

ORDINANCE NO. 09-03

AN ORDINANCE OF THE CITY OF SOMERSET, KENTUCKY (“LESSEE”) AUTHORIZING AND APPROVING A GENERAL OBLIGATION LEASE AGREEMENT (“LEASE”) FOR THE FINANCING OF A PUBLIC PROJECT; AUTHORIZING AND APPROVING A MASTER TRUST INDENTURE, DATED FEBRUARY 1, 2007, BY AND AMONG, LESSEE, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE (“TRUSTEE”), AND ROSS SINCLAIRE & ASSOCIATES, LLC, AS TRUSTOR AND PROGRAM ADMINISTRATOR (“RSA”), ESTABLISHING THE KENTUCKY PUBLIC AGENCY DEVELOPMENT TRUST AND LEASE ACQUISITION PROGRAM (“MASTER TRUST INDENTURE”); AUTHORIZING AND APPROVING A CERTIFICATE OF ISSUANCE AMENDING THE MASTER TRUST INDENTURE AND AUTHORIZING THE ISSUANCE OF CERTIFICATES OF PARTICIPATION; AUTHORIZING THE LEVY OF A DIRECT ANNUAL TAX ON ALL TAXABLE PROPERTY WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE LESSEE, IN ADDITION TO ALL OTHER TAXES, IN AN AMOUNT SUFFICIENT TO PAY THE LEASE RENTAL PAYMENTS DUE UNDER THE LEASE, TO INCLUDE THE PRINCIPAL OF AND INTEREST ON THE CERTIFICATES OF PARTICIPATION WHEN AND AS THE SAME BECOME DUE; AUTHORIZING THE ESTABLISHMENT OF CERTAIN FUNDS, TO INCLUDE A SINKING FUND, TO PROVIDE FOR THE COLLECTION AND DEPOSIT OF REVENUES FROM THE LEASE, AND, TO THE EXTENT REQUIRED, THE PROCEEDS OF A TAX; AND AUTHORIZING THE EXECUTION OF VARIOUS DOCUMENTS AND CERTIFICATES, INCLUDING A SUBLEASE AGREEMENT BY AND BETWEEN LESSEE AND BLAKLEY FAMILY YOUNG MEN’S CHRISTIAN ASSOCIATION, INC. (“SUBLEASE”), AND SUPPORTING DOCUMENTS, RELATING TO THE LEASE, THE SUBLEASE, THE ISSUANCE OF THE CERTIFICATES OF PARTICIPATION, AND OTHER ACTIONS WITH REGARD TO THE LEASE, THE SUBLEASE, AND THE FINANCING OF THE PROJECT GENERALLY.

WHEREAS, the Governing Body of the City of Somerset, Kentucky (the “Lessee”) has the power pursuant to the Governmental Leasing Act, Section 65.940 *et seq.*, of the Kentucky Revised Statutes (“Act”), to enter into lease agreements in order to finance the acquisition of, and provide for, the use of property for public purposes;

WHEREAS, the Governing Body of the Lessee (“Governing Body”) has the power, pursuant to Section 103.200 *et seq.*, of the Kentucky Revised Statutes, and specifically, KRS 103.200(d) & (e), to finance, as public projects, facilities utilized by nonprofit institutions, available to the public;

WHEREAS, the Act, and specifically KRS 65.942(2) provides that a governmental agency may pledge any revenues or taxes as security for payments due under a lease, which is entered into in order to finance the acquisition of, and provide for, the use of property for public purposes;

WHEREAS, the Governing Body of the Lessee has determined and hereby determines that the acquisition of the Blakley Family Young Men's Christian Association, Inc. ("YMCA") property, located within the geographical limits of the Lessee, pursuant to the Act, and the subsequent sub-leasing of the property to the YMCA, a nonprofit, non-stock organization as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("Code"), is a proper public project which will promote economic development within the City of Somerset and the Commonwealth of Kentucky;

WHEREAS, the Governing Body of the Lessee has previously determined, and hereby further determines, that the Lessee is in need of the Project, as defined in the Lease hereinafter described;

WHEREAS, the Governing Body has previously determined and hereby determines that in order to finance the Project (hereinafter defined), pursuant to the Act, that it is necessary and appropriate, to authorize and approve (i) the Master Trust Indenture dated February 1, 2007, by and among Ross Sinclair & Associates, LLC ("RSA"), U.S. Bank National Association ("Trustee"), and Governmental Agencies of the Commonwealth of Kentucky ("Master Trust Indenture"); (ii) a Lease Agreement by and among the Lessee, the Lessor, and YMCA to be dated such date as determined by the Financial Advisor, with regard to the leasing by the Lessee from the Lessor of the Project pursuant to the Act ("Lease"); and (iii) a Sublease Agreement by and between the Lessee, as Sublessor, and the YMCA as Sublessee ("Sublease"), for the purpose of generating lease revenues, payable to the Lessee, as Sublessor, for subsequent payment of amounts due under the Lease.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOMERSET, KENTUCKY, AS FOLLOWS:

Section 1. Preamble Incorporated; Ordinance and Lease as Contract; Continuing Disclosure Agreement. The Preamble to this Ordinance is hereby incorporated within the body of this Ordinance as fully as if copied in full hereat.

This Ordinance, and the Lease shall constitute a contract between the Lessee and all who become registered owners of the Certificates of Participation evidencing participation in the Lease as authorized by the Act ("Certificates"), and any Certificates subsequently issued ranking on a parity therewith, and after the issuance and delivery of such Certificates, no change, variation or alteration of any kind in the provisions of the Lease or the Sublease, shall be made in any manner, except as otherwise set forth and provided in the Lease or Sublease, the terms and provisions of which are incorporated herein by reference thereto.

The Governing Body of the Lessee hereby expressly approves and authorizes a Continuing Disclosure Agreement and the Mayor and City Clerk are hereby authorized to execute a Continuing Disclosure Agreement and ordered to comply with Rule 15c-2-12 of the Securities and Exchange Commission in providing annual financial information in connection with the issuance of the Certificates, the Lease, and the Sublease; all expenses in connection therewith to be borne by the Lessee.

Section 2. Authorization of Master Trust Indenture, Lease Agreement, Certificate of Issuance, Sublease Agreement, and Certificates of Participation.

It is hereby found and determined by the Governing Body of the Lessee, that the Project, as defined and set forth in the Lease is a public project and public property to be used for public purposes as defined and set forth in the Act and Kentucky Revised Statutes. It is further determined by the Governing Body of the Lessee that it is necessary and desirable and in the best interests of the Lessee to authorize

and enter into the Master Trust Indenture, the Lease, the Sublease, and the Certificate of Issuance, as follows.

(a) The Lessee, acting by and through its Governing Body, (i) hereby expressly approves and authorizes the Master Trust Indenture with execution of the Certificate of Issuance, amending the Master Trust Indenture, as hereinafter provided in Section 2(c), and (ii) expressly approves and authorizes the Lessee's participation in the Lease Acquisition Program, established by the Master Trust Indenture. The terms and provisions of the Master Trust Indenture are incorporated herein by reference thereto.

(b) The Lessee, acting by and through its Governing Body, hereby expressly approves, authorizes and directs the execution and delivery by the Lessee of the General Obligation Lease Agreement ("Lease"), by and among Kentucky Public Agency Development Trust, as Lessor ("Lessor"), the Lessee, and RSA, substantially in the form presented to the Governing Body. The Mayor and City Clerk of the Lessee are hereby authorized to execute the Lease, together with such other agreements, documents, certifications and related agreements which may be necessary or required to accomplish the transactions contemplated by the Lease, or as may be required by the Financial Advisor and/or Bond Counsel to evidence the delivery of the Certificates and the Lease. The terms and provisions of the Lease are incorporated herein by reference thereto.

(c) The Lessee, acting by and through its Governing Body, hereby expressly approves, authorizes and directs the execution and delivery by the Lessee of the Certificate of Issuance, evidencing the issuance of the Certificates, as defined in the Master Trust Indenture, and amending the Master Trust Indenture (which Certificates of Issuance shall also constitute a Supplemental Indenture), substantially in the form presented to the Governing Body. The Mayor and City Clerk of the Lessee are hereby authorized to execute the Certificate of Issuance, together with such other agreements, documents, certifications and related agreements which may be necessary or required to accomplish the transactions contemplated by the Certificate of Issuance, or as may be required by the Financial Advisor and/or Bond Counsel to evidence the delivery of the Certificates and the Lease. The terms and provisions of the Certificate of Issuance are incorporated herein by reference thereto.

(d) The Lessee, acting by and through its Governing Body, hereby expressly approves, authorizes and directs the execution and delivery by the Lessee of a Sublease Agreement by and between the Lessee, as Lessor, and YMCA, as Sublessee ("Sublease") substantially in the form presented to the Governing Body. The Mayor and City Clerk of the Lessee are hereby authorized to execute the Sublease, together with such other agreements, documents, certifications and related agreements which may be necessary or required to accomplish the transactions contemplated by the Sublease. The terms and provisions of the Sublease Agreement are incorporated herein by reference thereto.

(e) The Lessee, acting through its Governing Body, hereby approves, authorizes and directs the issuance of **Kentucky Public Agency Development General Obligation Lease Certificates of Participation, Fixed Rate, Series 2009 A1 (YMCA Project)**, in the principal amount of \$2,525,000 [plus or minus an amount not to exceed ten percent (10%)] (the "Certificates") to finance (i) the acquisition of the Blakley Family Young Men's Christian Association, Inc. ("YMCA") property, located within the geographical limits of the Lessee, pursuant to the Act, and the subsequent sub-leasing of the property to the YMCA (ii) capitalized and/or accrued interest, if any, and (iii) cost of issuance.

Section 3. General Obligation Pledge; Compliance with Constitution; Authorization of Tax; Pledge of Tax, Project Receipts to Payment of Certificates; Designation as General Obligation Lease.

(a) That the debt represented by the Lease and the Certificates is hereby determined to be within the maximum indebtedness of the Lessee, permitted under Section 158 of the Constitution of Kentucky.

(b) That the Lessee is hereby authorized to contract the indebtedness represented by the Lease and the Certificates pursuant to Section 159 of the Constitution of Kentucky and to provide for the collection of an annual tax sufficient to pay the interest on the Certificates and the Lease Payments due under the Lease and establish a Sinking Fund, within the Indenture or Certificate of Issuance, to provide for the payment of the principal of the Certificates and/or the Lease Payments due pursuant to the Lease.

(c) That pursuant to Section 157 of the Constitution of Kentucky and the Act, as defined in the Indenture and Certificate of Issuance, there is hereby authorized to be levied, and the Lessee hereby covenants to so levy and collect, each year that the Certificates and the Lease remain outstanding, a Tax, as herein defined, in an amount sufficient to provide for the full payment of the principal and interest requirements on said Certificates and the Lease Payments, as defined in the Lease; provided however, that said Tax shall be levied only to the extent that revenues, which constitute lease payments from the YMCA to the Lessee, as Sublessor under the Sublease (“Project Revenues”) or other receipts from taxes or other sources are not sufficient to provide for the full payment of the accruing interest and maturing principal on the Certificates or the Lease Payments each year.

(d) That by the adoption of this Ordinance, the Lessee covenants with the Owners of the Certificates, that it shall levy each year a Tax in a sufficient amount and appropriate in its annual budget, together with other monies available to it, including the Project Revenues, an amount of funds sufficient to pay the “debt charges” on the Certificates and/or Lease Payments due pursuant to the Lease, as said term is defined in KRS § 66.011(4).

(e) That the tax shall include the *ad valorem* property taxes permitted under Section 157 of the Constitution of Kentucky, occupational license fees, insurance premium taxes, excises and any other receipts from taxes, excises, utilities and service revenues, permits, licenses, fines or other sources of revenue of, or revenue distributions to, the Lessee (the “Tax”).

Notwithstanding the foregoing, the Tax shall only be levied, collected and applied to the payment of said “debt charges” on the Certificates or Lease Payments due pursuant to the Lease, to the extent the Project Revenues are not sufficient to meet such “debt charges.”

(f) That there is hereby pledged to the payment of the Certificates and the Lease Payments under the Lease, the Tax, to the extent required each year, and the Project Revenues, which together shall constitute the “Pledge Receipts” securing such Certificates and the obligation of Lessee under the Lease, in accordance with the terms of this Ordinance.

(g) That in accordance with the Act and KRS § 66.011(22), the Lessee hereby states its belief that the Certificates, and the obligations under the Lease are “self-supporting obligations” to be retired exclusively from the Project Revenues, but, nevertheless, the Lessee covenants to levy, collect and segregate the Tax to the extent the Project Revenues are inadequate to meet the current annual debt service requirements on the Certificates or the Lease Payments due under Lease, and hereby designates the Certificates and the obligations, including Lease Payments due under the Lease as a full general

obligation of the Lessee to the payment of which the full faith, credit, revenue and taxing authority of the Lessee are hereby pledged for the prompt payment thereof.

(h) That the Tax, to the extent required, and the Project Revenues, shall, as received, be deposited into the appropriate Sinking Fund for the Indenture, Lease and Certificate of Issuance and applied solely to the payment of principal and interest requirements of and administrative expenses for the Certificates and/or the Lease Payments due pursuant to the Lease.

Section 4. Execution of Documents Authorized; Approval of State Local Debt Officer.

The Mayor and City Clerk of the Lessee are hereby authorized to execute such certificates, documents, receipts and/or agreements necessary or required to evidence the issuance of the Certificates and as required by the Code, Indenture, Lease, Sublease Agreement and/or Certificate of Issuance, including, but not limited to IRS form 8038, Tax Regulatory Agreement, Certificate Under Sections 103(b)(2) and 148 of the Code ("Tax Certificate"), Continuing Disclosure Agreement, and any other document required for the financing of the Project and the issuance of the Certificates.

The Certificates and Lease shall only be issued to the extent approved by a decision of the State Local Debt Officer, if required.

Section 5. Employment of Financial Advisor and Bond Counsel. The employment of Ross Sinclair & Associates, LLC, Frankfort, Kentucky, as Financial Advisor and Program Administrator is hereby authorized, approved and directed; and, the employment of Gillard B. Johnson, III, with Reed & Johnson, Lexington, Kentucky, as Bond Counsel is hereby authorized, approved and directed.

Section 6. Establishment of Funds. There are hereby authorized to be established the Funds and Accounts identified in the Indenture, as amended by the Certificate of Issuance, the terms and provisions of which are incorporated herein.

Section 7. Tax Covenants. The Lessee shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Lessee on the Certificates and Lease Payments due under the Lease shall be excludable from the gross income of the recipients thereof for Federal income tax purposes under any valid provision of the Internal Revenue Code of 1986, as amended ("Code").

The Lessee shall not permit at any time or times any of the proceeds of the Certificates and Lease to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause such Certificates and Lease to be "arbitrage bonds" as defined in Section 148 of the Code, as then in effect.

The Lessee further covenants that prior to the issuance of said Certificates and Lease and as a condition precedent to such issuance, the Lessee shall certify by issuance of a certificate of the Lessee, or such other official as may be designated by the Lessee, supplemental to this Ordinance, that on the basis of the facts, estimates and circumstances in existence on the date of issue of said Certificates and Lease, it is not expected that the proceeds of said Certificates and Lease will be used in a manner which would cause such obligations to be "arbitrage bonds" under the Code.

Section 8. Investment of Funds. Ross Sinclair & Associates, LLC, as Program Administrator, is hereby authorized to direct the Trustee to invest funds on deposit under the Lease in such manner, subject to all legal limitations, as will, in the Program Administrator's judgment, produce the most favorable financial result for the Lessee and/or permitted by the Indenture or Certificate of Issuance.

Section 9. Qualified Tax Exempt Obligations and Rebate Requirements. The City Council, by the adoption of this Ordinance, reasonably anticipates that the total principal amount of qualified tax-exempt obligations which it will issue during the calendar year ending December 31, 2009, will not exceed \$10,000,000 and therefore designates the Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code.

Section 10. Amendments. The Lease and related certificates, documents, receipts and/or agreements necessary or required to evidence the issuance of the Certificates, and/or the Lessee's participation in the Lease Acquisition Program, including, but not limited to, IRS Form 8038, Tax Regulatory Agreement, Tax Certificate, Continuing Disclosure Agreement and/or any other document required for the financing of the Project and issuance of the Certificates, as presented to the Governing Body, may be amended prior to execution and delivery if so requested by Bond Counsel, Trustee, and/or the Program Administrator, without further action of the Governing Body.

Section 11. Severability. If any Section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such Section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 12. Conflicts Repealed; Effective Date of Ordinance. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed and the provisions of this Ordinance shall prevail and be given effect.

This Ordinance shall take effect from and after its passage, as provided by law and a publication of a summary thereof.

Given first reading on the 9th day of March, 2009.

Given second reading and passed and adopted on the 23rd day of March, 2009.

By: _____

Title: _____

ATTEST:

By: _____

Title: _____