LEASE

Between

NAPA VALLEY COMMUNITY COLLEGE DISTRICT

and

Robert J. Fitzgerald

This Lease made and entered into this 12th day of November, 2015, by and between the Napa Valley Community College District, a California public entity, hereinafter designated as "District" as Lessor, and Robert J. Fitzgerald, a private individual, hereinafter designated as "Lessee", is as follows:

WITNESSETH

Lessee, for the consideration hereinafter set forth, hereby leases from District the Property described below subject to the terms and conditions as follows:

1. Authority to Lease.

The Board of Trustees of the District at its regular board meeting held on November 12, 2015 approved the intent to lease a parcel of land including existing vineyards more specifically described below as the Property (hereafter the “Property”).

Pursuant to Education Code Section 81378.1, the Board has determined that the Property offered for lease under this Lease Agreement will not be needed for academic activities for the period of time encompassed and designated in the Term Section of this Lease. Such Term shall not
exceed five (5) years. The Board further certified that the fair market value of the lease of the Property shall not exceed $25,000 per year.

2. **Property.**

Lessee hereby leases from District a lot and vineyard consisting of approximately four-fifths of an acre AP number 009-07-021-000 located at 1088 College Avenue St. Helena, California (hereinafter “Property”).

3. **Use of Property.**

Lessee shall use the Property solely for vineyard, viticulture and related purposes. Any use shall be consistent with all applicable zoning ordinances and regulations. Any use of the Property which is not in conformance with the restrictions of this Section may result in District taking action to immediately terminate this Lease as provided herein.

4. **Term.**

The term of this Lease shall be for twelve (12) months and shall commence on November 12, 2015 and will end on November 11, 2016. This Lease may be renewed in one year increments only with the express authorization of the Board of Trustees and upon such terms and conditions as hereafter agreed upon by the parties.

5. **Rent.**

As consideration for this Lease, Lessee shall pay rent for the Property of $50.00 per month. Rent shall be due and payable on the fifteenth (15) day of each and every month at the location designated by the District in Section 15 of this Lease.
6. **Security Deposit.**

District acknowledges receipt of $150.00 (one-month's rent) which District is to retain as a security deposit for Lessee's faithful performance of this Lease. District is not obliged to apply the deposit on rents or other charges in arrears or on damages for Lessee's failure to perform the Lease. However, District may so apply the security at District's option, and District's right to possession of the Property for nonpayment of rent or for any other reason will not in any event be affected by reason of the fact that District holds this security. The security deposit, if not applied toward payment of arrearages or damages as provided in this agreement, is to be returned to Lessee when this Lease is terminated, after Lessee has vacated the Property and delivered possession to District.

If District repossesses the Property because of Lessee's default or breach, District may apply the deposit on all damages suffered to the date of the repossession and may retain the remainder to apply on such damages as may be suffered thereafter by reason of the default or breach.

7. **Renegotiation by District.**

As required by Section 81378.1(c) of the Education Code, this Lease shall be subject to renegotiation or may be rescinded by District after 60 days' notice to Lessee if the Board of Trustees, in its sole discretion, determines at any time in the course of the Term, that the Property, or any portion thereof, are needed for academic purposes.

8. **Care, Maintenance and Repair.**

Lessee shall provide usual and customary care to the Property and vineyard, including but not limited to pruning, care of the grapevines and standard viticulture practices. The Property shall be maintained weed free and litter free and presented as well groomed and maintained. Lessee is
responsible for compliance with the pesticide use and handling requirements as established by the County of Napa Agriculture Commissioner’s Office. Lessee shall be responsible for and shall pay for any repairs or replacements which are occasioned or made necessary by reason of the use of said Property by Lessee or its agents or employees. Lessee shall not be responsible for damage thereto by ordinary wear and tear, fire, earthquake, act of God or the elements.

9. Inspection by District.

Lessee shall permit District or District’s agents, representatives or employees to enter said Property at all reasonable times and with reasonable notice for the purpose of inspecting said Property to determine whether Lessee is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect District's interest in said Property under this Lease or to perform District's duties under this Lease.

10. Alterations.

No alterations may be made by Lessee without the written consent of District. This includes adding additional grapevines. Should Lessee desire to make alterations, such alterations shall not be carried out unless and until the terms, conditions, and financing for such alterations have been mutually agreed upon by the parties. Lessee shall have the right to remove from the Property immediately before the expiration of the term or within 10 days after any termination of the term or any notice terminating this Lease, any alterations, additions or improvements Lessee has made at Lessee's on cost to the Property, as long as Lessee at its cost promptly restores the Property to its original condition. Any alterations, additions or improvements not removed shall become the property of District.
11. **Utilities.**

Lessee shall pay for all utilities and services directly related to this property including without limitation, garbage and water.

12. **Insurance.**

   A. **Lessee:** With respect to this Lease, Lessee shall maintain insurance as described below:

      (1) If and when applicable, Workers' compensation insurance with limits of $1,000,000.00 or more with an insurance carrier satisfactory to the District in accordance with the Act of the Legislature of the State of California, known as the "Workers' Compensation Insurance and Safety Act" originally approved May 26, 1913, and all Act amendments and supplements thereto. Said policy shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to District. In the event Lessee is self-insured, it shall furnish a certificate of permission to self-insure, signed by the Department of Industrial Relations Administration of Self-insurance, Sacramento, California."

      (2) Commercial or Comprehensive General Liability insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than $1,000,000.00 combined single limit for each occurrence. Said insurance shall include, but not be limited to: Property and operations liability, independent contractors’ liability, and personal injury liability.
Each said comprehensive or commercial general liability insurance policy shall be endorsed with the following specific language:

(a) District, its officers and employees, are named as additional insured for all liability arising out of the operations by or on behalf of the name insured in the performance of this Lease.

(b) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(c) The insurance provided herein is primary coverage to District with respect to any insurance or self-insurance programs maintained by District and no insurance held or owned by District shall be called upon to contribute to a loss, except for the sole negligence of District.

(d) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to District.

Documentation

The following documentation shall be submitted to District:

(a) Properly executed Certificates of Insurance clearly evidencing all coverages, limits, and endorsements required above. Said certificates shall be submitted prior to the execution of this Lease.
(b) Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Lease.

(c) Upon District's written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of District's request.

(5) Policy Obligations

Lessee's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

(6) Material Breach

If Lessee, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of Lease.

B. Fire/Calamity Insurance. District shall maintain insurance on the Property in the same manner and to the same extent as District currently insures its buildings generally. Lessee shall maintain insurance on its own property.

13. Hold Harmless.

Lessee shall hold harmless, defend and indemnify District, its officers, agents and employees, from and against any liability, claim, action, cost, damage or loss, including reasonable costs and attorneys' fees, for injury, including death, to any person or damage to any property arising out of Lessee's activities under this Lease, whether or not there is concurrent passive or active negligence on the part of District, but excluding liability due to the sole negligence or willful misconduct of District. This obligation shall continue beyond the term of this Lease as to any or omission which occurred during or under this Lease. This indemnification obligation is not limited
in any way by any limitation on the amount or type of damages or compensation payable to Lessee or its employees or agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

14. **Assignment.**

This Lease shall not be assignable by Lessee, or by operation of law without the written consent of District. Any attempt to so assign the Lease without consent shall be null and void.

15. **Notice.**

As used in this Lease, notice includes but is not limited to the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment. All notices must be in writing. Notice is considered given either (a) when delivered in person to the recipient named below, or (b) when deposited in the United States or Campus mail in a sealed envelope or container, postage and charges paid if required addressed as follows:

- **Notice to Lessee:** Robert J. Fitzgerald
  6 Del Monte Court
  St. Helena, CA. 94574

- **Notice to District:** Vice President Administrative Services
  Napa Valley Community College District
  2277 Napa Vallejo Hwy
  Napa, CA 94558

16. **Successors in Interest.**

The provisions and conditions of this Lease shall extend to and bind the assignees or transferees, as permitted, under this Lease and shall bind any successors in interest of the parties hereto.
17. Destruction of Property.

In the event the Property is destroyed, Lessee shall be entitled, at its election, to terminate this Lease and all liability of Lessee for rent accruing subsequent to the date of such election shall cease.

18. Remedies for Breach.

It is agreed that in the event Lessee shall use or attempt to use the Property for any purpose other than that hereinabove authorized, or shall fail to care for the Property, or shall cause waste to the Property, or shall fail to pay or make settlement of the rental hereunder at the times and in the manner required, or shall default in the performance of, or shall breach any other covenant or condition of the Lease as provided herein and any such default or breach (excepting assignment) shall continue for a period of fourteen (14) days after written notice thereof by District to Lessee, then District, at its option, may terminate this Lease and upon termination, this Lease shall cease and end and District may re-enter the Property, take possession thereof, and oust Lessee and any improvements therefrom.

District shall be in default of this Lease if it fails or refuses to perform any provision of this Lease that it is obligated to perform and if the failure to perform is not cured within fourteen (14) days after notice of default has been given by Lessee to District. If the default cannot reasonably be cured within fourteen days, District shall not be in default if District commences to cure the default within the 14-day period and diligently and in good faith continues to cure the default. In the event of default by District, then Lessee may terminate this Lease and upon such termination this Lease shall cease and end.
19. Abandonment by Lessee.

Should Lessee breach this Lease and abandon Property prior to the natural expiration of the term of this Lease, District may terminate this Lease.

20. District's Remedies in Event of Breach.

In the event of any breach of this Lease, District, in addition to the other rights or remedies District may have, shall have the immediate right of reentry and may remove all persons and property from the Property. The property may be removed and stored in any place in the building where the demised Property are located, or in any other place, for the account of, and at the expense and risk of Lessee. Lessee waives all claims for damages which may be caused by the reentry of District and the taking of possession of the demised Property or removal or storage of the furniture and property as herein provided. Lessee will save District harmless from any loss, costs or damages caused by District and no such entry will be considered or construed to be a forcible entry. Should District elect to reenter, as provided in this agreement, or should District take possession pursuant to legal proceedings or pursuant to any notice provided for by law, District may either terminate this Lease or District may from time to time, without terminating this Lease, relet the Property or any part of it for such term or terms and at such rental or rentals and on such other terms and conditions as District in District's sole discretion may deem advisable, with the right to make alterations and repairs to the Property. Rentals received by District from such reletting shall be applied: first, to the payment of any indebtedness, other than rent, due under the terms of this Lease from Lessee to District; second, to the payment of rent due and unpaid; third, to the payment of any cost of reletting; fourth, to the payment of the cost of any alterations and repairs to the Property; and the
residue, if any, will be held by District and applied in payment of future rent when it becomes due and applied in payment of future rent when it becomes due and payable. Should the rentals received from reletting during any month be less than that agreed to be paid during that month by Lessee under the terms of this agreement, and then Lessee shall pay the deficiency to District. The deficiency shall be calculated and paid monthly. No such reentry or taking possession of the Property by District shall be construed as an election on District's part to terminate this Lease unless a written notice of such intention is given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination, District may at any time thereafter elect to terminate this Lease for such previous breach. Should District at any time terminate this Lease for any breach, in addition to any other remedy District may have, District may recover from Lessee all damages District may incur by reason of such breach, including the cost of recovering the Property, and including the worth at the time of the termination, of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the Property for the remainder of the stated term.

21. Liability for Attorneys' Fees.

In case suit shall be brought for a wrongful withholding of possession of the Property, for the recovery of any rent due under the provisions of this Lease, or because of the breach of any other covenant, on the part of Lessee to be kept or performed, Lessee shall pay to District reasonable attorney fees which shall be fixed by the court, and such attorney fees shall be deemed to
have accrued on the commencement of such action and shall be paid whether or not such action is
prosecuted to judgment.

22. Amendment.

This Lease may be amended only by written consent of the parties.

23. Severability.

The invalidity or illegality of any provision of this Lease shall not affect the remainder of the agreement.


Lessee shall comply with the Americans with Disabilities Act which prohibits discrimination on the basis of disability in the provision of and access to the services, facilities, and activities of the District.

25. Compliance with Law.

Lessee shall not use the Property or permit anything to be done in or about the Property which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Lessee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in forced, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Property, excluding structural changes not related to or affected by Lessee's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Lessee in any action against Lessee, whether District is a party
thereto or not, that Lessee has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between the District and Lessee.

26. Holding Over.

If Lessee, with District's consent, remains in possession of the Property after expiration or termination of the term, or after the date in any notice given by District to Lessee terminating this Lease, such possession by Lessee shall be deemed to be a month-to-month tenancy terminable on 30 days' notice given at any time by either party. All provisions of this Lease, except those pertaining to term and option to extend shall apply to the month-to-month tenancy.


Lessee acknowledges that various materials utilized on the Property may contain materials that have been or may in the future be determined to be toxic, hazardous or undesirable and may need to be specially treated, specially handled and/or removed from the Property. Such substances may be above and below ground on the Property or may be present in soils, water, building components or other portions of the Property in areas that may or may not be accessible or noticeable. Lessee shall use and operate the Property, at all times during the term hereof, under and in compliance with the laws of the State of California and in compliance with all applicable environmental legal requirements. For any contamination to Property due to Lessee's use, Lessee assumes full responsibility for the clean-up of such toxic hazardous or undesirable materials as required by current and further federal, state and local laws and regulations. Lessee acknowledges that toxic wastes, hazardous materials and undesirable substances problems can be extremely costly
to correct and Lessee relieves District from all liability related thereto due to Lessee's use. Lessee therefore agrees that Lessee shall indemnify and defend and hold District harmless from any claim, liability, damage, cost or expense, including but not limited to court costs and attorney's fees, arising out of or in any way related to toxic waste, hazardous material and/or undesirable substance affecting the Property related to and/or caused by Lessee's use.

28. **Property Taxes.**

Lessee is aware of the terms of Revenue and Taxation Code Section 107.6 (possessory interest tax). Pursuant to this Section, should this Lease create a possessory interest as defined in Revenue and Taxation Code Section 107 and/or 107.4, such property interest may be subject to property taxation if created and Lessee may be subject to the payment of property taxes on such interest.

29. **Condition at Termination.**

During the term of this Lease, Lessee shall at all times maintain the Property in a good, clean and safe condition. Upon the expiration of the term of this Lease and any renewals thereof or upon the sooner termination thereof, Lessee shall surrender to District possession of the Property. Lessee shall leave the Property in as good order and condition as said Property were in at the beginning of the term of this Lease, ordinary wear and tear thereof and damage by the elements, fire, earthquake, flood, act of God, or public calamity excepted.

30. **Corporate Authority.**

The signatories hereto certify as to their authority to execute this Lease as provided by their respective entities.
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed on the day and year first above written.

Napa Valley Community College District
BY:_____________________________
Printed Name:_____________________
Date:____________________________

Lessee
BY:_____________________________

_________________________
_________________________