RESOLUTION NO. 1805

A RESOLUTION OF THE BOARD OF SUPERVISORS OF YAVAPAI COUNTY FINDING THAT THE COUNTY HAS EXPENDED EIGHTY-FIVE PERCENT (85%) OF THE NET SALE PROCEEDS RECEIVED BY THE COUNTY, AND ALL INVESTMENT INCOME ON SUCH PROCEEDS, FROM THE LEASE-PURCHASE AGREEMENT BETWEEN THE COUNTY AND BANK OF AMERICA N.A., DATED MAY 15, 2008, AS AMENDED ON JUNE 15 2009; DETERMINING THAT THE COUNTY REASONABLY EXPECTS TO COMPLETE WORK ON THE JUVENILE CENTER AT PRESCOTT LAKES, THE LAST REMAINING FACILITY TO BE CONSTRUCTED WITH THE LEASE PROCEEDS BY DECEMBER 15, 2012; AND RATIFYING, CONFIRMING AND ACCEPTING AMENDMENT NO. 2 TO THE ESCROW AGREEMENT, WHICH SECURES THE LEASE-PURCHASE AGREEMENT'S PROCEEDS.

WHEREAS, on May 15, 2008 Yavapai County (the "*County*") entered into a lease purchase agreement (the "*Agreement*") with Bank of America N.A. (the "*Bank*"); and

WHEREAS, on June 15, 2009 the Agreement was amended by the parties execution and delivery of the First Amendment to Lease Agreement; and

WHEREAS, when the Agreement was first executed and delivered, an Escrow Agreement (the "*Escrow Agreement*") was entered into between the County and Compass Bank (now known as BBVA Compass) to secure the proceeds of the Agreement; and

WHEREAS, on June 15, 2009, the County and Compass Bank entered into Amendment No. 1 to Escrow Agreement, which extended the Escrow Agreement to June 15, 2012; and

WHEREAS, the County has encountered delays in the construction of the Juvenile Center being constructed at Prescott Lakes; and

WHEREAS, the County, and this Board, reasonably believe that the work on the Juvenile Center will be complete on or about December 1, 2012; and

WHEREAS, more than eighty-five percent (85%) of the proceeds of the Lease-Purchase Agreement and the investment income received on such proceeds have been expended, and no more than $2,529,297.24 remained of such proceeds on June 13, 2012, and, therefore, the Escrow Agreement has not become a "*Hedge Bond,*" as defined in the United States Internal Revenue Code of 1986, as amended (the "*Code*"); and

WHEREAS, the County desires that the Escrow Agreement be again amended to provide that the Ending Date of such agreement be extended to December 1, 2012 from its current Ending Date of June 15, 2012; and

WHEREAS, the Chair of this Board and the Clerk have heretofore executed and delivered Amendment No. 2 to Escrow Agreement ("*Amendment No. 2*"), in the form attached as *Exhibit A* to this Resolution and incorporated herein by reference thereto; and

WHEREAS, by this resolution this Board will ratify, confirm and accept the prior execution and delivery of Amendment No. 2 and the extension of such Escrow Agreement's Ending Date from June 15, 2012 to December 1, 2012.

NOW THEREFORE BE RESOLVED BY THE BOARD OF SUPERVISORS OF YAVAPAI COUNTY, ARIZONA, as follows:

Section 1. **Finding and determination.** It is hereby found and determined that the County had expended more than eighty five percent (85%) of the Net Sale Proceeds of the Agreement, and the investment income received thereon, on or before June 15, 2012, the Escrow Agreement's Ending Date prior to execution and delivery of Amendment No. 2. It is further found and determined that the County will not complete the Juvenile Center at Prescott Lakes until on or before December 1, 2012 and that the Escrow Agreement's Ending Date should be extended from June 15, 2012 to December 1, 2012. This Board further finds that the table of expenditures shown on *Exhibit B* attached hereto shows the aggregate expenditures from the Agreement, and further shows the amount remaining from the initial proceeds and investment income thereon is less than fifteen percent (15%) of the actual amount of such proceeds and investment income thereon available to the County under the Agreement.

Section 2. **Ratification, Confirmation and Acceptance of Amendment No. 2.** The execution and delivery by the Chair and Clerk of this Board of Amendment No. 2, in the form shown on *Exhibit A* attached hereto, is hereby ratified, confirmed and accepted by Yavapai County and this Board.

ADOPTED AND APPROVED this 16th day of July, 2012.

By: ______________________
Chair, Board of Supervisors

ATTEST:

By: ______________________
Clerk, Board of Supervisors

FHR:rwr 1759902.2 7/3/2012

CERTIFICATION OF BOARD OF SUPERVISORS

I, Phil Bourdon, the Clerk of the Board of Supervisors Yavapai County, Arizona, do hereby certify that the above and foregoing resolution was duly passed by the Board of Supervisors of the County at a regular meeting held on July 16, 2012, and the vote was 3 aye's, 0 nay's, 0 abstained and 0 were absent. 3 Board Members were present thereat.

DATED: 7/16/12

Clerk, Board of Supervisors

APPROVED AS TO FORM:
GUST ROSENFELD, PLC

Special Counsel

FHR:rwr 1759902.2 7/3/2012

EXHIBIT A

AMENDMENT NO. 2 TO ESCROW AGREEMENT

AMENDMENT NO. 2 TO ESCROW AGREEMENT

This **AMENDMENT NO. 2** ("*Amendment No. 2*") to **ESCROW AGREEMENT** dated as of May 15, 2008, is entered into as of July___, 2012 between **BANC OF AMERICA PUBLIC CAPITAL CORP** as Lessor, **YAVAPAI COUNTY, ARIZONA** as Lessee and **COMPASS BANK** as Escrow Agent.

WHEREAS, Lessor and Lessee have entered into a Lease Agreement dated as of May 15, 2008 (the "*Lease*"); Lessor, Lessee and Escrow Agent have entered into an Escrow Agreement dated as of May 15, 2008 (the "*Agreement*"); all defined terms therein not otherwise defined herein are used with the meanings defined therein; and

WHEREAS, said Escrow Agreement was amended as of March 10, 2011 by the parties' execution of Amendment No. 1 to Escrow Agreement; and

WHEREAS, Lessor, Lessee and Escrow Agent now desire to again amend the Agreement, to further extend the Ending Date, as hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. Schedule 1 of the Escrow Agreement is hereby amended as follows:

   The reference to "Ending Date: June 15, 2011," is hereby deleted and replaced with "Ending Date: December 1, 2012."

2. Bond Counsel Tax Opinion. As a condition precedent to the effectiveness of this Amendment, Lessee will deliver a tax opinion of bond counsel in form and substance satisfactory to Lessor and its counsel to the effect that (i) the Escrow Agreement as amended by this Amendment No. 2 is a valid and binding obligation of Lessee, enforceable in accordance with its terms, and (ii) the provisions of this Amendment will not affect the excludability of interest payable under the Lease Agreement in respect of the affected Schedule from the gross income of Lessor for federal income tax purposes.

3. Ratification of Escrow Agreement. Except as expressly modified and superseded by Amendment No. 1 and Amendment No. 2, the Escrow Agreement is ratified and confirmed in all respects and shall continue in full force and effect.

4. Tax Matters. Lessee has complied and will continue to comply with the tax covenants set forth in Section 6.5 of the Lease and with any applicable tax compliance certificate (the "*Tax Certificate*"). The amendments to the Escrow Agreement set forth herein are not inconsistent with such tax covenants and Tax Certificate. Lessee agrees that it will calculate and make, or cause to be calculated or made, payments of any rebate in the amounts and at the times and in the manner provided

in Section 148 (f) of the Internal Revenue Code, pursuant to the provisions of the Master Lease and the related Tax Certificate.

5. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by telecopier shall be as effective as delivery of a manually executed counterpart of this Amendment.

6. Successors and Assigns; Third Parties. This Amendment shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective permitted successors and assigns. No third party beneficiaries are intended in connection with this Amendment.

7. Severability. If any term or provision of this Amendment shall be deemed prohibited or invalid under applicable law, such provision shall be invalidated without affecting the remaining provisions of this Amendment or the Escrow Agreement, respectively.

8. Entire Agreement. This Amendment, together with the Escrow Agreement, contains the entire and exclusive agreement of the parties hereto with reference to the matters discussed herein and therein. This Amendment supersedes all prior drafts and communications with respect thereto.

9. Governing Law. This Amendment shall be governed by and construed in accordance with the internal laws of the State of Arizona.

10. Effective Date. This Amendment No. 2 shall become effective as of the date herewith upon ratification by the Board of Supervisors of Yavapai County, Arizona, the Lessee's governing body.

INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Escrow Agreement as of the day and year written above.

BANC OF AMERICA PUBLIC CAPITAL CORP, as Lessor	**YAVAPAI COUNTY, ARIZONA** as Lessee
By________________________	By________________________
Title________________________	Title________________________

COMPASS BANK, as Escrow Agent

By________________________

Title________________________

EXHIBIT B

TABLE OF EXPENDITURES

Compass Bank Payment Requests

Pymt Req No	FY 07/08 Amount ($)	FY 08/09 Amount ($)	FY 09/10 Amount	FY 10/11 Amount ($)	FY 11/12 Amount ($)	Total ($)	Date Submitted	Date Received	Interest Received ($)
1	75,000.00					75,000.00	07/30/2008	08/10/2008	
2	746,345.75					746,345.75	07/30/2008	08/10/2008	
3	4,506.62	398,034.00				402,540.62	08/07/2008	08/14/2008	
4		189,183.84				189,183.84	08/13/2008	09/04/2008	
5		108,384.00				108,384.00	08/14/2008	09/04/2008	
6	20,818.91	511,046.99				531,865.90	09/18/2008	09/23/2008	
7		295,363.59				295,363.59	10/15/2008	10/21/2008	
								11/07/2008	390,303.10
8		141,212.60				141,212.60	11/14/2008	11/20/2008	
9		121,396.39				121,396.39	11/20/2008	11/26/2008	
								12/09/2008	49,972.62
10		719,256.93				719,256.93	12/17/2008	12/19/2008	
								01/07/2009	30,172.41
11		622,496.98				622,496.98	01/15/2009	01/20/2009	
								02/09/2009	6,169.42
12		893,926.19				893,926.19	02/19/2009	02/25/2009	
								03/09/2009	356.76
13		688,768.59				688,768.59	03/25/2009	03/31/2009	
								04/08/2009	364.82
14		974,216.13				974,216.13	04/15/2009	04/20/2009	
								05/07/2009	389.68

Compass Bank Payment Requests

Pymt Req No	FY 07/08 Amount ($)	FY 08/09 Amount ($)	FY 09/10 Amount	FY 10/11 Amount ($)	FY 11/12 Amount ($)	Total ($)	Date Submitted	Date Received	Interest Received ($)
								06/09/2009	409.47
15	Request for return of $25,000,000.00						06/10/2009		
								07/08/2009	280.64
								08/07/2009	141.15
16			1,056,028.78			1,056,028.78	08/26/2009	08/31/2009	
								09/10/2009	147.32
17			626,146.88			626,146.88	09/24/2009	10/05/2009	
								10/07/2009	146.97
18			591,946.16			591,946.16	10/30/2009	110/2/2009	
								11/09/2009	141.96
19			491,200.43			491,200.43	11/24/2009	11/30/2009	
								12/09/2009	137.23
20			175,540.45			175,540.45	01/05/2010	01/06/2010	
								01/07/2010	128.02
21			94,412.67			94,412.67	01/27/2010	01/29/2010	
								02/09/2010	135.15
								03/09/2010	97.93
								04/07/2010	108.58
22			197,970.40			197,970.40	04/28/2010	04/30/2010	
								05/07/2010	98.35
23			167,886.22			167,886.22	05/26/2010	05/28/2010	
								06/09/2010	105.32
								07/08/2010	96.12

Compass Bank Payment Requests

Pymt Req No	FY 07/08 Amount ($)	FY 08/09 Amount ($)	FY 09/10 Amount	FY 10/11 Amount ($)	FY 11/12 Amount ($)	Total ($)	Date Submitted	Date Received	Interest Received ($)
24			150,623.67			150,623.67	07/14/2010	07/16/2010	
								08/09/2010	112.40
25			120.00	164,968.91		165,088.91	08/25/2010	08/27/2010	
								09/09/2010	103.60
26				140,735.82		140,735.82	09/22/2010	09/24/2010	
								10/07/2010	97.19
								11/09/2010	98.33
								12/08/2010	92.62
								01/07/2011	103.19
27				121,452.49		121,452.49	02/02/2011	02/04/2011	
								02/09/2011	96.20
								03/09/2011	94.44
								04/07/2011	89.47
28				296,194.72		296,194.72	04/06/2011	04/12/2011	
								05/09/2011	94.49
29				183,066.11		183,066.11	05/11/2011	05/13/2011	
30				570,865.11		570,865.11	05/18/2011	05/24/2011	
								06/08/2011	78.22
31				493,464.18		493,464.18	06/15/2011	06/17/2011	
								07/07/2011	66.30
32				415,926.94		415,926.94	07/14/2011	07/18/2011	
								08/09/2011	66.08
33				25,056.29	837,568.41	862,624.70	08/18/2011	08/23/2011	
						-		09/08/2011	63.81
34					852,922.09	852,922.09	09/15/2011	09/16/2011	
								10/07/2011	55.96
35					670,592.34	670,592.34	10/13/2011	10/17/2011	

Compass Bank Payment Requests

Pymt Req No	FY 07/08 Amount ($)	FY 08/09 Amount ($)	FY 09/10 Amount	FY 10/11 Amount ($)	FY 11/12 Amount ($)	Total ($)	Date Submitted	Date Received	Interest Received ($)
36					634,811.58	634,811.58	11/09/2011	11/14/2011	
								11/10/2011	53.82
								12/07/2011	48.43
37					912,065.99	912,065.99	12/15/2011	12/19/2011	
								01/09/2012	46.58
38					695,871.83	695,871.83	01/25/2012	01/27/2012	
39					443,745.05	443,745.05	02/08/2012	02/10/2012	
						-		02/08/2012	43.67
								03/07/2012	36.60
40					1,207,218.65	1,207,218.65	03/08/2012	03/12/2012	
						-		04/09/2012	33.87
41					654,615.11	654,615.11	04/11/2012	04/13/2012	
42					695,621.01	695,621.01	05/09/2012	05/11/2012	
						-		05/09/2012	29.14
43					2,141,718.52	2,141,718.52	05/23/2012	05/29/2012	
						-		06/07/2012	23.89
44					731,919.76	731,919.76	06/13/2012	06/15/2012	
	846,671.28	5,663,286.23	3,551,875.66	2,411,730.57	10,478,670.34	22,952,234.08			481,531.32
			Lease Proceeds			25,000,000.00			
			Net Lease Proceeds			2,047,765.92	8.19%	Bal to spend by 06/2012 (Escrow Ending Date)	

As of 05/09/2012 balance of unexpended proceeds: $4,921,404.20

IRS Requirement unspent proceeds less than: $50,000,000 15.00% $ 7,500,000