

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: 12/16/2008

Consent       Regular  
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

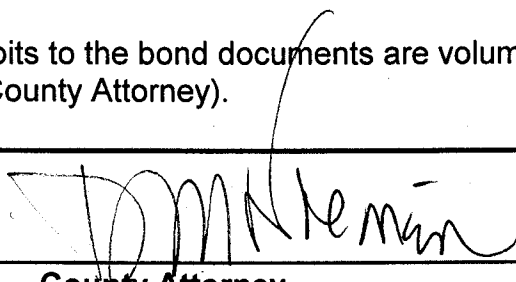
**Motion and Title: Staff recommends motion to:** (a) conduct a TEFRA public hearing concerning the issuance of up to \$18,000,000 industrial development revenue bonds (the "Bonds") for the benefit of Pine Crest Preparatory School, Inc. (the "School"); and (b) adopt a resolution authorizing the issuance of the Bonds and an amendment to the interlocal agreement between the County and the City of Ft. Lauderdale.

**Summary:** The Board approved the School's application for the issuance of the Bonds on December 2, 2008. This transaction will be a tax-exempt lease-purchase of a new energy management (HVAC system) at the School's middle and upper school facilities in Ft. Lauderdale, and is part of the overall capital improvement plan of the School for which the County issued \$75,000,000 in revenue bonds in August, 2008. Another part of that capital improvement plan will be used to improve the School's lower school facilities located in Palm Beach County. The County and the City of Ft. Lauderdale have previously entered into an interlocal agreement that allowed the County to issue the August, 2008 bonds, and it is necessary to amend the agreement to cover this new transaction. **The Bonds will be payable solely from revenues derived from the School, and neither the taxing power nor the faith and credit of the County nor any County funds are pledged to pay the Bonds.** District 4 (PFK)

**Background and Justification:** The Bonds will take the form of a tax-exempt lease-purchase with Banc of America Public Capital Corp as lessor. The School will request final approval for the issuance of the Bonds at a later date.

**Attachments:**

- 1. Resolution (exhibits to the bond documents are voluminous and are available in the office of the County Attorney).

Recommended by:       12/3/08  
County Attorney      Date

Approved by: N/A      \_\_\_\_\_  
Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>(\$10,000)</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<b><u>(\$10,000)</u></b>	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget?                      Yes \_\_\_\_\_ No X

Budget Account No.:      Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_

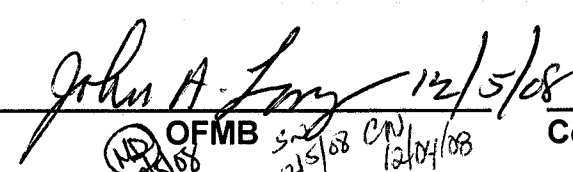
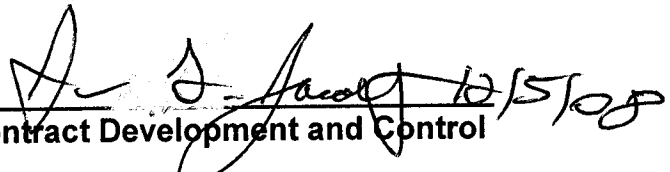
Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**C. Departmental Fiscal Review:** All costs to be borne by Applicant. No fiscal impact cost to Palm Beach County. Palm Beach County will receive \$10,000 in industrial development revenue bond fees as well as legal fees for services rendered in reviewing this project.

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

 12/5/08  
 12/5/08  
 OFMB      Contract Development and Control  
 12/5/08      12/04/08

**B. Legal Sufficiency:**

 12/2/08  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

RESOLUTION NO. R-2008-\_\_\_\_\_

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA AUTHORIZING THE ISSUANCE OF \$18,000,000 REVENUE BONDS IN THE FORM OF A MASTER LEASE AND SUBLEASE AGREEMENT AMONG THE COUNTY, BANC OF AMERICA PUBLIC CAPITAL CORP AND PINE CREST PREPARATORY SCHOOL, INC., FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF IMPROVEMENTS TO EDUCATIONAL FACILITIES OWNED AND OPERATED BY PINE CREST PREPARATORY SCHOOL, INC.; AUTHORIZING CERTAIN OFFICIALS AND EMPLOYEES OF THE COUNTY TO TAKE ALL ACTIONS REQUIRED IN CONNECTION WITH THE ISSUANCE OF THE BONDS; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Palm Beach County, Florida (the "Lessor") is a political subdivision of the State of Florida and is empowered by the provisions of the Florida Constitution and Chapter 159, Part II, Florida Statutes (the "Act"), to issue obligations in the form of master lease and sublease agreements for the purpose of financing educational facilities; and

WHEREAS, on December 2, 2008, the Board of County Commissioners (the "Governing Body") of the Lessor approved the application of Pine Crest Preparatory School, Inc. (the "Sub-Lessee") for the issuance of \$18,000,000 of revenue bonds in the form of a master lease and sublease agreement among the Lessor, Banc of America Public Capital Corp (the "Lessee and Sub-Lessor") and the Sub-Lessee (the "Master Lease-Sublease") to finance the cost of a chilled water production/storage facility and distribution piping and building retro-fit to the Sub-Lessee's private school facilities located at 1501 N.E. 62nd Street, Fort Lauderdale, Florida, conditioned upon the adoption of this resolution and certain other conditions; and

WHEREAS, the Lessor has determined to enter into the Master Lease-Sublease in the principal amount of not exceeding \$18,000,000 as further provided herein; and

WHEREAS, on December 16, 2008 the Lessor conducted a public hearing as required by Section 147(f) of the Internal Revenue Code of 1986, as amended, with respect to the Master Lease-Sublease; and

WHEREAS, it is necessary and desirable to approve the form of the Master Lease-Sublease; and

WHEREAS, it is necessary and desirable to approve an amendment to the interlocal agreement between the Lessor and the City of Ft. Lauderdale, Florida dated July 31, 2008 in order to facilitate the transaction contemplated by the Master Lease-Sublease;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY THAT:

Section 1. Definitions. Unless the context otherwise requires, terms used herein in capitalized form and not otherwise defined herein shall have the meanings specified therefor in the Master Lease-Sublease attached hereto as Exhibit "A."

Section 2. Findings. The Lessor hereby finds that the transaction described in the Master Lease-Sublease complies with the criteria and requirements of the Act.

Section 3. Authorization of Execution of the Master Lease-Sublease. The Master Lease-Sublease, in substantially the form thereof attached hereto as Exhibit "A," with such changes, alterations and corrections as may be approved by the County Administrator, or in his absence or inability to act, any Deputy County Administrator, such approval to be presumed by the execution thereof by the County Administrator, or in his absence or inability to act, any Deputy County Administrator, is hereby authorized by the Lessor, and the Lessor hereby authorizes and directs the County Administrator, or in his absence or inability to act, any Deputy County Administrator to execute the Master Lease-Sublease on behalf of the Lessor.

For purposes of Section 218.385, Florida Statutes, the Lessor hereby determines that a negotiated sale of the revenue bonds evidenced by the Master Lease-Sublease is in the best interest of the Lessor and the Sub-Lessee by reason of the nature of the lease purchase transaction (including, among other reasons, to the fact that the transaction is a limited obligation of the Lessor payable only from the sources provided therefor in the Master Lease-Sublease). Prior to the execution by the Lessor of the Master Lease-Sublease, the Lessee and Sub-Lessor shall file with the Lessor the disclosure required by Section 218.385, Florida Statutes.

Section 4. Authorization of Execution of First Amendment to Interlocal Agreement. The First Amendment to Interlocal Agreement, in substantially the form thereof attached hereto as Exhibit "B," with such changes, alterations and corrections as may be approved by the Chairman of the Governing Body, or in his absence or inability to act, the Vice Chairman, such approval to be presumed by the execution thereof by the Chairman of the Governing Body, or in his absence or inability to act, the Vice Chairman, is hereby authorized by the Lessor, and the Lessor hereby authorizes and directs the Chairman of the Governing Body, or in his absence or inability to act, the Vice Chairman to execute the Master Lease-Sublease on behalf of the Lessor and upon such execution for the Clerk to the Governing Body, or any duly authorized Deputy Clerk, to attest thereto under the seal of the Lessor.

Section 5 No Personal Liability. No covenant, stipulation, obligation or agreement herein contained or contained in the Master Lease-Sublease, or any instrument contemplated thereby shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, member, agent or employee of the Lessor in his or her individual capacity, and no member of the Governing Body of

the Lessor executing any documents herein mentioned or authorized shall be liable personally thereon or be subject to any personal accountability by reason of the issuance or execution thereof.

Section 6 No Third Party Beneficiaries. Except as herein or in the documents herein mentioned otherwise expressly provided, nothing in this Resolution or in such documents, express or implied, is intended or shall be construed to confer upon any Person other than the Lessor, the Lessee and Sub-Lessor or the Sub-Lessee any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof or of such documents; this Resolution and such documents being intended to be and being for the sole and exclusive benefit of such parties.

Section 7. Prerequisites Performed. All acts, conditions and things relating to the passage of this Resolution and required by the Constitution or laws of the State of Florida to happen, exist and be performed precedent to and in the passage hereof have happened, exist and have been performed as so required.

Section 8. General Authority. The Lessor and its officers, agents and employees are hereby authorized to do all acts and things required of them by this Resolution or the Master Lease-Sublease, or desirable or consistent with the requirements hereof or thereof, for the full punctual and complete performance of all terms, covenants and agreements contained herein and therein.

Section 9. General Authorizations. The County Administrator, or in his absence or inability to act, any Deputy County Administrator, the County Attorney and any other appropriate employee of the Lessor, are hereby each authorized to execute, publish, file and record such other documents, instruments, notices, and records and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution, and to comply with and perform the obligations of the Lessor under the Master Lease-Sublease.

Section 10. Effective Date. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_ who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the motion passed as follows:

Commissioner Jeff Koons - Chairman	_____
Commissioner Burt Aaronson - Vice Chairman	_____
Commissioner Karen T. Marcus	_____
Commissioner Shelley Vana	_____
Commissioner Mary McCarty	_____
Commissioner Jess R. Santamaria	_____
Commissioner Addie Greene	_____

The Chairman thereupon declared the Resolution duly passed and adopted this 16th day of December, 2008.

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF  
COUNTY COMMISSIONERS  
Sharon R. Bock, Clerk and Comptroller

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By \_\_\_\_\_  
County Attorney

EXHIBIT "A"

MASTER LEASE-SUBLEASE

**EXHIBIT B**

**FIRST AMENDMENT TO INTERLOCAL AGREEMENT**

This First Amendment to Interlocal Agreement is effective as of December 16, 2008, and is between the City of Ft. Lauderdale, Florida ("Fort Lauderdale") and Palm Beach County, Florida ("Palm Beach County").

1. Section 1 of the Interlocal Agreement, dated July 31, 2008, between the City and the County is amended by the addition of the following paragraphs:

"Fort Lauderdale hereby authorizes Palm Beach County to issue an additional series of industrial development revenue bonds (the "Second Bonds") in the amount of not to exceed \$18,000,000 for the purpose of financing a chilled water production/storage facility and distribution piping and building retro-fit to the School's campus located in the City. All proceeds of and repayments of the Second Bonds will be administered by Palm Beach County or its agents (as set forth in Section 2 below) and Fort Lauderdale shall have no responsibility for payment of the Second Bonds or for the use of the proceeds thereof."

All references to "Bonds" in Sections 2, 3, 4, 5, 6 and 7 of this Interlocal Agreement shall be deemed to include the Second Bonds in addition to the "Bonds" originally described in the Interlocal Agreement.

2. Except as hereby amended the Interlocal Agreement remains in full force and effect.

In witness whereof, the parties have entered into this First Amendment to Interlocal Agreement on the day and year first above written.

(SEAL)  
ATTEST:

**PALM BEACH COUNTY, FLORIDA**

Sharon R. Bock, Clerk & Comptroller

By: \_\_\_\_\_  
John F. Koons, Chairman,  
Board of Commissioners

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY

\_\_\_\_\_  
County Attorney

(SEAL)  
ATTEST:

**CITY OF FORT LAUDERDALE, FLORIDA**

By: \_\_\_\_\_  
Jonda K. Joseph  
Clerk

By: \_\_\_\_\_  
Jim Naugle  
Mayor

APPROVED AS TO FORM

By: \_\_\_\_\_  
George Gretsas  
City Manager

\_\_\_\_\_  
City Attorney