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Agenda Date: November 6, 2007

Report Title: Sacramento Marina South Basin Renovation Project Financing

Description of Documents: These documents are associated with a General Services Report

Comments: Should you have any questions, please contact Chris Tjie (x-5517)

Ground and Facilities Lease

Dated as of November 1, 2007

between the

City of Sacramento, California
as Lessor

and the

Banc of America Public Capital Corp
as Lessee

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Exhibit A Legal Description of Premises

Ground and Facilities Lease

This Ground and Facilities Lease, dated November 1, 2007, for purposes of identification (this "Lease"), is between the City of Sacramento (the "Lessor"), a California municipal corporation; and the Banc of America Public Capital Corp (the "Lessee"), a Kansas corporation.

Background

- A. The Lessor has determined to lease certain real property and the improvements thereon, as more fully described in Section 3 of this Lease (the "Premises"), to the Lessee in consideration for the rental payments provided for herein, and the Lessor has further determined to sublease the Premises back from the Lessee in consideration for the rental payments provided for in a sublease between the Lessor and the Lessee, dated November 1, 2007, for purposes of identification (the "Sublease").
- B. Section 3.68.110, subsection F, of the Sacramento City Code, authorizes the Lessor to lease city-owned property without competitive bidding if the Sacramento City Council finds that doing so is in the Lessor's best interest and, in addition, finds and determines that special circumstances make the use of bidding inappropriate.
- C. The Sacramento City Council, having made the required findings and determinations, has authorized the Lessor's entry into this Lease without bidding.
- D. The Sacramento City Council adopted its resolution on _____ authorizing the Lessor to pay the costs of the Sacramento Marina South Basin Renovation Project — PN: IA66 (the "Marina Project") by undertaking a lease-leaseback transaction for the Premises.
- E. The Lessee agrees to pay the Lessor the sum of \$1,523,000 pursuant to Section 9 hereof.
- F. The Lessor agrees to receive such rent from the Lessee, to deposit it into a separate account, and to apply it to pay the costs of the Marina Project and for other related expenses pursuant to Subsection 1(h) and Section 12 hereof.
- G. Under the terms of this Lease, the Lessee agrees to relinquish and transfer all of its interests to the Premises, and in any additions thereto, to the Lessor at the end of the term of this Lease and the Sublease.
- H. The Lessee and the Lessor desire to enter into this Lease and the Sublease as separate and distinct transactions so that no merger of the leasehold estates created thereby will occur.

With these background facts in mind, the Lessor and the Lessee agree as follows:

1. **Representations and Warranties of the Lessee.** The Lessee makes the following representations and warranties to the Lessor as of the date of its execution of this Lease:
 - (a) The Lessee is a corporation duly organized and in good standing under the laws of the State of Kansas; has full legal right, power, and authority to enter into this Lease and to

carry out and consummate all transactions contemplated by this Lease; and, by appropriate corporate action, has duly authorized the execution and delivery of this Lease.

- (b) The officers of the Lessee executing this Lease are duly and properly in office and fully authorized to execute the same.
- (c) This Lease has been duly authorized, executed, and delivered by the Lessee and constitutes a legal, valid, and binding agreement of the Lessee, enforceable against the Lessee in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, or other laws affecting the enforcement of creditors' rights generally or by the application of equitable principles if equitable remedies are sought.
- (d) The execution and delivery of this Lease, the consummation of the transactions contemplated in it, and the Lessee's fulfillment of, or compliance with, its terms and conditions will not—
 - (1) conflict with or constitute a violation or breach of or default (with due notice or the passage of time, or both) under Lessee's articles or bylaws or any indenture, mortgage, deed of trust, lease, contract, or other agreement or instrument to which the Lessee is a party or by which it or its properties are otherwise subject or bound;
 - (2) conflict with or violate, to the Lessee's knowledge, any applicable law, administrative rule, or regulation, or any applicable court or administrative decree or order; or
 - (3) result in the creation or imposition of any prohibitive lien, charge, or encumbrance of any nature upon any of the property or assets of the Lessee

which conflict, violation, breach, default, lien, charge, or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease or the Lessee's financial condition, assets, properties, or operations.

- (e) No consent or approval of any trustee or holder of any indebtedness of the Lessee, and no consent, permission, authorization, order, or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) There is no action, suit, proceeding, inquiry, or investigation, before or by any court or federal, state, municipal, or other governmental authority, pending or, to the Lessee's knowledge after reasonable investigation, threatened against or affecting the Lessee or the Lessee's financial condition, assets, properties, or operations that, if determined adversely to the Lessee or its interest, could have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, this Lease or upon the Lessee's financial condition, assets, properties, or operations; and the Lessee is not in default with respect to any order or decree of any court or any order, regulation, or demand of any

federal, state, municipal, or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease or the Lessee's financial condition, assets, properties, or operations.

- (g) No information, exhibit, or report furnished to the Lessor by the Lessee in connection with the negotiation of this Lease contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.
- (h) All of the original proceeds and investment proceeds of this Lease and the Sublease (determined pursuant to applicable provisions of the Internal Revenue Code of 1986, as amended) must be used for the Marina Project and related expenses.

2. Representations and Warranties of the Lessor. The Lessor makes the following representations and warranties to the Lessee as of the date of its execution of this Lease.

- (a) The Lessor has full legal right, power, and authority to enter this Lease and to carry out and consummate all transactions contemplated by this Lease, and by proper action has duly authorized the execution and delivery of this Lease.
- (b) The officers of the Lessor executing this Lease are duly and properly holding their respective offices and are fully authorized to execute this Lease.
- (c) This Lease has been duly authorized, executed, and delivered by the Lessor, and, when duly authorized, executed, and delivered by the Lessee, will constitute a legal, valid, and binding agreement of the Lessor, enforceable against the Lessor in accordance with its terms.
- (d) The Lessor owns the Premises in fee simple, and, as of the date of the Lessor's execution of this Lease, the Premises are free from any encumbrances (including, without limitation, trust deeds, leases, or mortgages) that could materially adversely affect the transactions contemplated by this Lease and the Sublease.

3. Lease of the Premises; Utilities and Parking. The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, on the terms and conditions set forth in this Lease, that certain parcel of land, together with all improvements thereon, that is generally known as Fire Station No. 9 and located at 5801 Florin Perkins Road, Sacramento, California, as more particularly described on the attached Exhibit "A," which by this reference is incorporated herein. The Lessor shall provide or cause to be provided to or for the Premises during the term of this Lease, at such rates and charges required by Section 10 hereof, adequate parking spaces and such utility services (including electricity, gas, water, sewer, garbage disposal, heating, air conditioning, and telephone) and custodial and building-maintenance services as the Lessor provides or causes to be provided to buildings similar to the Premises (the "Utilities and Services").

4. Possession. The Lessor shall deliver possession of the Premises to the Lessee upon commencement of the term of this Lease as set forth in Section 8 herein.

5. As-is Condition. Subject to the representations, warranties, and covenants of the Lessor in Sections 2 and 11 hereof, the Premises are leased in an as-is condition.

6. Quiet Enjoyment. Subject to the limitations expressly set forth in this Lease, the Lessor covenants that the Lessee, upon performing all covenants in this Lease, may quietly have, hold, and enjoy all of the Premises during the term of this Lease and any extended term hereof, without hindrance or interruption by the Lessor.

7. Use of Premises.

(a) During the term of the Sublease, the Lessee shall use the Premises solely for the purpose of subleasing the Premises to the Lessor for its use as a fire station and for such purposes as may be incidental thereto.

(b) If the term of the Sublease has Terminated (as that term is defined in the Sublease), then while this Lease is in effect the Lessee may use the Premises for such purposes as the Lessee determines in its reasonable discretion, subject to the following:

(1) The Lessee shall not use the Premises for any illegal activity or for any activity that would jeopardize the public health or welfare.

(2) The Lessee shall comply, at its own cost, with all valid and applicable statutes, ordinances, regulations, rules, and orders of all federal, state, and local governmental entities with jurisdiction over the Premises. In particular, but without limiting the generality of the previous sentence, the Lessee shall comply with the Americans with Disabilities Act with respect to any changes or alterations the Lessee makes to the Premises after the Sublease terminates.

(3) The Lessee shall indemnify, defend, protect, and hold the Lessor harmless from and against any and all liabilities, losses, claims, suits, damages, and expenses (including reasonable attorneys' fees and litigations costs) arising out of the Lessee's use of the Premises after the Sublease has Terminated, except to the extent those liabilities, losses, claims, suits, damages, and expenses are caused by the Lessor's negligence or willful misconduct.

(4) The Lessee shall reimburse the Lessor for insurance premiums as required by Subsection 13(f).

8. Term. The term of this Lease commences on the earlier of November 1, 2007, or the date this Lease is recorded with the Sacramento County Recorder. The term of this Lease ends on October 31, 2037, unless it is extended or sooner terminated as hereinafter provided. If, on October 31, 2037, any rental payments listed in Schedule I of the Sublease are unpaid or are not provided for (without regard to the occurrence of any Non-appropriation Event, as that term is defined in the Sublease), then the term of this Lease will be extended until 10 days after such

rental payments are fully paid or provided for, and the Sublease will be discharged by its terms, except that the term of this Lease will in no event be extended beyond October 1, 2047. If, prior to October 1, 2037, all rental payments listed in Schedule I of the Sublease have been fully paid or provided for under the terms of the Sublease (including any rental payments accruing during the occurrence of a Non-appropriation Event), then the term of this Lease will end 10 days thereafter or 10 days after written notice by the Lessee to the Lessor, whichever is earlier.

9. Rental. The Lessor makes this Lease in consideration for the Lessee's payment of an initial rental payment of \$1,523,000 upon the execution and delivery hereof and subsequent payment of \$1 on or before November 1 of each year prior to the termination of this Lease.

10. Charges for Utilities and Services Provided by the Lessor. Except as otherwise provided in this Section 10, the Lessee shall reimburse the Lessor for reasonable expenditures incurred by the Lessor as result of the supply of Utilities and Services to or for the Premises as provided in Section 3 hereof. Reimbursement is to be computed on a simple but equitable basis. The Lessor shall determine and specify such costs and the amount thereof and the Lessee shall reimburse the Lessor within 30 days after receiving a notice of such determination. Notwithstanding the foregoing, unless the term of the Sublease has Terminated, such expenditures will be Lessor's sole obligation.

11. Environmental Hazards. The Lessor's policy is to comply with all applicable laws and regulations regarding the use, storage, and disposal of hazardous materials and substances. To the best of the Lessor's knowledge, no toxic or hazardous pollutants, waste, materials, or substances are located on the Premises in a manner or to an extent that violates any applicable federal or state law. To the extent permitted by law, the Lessor shall indemnify, defend, protect, and hold the Lessee harmless from and against any and all liabilities, losses, claims, suits, damages, and expenses (including reasonable attorneys' fees and litigation costs) arising out of the condition of the Premises, including but not limited to those incurred by the Lessee as a result of any environmental hazards, but not including liabilities, losses, claims, suits, damages, and expenses to the extent they are caused by the Lessee's negligence or willful misconduct or by the Lessee's use of the Premises after the Sublease is Terminated.

12. Financing the Marina Project. The Lessor shall use the Lessee's initial rental payment under this Lease to pay the costs of the Marina Project and certain related costs (and for making reimbursements to the Lessor or any state agency, public agency, person, or firm for such costs theretofore paid by it). The Lessee shall not be responsible to the Lessor or to any other person for the use of the initial rental payment under this Lease or any proceeds thereof.

13. Risk of Loss; Insurance and Indemnification.

- (a) The Lessor owns the Premises and at all times shall bear and be responsible for all risks of loss of all or any portion of the Premises from any cause, whether or not covered by insurance. Any such loss will not cause this Lease to terminate. Except with respect to changes or alterations made to the Premises by the Lessee during the term of this Lease but after the term of the Sublease has Terminated, the Lessor shall be responsible for making all such changes and alterations to the Premises that may be required from time to time by law applicable to the Premises, including but not limited to the Americans with Disabilities

Act. The Lessor shall pay all costs of restoration and repair to the Premises resulting from any cause, whether or not covered by insurance. Notwithstanding anything to the contrary contained in this Section 13, the Lessor is not obligated to bear, and is not responsible for, any loss to the extent the loss is caused by the Lessee's negligence or willful misconduct.

- (b) The Lessor shall procure or cause to be procured and shall maintain or cause to be maintained throughout the term of this Lease, with reputable commercial insurers, insurance against the following risks in the following amounts:
- (1) Insurance against loss or damage to each portion of the Premises by fire or lightning, with an extended-coverage endorsement and vandalism-and-malicious-mischief insurance and sprinkler-system-leakage insurance and boiler insurance. This insurance must, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke, and such other hazards as are normally covered by such insurance, and it must be in an amount equal to the replacement cost (without deduction for depreciation) of such portion of the Premises. In any event, this insurance must be in an amount sufficient, in the event of total or partial loss, to enable the Lessor either to prepay all remaining Base Rental payments scheduled to be paid pursuant to the Sublease or to restore the Premises to the condition existing before the loss.
 - (2) Use-and-occupancy insurance against loss, total or partial, of the use and occupancy of each portion of the Premises as a result of any of the hazards covered by the insurance required by Section 13(b)(1) hereof, in an amount sufficient to pay the proportionate share of the Base Rent payments attributable to such portion of the Premises for the succeeding 24-month period.
 - (3) Workers-compensation insurance covering all employees working in or on the Premises, in the same amount and type as other workers-compensation insurance the Lessor maintains for similar employees doing similar work (and the Lessor shall also require any other person or entity working in or on the Premises to carry the foregoing amount of workers-compensation insurance).
 - (4) A standard comprehensive-public-entity-liability insurance policy or policies in protection of the Lessor and its officers and employees, indemnifying and defending such parties against all direct or contingent loss or liability for damages for personal injury, death, or property damage occasioned by reason of the possession, operation, or use of the Premises, with minimum liability limits of \$10,000,000 for third-party liability.
 - (5) The policies of liability insurance required by this Section 13 must contain substantially the following special endorsements:

“The Lessee, Banc of America Public Capital Corp, and its officers, employees, and agents are hereby declared to be additional insureds under the terms of this policy as to the activities of the Lessor, the City of Sacramento, CA.

"This insurance policy will not be cancelled or modified materially without 60 days' prior written notice to the Lessee. The Banc of America Public Capital Corp, the Lessee, is not liable for the payment of premiums or assessments on this policy."

- (c) Notwithstanding the above provisions, as an alternative to providing the insurance required by Subsections 13(b)(1), 13(b)(3), and 13(b)(4) above, the Lessor may provide a self-insurance method or plan of protection. Any self-insurance maintained by the Lessor pursuant to the foregoing sections must comply with the following terms:
- (1) the self-insurance program must be approved by the Lessor's Risk Manager;
 - (2) the self-insurance program must include an actuarially sound claims-reserve fund out of which each self-insured claim will be paid, the adequacy of each such fund must be evaluated on an annual basis by the Lessor's Risk Manager, and any deficiencies in any self-insurance claims fund must be remedied in accordance with the recommendation of the Lessor's Risk Manager;
 - (3) the self-insurance claims fund must be held in a separate fund by an independent trustee or such other entity as may be approved by the Lessee;
 - (4) if the self-insurance program is discontinued, the actuarial soundness of its claim-reserve fund, as determined by the Lessor's Risk Manager, must be maintained; and
 - (5) the self-insurance program must be acceptable to the Lessee.
- (d) Any insurance policy issued pursuant to this Section 13 must be written or endorsed to make losses, if any, payable to the Lessor and Lessee as their respective interests may appear, except that the net proceeds, if any, of the insurance policy described in Subsection 13(b)(2) must be paid to the Lessee. The Lessee is not responsible for the sufficiency of any insurance herein required and will be fully protected in accepting payment on account of such insurance or any adjustments, compromise, or settlement of any loss agreed to by it. Except as provided in Subsection 13(c), the Lessor shall file a certificate with the Lessee not later than July 1 of each year certifying that the insurance required by this Section 13 is in full force and effect and that the Lessee is named as a loss payee on each insurance policy the Lessee requires to be so endorsed.
- (e) No cancellation provision in any insurance policy is to be construed in derogation of the Lessor's continuous duty to furnish insurance during the term of this Lease. Each policy must be underwritten to the reasonable satisfaction of the Lessee. A complete and signed certified copy of each policy must be submitted to the Lessee currently with the execution of this Lease. Prior to the expiration of any such policy, a signed certified copy of the policy showing that such insurance coverage has been renewed or extended must be filed with the Lessee. The Lessor shall certify to the Lessee annually on or before July 1 of each year that the insurance policies required under this Section 13 are in full force and effect.

- (f) Except as otherwise provided below, the Lessee shall reimburse the Lessor for premiums the Lessor pays for all insurance or methods or plans of protection the Lessor maintains pursuant to this Section 13. Notwithstanding the foregoing, unless the term of the Sublease has Terminated, such premiums will be solely the obligation of the Lessor and no such reimbursement will be payable by the Lessee.

14. Title on Termination. Upon the termination or expiration of this Lease, the Lessee shall quit and surrender the Premises, and all right, title, and interest in and to all improvements and equipment constructed or installed on the Premises will vest in the Lessor free and clear of all and any liens and encumbrances created or caused by the Lessee. Upon termination of this Lease, the Lessor will be entitled to require the Lessee, at the Lessee's own expense and risk, to restore the Premises as nearly as possible to the condition existing at the Termination of the term of the Sublease. But the Lessee will have no such obligation for any change, alteration, addition, or improvement to the Premises carried out or caused by the Lessor, or for any services performed by or on behalf of the Lessor as a part of the Utilities and Services, or for any change or alteration caused by ordinary wear and tear to the Premises. If the Lessee fails to so restore the Premises within 90 days after the Lessor requires it to do so, then the Lessor may so restore the Premises at the Lessee's risk, and the Lessee shall pay all costs and expense of such removal or restoration upon the Lessor's demand. The Lessor is entitled to require such restoration by the Lessee within 30 days after the expiration of this Lease, but not thereafter.

15. Termination. This Lease terminates upon the occurrence of any of the following:

- (a) Expiration of the term of this Lease set forth in Section 8.
- (b) The Lessee's election to terminate this Lease simultaneously with, or at any time after, Termination of the Sublease, whether due to the occurrence of a Non-appropriation Event (as that term is defined in the Sublease) or any other cause. The Lessee shall give the Lessor written notice of such termination, and the notice must state the termination date on which the Lessee shall surrender the then-remaining unexpired term of this Lease.
- (c) All rental payments listed in Schedule I of the Sublease are fully paid or provided for by the Lessor in accordance with the Sublease (including any Rental payments accruing during the occurrence of a Non-appropriation Event), regardless of whether the Sublease has been Terminated.

The Lessee's failure to perform any provision of this Lease will not be the basis for the termination of this Lease. But the Lessor may seek whatever remedy is provided by law against the Lessee so long as the remedy does not interfere with the Lessee's occupancy of the Premises under this Lease or the Lessor's obligation to pay Rent under, and as defined in, the Sublease.

16. Right of Entry. The Lessor, through any of its duly authorized representatives, may enter upon the Premises during reasonable business hours (and in emergencies at all times) to inspect the Premises for any purpose connected with the Lessee's rights or obligations under this Lease and for all other lawful purposes.

17. Signs. The Lessee shall not construct, hang, or paint any signs on the grounds or exterior of buildings without the Lessor's written consent.

18. Waste. After the Termination of the Sublease, the Lessee shall not knowingly commit, suffer, or permit any waste, nuisance, or unlawful activity on the Premises.

19. Taxes and Assessments. The Lessee shall pay all lawful taxes, assessments, and charges that are levied upon any interest the Lessee has under this Lease (including both the land and improvements) unless payable by the Lessor during the term of the Sublease in accordance with Section 5 thereof. This Lease may create a possessory interest subject to property taxation, and the Lessee shall pay any such tax levied on such interest unless payable by the Lessor during the term of the Sublease in accordance with Section 5 thereof.

20. Assignment or Sublease.

- (a) The Lessee may assign this Lease without the Lessor's consent. The Lessor shall execute all documents, including acknowledgments of notices of assignment or releases of the assignor, that may be reasonably requested by the Lessee or its assignee to protect their interests in this Lease.
- (b) Except for Permitted Encumbrances (as that term is defined in the Sublease), the Lessor shall not sell, assign, convey, or otherwise transfer any interest in all or any portion of the Premises. The Lessor shall not create or suffer to exist in any jurisdiction any mortgage, lien, or security interest with respect to all or any part of the Premises.

21. Liens.

- (a) During the Term of the Sublease. Except as provided in Subsection 21(b), the Lessee shall not change, alter, add to, or improve the Premises or cause other work to be done or performed or materials to be supplied in or about the Premises ("Work"). Except as provided in Section 3 (with regard to Utilities and Services) or in Section 13, the Lessor may cause, but is not obligated to cause, any Work to be done or performed in or upon the Premises. The Lessee has no responsibility, obligation, or liability for any Work the Lessor performs. The Lessor shall not permit any mechanic's or materialmen's lien or similar lien to be filed against the Premises unless the lien secures an obligation that is not delinquent or is fully bonded against, or unless the amount, validity, or application of the lien is being contested in good faith by appropriate procedures.
- (b) During Any Other Period. If the term of the Sublease has Terminated, then the Lessee may perform Work, or cause Work to be performed, in or upon the Premises. The Lessee shall pay, when due, all sums of money owed for any labor, services, materials, supplies, or equipment furnished to or for the Lessee in, upon, or about the Premises for such Work and which may be secured by any mechanic's, materialmen's, or other lien against the Premises or the Lessee's interest therein on account of such Work. The Lessee shall cause each such lien to be fully discharged and released when the performance of any obligation secured by the lien matures or comes due, except that the Lessee may contest any such lien. If any such lien is reduced to final judgment and the judgment or any process issued

to enforce the judgment is not promptly stayed, or, if so stayed, the stay thereafter expires, the Lessee shall pay and discharge the judgment forthwith.

22. Relationship of Parties. In the performance of this Lease, the Lessee and the Lessee's directors, members, officers, employees, and agents will act in an independent capacity and not as officers, employees, or agents of the Lessor. The Lessor's officers, employees, and agents who participate in the performance of this Lease are not officers, employees, or agents of the Lessee. The directors, members, officers, employees, and agents of the Lessee are not personally or individually liable for any amount required to be paid under this Lease, nor are they subject to any personal liability or accountability under this Lease.

23. Encumbrance of Leasehold. The Lessee is entitled to encumber this Lease with the Sublease and with such other subleases, deeds of trust, mortgages, or other security devices as the Lessee may reasonably request.

24. Amendments. This Lease may not be amended, changed, modified, or altered without the prior written consent of the parties.

25. Waiver. The waiver by any party of a breach by the other party of any term, covenant, or condition in this Lease will not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition in this Lease.

26. Non-liability of the Lessor. Any obligation of the Lessor created by, or arising out of, this Lease will not impose a debt or pecuniary liability upon the Lessor or a charge upon the Lessor's general credit or taxing powers. Such an obligation is payable solely out of funds duly authorized and appropriated by the Lessor. The delivery of this Lease will not obligate the Lessor, directly or indirectly or contingently, to levy any form of taxation therefor or to make any appropriation. Nothing in this Lease or in the Lessor's proceedings to approve this Lease is to be construed to create a debt of the Lessor within the meaning of any constitutional or statutory provision of the State of California. No breach of any pledge, obligation, or agreement made or incurred in connection with this Lease will impose any pecuniary liability or any charge upon the Lessor's general credit.

27. Law Governing. This Lease is governed exclusively by its provisions and by the laws of the State of California as the same from time to time exist.

28. Section Headings. All headings, titles, and captions in this Lease are for convenience of reference only. They do not define or limit the scope of any provision of this Lease.

29. Notices. All notices given by either party to the other must be in writing and and be sent by personal delivery (including delivery by a service such as FedEx or UPS) or by United States Mail (certified mail, postage prepaid, return receipt requested) to the following addresses:

- (a) To the Lessor: City Treasurer's Office
City of Sacramento
Historic City Hall
915 I Street, Third Floor (0900)
Sacramento, CA 95814
Attn: Manager, Public Finance & Banking
- (b) To the Lessee: Banc of America Public Capital Corp
555 California Street, 5th Floor
San Francisco, CA 94104
Attn: _____

Notices will be considered given when actually received. The address to which notices are to be sent may be changed by written notice given as provided in this Section 29.

30. Successors and Assigns. This Lease is binding upon and inures to the benefit of the parties' successors and assigns.

31. Holding Over. If the Lessee holds over beyond the expiration of the term of this Lease with the Lessor's express or implied consent, then such holding over will be on a month-to-month basis, subject otherwise to all the terms and conditions of this Lease.

32. Eminent Domain. If the whole or any part of the Premises or improvements thereon is taken permanently or temporarily under the power of eminent domain, then the Lessee's interest is to be recognized and is hereby determined to be the amount of the then-unpaid Base Rent payments listed in Schedule I to the Sublease (without regard to the occurrence of any Non-appropriation Event). The Lessee's interest is to be recognized and satisfied (notwithstanding any Termination or Expiration of the Sublease) from (a) the proceeds of any such taking, and (b) any lawfully available funds of the Lessor, if and when appropriated for such purpose, which the Lessor shall pay as a return of the initial rental payment or portion thereof paid by the Lessee under Section 9 of this Lease, and which the Lessor may pay in periodic payments or in prepayment amounts at the times and amounts described in Schedule I to the Sublease.

33. Partial Invalidity. If any one or more of the terms, provisions, covenants, or conditions of this Lease is declared, to any extent, to be invalid, unenforceable, void, or voidable for any reason by a court of competent jurisdiction, the finding, order, or decree of which becomes final, none of the remaining terms, provisions, covenants, or conditions of this Lease will be affected thereby, and each provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

34. No Merger. If, during the term of this Lease, the Lessee acquires a sublessee's interest or any other interest in the Premises, then the Lessee's interests under this Lease will not merge or become merged in or with such other interest, and the Lessee's estate under this Lease will continue in full force and effect to the same extent as if the Lessee had not acquired such interest.

35. Execution. The parties may execute this Lease in any number of counterparts, each of which will be considered an original, but all of which together will constitute the same Lease.

36. Integration. This Lease sets forth the parties' entire understanding regarding the matters set forth above, and it supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied).

City of Sacramento

Banc of America Public Capital Corp

By: _____

Thomas Berke
Interim City Treasurer

Dated: _____, 2007

By: _____

[name]
[title]

Dated: _____, 2007

Approved for Legal Form
Sacramento City Attorney

By: _____

Exhibit A
Legal Description of Premises

The land referred to herein below is situated in the County of Sacramento, State of California and is described as follows:

Parcel 2, as described in Certificate of Compliance for Lot Line Adjustment recorded July 3, 2001, in Book 20010703, Page 1442, Official Records being more particularly described as follows:

All that portion of the Northwest one-quarter of Section 25, Township 8 North, Range 5 East, M.D.B.& M., according to the official plat thereof described as follows:

Beginning at a point on the center line of Florin-Perkins Road, a public road 60 feet in width, as shown on the Record of Survey entitled "A portion of the Northwest quarter of Section 25, Township 8 North, Range 5 East, M.D.B.& M.," recorded in the office of the County Recorder of Sacramento County on January 22, 1960 in Book 15 of Surveys, at Page 28, from which the Northwest corner of said Section 25 bears North 00°16'30" West 1341.30 feet; thence from said point of beginning, North 89°48'00" East 274.90 feet thence South 00°16'30" East 165.00 feet; thence South 89°43'00" West 274.90 feet to the centerline of said Florin-Perkins Road; thence along said centerline, North 00°16'30" West 165.00 feet to the point of beginning.

EXCEPTING THEREFROM the following parcel of land;

BEGINNING at a point on the centerline Unsworth Avenue, as shown on that certain Record of Survey entitled, "A portion of the Northwest Quarter of Section 25, Township 8 North, Range 5, East, M.D.B.& M.," recorded in the Office of the County Recorder of Sacramento County on January 22, 1960, in Book 15 of Surveys at Page 28, from which point the Northwest corner of said Section 25 bears the following two courses and distances: (1) South 89°48'00" East 268.93 feet and (2) North 00°16'30 West 1341.30 feet; THENCE from said Point of beginning, South 00°03'05" East 165.00 feet to a point in the North line of Parcel 1 as shown on that certain Parcel Maps recorded in the Office of said Recorder in Book 12 of Parcel Maps, at Page 23; THENCE North 89°48'00" East 6.26 feet to the Northeast corner of said Parcel 1; THENCE North 00°09'00" West (called North 00°16'30" West on the Deed recorded in Book 64-11-15 of Official Records at Page 97) 165.00 feet to a point on the centerline of Unsworth Avenue; THENCE South 89°48'00" West 5.97 feet to the point of beginning.

APN: 062-0020-089

Sublease

This Sublease, dated November 1, 2007, for purposes of identification (this "Sublease"), is between the **Banc of America Public Capital Corp** (the "Sublessor"), a Kansas corporation; and the **City of Sacramento** (the "Sublessee"), a California municipal corporation.

Background

- A. Section 3.68.110, subsection F, of the Sacramento City Code, authorizes the Sublessee to lease city-owned property without competitive bidding if the Sacramento City Council finds that doing so is in the Sublessee's best interest and, in addition, finds and determines that special circumstances make the use of bidding inappropriate.
- B. The Sacramento City Council, having made the required findings and determinations, has authorized the Sublessee to lease the Premises described in the Lease (as those terms are defined in Section 1 below) to the Sublessor, without bidding, and to sublease the Premises back from the Sublessor.
- C. The Sacramento City Council adopted its resolution on _____ authorizing the Sublessee to pay the costs of the Sacramento Marina South Basin Expansion Project – PN: IA66 (the "Marina Project") by entering into the Lease and this Sublease.
- D. Under Sections 9 and 12 of the Lease, the Sublessee will receive \$1,523,000 from the Sublessor and apply that sum to the payment of rent under the Lease. To that end, under Subsection 1(h) of the Lease, the Sublessee will deposit that sum into a separate account and apply it to pay the costs of the planning, designing, and constructing the Marina Project and for other related expenses.
- E. Under the Lease and this Sublease, the Sublessor will relinquish and transfer all of its interests to the Premises, and in any additions thereto, to the Sublessee at the end of the terms of the Lease and this Sublease.
- F. The Sublessor and the Sublessee desire to enter into the Lease and this Sublease as separate and distinct transactions so that no merger of the leasehold estates created thereby will occur.

With these background facts in mind, the Lessor and the Lessee agree as follows:

- 1. **Definitions.** Unless the context otherwise requires, the terms defined in this section shall, for all purposes of this Sublease, have the meanings herein specified:
 - (a) "Additional Rent" means the rent payments to be paid by the Sublessee under Subsection 3(a)(2) below.
 - (b) "Base Rent" means the rent payments to be paid by the Sublessee under Subsection 3(a)(1) below.

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- (c) "Capital Improvements" means the Sacramento Marina South Basin Expansion Project – PN: IA66.
 - (d) "Determination of Taxability" means a determination that the interest component payable as a portion of the Base Rent listed on Schedule I hereto is includible for federal income tax purposes in the gross income of the Sublessor by reason of such obligation under this Sublease being an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), which determination will be deemed to have been made with respect to such obligation under this Sublease on the earliest of the following dates:
 - (1) The date on which the Sublessee determines that the interest payable on such obligation under this Sublease is includible for federal income-tax purposes in the gross income of the Sublessor by reason of such obligation under this Sublease being an "arbitrage bond" within the meaning of Section 148 of the Code.
 - (2) The date on which the Internal Revenue Service issues any private ruling, technical advice, or any other substantially equivalent written communication to the effect that the interest payable on such obligation under this Sublease is includible for federal income-tax purposes in the gross income of the Sublessor by reason of such obligation under this Sublease being an "arbitrage bond" within the meaning of Section 148 of the Code.
 - (3) The date on which the Sublessee receives written notice from the Sublessor that the Internal Revenue Service has issued a 30-day letter or other formal written determination (a copy of which the Sublessor shall provide to the Sublessee) asserting that the interest payable on such obligation under this Sublease is includible for federal income-tax purposes in the gross income of the Sublessor by reason of such obligation under this Sublease being an "arbitrage bond" within the meaning of Section 148 of the Code.
 - (4) The date on which the Sublessor receives written notice from the Sublessee that the Sublessee has taken any action or has failed to take any action the effect of which is to cause the interest payable on such obligation under this Sublease to become includible for federal-income tax purposes in the gross income of the Sublessor by reason of such obligation under this Sublease being an "arbitrage bond" within the meaning of Section 148 of the Code.

Notwithstanding the foregoing, in the event of a good-faith appeal, protest, or contest to the Internal Revenue Service or to any court, governmental agency, authority, or arbitrator, as appropriate, or the Sublessee's filing with the Internal Revenue Service of a request for ruling or other advice within 60 days after the earliest of the dates referred to in Subsections 1(d)(2), 1(d)(3), and 1(d)(4) above, no Determination of Taxability will be deemed to have occurred until the date upon which all such appeals, protests, contests, or requests, pursued with due diligence by the Sublessee, have been exhausted.

- (e) “Expiration” means either—
- (1) the expiration of the term of this Sublease on October 31, 2037; or
 - (2) if earlier, the expiration of the term of this Sublease pursuant to Section 2 or Subsection 15(d) of this Sublease, so long as no Termination or event that with notice would constitute a Termination has occurred and is then continuing.
- (f) “Lease” means the Ground and Facilities Lease, dated November 1, 2007, for purposes of identification, between the Sublessee as lessor and the Sublessor as lessee, as amended in accordance with its terms.
- (g) “Non-appropriation Event” is defined in Section 3 below.
- (h) “Permitted Encumbrances” means—
- (1) minor defects and irregularities in title that in the aggregate do not materially adversely affect the value or operation of the Premises for the purposes for which they are or may reasonably be expected to be used;
 - (2) easements, exceptions, or reservations for ingress and egress, parking, pipelines, telephone lines, telegraph lines, cable-television lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage-and-sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal, or other materials, and other like purposes, or for the joint or common use of real property, facilities, and equipment that in the aggregate do not materially interfere with or impair the operation of the Premises for the purposes for which they are or may reasonably be expected to be used;
 - (3) rights reserved to or vested in any governmental authority to control, regulate, or use in any manner any portion of the Premises, which do not materially impair the operation of the Premises for the purposes for which they are or may reasonably be expected to be used;
 - (4) present or future valid zoning laws and ordinances; and
 - (5) any future assignment, lease, sublease, license, or allocation of space permitted under Section 25 of this Sublease.
- (i) “Premises” means the real property and improvements located at 5001 Florin Perkins Road, Sacramento, California, generally known as Fire Station No. 9 and more specifically described in Exhibit A to this Sublease.
- (j) “Rent” means the Base Rent and the Additional Rent.
- (k) “State” means the State of California.
- (l) “Sublease” means this Sublease, as amended in accordance with its terms.

- (m) “Terminate” and “Termination” mean a termination of this Sublease upon written notice from the Sublessor to the Sublessee pursuant to Subsection 3(e), Section 8, or Section 9 of this Sublease, and in each case subject to the terms and conditions specified therein.

2. Purpose and Term. The Sublessor hereby leases the Premises to the Sublessee, and the Sublessee hereby hires the Premises from the Sublessor, on the terms and conditions set forth in this Sublease, subject to all easements, encumbrances, and restrictions, including but not limited to the terms and conditions of the Lease.

- (a) Except as otherwise provided below, during the term of this Sublease the Sublessee shall use the Premises solely for purposes authorized by law as to afford the public the benefits contemplated by this Sublease, and the Sublessee shall not abandon the Premises.
- (b) The term of this Sublease begins on the earlier of the following: the date this Sublease is recorded with the Sacramento County Recorder, or November 1, 2007. The term of this Sublease expires on October 31, 2037, except as follows:
- (1) If, on October 31, 2037, the Base Rent scheduled to be paid by the Sublessee under this Sublease has not been fully paid for any reason, then the term of this Sublease will be extended until the date on which all such Base Rent payments have been fully paid and retired, but the term of this Sublease will in no event extend beyond October 31, 2047.
- (2) If, prior to October 31, 2037, all Base Rent scheduled to be paid by the Sublessee under this Sublease has been fully paid, then the the term of this Sublease will expire simultaneously therewith.
- (c) The Sublessee’s obligation to pay Base Rent commences on the date of execution and delivery of this Sublease. The Sublessor hereby delivers possession of the Premises to the Sublessee, and the Sublessee hereby accepts full and complete possession of the Premises under this Sublease.

3. Rent; Non-appropriation Event.

- (a) Rent. As rent for the use and occupancy of the Premises, the Sublessee shall pay to the Sublessor, or to the Sublessor’s successors or assigns, without deduction or offset of any kind, the following amounts at the following times:
- (1) **Base Rent.** On or before the business day immediately preceding the date set forth in Schedule I hereto, the Sublessee shall pay to the Sublessor Base Rent in such amount in each semi-annual period as is equal to the amounts set forth in Schedule I. Each payment of Base Rent will be for the use of the Premises for the period ending on the last day of the semi-annual period preceding the date on which such Base Rent is due.

- (2) **Additional Rent.** The Sublessee shall pay to the Sublessor as Additional Rent under this Sublease such reasonable amounts in each year as the Sublessor reasonably requires for the payment of all administrative costs, unpaid origination costs, and other expenses of the Sublessor in connection with the Premises, this Sublease, or the Lease, including all fees of accountants or attorneys, and all litigation costs, insurance premiums, and all other necessary costs of the Sublessor or charges required to be paid by it to comply with federal or state law or the Lease. The Sublessor may bill such Additional Rent from time to time, together with a statement certifying that the amount so billed has been paid by the Sublessor for one or more of the items above described or that the amount is then payable by the Sublessor for such items. The Sublessee shall pay the amounts so billed within 30 days after the Sublessee receives the bill.
- (b) **Fair Rental Value.** Payments of Base Rent and Additional Rent for each rent-payment period during the term of this Sublease will constitute the total Rent for such rent-payment period. The Sublessee's payment of Base Rent and Additional Rent in each rent-payment period will be for and in consideration of the right to the use, occupancy, and continued quiet enjoyment of the Premises during such rent-payment period. The parties agree that the total Rent represents the fair-rental value of the Premises, having considered (1) the independent appraisal report for the Premises filed with the Sublessee; (2) other obligations of the parties under this Sublease and the Lease; (3) the uses and purposes that may be served by the Premises; and (4) the benefits from the Premises that will accrue to the Sublessee and the general public.
- (c) **Method of Payment.** The Sublessee shall pay each installment of Rent payable under this Sublease in lawful money of the United States of America to or upon the order of the Sublessor or its successors or assigns at such place within the United States of America as the Sublessor or its successors and assigns may designate. Any such installment of Rent accruing hereunder that is not paid when due will bear interest at the legal rate of interest at which money judgments in the State of California bear interest from the date when the Rent is due until the Rent is paid. All Rent payments received will be applied first to the Base Rent due and then to the Additional Rent due. No application payments that are less than the total Rent due and owing will be deemed a waiver of any default under this Lease.
- (d) **Budgeting Rents.** Subject to Subsection 3(e) below, the Sublessee intends to do all things lawfully within its power to obtain and maintain funds from which payments of Rent may be made in accordance with this Section 3. The Sublessee reasonably believes that funds will be available to make all payments of Rent during the term of this Sublease. The Sublessee intends to include in the budget submitted for each successive fiscal year during the term of this Sublease sufficient funds from which payments of Rent may be made and to use its bona fide best efforts to pursue any available administrative reviews and appeals if the portion of the budget that addresses funds for paying Rent is not approved. Nothing in this Subsection 3(d) or in this Sublease obligates the Sublessee to budget or appropriate funds for the payment of Rent in any fiscal year after the fiscal year in which this Sublease is entered into.

- (e) Non-appropriation Event. The City Council is not obligated by this Sublease to appropriate funds for the payment of Base Rent due (a "Non-appropriation Event"). Moreover, notwithstanding anything to the contrary contained in this Section 3 or elsewhere in this Sublease, the Sublessee is not obligated to pay Rent if moneys are not lawfully available to the Sublessee for that purpose and a Non-appropriation Event has occurred. The occurrence of a Non-appropriation Event will not constitute a breach or default by the Sublessee under this Sublease; however, if the Sublessee fails to make a payment of Base Rent in the time, form, and manner required by Subsections 3(a)(1) and 3(c), then the Sublessor may require the Sublessee to relinquish possession of the Premises, and in such event and upon the Sublessor's written notice to the Sublessee this Sublease will Terminate. If the Sublessor requires the Sublessee to relinquish possession of the Premises, the Sublessee shall promptly vacate the Premises, and, to the extent necessary, the Sublessor may follow the procedures in Section 8 below to remove persons and property from the Premises. The Sublessee's failure to surrender and vacate the Premises will obligate the Sublessee to pay reasonable rent for the Premises, as determined by the Sublessor, during the time that such failure continues; however, the payment of such rent will not excuse the Sublessee's failure to surrender and vacate unless the Sublessor has given its written consent.
- (f) Unconditional Obligation. Subject to Subsection 3(e), the Sublessee's obligation to make payments of Rent and to perform and observe the other covenants and agreements contained in this Sublease is absolute and unconditional. Thus, except as provided in Subsection 3(e), the Sublessee shall make all payments of Rent and perform and observe the other covenants and agreements under this Sublease when due, and the Sublessee shall not withhold any Rent or the performance and observance of other covenants and agreements despite any dispute, claim, defense, or other right the Sublessee may have against the Sublessor, or any defect in, damage to, or destruction of the Premises. The Sublessee shall not assert any right of set-off or counterclaim against its obligation to make payments of Rent or to perform and observe the other covenants and agreements required under this Sublease. Nothing in this Subsection 3(f) releases the Sublessor from the performance of its obligations under this Lease. If the Sublessor fails to perform any such obligation, the Sublessee may institute any legal action against the Sublessor that the Sublessee deems necessary or appropriate to compel the performance of such obligation or to recover damages in accordance with this Sublease.

4. The Sublessee's Obligations under the Lease. The Sublessee has obligated itself under the Lease to do the following:

- (a) To provide the Utilities and Services defined in the Lease. The Sublessor shall accept such Utilities and Services from the Sublessee during the term of this Sublease and look only to the Sublessee for them, and the Sublessor will not be responsible to the Sublessee or to any other person for the Utilities and Services.
- (b) Except as otherwise set forth in the Lease, to bear and be responsible for all risks of loss of all or any portion of the Premises from any cause, whether or not covered by insurance; to make all changes and alterations to the Premises that may be required from time to time by law applicable to the Premises, including but not limited to the Americans with Disabilities

Act; and to pay all costs of restoration and repair to the Premises resulting from any cause, whether or not covered by insurance. The Sublessor shall look only to the Sublessee in connection these obligations and shall not be responsible to the Sublessee or to any other person for these obligations.

- (c) To maintain certain insurance coverage or to make alternative arrangements for the coverage of certain risks, as set forth in Section 13 of the Lease. During the term of this Sublease, payment of the insurance premiums will be the Sublessee's obligation.

5. Taxes and Assessments. As Additional Rent, the Sublessee shall pay to the Sublessor, or upon the order of the Sublessor, any amounts in each year that the Sublessor requires for the payment of all taxes and assessments lawfully assessed or levied by any governmental entity on to the Premises or the parties' interests or estates therein or on the Rent the Sublessor receives under this Lease, other than any taxes based upon the Sublessor's income; however, upon the occurrence of a Determination of Taxability, the Annual Interest Rate listed on Schedule I to this Sublease will be changed to a new rate equal to ____ for all purposes of this Sublease, as of the date this Sublease is entered into.

6. Changes to the Premises. The Sublessee shall not knowingly commit, suffer, or permit any waste, nuisance, or unlawful activity on the Premises.

7. Indemnification.

- (a) To the extent permitted by law, the Sublessee shall indemnify, defend, protect, and hold harmless the Sublessor and the Sublessor's directors, members, officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation expenses) that are caused by, or arise from, the Premises.

- (1) This obligation to indemnify includes but is not limited to liabilities, claims, demands, damages, and costs that arise (A) from any defects in the Premises (whether latent or patent) or (B) from the use, occupancy, or operation of the Premises, including but not limited to any mechanics' or materialmen's liens or other liens against the Premises or any death, injury, or damage suffered by any person or property on the Premises.

- (2) This obligation to indemnify does not include liabilities, claims, demands, damages, and costs to the extent caused by the negligence or willful misconduct of the Sublessor or the Sublessor's directors, members, officers, employees, or agents.

- (b) The Sublessor and its directors, members, officers, employees, and agents shall not be responsible for any damage or injury to the person or property of (1) the Sublessee; (2) the Sublessee's officers, employees, or agents; or (3) any other person who may be on the Premises to the extent such damage or injury arises from any negligence or willful misconduct of any person or entity other than the Sublessor or its directors, members, officers, employees, or agents.

8. Breach.

- (a) If the Sublessee fails (other than as a result of a Non-appropriation Event) to pay any Rent owed under this Sublease when the Rent becomes due and payable; or if the Sublessee fails to comply with any provision of this Sublease, when required to do so, for 60 days after receiving the Sublessor's written notice of the noncompliance plus such additional time as may be reasonably required in the Sublessor's sole discretion to correct the noncompliance; or if any of the events specified in Subsection 8(b) occurs, then the Sublessee will be in default under this Sublease, and the Sublessor will be entitled to exercise any remedies available at law or granted under this Sublease. Upon such a default, the Sublessor will be entitled to do any of the following in addition to all other rights and remedies it may have at law:
- (1) To Terminate this Sublease in the manner in the manner provided below, re-enter the Premises, remove all persons in possession of the Premises, and remove all personal property on the Premises and place that personal property in storage in any warehouse or other suitable place for the Sublessee. In the event of such Termination, the Sublessee shall immediately surrender possession of the Premises and pay the Sublessor all damages recoverable at law that the Sublessor incurs because of the Sublessee's default, including but not limited to any costs, loss, or damage arising out of the Sublessor's re-entry upon the Premises and removal and storage of property in accordance with this Sublease. None of the following events, by itself, will operate to Terminate this Sublease: (A) notice to pay Rent or to deliver up possession of the Premises given pursuant to law; (B) any entry or re-entry by the Sublessor; (C) any proceeding in unlawful detainer or otherwise brought by the Sublessor for the purpose of effecting such re-entry or obtaining possession of the Premises; or (D) the appointment of a receiver upon the Sublessor's initiative to protect the Sublessor's interest under this Sublease. No Termination of this Sublease because of the Sublessee's default will be or become effective by operation of law or acts of the parties, or otherwise, unless and until the Sublessor gives written notice to the Sublessee of the Sublessor's election to Terminate this lease. No surrender of the Premises or of the remainder of the term of this Sublease, and no Termination of this Sublease, will be valid for any purpose unless stated or accepted by the Sublessor by written notice.
 - (2) Without Terminating this Sublease, (A) to collect each installment of Rent as it becomes due and to enforce any other term or provision of this Sublease to be kept or performed by the Sublessee or (B) to exercise any and all rights of entry and re-entry upon the Premises. If the Sublessor does not elect to Terminate this Sublease in the manner provided for in Subsection 8(a)(1) above, then the Sublessee will remain liable and shall keep or perform all covenants and conditions of this Sublease that the Sublessee is to keep or perform. If the Premises are not re-let, then, subject to Subsection 3(e) above, the Sublessee shall pay the full amount of the Rent to the end of the term of this Sublease. If the Premises are re-let, then, subject to Subsection 3(e) above, the Sublessee shall pay any resulting deficiency in Rent. The Sublessee shall pay the Rent and any Rent deficiency punctually at the same

time and in the same manner as provided above for the payment of Rent, regardless whether the Sublessor has received in previous years or may receive in subsequent years Rent in excess of the Rent, and regardless whether the Sublessor re-enters the Premises or brings a suit in unlawful detainer or otherwise for the purpose of effecting such re-entry or obtaining possession of the Premises. If the Sublessor elects to re-enter as provided in this Subsection 8(a), then the Sublessee hereby irrevocably appoints the Sublessor as the Sublessee's agent and attorney-in-fact to re-let all or part of the Premises from time to time, either in the Sublessor's name or otherwise, upon such terms and conditions and for such use and period as the Sublessor may deem advisable and to remove all persons in possession of, and all personal property situated upon, the Premises and to place such personal property in storage for the Sublessee in any warehouse or other suitable place in Sacramento County, at the Sublessee's expense, and the Sublessee shall save harmless the Sublessor from any costs, loss, or damage arising out of, in connection with, or incident to any such re-entry upon and re-letting of the Premises and any removal and storage of such property by the Sublessor or its duly authorized agents in accordance with this Sublease, except for any such costs, loss, or damage resulting from the intentional or negligent actions of the Sublessor or its agents. This Sublease is full and sufficient notice of the Sublessor's right to re-let the Premises in the event of such re-entry without causing a surrender of this Sublease. The Sublessor's actions in effecting such a re-letting will not constitute a surrender or Termination of this Sublease irrespective of the use or the term for which the re-letting is made or the terms and conditions of the re-letting, or otherwise. If the Sublessee defaults, then the Sublessor will be entitled to Terminate this lease manner provided for in Subsection 8(a)(1) above. The Sublessee waives the right to any Rent the Sublessor receives in excess of the Rent specified in this Sublease and hereby conveys and releases such excess to the Sublessor as compensation for the Sublessor's services in re-letting the Premises. The Sublessee shall pay the Sublessor the cost of any alterations or additions to the Premises necessary to place the Premises in condition for re-letting immediately after the Sublessor notifies the Sublessee in writing that such additions or alterations are complete.

- (3) The Sublessee hereby waives all claims for damages caused by the Sublessor in re-entering and taking possession of the Premises as provided in this Sublease, all claims for damages that may result from the destruction of or injury to the Premises, and all claims for damages to or loss of any property belonging to the Sublessee or any other person that may be in or upon the Premises. The waivers in this Subsection 8(a)(3) do not apply to claims resulting from the intentional or negligent acts or omissions of the Sublessor or its agents.
- (4) The Sublessor's remedies under this Sublease or under any law now in force or later enacted are cumulative, and the single or partial exercise of any right, power, or privilege under this Sublease will not impair the Sublessor's right to other or further exercise of the same right, power, or privilege or the exercise of any or all other rights, powers, or privileges. If any statute or law validly limits the Sublessor's remedies under this Sublease, then the Sublessor nevertheless will be entitled to whatever remedies are allowable under any statute or law.

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- (5) If the Sublessor prevails in any action brought to enforce this Sublease, then the Sublessee shall pay the Sublessor's reasonable attorneys' fees incurred in attempting to enforce any of the remedies available to the Sublessor under this Sublease.
- (b) The Sublessee will also be in default of this Sublease if any of the following events occurs:
- (1) The Sublessee's interest in this Sublease or any part of it is assigned, sublet, or transferred, either voluntarily or by operation of law, without the Sublessor's written consent.
 - (2) The Sublessee or any assignee files any petition or institutes any proceedings under any state or federal law dealing with, or relating to, bankruptcy or insolvency, by which the Sublessee—
 - (A) seeks to be adjudicated a bankrupt or to be discharged from any of the Sublessee's debts or obligations;
 - (B) offers to the Sublessee's creditors to effect a composition or extension of time to pay the Sublessee's debts; or
 - (C) seeks a reorganization, or to effect a plan of reorganization, or a readjustment of the Sublessee's debts, or any other similar relief.
 - (3) A petition is filed or a proceeding instituted against the Sublessee under any state or federal law dealing with, or relating to, bankruptcy or insolvency for purposes similar to those described above in Subsection 8(b)(2).
 - (4) A receiver of the Sublessee's business, property, or assets is appointed by any court, except a receiver appointed at the Sublessor's request.
 - (5) The Sublessee makes a general assignment or any assignment for the benefit of the Sublessee's creditors.
 - (6) The Sublessee abandons the Premises.
- (c) The Sublessor will not be in default in the performance of any of its obligations under this Sublease unless the Sublessor fails to perform such obligations within 60 days or within such additional time as is reasonably required to correct the default after after the Sublessee notifies the Sublessor in writing, specifying how the Sublessor has failed to perform. The Sublessor's default will not excuse the Sublessee from its obligation to pay Rent, but the Sublessee will be entitled to pursue any remedy provided for by law against the Sublessor.
- (d) Time is of the essence of this Sublease.

9. **Eminent Domain.** If the whole or any portion of the Premises is taken by eminent-domain proceedings (or sold to a governmental entity threatening to exercise the power of eminent domain), then the proceeds from the taking will be deposited with the Sublessor, and the Sublessor shall hold the proceeds in a special fund in trust and shall apply and disburse the proceeds as follows:

(a) If the Premises are taken in part and the remainder is usable by the Sublessee, then this Sublease will continue in full force as to the remainder.

(1) If the part taken is replaced by a facility of equal or greater utility within or adjacent to the remainder, then the Sublessee shall disburse the proceeds to the party that incurs the expense of making such replacement (as set forth in a writing the Sublessor executes and files with the Sublessee), and Base Rent under this Sublease will not be reduced.

(2) If no replacement is made, then the Sublessee shall apply the proceeds in the order of priority specified in subsection 9(b). In addition, Base Rent under this Sublease will be partially reduced in proportion to the area of the Premises taken, but only if the Sublessee prepays the reduced Base Rent in full.

(b) If the Premises are taken in part and the remainder is not usable by the Sublessee, or if the entire Premises are taken, then the term of this Sublease will Terminate on the day possession is taken; and the Sublessor shall apply the proceeds, together with any other money then available to it for such purpose, according to the following priority: (1) first, to prepay unpaid Base Rent scheduled to be paid under this Sublease; (2) second, to pay any Rent or other amounts payable by the Sublessee under this Sublease; and (3) third, for transfer to, and deposit with, the Sublessee, who may apply the proceeds for any lawful purpose of the Sublessee. If, however, the proceeds, together with any other money then available to the Sublessee for such purpose, are not sufficient to prepay unpaid Base Rent and to pay any Rent or other amounts payable by the Sublessee under this Sublease, then the Sublessee will continue to be liable for all Base Rent and all other Rent or amounts in accordance with Section 3 above and subject to Subsection 3(e) above.

10. **Right of Entry.** The Sublessor may enter the Premises during reasonable business hours (and in emergencies at all times) to inspect the Premises for any purpose connected with the Sublessee's rights or obligations under this Sublease and for all other lawful purposes.

11. **Alteration of the Premises.** The Sublessor has agreed in the Lease that, during the term of this Sublease, the Sublessor shall not change, alter, add to, or improve the Premises or cause other work to be done or performed or materials to be supplied, in or about the Premises ("Work"). The Sublessee, in its capacity as Sublessee under this Sublease, shall not perform any Work in or about the Premises.

12. **Quiet Enjoyment.** At all times during the term of this Sublease, the Sublessee will peaceably and quietly have, hold, and enjoy the Premises without suit, trouble, or hindrance from the Sublessor so long as the Sublessee complies with, and is not in default under, this Sublease.

13. Sublessor Not Liable. The Sublessor and its directors, members, officers, employees, and agents will not be liable to the Sublessee or to any other party for any death, injury, or damage that results from any cause to any person or property in, on, or about the Premises, except any liability arising from the negligence or willful misconduct of the Sublessor or its directors, members, officers, employees, or agents in connection with their entry onto the Premises. The Sublessee shall indemnify, defend, protect, and save harmless the Sublessor and its directors, members, officers, employees, and agents in accordance with Section 7 above. The Sublessor's directors, members, officers, employees, and agents will not be personally liable for any Rent or other payment under this Sublease, nor will they be subject to any personal liability under this Sublease.

14. Title to Property. Upon the Expiration of this Sublease, full right, title, and interest to the Premises will revert to, and vest in, the Sublessee. Upon Expiration, the Sublessor shall execute such conveyances, deeds, and other documents as may be necessary to effect the reversion and vesting of record. Notwithstanding the foregoing, the Termination of this Sublease will not affect the Sublessor's rights under the Lease.

15. Prepayment; Discharge.

- (a) The Sublessee shall prepay on any date, from insurance and eminent-domain proceeds to the extent provided in Section 13 of the Lease and Section 9 of this Sublease, all or any part (in an integral multiple of \$5,000) of the principal components of Base Rent payments then unpaid so that the aggregate annual amounts of principal components of Base Rent payments that are payable after the prepayment date are as nearly proportional as practicable to the aggregate annual amounts of principal components of Base Rent payments unpaid before the prepayment date, at a prepayment amount equal to the sum of the principal component prepaid plus accrued interest to the prepayment date.
- (b) The Sublessee may prepay from any source of lawfully available funds, on any Base Rent payment date on or after November 1, 2007, all or any portion of the Base Rent payments listed on Schedule I of this Sublease, at the prepayment price set forth in Schedule I. The Sublessee shall also pay all of the Base Rent due on the Base Rent payment date and all other Base Rent and other Rent that is otherwise due and unpaid.
- (c) Before making any prepayment under this Section 15, and within five days following the event creating a right or obligation to prepay, the Sublessee shall give the Sublessor written notice describing the event and specifying the date on which the prepayment will be made, which must be at least forty-five days after the date notice is given.
- (d) When the events described below in Subsections 15(d)(1) and 15(d)(2) have occurred, the Sublessor's right, title, and interest under this Sublease will terminate; the Sublessee's obligations under this Sublease will be completely discharged; and, if all of the Base Rent payments listed in Schedule I have been so provided for, the Sublessor's interest in, and title to, the Premises will be reconveyed to the Sublessee, and the term of this Sublease will Terminate:

- (1) On or before the due dates of the Base Rent payments or the date when the Sublessee may exercise its option to prepay all or a portion of the Base Rent payments, sufficient moneys or securities have been deposited and irrevocably appropriated and set aside to the payment of the Base Rent payments (as used in this Subsection 15(d)(1) “securities” means direct obligations of, or obligations guaranteed by, the United States of America, not redeemable prior to maturity), the principal of and interest on which, when due, will provide money sufficient to pay all principal and interest components of the Base Rent payments to the due date of the Base Rent payments.
- (2) The Sublessee has filed with the Sublessor a verification report of a firm of certified public accountants or other financial-services firm acceptable to the Sublessee, verifying that the moneys or securities so deposited, together with earnings thereon, will be sufficient to make all payments of Base Rent to be discharged.

The termination and discharge of rights and obligations in accordance with this Subsection 15(d) will not affect the Sublessor’s right and the Sublessee’s obligation to have the moneys and securities deposited in trust and applied to the Base Rent payments. Upon the termination and discharge of rights and obligations, the Sublessor shall prepare (or cause to be prepared), as evidence of the Sublessee’s discharge, an accounting for such period or periods as the Sublessee requests, and the Sublessor shall pay to the Sublessee, as an overpayment of Base Rent, all moneys and securities the Sublessor holds under this Sublease other than moneys and securities required to pay or prepay the Base Rent payments or the Sublessor’s fees and expenses, which the Sublessor shall continue to hold in trust for the payment of Base Rent payments and the Sublessor’s fees and expenses, and which the Sublessor shall apply to pay Base Rent and the Sublessor’s fees and expenses.

16. Law Governing. This Sublease is governed exclusively by its provisions and by the laws of the State as the same from time to time exist.

17. Notices. All notices given by either party to the other must be in writing and and be sent by personal delivery (including delivery by a service such as FedEx or UPS) or by United States Mail (certified mail, postage prepaid, return receipt requested) to the following addresses:

- (a) To the Sublessor:
 - City Treasurer’s Office
 - City of Sacramento
 - Historic City Hall
 - 915 I Street, Third Floor (0900)
 - Sacramento, CA 95814
 - Attn: Manager, Public Finance & Banking
- (b) To the Sublessee:
 - Banc of America Public Capital Corp
 - 555 California Street, 5th Floor
 - San Francisco, CA 94104
 - Attn: _____

Notices will be considered given when actually received. The address to which notices are to be sent may be changed by written notice given as provided in this Section 17.

18. Validity and Severability. If this Sublease or any part of it is held by a court of competent jurisdiction to be void, voidable, or unenforceable by the Sublessor or by the Sublessee, then all of the remaining terms of this Sublease will nonetheless continue in full force. If such a court holds that any of the Sublessee's covenants or conditions under this Sublease, including but not limited to the covenant to pay Rent, is unenforceable for the full term of this Sublease, then the term of this Sublease will be deemed to be year to year; the Sublessee shall pay Rent annually in consideration of the Sublessee's right to possess, occupy, and use the Premises; and all the other terms, provisions, and conditions of this Sublease will remain in full force, except to the extent that such terms, provisions, and conditions are contrary to, or inconsistent with, such holding.

19. Waiver. The waiver by a party of a breach by the other party of any term, covenant, or condition in this Sublease will not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition in this Sublease.

20. Net Sublease. This Sublease is a "net lease," and the Rent provided for under this Sublease will be an absolute net return to the Sublessor, free and clear of any expenses, charges, counterclaims, or set-offs. The Sublessee hereby waives the benefits of Civil Code section 1932, subdivision 2, and Civil Code section 1933, subdivision 4, and any other rights to terminate this Sublease by virtue of any damage or destruction of the Premises.

21. Section Headings. All section headings in this Sublease are for convenience of reference only. They do not define or limit the scope of any provision of this Sublease.

22. Amendment. This Sublease may be amended only by a written instrument duly authorized, executed, and delivered by the Sublessor and the Sublessee.

23. Tax Covenants.

(a) The Sublessee and the Sublessor shall not use the proceeds of the Sublease or any other funds of the Sublessee or the Sublessor that will cause the Sublease to be "arbitrage bonds" subject to federal income taxation by reason of Section 148 of Code. The Sublessee and the Sublessor shall not use the proceeds of the Sublease or any other funds of the Sublessee or the Sublessor that will cause the Sublease to be "federally guaranteed" and subject to inclusion in gross income for federal income-tax purposes by reason of Section 149(b) of the Code. To these ends, so long as any Base Rent payments are unpaid, the Sublessee and the Sublessor, with respect to such proceeds and such other funds, will comply with all requirements of Sections 148 and 149(b) of the Code and all regulations of the United States Department of the Treasury issued under those sections to the extent those requirements are applicable and in effect at the time.

(b) The Sublessor and the Sublessee shall not use or permit the use of the Premises by any person who is not an "exempt person" within the meaning of Section 141(a) of the Code or

by an "exempt person" (including themselves) in an "unrelated trade or business" in any manner that would result in the inclusion of interest received under this Sublease in gross income for federal income-tax purposes under Section 103 of the Code.

- (c) If, at any time, either the Sublessor or the Sublessee is of the opinion that it is necessary for purposes of this Section 23 to restrict or limit the yield on, or to change in any way the investment of, any moneys the Sublessee or the Sublessor hold in connection with this Sublease or the Lease, then the Sublessor or the Sublessee shall so instruct the appropriate officials of the Sublessee or Sublessor in writing, and the appropriate officials of the Sublessee shall take such actions as may be necessary in accordance with those instructions.
- (d) In furtherance of their covenants in Subsections 23(a), 23(b), and 23(c), the Sublessor and the Sublessee shall comply with the Tax Certificate delivered at the time of delivery of this Sublease.
- (e) The Sublessee and the Sublessor shall perform all lawful acts and necessary or desirable to assure that the interest component of the Base Rent payments will be excluded from gross income for federal income-tax purposes and shall not take any action that would result in such interest being included in gross income for federal income-tax purposes.
- (f) The covenants in this Section 23 will survive payment in full of obligations under this Sublease.

24. Environmental Hazards. The Sublessee shall comply with any state or federal law relating to toxic or hazardous pollutants, waste, materials, or substances. To the extent permitted by law, the Sublessee shall indemnify and hold the Sublessor harmless from and against all losses, claims, suits, damages, and costs (including reasonable attorneys' fees and litigation expenses) arising out of the condition of the Premises, including but not limited to all costs the Sublessor must incur because of any law described in this Section 24, except as follows: this obligation to indemnify does not include losses, claims, suits, damages, and costs to the extent caused by the negligence or willful misconduct of the Sublessor or the Sublessor's directors, members, officers, employees, or agents.

25. Assignment.

- (a) The Sublessor may assign this Sublease and the Sublessor's rights under this Sublease without the Sublessee's consent. The Sublessee shall execute all documents that the Sublessor or the assignee may reasonably request to protect their interests under this Sublease, including acknowledgments of notices of assignment or releases of the assignor.
- (b) Except for Permitted Encumbrances, the Sublessee shall not (1) sell, assign, convey, or otherwise transfer any interest in, all or any portion of, the Premises; (2) create or suffer to exist in any jurisdiction any mortgage, lien, or security interest with respect to all or any part of the Premises; or (3) assign this Sublease or grant any lease in its interest in the Premises.

26. **Holding Over.** If the Sublessee holds over following the expiration of the term of this Sublease with the Sublessor's express or implied consent, then the holding over will be on a month-to-month basis, subject otherwise to all the terms and conditions of this Sublease.

27. **No Merger; Counterparts.** If, during the term of this Sublease, the Sublessee acquires fee title to the Premises or any other lessor's interest in the Premises, then the interests of the Sublessee under this Sublease will not merge or become merged in or with the fee other interest, and the Sublessee's estate under this Sublease will continue in full force to the same extent as if the Sublessee had not so acquired such fee or interest.

28. **Execution.** The parties may execute this Sublease in any number of counterparts, each of which will be considered an original, but all of which will together constitute the same Sublease.

29. **Integration.** This Sublease sets forth the parties' entire understanding regarding the matters set forth above, and it supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied).

City of Sacramento

Banc of America Public Capital Corp

By: _____
Thomas Berke
Interim City Treasurer
Dated: _____, 2007

By: _____
[name]
[title]
Dated: _____, 2007

Approved for Legal Form
Sacramento City Attorney

By: _____

Exhibit A

Legal Description of Premises

The land referred to herein below is situated in the County of Sacramento, State of California and is described as follows:

Parcel 2, as described in Certificate of Compliance for Lot Line Adjustment recorded July 3, 2001, in Book 20010703, Page 1442, Official Records being more particularly described as follows:

All that portion of the Northwest one-quarter of Section 25, Township 8 North, Range 5 East, M.D.B.& M., according to the official plat thereof described as follows:

Beginning at a point on the center line of Florin-Perkins Road, a public road 60 feet in width, as shown on the Record of Survey entitled "A portion of the Northwest quarter of Section 25, Township 8 North, Range 5 East, M.D.B.& M.," recorded in the office of the County Recorder of Sacramento County on January 22, 1960 in Book 15 of Surveys, at Page 28, from which the Northwest corner of said Section 25 bears North $00^{\circ}16'30''$ West 1341.30 feet; thence from said point of beginning, North $89^{\circ}48'00''$ East 274.90 feet thence South $00^{\circ}16'30''$ East 165.00 feet; thence South $89^{\circ}43'00''$ West 274.90 feet to the centerline of said Florin-Perkins Road; thence along said centerline, North $00^{\circ}16'30''$ West 165.00 feet to the point of beginning.

EXCEPTING THEREFROM the following parcel of land;

BEGINNING at a point on the centerline Unsworth Avenue, as shown on that certain Record of Survey entitled, "A portion of the Northwest Quarter of Section 25, Township 8 North, Range 5, East, M.D.B.& M.," recorded in the Office of the County Recorder of Sacramento County on January 22, 1960, in Book 15 of Surveys at Page 28, from which point the Northwest corner of said Section 25 bears the following two courses and distances: (1) South $89^{\circ}48'00''$ East 268.93 feet and (2) North $00^{\circ}16'30''$ West 1341.30 feet; THENCE from said Point of beginning, South $00^{\circ}03'05''$ East 165.00 feet to a point in the North line of Parcel 1 as shown on that certain Parcel Maps recorded in the Office of said Recorder in Book 12 of Parcel Maps, at Page 23; THENCE North $89^{\circ}48'00''$ East 6.26 feet to the Northeast corner of said Parcel 1; THENCE North $00^{\circ}09'00''$ West (called North $00^{\circ}16'30''$ West on the Deed recorded in Book 64-11-15 of Official Records at Page 97) 165.00 feet to a point on the centerline of Unsworth Avenue; THENCE South $89^{\circ}48'00''$ West 5.97 feet to the point of beginning.

APN: 062-0020-089

Sublease

Dated as of November 1, 2007

by and between the

Banc of America Public Capital Corp
as Sublessor

and the

City of Sacramento, California
as Sublessee

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Exhibit A Legal Description of the Premises A-1

Schedule I Base Rent Payment Schedule I-1

Tax Certificate

THIS TAX CERTIFICATE (the “Tax Certificate”) is executed by the City of Sacramento (the “Issuer”), a charter city and municipal corporation of the State of California as further described below, in its capacity as the issuer of the Obligation (as such term is hereinafter defined), for the benefit of Banc of America Public Capital Corp. (“Bank”).

RECITALS

A. The Issuer has determined to finance the expansion and improvement of its municipal marina, known as the Sacramento Basin Marina Expansion Project (the “Project”) located within the City of Sacramento, through the execution of the “Sublease,” as defined in Section 1.5 herein. The Sublease provides for the payment by the Issuer of certain Base Rent (as set forth in Schedule I to the Sublease) in the aggregate principal amount of \$1,500,000, together with interest thereon (the “Obligation”).

B. The Issuer has covenanted under the terms of the Obligation to maintain the exclusion of the interest payable with respect to the Obligation from gross income for federal income tax purposes under the Internal Revenue Code of 1986 (the “Code”).

C. The Code and the regulations and rulings relating thereto prescribe that the use and operation of the Project be restricted in certain respects to assure that such facilities will be used and operated in accordance with the Code.

D. The Code and the regulations and rulings relating thereto impose certain limitations on the use and investment of the proceeds of the Obligation and of other moneys relating to the Obligation.

E. The Issuer has determined to execute this Tax Certificate in order to set forth certain terms and conditions relating to the use and operation of the Project and the restrictions on the use and investment of the proceeds of the Obligation and of other moneys relating to the Obligation in order to assure that the interest payable with respect to the Obligation will be excluded from the gross income for federal income tax purposes.

ARTICLE I
IN GENERAL

1.1 The Issuer. The Issuer is a charter city and municipal corporation, duly organized and validly existing under the constitution and laws of the State of California. The Issuer may exercise the power of eminent domain pursuant to the laws of the State of California.

1.2 Delivery of the Obligation. The Issuer is delivering the Obligation on the date hereof to Bank.

1.3 Purpose of Tax Certificate. The Issuer is delivering this Tax Certificate to Orrick, Herrington & Sutcliffe LLP, as special tax counsel (“Special Tax Counsel”), with the understanding that Special Tax Counsel will rely in part upon this Tax Certificate in rendering its opinion that interest on the Obligation is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986.

1.4 Authorization. The Obligation is being issued pursuant to the laws of California.

1.5 Definitions. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth under the terms of the Sublease. Unless the context otherwise requires, the following capitalized terms have the following meanings:

“*Acquisition Fund*” means the fund of the same name established pursuant to this Tax Certificate.

“*Closing Date*” means the date of this Tax Certificate.

“*Code*” means the Internal Revenue Code of 1986 and the applicable Treasury Regulations.

“*Gross Proceeds*” has the meaning used in Section 1.148-1(b) of the Treasury Regulations, and generally means all proceeds derived from or relating to the Obligation, including Sale Proceeds and amounts to be used to pay debt service on the Obligation.

“*Investment Property*” means any security or obligation (other than a Tax-Exempt Bond), any annuity contract, or any other investment-type property.

“*Net Sale Proceeds*” means the proceeds from the sale of the Obligation, less any amount invested as part of a “minor portion” pursuant to Section 148(e) of the Code.

“*Nonpurpose Investment*” means any Investment Property in which Gross Proceeds are invested other than the Obligation.

“*Obligation Year*” means the period beginning on the Closing Date and ending on November __, 2008 (or a shorter period selected by the Issuer and the Issuer in accordance with Treasury Regulations Section 1.148-1(b)), and each succeeding one-year

period thereafter. The last Obligation Year will end on the last date on which any component of the Obligation is outstanding.

“Opinion of Bond Counsel” means an approving written opinion of nationally recognized bond counsel to the effect that the exclusion of interest on the Obligation for federal income tax purposes is not adversely affected.

“Rebate Requirement” means the amount of rebatable arbitrage computed as of the last day of any Obligation Year pursuant to Section 1.148-3 of the Treasury Regulations.

“Sale Proceeds” means the amount of \$1,500,000, comprising the principal amount of the Obligation.

“Sublease” means, the Sublease, dated as of November 1, 2007, between the Issuer, as sublessee and the Bank as lessor, including the schedule of base rent payments to be made by the Issuer and attached as Schedule I to the Sublease.

“Tax-Exempt Bond” means any obligation the interest on which is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Code or Section 103 of the Internal Revenue Code of 1954, as amended (the “1954 Code”), and Title XIII of the Tax Reform Act of 1986, as amended, as well as stock in a regulated investment company to the extent at least 95 percent of income to the stockholder is treated as interest that is excludable from gross income under Section 103 of the Code or under Section 103 of the 1954 Code.

“Yield” means that discount rate described in Section 4.5 of this Tax Certificate.

1.6 Single Issue. All of the interest in the Obligation is being sold to Bank on the Closing Date. All of the interest in the Obligation is being sold pursuant to the same plan of financing and is expected to be paid out of substantially the same source of funds. No other governmental obligations which are expected to be paid out of substantially the same source of funds as the Obligation were or will be sold within the 31-day period beginning 15 days before the Closing Date pursuant to the same plan of financing as the Obligation.

ARTICLE II

PRIVATE ACTIVITY REQUIREMENTS

2.1 Purpose of Financing. The Issuer represents and warrants that the Obligation is being issued for the purpose of providing funds to finance the construction and installation of the Project for use in the Issuer's operations at its municipal marina. Absent an Opinion of Bond Counsel, the Issuer covenants and agrees to use the proceeds of the Obligation solely for the purposes described in this Section 2.1.

2.2 Tax Exempt Status. The Issuer is exempt from federal income taxation.

2.3 Ownership and Use of the Project; Use of Obligation Proceeds. All of the proceeds of the Obligation will be deposited in the Acquisition Fund, which fund the Issuer shall establish and maintain hereunder, to be used by the Issuer to finance the construction and installation of the Project. Absent an Opinion of Bond Counsel, the Issuer will not sell or lease the Project prior to the final maturity date in respect of the Obligation. All of the Project will be used only by the Issuer in furtherance of its governmental purposes for park and recreational activities and not by any private party.

2.4 Government Bond Status. The Issuer is expected to use all of the Project. Subject to Section 2.3 herein, the Issuer will not allow more than ten percent of the proceeds of the Obligation or of the Project or the output thereof to be used, directly or indirectly, by any nongovernmental person in the trade or business, other than as a member of the general public.

2.5 Economic Life; Weighted Average Maturity. A useful life of [30] years is expected for the Project. The weighted average maturity of the Obligation is no more than _____ years, which is less than 120% of the weighted average economic life of the Project from the expected placed in service date.

ARTICLE III

GENERAL TAX LIMITATIONS

3.1 Registered Form. The Obligation is being issued in registered form.

3.2 Federal Guarantee. The Issuer will not directly or indirectly use or permit the use of any proceeds of the Obligation or any other funds of the Issuer, or any related person in such a manner as to, or take or omit to take any action that would, cause the Obligation to be an obligation that is “federally guaranteed” within the meaning of Section 149(b) of the Code. In furtherance of this covenant, the Issuer will not allow the payment of principal or interest with respect to the Obligation to be guaranteed (directly or indirectly) in whole or in part by the United States or any agency or instrumentality thereof. The Issuer will not use 5% or more of the proceeds of the Obligation to make or finance loans the payment of principal or interest with respect to which is guaranteed in whole or in part by the United States or any agency or instrumentality thereof, nor will Issuer invest 5% or more of the proceeds in federally insured deposits or accounts.

3.3 No Refunding. None of the proceeds of the Obligation will be used directly or indirectly to make principal, interest, or premium payments with respect to any obligation other than the Obligation.

3.4 Information Reporting. The Issuer will cause IRS Form 8038-G to be filed with respect to the Obligation no later than February 15, 2008.

3.5 No Pooling. The Issuer will not use any proceeds of the Obligation directly or indirectly to make or finance loans to two or more ultimate borrowers.

3.6 No Hedge Bonds. The Issuer reasonably expects that more than 85% of the Net Sale Proceeds will be expended for the governmental purpose of the Obligation within three years of the Closing Date. Less than 50% of such proceeds will be invested at a substantially guaranteed yield for four years or longer.

3.7 Retention of Records. The Issuer covenants to maintain all records relating to the requirements of the Code and the representations, certifications and covenants set forth in this Tax Certificate until the date three years after the last outstanding Obligation has been retired. If any of the Obligation is refunded by Tax-Exempt Bonds (the “Refunding Obligations”), the Issuer covenants to maintain all records required to be retained by this Section until the later of the date three years after the last outstanding Obligation has been retired or the date three years after the last Refunding Obligations have been retired. The records that must be retained include, but are not limited to:

- (A) Basic records and documents relating to the Obligation (including the Sublease, this Tax Certificate, the Ground and Facilities Lease and the opinion of Special Tax Counsel);
- (B) Documentation evidencing the expenditure of Obligation proceeds;
- (C) Documentation evidencing the use of the Project by public and private sources (i.e., copies of management contracts, research agreements, leases, etc.);
- (D) Documentation evidencing all sources of payment or security for the Obligation; and
- (E) Documentation pertaining to any investment of Obligation proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received from the investment of proceeds, guaranteed investment contracts, and rebate calculations).

3.8 Tax Covenants. (A) The Issuer covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Obligation under Section 103 of the Code. The Issuer will not directly or indirectly use or permit the use of any proceeds of the Obligation or any other funds of the Issuer, or take or omit to take any action that would cause the Obligation to be considered “arbitrage bonds” within the meaning of Section 148(a) of the Code to the extent applicable to the Obligation. To that end, the Issuer will comply with all requirements of Section 148 of the Code to the extent applicable to the Obligation.

(B) Without limiting the generality of the foregoing, the Issuer agrees that there shall be paid from time to time all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the Obligation from time to time. This covenant shall survive payment in full or prepayment of the Obligation. The Issuer specifically covenants to pay or cause to be paid to the United States at the times and in the amounts determined under the Code the Rebate Requirement, as described in this Tax Certificate.

(C) The Issuer shall at all times do and perform all acts and things permitted by law, the Sublease and this Tax Certificate which are necessary or desirable in order to assure that interest paid on the Obligation (or any of them) will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being excluded from gross income for federal income tax purposes.

(D) Any other obligation issued by the Issuer either to make improvements to the Project or to refund the Obligation will be discharged no later than the latest maturity date of the original obligations, regardless of whether the original obligations are callable at an earlier date.

ARTICLE IV

ARBITRAGE

4.1 Offering Price. The Issuer is delivering the Obligation to Bank on the date hereof in exchange for payment of \$1,500,000, which represents the total amount of Sale Proceeds of the Obligation. As reflected in Exhibit A hereto, such payment represents the fair market value of the Obligation as of the Closing Date.

4.2 Sale Proceeds. On the Closing Date, the Sale Proceeds are being deposited in the Acquisition Fund, to be applied to pay for the costs of the Project as it is completed.

4.3 Funds and Accounts.

4.3.1 Debt Service Fund. The Issuer expects that a portion of its general fund will be used to pay debt service on the Obligation. Such portion being used to pay debt service on the Obligation for the each Obligation Year shall be hereinafter referred to collectively as the “Debt Service Fund.” There is no other fund or account so pledged as security for the Obligation except for the Debt Service Fund. All payments on the Obligation will be made by the Issuer directly to the holder of the Obligation from current revenues of the Issuer held in the Debt Service Fund, and such revenues will exceed debt service on the Obligation in each Obligation Year. Accordingly, amounts held in the Debt Service Fund may be invested without regard to yield pending their use to make debt service payments on the Obligation.

4.3.2 Acquisition Fund. Sale Proceeds will be deposited in the Acquisition Fund, to be periodically applied by the Issuer to pay for the costs of the Project as it is completed. Relying on representations made herein regarding the expected expenditure of such amounts, amounts in the Acquisition Fund may be invested without regard to yield for three years from the Closing Date. All earnings on Sale Proceeds in the Acquisition Fund will be retained in such fund, subject to requisition in order to pay additional Project costs.

4.4 No Replacement Proceeds. Neither the Issuer nor any related person will use any proceeds of the Obligation directly or indirectly to replace funds of the Issuer, or any related person which are or will be used directly or indirectly to acquire Investment Property reasonably expected to produce a yield that is materially higher than the yield on the Obligation. As

reflected in Section 2.5 hereof, the weighted average maturity of the Obligation is not more than 120% of the weighted average reasonably expected economic life of the Project.

4.5 Yield. For purposes of this Tax Certificate, yield is calculated as set forth in Section 148(b) of the Code and Treasury Regulations Sections 1.148-4 and 1.148-5. Thus, yield on the Obligation or yield on Investment Property generally means that discount rate which, when used in computing the present value of all unconditionally payable payments representing principal, interest and costs of qualified guarantees produces an amount equal to the issue price of the Obligation or the purchase price of the Investment Property, as appropriate. As reflected in Exhibit A hereto, the aggregate issue price of the Obligation is \$1,500,000, which represents the price at which the Obligation was sold to Bank. Also as reflected in Exhibit A hereto, Bank has purchased the Obligation for its own account. The yield on the Obligation has been calculated to be at least _____%.

4.6 No Abusive Arbitrage Device. The Obligation is not and will not be part of a transaction or series of transactions that enables the Issuer, or any related person to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage and increases the burden on the market for tax-exempt obligations in any manner, including, without limitation, by selling bonds that would not otherwise be sold, or selling more bonds, or issuing bonds sooner, or allowing bonds to remain outstanding longer, than otherwise would be necessary.

4.7 No Expected Sale. It is not expected that the Project or any part thereof financed in whole or in part by the Obligation will be sold or otherwise disposed of before the last scheduled principal payment due in respect of the Obligation.

ARTICLE V

REBATE

5.1 Rebate Exceptions. With respect to the Obligation, the Issuer hereby covenants to comply with the rebate requirements contained in Section 148(f) of the Code. In connection with the Obligation proceeds in the Acquisition Fund, the Issuer expects to expend all such proceeds in time to meet one or more spending exceptions set forth herein. In addition, amounts in the Debt Service Fund are expected to qualify as part of a “bona fide debt service fund,” as defined in Treasury Regulations Section 1.148-1(b), and therefore are not taken into account for determining rebate on the Obligation. Accordingly, the Issuer expects no rebate liability with respect to all amounts connected with the Obligation.

5.1.1 Eighteen-Month Expenditure Exception. In general, no rebate calculations will be required with respect to Sale Proceeds, and investment earnings thereon, if at least 15% of expected “Adjusted Gross Proceeds” actually are spent within six months after the Closing Date, at least 60% of expected Adjusted Gross Proceeds actually are spent within twelve months after the Closing Date, and 100% of actual Adjusted Gross Proceeds actually are spent within eighteen months after the Closing Date. As used herein, Adjusted Gross Proceeds means Gross Proceeds, adjusted as set forth in Treasury Regulations Section 1.148-7(c)(3). Thus, Adjusted Gross Proceeds generally means Gross Proceeds less the amounts held in Debt Service

Funds and a reasonably required reserve fund, if any. For the first two requirements in the preceding sentence, Adjusted Gross Proceeds includes expected investment earnings as of the Closing Date.

The requirement that 100% of actual Adjusted Gross Proceeds be spent within eighteen months after the Closing Date will be met if at least 95% of Adjusted Gross Proceeds is spent within eighteen months and the remainder is held as a reasonable retainage, as permitted by contracts with the contractors, and such remainder is spent within thirty months after the Closing Date. In addition, any failure to satisfy the final spending requirement is disregarded if the Issuer exercises due diligence to complete the Project and the amount of failure does not exceed the lesser of three percent of the issue price of the Obligation or \$250,000.

5.1.2 Two-Year Construction Exception. “Available Construction Proceeds” may not be subject to the Rebate Requirement if the conditions set forth herein are met. In determining the amount of Available Construction Proceeds as of (i) the first three dates set forth below, the aggregate reasonably expected amount of investment earnings that are Available Construction Proceeds are used and (ii) the last date set forth below, the actual investment earnings that are Available Construction Proceeds are used. The Issuer reasonably expects that the Project will be owned by the Issuer or another governmental unit. As used herein, “construction expenditures” include costs for construction (including for constructed personal property), reconstruction and rehabilitation, but do not include costs of acquisition of interests in land or other existing real property. Section 1.148-7(g) provides that constructed personal property includes tangible personal property where (a) a substantial portion of the Project is completed more than six months after the earlier of the date construction or rehabilitation commenced and the date the Issuer entered into an acquisition contract, and (b) based on the reasonable expectations of the Issuer (or representations of the entity constructing the property), with the exercise of due diligence, completion of construction or rehabilitation (and delivery to the Issuer) could not have occurred within that 6-month period. The Issuer expects all Available Construction Proceeds to be spent on construction expenditures.

The portions of the Available Construction Proceeds required to be spent at the end of each 6-month period are as follows:

End of first six months	10%
End of first year	45%
End of first 18 months	75%
End of second year	100%

The requirement that 100% of the Available Construction Proceeds be expended within two years of the Closing Date will be met if at least 95% of the Available Construction Proceeds is spent by such time, if the remainder is a “reasonable retainage” as required or permitted by construction contracts with the Issuer’s contractors, and if such remainder is spent within the three years of the Closing Date. In addition, any failure to satisfy the final spending requirement is disregarded if the Issuer exercises due diligence to complete the Project and the amount of failure does not exceed the lesser of three percent of the issue price of the Obligation or \$250,000.

For purposes of this section, Available Construction Proceeds means all Sale Proceeds, less the amount of Sale Proceeds used to pay the costs of executing and delivering the Obligation, if any, plus all Investment Proceeds (received, accrued or reasonably expected to be earned) thereon.

The Issuer expects to meet this exception and expects to earn at or below _____% in connection therewith.

5.2 Rebate Obligation. In the event that all such Gross Proceeds are not so spent as set forth above or that additional unexpected Gross Proceeds arise in the future, the Issuer hereby covenants to consult with nationally recognized bond counsel to determine what actions they must undertake to ensure that the Rebate Requirement, if any, is satisfied. For such purposes, the Issuer may in the future retain a consultant for such purposes, but the Issuer acknowledges that Orrick, Herrington & Sutcliffe LLP shall have no responsibility concerning the Issuer's rebate obligations unless mutually agreed to in writing in the future.

ARTICLE VI

OTHER MATTERS

6.1 Expectations. The undersigned is an authorized representative of the Issuer acting for and on behalf of the Issuer in executing this Tax Certificate. To the best of the knowledge and belief of the undersigned, there are no other facts, estimates or circumstances that would materially change the expectations as set forth herein, and said expectations are reasonable.

6.2 Amendments. Notwithstanding any other provision of this Tax Certificate, the Issuer may amend this Tax Certificate and thereby alter any actions allowed or required by this Tax Certificate if such amendment is supported by an Opinion of Bond Counsel.

[Remainder of this page intentionally left blank]

6.3 Survival of Defeasance. Notwithstanding any provision in this Tax Certificate or the Obligation to the contrary, the obligation to remit the Rebate Requirement, if any, to the United States Department of the Treasury and to comply with all other requirements contained in this Tax Certificate shall survive the defeasance of the Obligation.

Dated: November __, 2007

CITY OF SACRAMENTO

By _____

[NAME]

[TITLE]

EXHIBIT A

CERTIFICATE OF BANC OF AMERICA PUBLIC CAPITAL CORP.

On behalf of Banc of America Public Capital Corp. (“Bank”), the undersigned hereby certifies as follows in connection with the execution and delivery of that certain Sublease, dated as of November 1, 2007, between the City of Sacramento, as sublessee (the “Issuer”) and Bank, as sublessor (the “Obligation”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Tax Certificate to which this certificate is attached as an exhibit.

1. As of the date of this certificate, Bank has purchased the Obligation from the Issuer in a bona fide, arms’ length transaction for an aggregate sale price of \$1,500,000.

2. Bank has purchased the Obligation for its own account and has no present view for resale, except to an affiliate of Bank. Except as described herein, as of the date hereof, Bank has not entered into, and is not actively negotiating, any contract for sale of the Obligation (or any portion thereof) to any other party excluding any assignment to an affiliate of Bank. Bank hereby represents that the fair market value of the Obligation as of the date hereof, for purposes of calculating the issue price of the same, is \$1,500,000.

Dated: November __, 2007

BANC OF AMERICA PUBLIC CAPITAL CORP.

By: _____
Authorized Representative

JPC DRAFT 11/1/07 @ 1045

November __, 2007

Banc of America Public Capital Corp
555 California Street, 5th Floor
San Francisco, California 94104

Re: Sublease dated November 1, 2007, between Banc of America Public Capital Corp as sublessor and the City of Sacramento as sublessee (Sacramento Marina South Basin Renovation Project – PN:IA66)

Ladies and Gentlemen:

We serve as legal counsel to City of Sacramento (the “City”). In that capacity, and in connection with the lease-and-leaseback of real property and improvements generally known as Fire Station No. 9 (the “Premises”) for purposes of financing improvements to the Sacramento Marina, we have examined the following documents:

- An executed counterpart of the Ground and Facilities Lease between the City as lessor and Banc of America Public Capital Corp, dated November 1, 2007 (the “Lease”).
- An executed counterpart of the Sublease between the City as sublessee and Banc of America Public Capital Corp as sublessor, dated November 1, 2007 (the “Sublease”).
- The City’s resolutions that, among other things, authorize the City to execute the Lease and the Sublease.
- Any other opinions, documents, and matters of law that we deemed necessary to examine in connection with the opinions set forth below.

Based on the foregoing, we are of the following opinions:

1. The City is a charter city of the State of California and is authorized by the Constitution and laws of that state to enter into the Lease and the Sublease and to carry out its obligations under the Lease and the Sublease.

Banc of America Public Capital Corp
Re: Sublease with the City of Sacramento
November __, 2007
Page 2 of 2

2. The City has the requisite power and authority to lease the Premises, to execute and deliver the Lease and the Sublease, and to perform its obligations under the Lease and Sublease.
3. The Lease and Sublease have been duly authorized, approved, executed, and delivered by and on behalf of the City and are valid and binding obligations of the City, enforceable in accordance with their terms.
4. The authorization, approval, execution, and delivery of the Lease and the Sublease and all other proceedings of the City relating to the transactions contemplated in the Lease and the Sublease have been performed in accordance with all applicable state and federal laws, including but not limited to open-meeting laws and public-bidding laws.
5. To our current, actual knowledge, the City has not been served with process in, or overtly threatened with, any lawsuit, administrative proceeding, or investigation in any court or before any governmental authority, arbitration board, or tribunal that, if adversely determined against the City, would adversely affect the transactions contemplated by the Lease and the Sublease or the interest of Banc of America Public Capital Corp or its assigns, as the case may be, in the Premises or other collateral under the Lease and the Sublease.

We express no opinion regarding state or federal laws that pertain to the tax-exempt status of the Lease and Sublease or to the tax-exempt status of any rent paid under them.

These opinions are governed by, and are to be interpreted in accordance with, the Legal Opinions Accord included in the *Third-Party Legal Opinion Report of the ABA Section of Business Law (1991)*. These opinions are also governed by, and are to be interpreted in accordance with, the "California Provisions" set out in the *Business Law Section of the State Bar of California Report on the Third-Party Legal Opinion Report of the ABA Section of Business Law (dated May 1992)*. As a consequence, these opinions are subject to a number of qualifications, exceptions, definitions, limitations on coverage, understandings, and other matters, all as more particularly described in the Legal Opinions Accord and the California Provisions, and they must be read in conjunction with those documents.

Banc of America Public Capital Corp and its successors and assigns are entitled to rely on this opinion.

Sincerely,

Eileen M. Teichert
City Attorney

By: _____
Joseph P. Cerullo
Senor Deputy City Attorney