISTIAN ASSOCIATION OF
TOPKEA, KANSAS,
Defendants.

ANSWER

COMES NOW, The Young Men's Christian Association of Topeka, Kansas (YMCA),
by and through its counsel, Engel Law, P.A., and in Answer to the Petition, states:

1. The YMCA admits each and every allegation in the Petition other than the statements
is paragraphs 2 and 15, which are not allegations necessitating responsive answers.

Wherefore, The YMCA prays for an order directing the Trustee to sell the Real Estate
to the YMCA for the gross sales price of \$825,000.00 pursuant to the terms of its offer, and
for such other relief as is just and equitable.

Respectfully submitted,

/s/ Charles T. Engel

Charles T. Engel, S. Ct. No. 12304

Derek D. Ulrich, S. Ct. No. 27683

ENGEL LAW, P.A.

800 SW Jackson, Suite 1000

Topeka, Kansas 66612

P: (785) 233-6700 F: (785) 233-6701

chuck@engellawpa.com

derek@engellawpa.com

Attorneys for YMCA of Topeka

Certificate of Service

I hereby certify that on this 14th day of June 2024, I caused the foregoing Answer to be filed electronically using the court's eFlex electronic filing system which will provide electronic notification to:

R. Patrick Riordan
RIORDAN, FINCHER & MAYO, P.A.
3735 SW Wanamaker Rd., Suite A
Topeka, Kansas 66610

/s/ Charles T. Engel

ELECTRONICALLY FILED
2024 Jun 14 PM 4:30
CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: SN-2024-CV-000152
PII COMPLIANT
IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 6

COREFIRT BANK & TRUST, as Trustee,
Plaintiff,

Case No. SN-2024-CV-000152

v.

BONDHOLDERS 1-100, and THE YOUNG
MEN'S CHRISTIAN ASSOCIATION OF
TOPKEA, KANSAS,
Defendants.

MOTION FOR JUDGMENT ON THE PLEADINGS

Now comes The Young Men's Christian Association of Topeka, Kansas, (YMCA) by and through its counsel, Engel Law, P.A., and in support of its Motion for Judgment on the Pleadings pursuant to K.S.A. 60-212(c) states:

1. The Trustee commenced this action by filing the Petition on March 1, 2024.
2. The YMCA filed its Entry of Appearance on March 14, 2024.
3. The YMCA filed its Answer on June 14, 2024.
4. The Trustee has neither requested nor served the Bondholder defendants,
5. The Bondholder defendants are not necessary parties to this action per the Lease and Indenture attached as Exhibit "A" to the Petition.
6. The pleadings have now closed.
7. The allegations of the Petition are true.

8. Before December 1, 2023, the YMCA presented the highest offer to purchase the real estate that is the subject of the Petition in the amount of \$825,000.00 to the Trustee.

9. There are no other offers to purchase the real estate for an amount greater than that offered by the YMCA.

10. It is in the best interests of the Trustee and the YMCA for the Court to direct the Trustee to sell the real estate to the YMCA in the amount of \$825,000.00 pursuant to its offer.

Wherefore, the YMCA requests an order from the Court directing the Trustee to sell the real estate to the YMCA in the amount of \$825,000.00 pursuant to its offer, and for such other and further relief as is just and equitable.

Respectfully submitted,

s/ Charles T. Engel

Charles T. Engel, S.Ct.No. 12304

Engel Law, P.A.

800 S.W. Jackson, Suite 1000

Topeka, Kansas 66612

785-233-6700

chuck@engellawpa.com

Certificate of Service

I hereby certify that on this 14th day of June 2024, I caused the foregoing Motion for Judgment on the Pleadings to be filed electronically using the court's eFlex electronic filing system which will provide electronic notification to:

R. Patrick Riordan

RIORDAN, FINCHER & MAYO, P.A.

3735 SW Wanamaker Rd., Suite A

Topeka, Kansas 66610

/s/ Charles T. Engel

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

COREFIRST BANK & TRUST, as Trustee,)	
)	
Plaintiff,)	Case No. 2024-CV-152
)	Div. 6
v.)	
)	
THE YOUNG MEN’S CHRISTIAN)	
ASSOCIATION OF TOPEKA, KANSAS, et al.,)	
)	Title to Real Estate Involved
)	
Defendants.)	
)	

(Pursuant to K.S.A. Ch. 60)

**RESPONSE TO DEFENDANT YOUNG MEN’S CHRISTIAN
ASSOCIATION OF TOPEKA, KANSAS’S
MOTION FOR JUDGMENT ON THE PLEADINGS**

COMES NOW plaintiff CoreFirst Bank & Trust as Trustee (“Trustee”) under the Trust Indenture (“Indenture”) dated as of September 1, 2011, between the Trustee and the City of Topeka, Kansas, authorizing the Issuance of the Economic Development Refunding Revenue Bonds Series 2011A (YMCA Project) in the maximum amount of \$7,055,00 (the “Series 2011A Bonds”), and for its response to the Motion for Judgment on the Pleadings defendant The Young Men’s Christian Association of Topeka, Kansas (“YMCA”), states as follows:

1. The standard for a motion for judgment on the pleadings is well established:

“ ‘A motion for judgment on the pleadings under 60-212(c), filed by a defendant, is based upon the premise that the moving party is entitled to judgment on the face of the pleadings themselves and the basic question to be determined is whether, upon the admitted facts, the plaintiffs have stated a cause of action. The motion serves as a means of disposing of the case without a trial where the total result of the pleadings frame the issues in such manner that the disposition of the case is a matter of law on the facts alleged or admitted, leaving no real issue to be tried. The motion operates as an admission by movant of all fact allegations in the opposing party's pleadings.’

An appellate court's review of whether the district court properly granted a motion for judgment on the pleadings is unlimited. [Citations omitted.]” *Mashaney v. Bd. of Indigents' Def. Servs.*, 302 Kan. 625, 638-39, 355 P.3d 667 (2015).

Tillman v. Goodpasture, 313 Kan. 278, 485 P.3d 656 (Kan. 2021).

2. In the present motion, the YMCA is not arguing that the Trustee fails to state a claim. Rather, the YMCA is arguing that it is entitled to an affirmative relief that is different from that sought by the Trustee. Specially, the YMCA wants a judgment from the Court directing the Trustee to sell the Real Estate to the YMCA rather than a judgment that allows the Trustee to sell the Real Estate sell the Real Estate to the YMCA *or any other person or entity* for a gross sales price of \$825,000.00 or more (emphasis added). This distinction is a crucial one makes the use of KSA 60-212(c) in applicable.

3. Further, the YMCA contests the role of the bondholders' involvement in this case. The motion does not explain why the bondholders are not necessary parties. At the very least, the YMCA is the underlying debtor on the Indenture, and to the extent that the underlying debtor wants to buys the Real Estate, the YMCA's offer may constitute a modification of the Indenture which would certainly require bondholder involvement.

4. The Trustee will be sending out ballots to the Bondholders. When the ballots are sent, the Trustee will file a notice of the balloting, with a time-table and a copy of the ballot.

WHEREFORE, the Trustee prays that the Court deny the YMCA's motion for judgment on the pleadings and for any further relief the Court deems just and equitable.

Respectfully submitted,

/s/ R. Patrick Riordan

R. Patrick Riordan, #15518
RIORDAN, FINCHER
& MAYO, P.A.
3735 SW Wanamaker Rd., Suite A
Topeka, KS 66610
(785) 783-8323; (785) 783-8327 fax
riordan@rfm-law.com
Attorneys for plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2024, I filed a true and correct copy of the above and foregoing with the Court using the Court's e-filing system which sent notification to all parties of interest participating in the Court's e-filing system.

/s/ R. Patrick Riordan
R. Patrick Riordan, #15518

ELECTRONICALLY FILED
2024 Jul 15 PM 4:03
CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: SN-2024-CV-000152
PII COMPLIANT
IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 6

COREFIRT BANK & TRUST, as Trustee,
Plaintiff,

Case No. SN-2024-CV-000152

v.

BONDHOLDERS 1-100, and THE YOUNG
MEN'S CHRISTIAN ASSOCIATION OF
TOPKEA, KANSAS,
Defendants.

Notice of Hearing

The Court will hold a hearing of the YMCA's Motion for Judgment on the Pleadings
on the 27th day of August 2024 at 9:00 a.m. in Division 6, at the Shawnee County
Courthouse, 200 SE 7th Street, Topeka, Kansas.

Respectfully submitted,

/s/ Charles T. Engel

Charles T. Engel, S. Ct. No. 12304

Derek D. Ulrich, S. Ct. No. 27683

ENGEL LAW, P.A.

800 SW Jackson, Suite 1000

Topeka, Kansas 66612

P: (785) 233-6700 F: (785) 233-6701

chuck@engellawpa.com

derek@engellawpa.com

Attorneys for YMCA of Topeka

Certificate of Service

I hereby certify that on this 15th day of July 2024, I caused the foregoing Notice of
Hearing to be filed electronically using the court's eFlex electronic filing system which will
provide electronic notification to:

R. Patrick Riordan
RIORDAN, FINCHER & MAYO, P.A.
3735 SW Wanamaker Rd., Suite A
Topeka, Kansas 66610

/s/ Charles T. Engel