

OPUS BANK

MASTER TAX-EXEMPT LEASE-PURCHASE AGREEMENT (ABATEMENT)

THIS MASTER TAX-EXEMPT LEASE-PURCHASE AGREEMENT is entered into as of ~~2~~February 15, 2019 by and between ~~3~~City of Placerville, a political subdivision of the State of California ("Lessee") and OPUS BANK, a California commercial bank ("Lessor").

ARTICLE I. DEFINITIONS

Section 1.1 Defined Terms. The following terms will have the meanings indicated below unless the context clearly requires otherwise. All terms defined herein are equally applicable to both the singular and the plural form of such terms.

"Agreement" means this Master Tax-Exempt Lease/Purchase Agreement, including all exhibits, schedules and addenda attached hereto, as the same may be amended, modified, supplemented or restated.

"Casualty Loss" has the meaning given in Section 7.2

"Code" means the Internal Revenue Code of 1986, as amended, together with any Treasury Regulations promulgated thereunder.

"Commencement Date" means the date when the term of a Property Schedule and Lessee's obligation to pay rent thereunder commences, which date shall be set forth in such Property Schedule. The parties agree that the Commencement Date for each Property Schedule shall be the date the proceeds of the Property Schedule are disbursed by Lessor to Lessee or to a Vendor, or deposited in a Restricted Account.

"Contract Rate" means the annual interest rate used to calculate the interest component of Rental Payments under a Property Schedule, as more fully described in the applicable Property Schedule.

"Default Rate" has the meaning given in Section 11.2 (a).

"Event of Default" has the meaning given in Section 11.1.

"Financial Statements" has the meaning given in Section 4.1(k).

"Lease Term" means, with respect to a Property Schedule, the Lease Term set forth in such Property Schedule, as provided in Section 2.2; provided, however, that if, at the end of the Lease Term specified in such Property Schedule, Rental Payments have been abated pursuant to Section 3.5, and such Rental Payments have not been paid in full from the proceeds of rental abatement insurance, the Lease Term shall be extended until the earlier of such date as all Rental Payments and all other sums payable under such Property Schedule have been paid, or the maximum lease term permitted by any applicable law.

"Lessee" means the entity identified as such in the first paragraph hereof, and its permitted successors and assigns.

"Lessor" means the entity identified as such in the first paragraph hereof, and its successors and assigns.

"Material Adverse Effect" means any event or circumstance that, taken alone or in conjunction with other events or circumstances, (a) has or could reasonably be expected to have a material adverse effect on the operations, properties or condition (financial or otherwise) of Lessee, or (b) impairs the ability of Lessee to perform its obligations under this Agreement or the Property Schedule.

"Net Proceeds" has the meaning given in Section 7.2.

"Prepayment Price" means, with respect to a Property Schedule that is by its terms pre-payable, the amount so designated on the Property Schedule, and at minimum includes: (a) accrued and unpaid interest on the principal component of all Rental Payments to and including the payment date, (b) the sum of the principal component of all remaining unpaid Rental Payments scheduled through the end of the Lease Term, and (c) all other sums then-due under the applicable Property Schedule being prepaid. The Prepayment Price may also include a prepayment premium on the prepaid principal component of Rental Payments.

"Property" means, collectively, the property lease-purchased pursuant to this Agreement, and with respect to each Property Schedule, the property described in such Property Schedule, and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 6.5 or Article VII.

"Property Schedule" means a Property Schedule in the form attached hereto as Exhibit A, including all exhibits and schedules attached thereto. Each Property Schedule shall be numbered by Lessor.

"Rental Payments" means the Rental Payments payable by Lessee under Article III of this Agreement and each Property Schedule, as set forth in each Property Schedule.

"Rental Payment Date" means each date on which Lessee is required to make a Rental Payment under a Property Schedule.

"Restricted Account" means a Lessor-controlled interest bearing account in the name of the Lessee established at Lessor for deposit of the proceeds of a Property Schedule, as more particularly identified in a Property Schedule.

"State" means the state of California.

"Taxable Rate" means the taxable interest rate set forth in the applicable Property Schedule.

"Vendor" means the manufacturer or contractor of the Property as well as the agents or dealers of the manufacturer or contractor from whom Lessor or Lessee purchased or is purchasing all or any portion of the Property.

Section 1.2 Property Schedules Separate Financings. Each Property Schedule executed and delivered under this Agreement shall be a separate financing, distinct from other Property Schedules.

ARTICLE II. LEASE OF PROPERTY

Section 2.1 Lease of Property. On the Commencement Date of each Property Schedule executed hereunder, Lessor hereby demises, leases and lets to Lessee, and Lessee hereby rents, leases and hires from Lessor, the Property described in such Property Schedule, in accordance with this Agreement and such Property Schedule, for the Lease Term set forth in such Property Schedule.

Section 2.2 Lease Term. The term of each Property Schedule shall commence on the Commencement Date set forth therein and shall terminate upon payment of the final Rental Payment set forth in such Property Schedule, unless terminated sooner pursuant to this Agreement or the Property Schedule.

Section 2.3 Enjoyment of Property. Lessee shall during the Lease Term peaceably and quietly have, hold and enjoy the Property, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement. Lessor shall not interfere with such quiet use and enjoyment during the Lease Term so long as no Event of Default has occurred under the subject Property Schedule.

Section 2.4 Location; Inspection. The Property will be initially located or based at the location(s) specified in the applicable Property Schedule. Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Property. Once installed, no item of the Property may be moved or relocated from the location (or the base location with respect to motor vehicles) specified for it without Lessor's prior written consent, which consent shall not be unreasonably withheld.

ARTICLE III. PAYMENT OF RENTAL PAYMENTS

Section 3.1 Payment of Rental Payments. Lessee shall promptly pay Rental Payments under each Property Schedule, exclusively from legally available funds, in lawful money of the United States of America, to Lessor in such amounts and on the Rental Payment Dates described in the applicable Property Schedule, at Lessor's address set forth on the signature page of this Agreement, unless Lessor instructs Lessee otherwise. With respect to any Rental Payment that is not paid on or before the due date thereof, Lessee shall also pay a late charge of five percent (5.0%) of the delinquent Rental Payment or the highest amount permitted by applicable law, whichever is lower.

Section 3.2 Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional, statutory or charter limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the faith and credit or taxing power of Lessee.

Section 3.3 Interest Component. A portion of each Rental Payment due under each Property Schedule is paid as, and represents payment of, interest, and each Property Schedule hereunder shall set forth the interest component (or method of computation thereof) of each Rental Payment thereunder during the Lease Term.

Section 3.4 Rental Payments to be Unconditional. SUBJECT TO SECTION 3.5, THE OBLIGATIONS OF LESSEE TO PAY THE RENTAL PAYMENTS DUE UNDER THE PROPERTY SCHEDULES AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT LESSEE'S RIGHTS OR ACTIONS AGAINST ANY VENDOR.

Section 3.5 Abatement. Except to the extent of amounts received in respect of rental interruption insurance or liquidated

damages, Rental Payments under a Property Schedule shall be abated during any period in which, by reason of material damage, destruction or condemnation, there is a substantial interference with the use and right of possession by Lessee of the Property subject to the Property Schedule, or a material portion thereof. The amount of abatement shall be such that the resulting Rental Payments represent fair consideration for the use and possession of the portions of the Property subject to the Property Schedule that is not damaged, destroyed or condemned. Such abatement shall continue for the period commencing with the date of such damage, destruction or condemnation and ending with the restoration of the affected Property to a condition which will permit the affected Property to be used substantially as intended. In the event of such damage, destruction or condemnation, the Property Schedule will continue in full force and effect, except as set forth in Article VII.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF LESSEE; TAX COVENANTS

Section 4.1 Representations and Warranties of Lessee. As of the Commencement Date for each Property Schedule executed and delivered hereunder, Lessee represents and warrants for the benefit of Lessor as follows:

(a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the Constitution and laws of the State, and is authorized under the Constitution and laws of the State to enter into this Agreement, the Property Schedule and the transactions contemplated hereby and thereby, and to perform all of its obligations under this Agreement and the Property Schedule.

(b) The execution and delivery of this Agreement and the Property Schedule have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Property by Lessee.

(c) This Agreement and the Property Schedule have been duly executed and delivered by and constitute the valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms.

(d) The execution, delivery and performance of this Agreement and the Property Schedule by Lessee does not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound.

(e) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or the Property Schedule or any other action wherein an unfavorable ruling or finding would have a Material Adverse Effect.

(f) Lessee is not in default with respect to any order or decree of any court, regulatory agency, public board or body, which default might have consequences that would have a Material Adverse Effect.

(g) Except as otherwise disclosed in writing by Lessee to Lessor, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time during the past ten (10) years has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year.

(h) Lessee or Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the current fiscal year, and such moneys will be applied in payment of all Rental Payments due and payable during such current fiscal year.

(i) The Property is essential to the proper, efficient and economic functioning of Lessee or to the services that Lessee provides; Lessee has an immediate need for, and expects to make immediate use of, the Property, which need is not temporary or expected to diminish during the applicable Lease Term.

(j) Lessee's exact legal name is as set forth on the first page of this Agreement.

(k) The financial statements of Lessee identified in the Property Schedule (the "Financial Statements") are complete and correct and fairly present the financial condition, changes in financial position and results of operations of Lessee at such date and for such period, and were prepared in accordance with generally accepted accounting principles applicable to political subdivisions such as Lessee. Since the date of the Financial Statements, (i) there has been no change in the assets, liabilities, financial position or results of operations of Lessee that might reasonably be anticipated to cause a Material Adverse Effect; (ii) Lessee has not incurred any obligations or liabilities which might reasonably be anticipated to cause a Material Adverse Effect; and (iii) Lessee has not (A) incurred any material indebtedness other than as reflected in the Financial Statements or as previously disclosed to Lessee, or (B) guaranteed the indebtedness of any other person.

(l) All information, reports and other papers and data furnished by Lessee to Lessor were, at the time the same were so furnished, complete and accurate in all material respects and insofar as necessary to give Lessor a true and accurate knowledge of the subject matter and were provided in expectation of Lessor's reliance thereon in entering into the transactions contemplated by this Agreement. No fact is known to Lessee which has had or, so far as Lessee can now reasonably foresee, may in the future have a Material Adverse Effect, which has not been set forth in the Financial Statements or in other such information, reports, papers and data or otherwise disclosed in writing to Lessor prior to the Commencement Date. No document furnished nor any representation, warranty or other written statement made to Lessor in connection with the negotiation, preparation or execution of this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state (as of the date made or furnished) any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were or will be made, not misleading.

Section 4.2 Tax Covenants of Lessee. As of the Commencement Date of each Property Schedule, Lessee hereby represents and warrants to, and covenants with, Lessor, as follows with respect to such Property Schedule:

(a) Lessee will comply with all applicable provisions of the Code, including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the

excludability from gross income for federal income tax purposes of the interest component of Rental Payments under the Property Schedule, and will not use or permit the use of the Property in such a manner as to cause a Property Schedule to be a "private activity bond" under Section 141(a) of the Code.

(b) Lessee will use the proceeds of the Property Schedule as soon as practicable and with all reasonable dispatch for the purpose for which the Property Schedule has been entered into, and that no part of the proceeds of the Property Schedule shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the Commencement Date, would have caused the Property Schedule to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the Commencement Date.

(c) (i) The estimated total costs, including taxes, freight, installation, cost of issuance, of the Property and the Property Schedule will not be less than the total principal amount of the Rental Payments; (ii) Lessee will pursue the acquisition of the Property and the expenditure of the net proceeds of the Property Schedule with due diligence; (iii) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (A) that is reasonably expected to be used to pay the Rental Payments under the Property Schedule, or (B) that may be used solely to prevent a default in the payment of the Rental Payments under the Property Schedule; (iv) the Property under the Property Schedule has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments under the Property Schedule, (v) there are no other obligations of Lessee which (A) are being sold within 15 days of the Commencement Date for the Property Schedule, or (B) are being sold pursuant to the same plan of financing as the Property Schedule, and (C) are expected to be paid from substantially the same source of funds; (vi) the officer or official who has executed the Property Schedule on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the proceeds of the Property Schedule. To the best of Lessee's knowledge, information and belief, the facts and estimates set forth in this Section 4.2(b) are accurate and the expectations of Lessee set forth in this Section 4.2(b) are reasonable. The representations, warranties and covenants set forth in this Section 4.2(b) are superseded by the representations, warranties and covenants set forth in any arbitrage or tax certificate executed and delivered by Lessee in connection with the Lease.

Section 4.3 Tax Changes. If Lessor (i) receives notice, in any form, from the Internal Revenue Service or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor, that Lessor may not exclude the interest component of Rental Payments paid under any Property Schedule from its Federal gross income (each an "Event of Taxability"), then (x) Lessee shall pay to Lessor upon demand an amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax, will restore to Lessor an interest rate equal to the Taxable Rate with respect to such Property Schedule, and (y) as to subsequent Rental Payments, the principal component thereof shall accrue interest at the Taxable Rate.

**ARTICLE V.
TITLE; SECURITY INTEREST**

Section 5.1 Title to the Property. Upon acceptance of the Property by Lessee and unless otherwise required by the laws of the State, title to the Property shall vest in Lessee, subject to Lessor's interests under the applicable Property Schedule and this Agreement. With respect to any Property consisting of a titled motor vehicle or trailer, Lessee shall apply for a certificate of title therefor reflecting Lessee as the owner and Lessor as the sole lienholder.

Section 5.2 Personal Property. The Property is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Property or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Property from any party having an interest in any such real estate or building.

Section 5.3 Security Interest. To the extent permitted by law and to secure the performance of all of Lessee's obligations under this Agreement with respect to a Property Schedule, Lessee grants to Lessor, for the benefit of Lessor and its successors and assigns, a security interest constituting a first lien on (a) Lessee's interest in all of the Property under the Property Schedule, whether now owned or hereafter acquired, (b) all additions, attachments, alterations and accessions to the Property, all substitutions and replacements for the Property, (c) any proceeds of any of the foregoing, including insurance proceeds, and (d) the Restricted Account and all monies therein. Lessee shall execute any additional documents, including financing statements, affidavits, notices and similar instruments, in form and substance satisfactory to Lessor, which Lessor deems necessary or appropriate to establish, maintain and perfect a security interest in the Property in favor of Lessor and its successors and assigns. Lessee hereby authorizes Lessor to file all financing statements which Lessor deems necessary or appropriate to establish, maintain and perfect such security interest.

**ARTICLE VI.
COVENANTS CONCERNING LESSEE AND THE PROPERTY**

Section 6.1 Delivery, Installation and Acceptance of Property. Lessee shall order the Property, shall cause the Property to be delivered and installed at the locations specified in the applicable Property Schedule and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. In connection with any Property Schedule for which a Restricted Account has been established, Lessee shall execute and deliver Disbursement Requests in the form attached to the Property Schedule to Lessor from time to time (with such supporting documentation as may be required by the Disbursement Request) for the purpose of effecting disbursements from the Restricted Account to pay (or reimburse Lessee for) costs of the Property so acquired and installed pursuant to such Property Schedule; and in connection with the final Disbursement Request for a Property Schedule, Lessee shall immediately accept the Property and evidence said acceptance by executing and delivering to Lessor the Acceptance Certificate substantially in the form attached to the Property Schedule. In connection with any Property Schedule for which a Restricted Account has not been established, Lessee shall accept the Property subject thereto prior to or contemporaneously with the Commencement Date, and shall evidence said acceptance by executing and delivering to Lessor the Acceptance Certificate substantially in the form attached to the Property Schedule (together with such copies of

invoices, proofs of payment, bills of sale and certificates of title or origin as Lessor may require).

Section 6.2 Maintenance of Property by Lessee. Lessee shall, at Lessee's sole cost and expense, keep and maintain the Property in good condition and working order and in compliance with the manufacturer's specifications, shall use, operate and maintain the Property in conformity with all laws and regulations concerning the Property's ownership, possession, use and maintenance, and shall keep the Property free and clear of all liens and claims, other than those created by this Agreement. Lessee shall have sole responsibility to maintain and repair the Property. Should Lessee fail to maintain, preserve and keep the Property in good repair and working order and in accordance with manufacturer's specifications, and if requested by Lessor, Lessee will, at Lessee's sole cost and expense, enter into maintenance contracts for the Property in form approved by Lessor and with approved providers.

Section 6.3 Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Property free of all levies, liens and encumbrances, except for the interest of Lessor under this Agreement. The parties to this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Property will be exempt from all property taxes. The Rental Payments payable by Lessee under this Agreement and the Property Schedules hereunder have been established to reflect the savings resulting from this exemption from taxation. Lessee will take such actions necessary under applicable law to obtain said exemption. Nevertheless, if the use, possession or acquisition of the Property is determined to be subject to taxation or later becomes subject to such taxes, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. Lessee shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property. Lessee shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term for such Property.

Section 6.4 Use of the Property. Lessee will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement and the applicable Property Schedule. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Property. In addition, Lessee agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Property; provided that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Property or its interest or rights under this Agreement. Lessee shall promptly notify Lessor in writing of any pending or threatened investigation, inquiry, claim or action by any governmental authority which could adversely affect this Agreement, any Property Schedule or the Property thereunder.

Section 6.5 Modifications. Subject to the provisions of this Section, Lessee shall have the right, at its own expense, to make alterations, additions, modifications or improvements to the Property. All such alterations, additions, modifications and improvements shall thereafter comprise part of the Property and

shall be subject to the provisions of this Agreement. Such alterations, additions, modifications and improvements shall not in any way damage the Property, substantially alter its nature, impair any applicable warranty or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, on completion of any alterations, additions, modifications or improvements made pursuant to this Section, shall be of a value which is equal to or greater than the value of the Property immediately prior to the making of such alterations, additions, modifications and improvements.

Section 6.6 Financial Statements and Information. Lessee shall deliver to Lessor, (a) within ~~24~~²⁷⁰ days after the end of each of its fiscal years, its annual audited financial statements for such fiscal year, accompanied by an unqualified opinion of Lessee's independent auditor, and (b) within 30 days after adoption, a copy of its annual budget for each fiscal year during the Lease Term. Lessee shall also deliver to Lessor such other financial information as Lessor may reasonably request.

ARTICLE VII.

INSURANCE; DAMAGE OR DESTRUCTION OF PROPERTY

Section 7.1 Insurance. At its own expense, Lessee shall maintain, (a) casualty insurance insuring the Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks required by Lessor, in an amount equal to at least the outstanding principal component of Rental Payments and with a deductible not exceeding ~~\$25~~^{\$5,000.00}, and (b) liability insurance that protects Lessor from liability for bodily injury and property damage in an amount and with deductibles reasonably acceptable to Lessor, (c) worker's compensation insurance covering all employees working on, in, near or about the Property, to the extent required by applicable law, and (d) rental interruption insurance with respect to each Property Schedule in an amount equal to the Rental Payments due under each such Property Schedule during the forthcoming two (2) years. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. All insurance proceeds from rental interruption insurance shall be paid to Lessor and shall be credited toward payment of the Rental Payments payable under the Property Schedule with respect to which the rental interruption occurred. All such insurance shall be with insurers that are acceptable to Lessor and are authorized to issue such insurance in the State. All such policies of liability insurance shall name Lessor as an additional insured. All such policies of casualty insurance shall contain a provision making any losses payable to Lessor and Lessee as their respective interests may appear, and all such policies of rental interruption insurance shall contain a provision making any losses payable to Lessor. All such insurance policies shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to Lessor and Lessee at least ten (10) days in advance of such cancellation or modification. All such insurance policies shall also contain an endorsement providing that coverage in favor of Lessor will not be impaired in any way by any act, omission or default of Lessee or any other person. Lessee may self-insure against the risks described in clauses (a) and/or (b) through a government pooling arrangement, self-funded loss reserve, risk retention program or other self-insurance program, in each case with Lessor's prior written consent. Lessee shall provide to Lessor, on or before the Commencement Date for each Property Schedule, and thereafter upon request of Lessor, certificates evidencing such coverage, or, if Lessor has consented to self-insurance, a written description of its self-insurance program together with a certification from Lessee's risk manager or insurance agent or consultant to the

effect that Lessee's self-insurance program provides adequate coverage against the risks listed above. Lessee shall furnish to Lessor, upon request of Lessor, reports on each existing insurance policy showing such information as Lessor may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured against; (3) the amount of the policy; (4) the properties insured; and (5) the expiration date of the policy.

Section 7.2 Damage or Destruction. If (a) the Property under a Property Schedule or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Property under a Property Schedule or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority (each such event, a "Casualty Loss"), Lessee shall either (i) cause the prompt repair or restoration of the affected Property to substantially the same condition as it was in prior to the occurrence of the Casualty Loss or the prompt replacement of the affected Property with substitute Property of substantially like type, utility and condition as the Property subject to the Casualty Loss; and Lessor and Lessee will cause the Net Proceeds (as hereinafter defined) of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the cost thereof, or (ii) exercise its option to prepay the obligations under the affected Property Schedule in accordance with Section 9.3. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee. Lessee will give Lessor prompt written notice of the occurrence of any Casualty Loss. The term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

Section 7.3 Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, replacement or restoration referred to in Section 7.2, Lessee shall (a) complete such replacement, repair or restoration and pay any costs thereof in excess of the amount of the Net Proceeds and, if Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Section 3.1, or (b) exercise its option to prepay the obligations under the affected Property Schedule in accordance with Section 9.3. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration or replacement or after such prepayment may be retained by Lessee.

ARTICLE VIII.

WARRANTIES; RISK OF LOSS

Section 8.1 Disclaimer of Warranties. LESSOR MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND LESSOR HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE PROPERTY IS LEASED TO LESSEE "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY LESSEE. Lessee acknowledges that it has made (or will make) the

selection of the Property from the Vendor based on its own judgment and expressly disclaims any reliance upon any statements or representations made by Lessor. Lessee understands and agrees that (a) neither the Vendor nor any sales representative or other agent of Vendor, is (i) an agent of Lessor, or (ii) authorized to make or alter any term or condition of this Agreement, and (b) no such waiver or alteration shall vary the terms of this Agreement unless expressly set forth herein. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Property Schedules, or the existence, furnishing, functioning or use of any item, product or service provided for in this Agreement or the Property Schedules.

Section 8.2 Vendor's Warranties. Lessor hereby irrevocably assigns to Lessee all rights that Lessor may have to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property against the Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Property, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Vendor of the Property.

Section 8.3 Release and Indemnification Covenants. Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Property under any Property Schedule from any cause, and no such loss of or damage to or liability arising from the Property shall relieve Lessee of the Obligation to make Rental Payments or to perform any other obligation under any Property Schedule. To the extent permitted by applicable law, but only from legally available funds, Lessee shall indemnify, protect, hold harmless, save and keep harmless Lessor from and against any and all liability, obligation, loss, claim and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest (collectively, "Losses") arising out of or resulting from the entering into this Agreement, any Property Schedules hereunder, the ownership of any item of the Property, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Property or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Property resulting in damage to property or injury to or death to any person; provided, however, that Lessee shall not be required to indemnify Lessor for Losses arising out of or resulting from Lessor's own gross negligence or willful misconduct. The indemnification arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement, or the applicable Property Schedule, or the termination of the Lease Term for such Property Schedule for any reason.

ARTICLE IX. OPTION TO PURCHASE OR PREPAY

Section 9.1 Option to Purchase. With respect to each Property Schedule, Lessee shall have the option to terminate Lessor's interest in the Property and any restrictions herein on the Property under such Property Schedule on the last day of the Lease Term for such Property Schedule, if the Property Schedule is still in effect on such day, upon payment in full of the Rental

Payments due thereunder plus payment of One (1) Dollar to Lessor.

Section 9.2 Optional Prepayment. From and after the date specified (if any) in the applicable Payment Schedule to a Property Schedule, Lessee shall have the option to prepay in whole the Rental Payments due under such Property Schedule, on the Rental Payment Dates specified in the Property Schedule, by paying in full all Rental Payments then due under the Property Schedule plus the then-applicable Prepayment Price as set forth in the Payment Schedule, plus all other amounts then owing thereunder. Lessee shall give written notice to Lessor of its intent to prepay Rental Payments under any Property Schedule not fewer than thirty (30) days prior to the prepayment date.

Section 9.3 Prepayment Upon Casualty Loss. If Lessee elects to prepay the Rental Payments under a Property Schedule following a Casualty Loss pursuant to Section 7.2 hereof, Lessee shall give written notice thereof to Lessor not later than thirty (30) days after the occurrence of the Casualty Loss, and Lessee shall pay, on the Rental Payment Date next succeeding the delivery of such notice, all Rental Payments then due under the Property Schedule plus the then-applicable the Prepayment Price as set forth in the Payment Schedule, plus all other amounts then owing thereunder.

Section 9.4 Transfer of Title. Upon exercise of any purchase or prepayment option with respect to a Property Schedule as set forth in this Article IX and payment of all amounts owing with respect thereto, Lessor's interest in and to the Property subject to such Property Schedule shall terminate, and Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably require to evidence the transfer, without warranty by or recourse to Lessor, of all of Lessor's right, title and interest in and to the Property subject to such Property Schedule to Lessee.

ARTICLE X. ASSIGNMENT AND SUBLETTING

Section 10.1 Assignment by Lessor. Lessor's right, title and interest in, to and under each Property Schedule and the Property under such Property Schedule may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor without the necessity of obtaining the consent of Lessee; provided that any assignment shall not be effective until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee agrees to execute all documents, including acknowledgements of notices of assignment that may be reasonably requested by Lessor or any assignee to protect its interests in this Agreement and the Property Schedules.

Section 10.2 Property Schedules Separate Financings. Assignees of the Lessor's rights in one Property Schedule shall have no rights in any other Property Schedule unless such rights have been separately assigned.

Section 10.3 Assignment and Subleasing by Lessee. NONE OF LESSEE'S RIGHT, TITLE AND INTEREST IN, TO AND UNDER THIS AGREEMENT, THE PROPERTY SCHEDULES AND IN THE PROPERTY THEREUNDER MAY BE ASSIGNED, SUBLEASED OR ENCUMBERED BY LESSEE FOR ANY REASON, WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR.

ARTICLE XI. EVENTS OF DEFAULT AND REMEDIES

Section 11.1 Events of Default Defined. Any of the following shall constitute an "Event of Default" under a Property Schedule:

(a) Failure by Lessee (i) to pay any Rental Payment under the Property Schedule or other payment required to be paid with respect thereto at the time specified therein, or (ii) to observe and perform the covenants and agreements set forth in Sections 6.3, 7.1 or 10.3 of this Agreement with respect to the Property Schedule;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to the Property Schedule (including failure to provide financial information in accordance with the requirements of Section 6.6) other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to the Property Schedule or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(d) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding;

(e) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days; or

(f) Any default shall occur under any other agreement between Lessee and Lessor or an affiliate of Lessor relating to the borrowing of money, the lease financing of property or otherwise receiving credit, including without limitation any other Property Schedule hereunder.

Section 11.2 Remedies on Default. Whenever any Event of Default exists with respect to a Property Schedule, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) Without terminating the Property Schedule, and by written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee thereunder to the end of the then-current fiscal year of Lessee to be due, including without limitation delinquent Rental Payments under the Property Schedule from prior fiscal years, and such amounts shall thereafter bear interest at the rate of 12% per annum or the maximum rate permitted by applicable law ("Default Rate"), whichever is less;

(b) Without terminating the Property Schedule, Lessor may annually bring legal proceedings against Lessee for Rental Payments due under the Property Schedule to the end of the then-current fiscal year, together with Lessor's costs and expenses associated with taking such action, including reasonable attorneys' fees.

(c) Lessor may terminate the Property Schedule, may enter the premises where the Property subject to the Property Schedule is located and retake possession of the Property, or require Lessee, at Lessee's expense, to promptly return any or all of the Property to the possession of Lessor at such place within the continental United States as Lessor shall specify; and Lessor may sell, lease or otherwise dispose of the Property in whole or in part, in one or more public or private transactions; provided, however, that any proceeds from the sale, lease or disposition of the Property in excess of the sum required to (i) pay off any outstanding principal component of Rental Payments, (ii) pay any other amounts then due under the Property Schedule, and (iii) pay Lessor's costs and expenses associated with the disposition of the Property (including attorneys' fees), shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto;

(d) Without terminating the Property Schedule, Lessor may enter the premises where the Property subject to the Property Schedule is located and retake possession of the Property, or require Lessee, at Lessee's expense, to promptly return any or all of the Property to the possession of Lessor at such place within the continental United States as Lessor shall specify; and Lessor may sublease the Property for the account of Lessee, continuing to hold Lessee liable for the difference between the Rental Payments due each year and the annual net proceeds of any such sublease (after deducting all costs and expenses incurred by Lessor in the exercise of its remedies, including, without limitation, all costs and expenses of taking possession, removing, storing and reconditioning the Property, and including reasonable attorneys' fees);

(e) Lessor may apply monies in any Restricted Account relating to the Property Schedule to payment of Lessee's obligations under the Property Schedule; and

(f) Lessor may take any action, at law or in equity, that is permitted by applicable law and that may appear necessary or desirable to enforce or to protect any of its rights under the Property Schedule and this Agreement.

Section 11.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article.

Section 11.4 Costs and Attorney Fees. Upon the occurrence of an Event of Default, Lessee agrees to pay to Lessor or reimburse Lessor for, in addition to all other amounts due hereunder, all of Lessor's costs of collection, including reasonable attorney fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee, shall be secured by this Agreement until paid and shall bear interest at the rate of 12% per annum or the maximum amount permitted by law, whichever is less. In the

event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

**ARTICLE XII.
MISCELLANEOUS**

Section 12.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the parties hereto at the addresses as specified on the signature page of this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee at its address as it appears on the registration books maintained by Lessee.

Section 12.2 Advances. In the event Lessee shall fail to either maintain the insurance required by this Agreement or keep the Property in good repair and working order, Lessor may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums thereof or maintain and repair the Property and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the Lease Term for the applicable Property Schedule and shall be due and payable on the next Rental Payment Date and Lessee covenants and agrees to promptly pay such amounts so advanced by Lessor.

Section 12.3 Further Assurances. Lessee agrees to execute such other and further documents, including, without limitation, confirmatory financing statements, continuation statements, certificates of title and the like, and to take all such action as may be necessary or appropriate, from time to time, in the reasonable opinion of Lessor, to perfect, confirm, establish, reestablish, continue, or complete the interests of Lessor in this Agreement and the Property Schedules, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and the Property Schedules.

Section 12.4 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 12.5 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of

competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.6 Waiver of Jury Trials. To the extent permitted by applicable law, Lessee and Lessor hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of Lessor or Lessee in the negotiation, administration, performance or enforcement hereof.

Section 12.7 Amendments, Changes and Modifications. This Agreement may be amended in writing by Lessor and Lessee to the extent the amendment or modification does not apply to outstanding Property Schedules at the time of such amendment or modification. The consent of all assignees shall be required to any amendment or modification before such amendment or modification shall be applicable to any outstanding Property Schedule.

Section 12.8 Execution in Counterparts. This Agreement and the Property Schedules hereunder may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.9 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 12.10 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 12.11 Disclaimer. Lessee acknowledges that (i) Lessor is acting solely for its own account and not as a fiduciary for Lessee or in the capacity of broker, dealer, placement agent, municipal securities underwriter or municipal advisor, (ii) Lessor has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of Lessee or with respect to the Rental Payments, and (iii) Lessor has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, or the correctness of any legal interpretation made by counsel to any other party with respect to any such matters.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

<3>City of Placerville, as Lessee

OPUS BANK, as Lessor

By: _____
Name: <5>M. Cleve Morris
Title: <6>City Manager

By: _____
Name: _____
Title: _____

Address: <7>3101 Center Street, Placerville, CA 95667

Address: 1990 MacArthur Blvd., 12th Floor
Irvine, CA 92612