NAPA COUNTY AGREEMENT NO. 8574

GROUND LEASE

THIS GROUND LEASE ("Lease") is entered into as of this 4th day of December, 2018, by and between NAPA COUNTY, a political subdivision of the State of California ("Lessor" or "County") and the NAPA COUNTY OFFICE OF EDUCATION ("Lessee"). Lessor and Lessee may at times be referred to below collectively as the "Parties" and individually as "Party."

RECITALS

WHEREAS, Lessor owns that certain real property consisting of approximately .57 acres, located at 1407 N. Oak Street, Calistoga, CA 94515, legally described by Exhibit "A," attached hereto and incorporated herein by this reference, and depicted and labeled as the "Lease Area" on Exhibit "B," attached hereto and incorporated herein by this reference ("the Lease Area"), which is a portion of a larger parcel of real property owned by Lessor designated as Assessor's Parcel No. 011-140-055-000 (the "Lessor's Larger Parcel"); and

WHEREAS, Lessee desires to lease from Lessor and Lessor desires to lease to Lessee the Lease Area; and

WHEREAS, to facilitate Lessee's use and occupancy of the Lease Area, Lessor and Lessee shall, concurrently with execution, and as a condition to effectiveness, of this Lease, enter into a separate Access and Utility Easement Agreement (the "AUE Agreement"), a true and correct unsigned copy of which is attached hereto as Exhibit "C," which will give Lessee the non-exclusive right to use the area depicted and labeled as the Access & Utilities Easement on Exhibit "B" hereto, (and which is more specifically and legally described by and depicted, respectively, by Exhibits "1" and "2" to the AUE Agreement; referred to hereinafter as the "Access and Utility Easement Property", for purposes of installation, maintenance, repair and use of utilities and for purposes of access to and from the Lease Area, which AUE Agreement shall be effective concurrently and coterminously with the term of this Lease,

TERMS

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated herein by this reference.

2. **Ground Lease and Term.** Lessor hereby leases to Lessee, and Lessee hereby hires and leases from Lessor, the Lease Area on the terms and conditions set forth in this Lease, the term of which shall begin on January 1, 2019, (the "Commencement Date"), and shall terminate on December 31, 2038 (the "Term's End"). The term of this Lease will be referred to as "Term" herein. Lessee shall have the right to exercise two (2) separate, consecutive options to extend the Term's End, each of which shall, if properly and timely exercised, extend the Term's End for a five-year period. In order to exercise each option, Lessor must do so no earlier than

eighteen (18) months prior to the Term's End, as extended if at all, and no later than six (6) months prior to the Term's End, as extended if at all. Each option must be exercised by Lessee by giving written notice to Lessor of the Lessee's exercise of the option in question, which notice must be given by Lessee during the 12-month window of time for exercise of each option specified above. Each option may be exercised only if this Lease has not been terminated prior to the exercise of the option in question.

3. Use of the Lease Area. The Lease Area may be used by Lessee solely for the operation of a Preschool and Day Care Center (the "Preschool") and Lessee may install, place and use on the Lease Area such modular unit and related equipment (collectively "Lessee's Facilities") as Lessee deems necessary for the operation of the Preschool. Under the concurrent AUE Agreement – and subject to Lessor's approval of specifications, location and construction and installation plans and plans for restoration of the area where utilities are to be installed, which shall not be unreasonably withheld – Lessee shall have the non-exclusive right to place utilities under and/or along the Access and Utility Easement Property in order to service the Lease Area, Lessee's Facilities and operation of the Preschool. Lessee may perform maintenance and repairs to, and replacement of Lessee's Facilities within the Lease Area as necessary and appropriate for its ongoing operation of the Preschool. Lessee may, with Lessor's consent, which shall not be unreasonably withheld, undertake construction and additions to the Lessee's Facilities if and as necessary to operation of the Preschool. Under the concurrent AUE Agreement, Lessee shall have full non-exclusive rights of ingress to and egress from the Lease Area on and across the Access and Utility Easement Property, to and from the public roadway known as North Oak Street. Lessee agrees to use and occupy the Lease Area in a lawful manner and in full compliance with all applicable federal, state and local laws, ordinances, permits, and regulations; provided, however, that Lessee, at its sole expense, shall have the right to contest the validity and applicability of any such laws, ordinances and regulations. Lessee shall obtain any and all licenses or permits as required by any governmental or taxing agency in connection with the operation of its business at or on the Lease Area, as required by law. Lessee shall not commit or permit any act or acts in or on the Lease Area or use or allow the Lease Area to be used in any manner which will increase the existing fire, liability and other insurance rates on the Lease Area or which will cause a cancellation of any insurance policy covering the Lease Area or any part thereof.

4. Lessor's Right to Market Lease Area and Lessor's Larger Parcel. Lessor shall have the right to affirmatively market for sale and to sell the Lease Area and/or the Lessor's Larger Parcel during the Term of this Lease, subject to rights of Lessee hereunder.

5. Assignment or Transfer. Lessor may assign or transfer this Lease to any person or entity without any requirement for prior approval by Lessee, provided that such assignee or transferee agrees in writing to fulfill the duties and obligations of the Lessor in this Lease through the Term's End, as extended if at all. Lessee shall not assign, transfer, convey, encumber or sublease any interest in this Lease on in the Lease Area, in whole or in part, without the prior written consent of Lessor or its successors or assigns.

6. Annual Rent. Lessee agrees to and shall pay, upon and as a condition to the effectiveness of the Commencement Date, and then on January 1st of every year through the Term's End, beginning on January 1, 2019, to Lessee, payable to Napa County in care of Napa

County Property Management, 1195 Third Street, Suite 101, Napa, California, 94559 (or at such other place as Lessor shall from time to time in writing designate) the sum of One Dollar and No Cents ($1.00) as annual rent for the Lease Area (the "Rent").

7. **Condition of Lease Area.** At occupancy, the Lease Area shall be delivered in its present "As-Is" condition.

8. **Ongoing Access to Lease Area.** Throughout the Term and any extension of the Term's End, and pursuant to the concurrent AUE Agreement, Lessee shall have the right of full, non-exclusive access to the Lease Area for its employees, agents, clients and invitees twenty-four (24) hours a day, seven (7) days per week, at no additional charge to Lessee. In exercising its right of access to the Lease Area, Lessee agrees to cooperate with any reasonable security procedures utilized and imposed upon occupants by Lessor and the Fair Association as applicable to Lessor's Larger Parcel including the Lease Area, and further agrees not to unduly disturb or interfere with the business or other activities of Lessor, the Fair Association or other tenants or occupants of Lessor's Larger Parcel. Lessor shall maintain the Access and Utility Easement Property from the nearest public roadway to the Lease Area in a manner sufficient to allow for Lessee's access to the Lease Area, subject to Lessee's obligations under the AUE Agreement to restore the condition of the Access and Utility Easement Property to its condition that existed prior to Lessee's installation of any utilities or utility lines under or through the Access and Utility Easement Property, and except for Lessee's responsibility under the AUE Agreement to pay for any damage to the Access and Utility Easement Property caused by use of the Access and Utility Easement Property by Lessee, its employees, agents, clients, and invitees. If Lessee or its employees, agents, clients or invitees cause any such damage to the Access Road, Lessee shall promptly repair the same at its sole expense.

9. **Lessee's Work, Maintenance and Repairs.** All of Lessee's construction and installation work at, on, or under the Lease Area shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Lessee shall submit copies of the site plan and specifications to Lessor for prior approval, which approval will not be unreasonably withheld, conditioned or delayed. Lessor shall give such approval or provide Lessee with its requests for changes within five (5) business days of Lessor's receipt of Lessee's plans. If Lessor does not provide such approval or request for changes within such five (5) business day period, Lessor shall be deemed to have approved the plans. Lessor shall not be entitled to receive any additional consideration in exchange for giving approval of Lessee's plans. Lessee shall maintain Lessee's Facilities and the Lease Area in neat and safe condition in compliance with all applicable codes and governmental regulations. Lessee shall be required to make any repairs to the Lease Area caused by Lessee, its employees, clients, agents, invitees, contractors or subcontractors. Upon the expiration, cancellation or termination of this Lease, Lessee shall surrender the Lease Area in good condition.

10. **Title to Lessee's Facilities.** Title to Lessee's Facilities and any equipment placed on the Lease Area by Lessee shall be held by Lessee. Lessee shall remove all Lessee's Facilities, including but not limited to any equipment or personal property, at its sole expense on or before the Term's End unless otherwise authorized by Lessor in writing. All of Lessee's Facilities shall remain the property of Lessee during the Term and at the Term's End unless not removed promptly upon the Term's End, in which case Lessor may, at its option, take possession of any property left on the Lease Area by Lessee.

11. Utilities.

A. Heating, Lighting, Water, Electrical, and Sewer Service: It is understood and agreed the Lessee shall have the right and the sole obligation to install and obtain necessary approvals of such installations of all utilities at Lessee's sole expense. Under the AUE Agreement, and subject to Lessor's reasonable approval, Lessee shall have the right to install, construct and place utilities under and/or along the Access and Utility Easement Property.

B. Payment of Utility Bills and Services: Lessee shall make all arrangements for and pay all connection, service, and termination charges levied in connection with all utilities and services furnished to or used in connection with the Lease Area.

C. Custodial and Maintenance. Lessee shall be responsible for all custodial and maintenance of the Lease Area and Lessee's Facilities during the entire Term of the Lease.

D. Garbage Service. Lessee shall be responsible for obtaining and paying for garbage service for the Lease Area.

E. Taxes. Lessee shall pay personal property taxes assessed against Lessee's Facilities and all other taxes, fees, and assessments attributable to the Lease Area and this Lease.

F. Insurance. Lessee shall be responsible for obtaining, paying for and maintaining during the Term of this Lease, fire insurance for the Lease Area and Lease Area.

G. Wi-Fi and Telephone Service. Lessee shall be responsible for obtaining and paying for telephone and Wi-Fi services.

12. Hold Harmless/Indemnification. Lessee shall throughout the Term, and to the fullest extent allowed under the laws of the State of California, indemnify, defend and hold Lessor harmless from and against all liabilities, debts, actions of any kind, causes of action, costs, attorney's fees, and/or claims arising from or related in any manner to any injury, including death, suffered by any person, and any property damage to the Lease Area or the Lessor's Larger Parcel, which injury or damage is caused by or arises from any action, omission or use of the Lease Area or the Access and Utility Easement Property by Lessee and/or any of its officers, agents, employees, contractors, subtenants or invitees, except to the extent that such injury or damage is caused by the intentional act or the negligence of Lessor or any of its officers, employees, agents, contractors, invitees, or other lessees.

13. Insurance: Lessee shall obtain and maintain in full force and effect throughout the Term of this Lease, and thereafter as to matters occurring during the Term of this Lease, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the Term of this Lease, Lessee shall provide workers' compensation insurance for the performance of any of Lessee's duties under this Lease, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide Lessor with certification of all such coverages upon request by Lessor's Risk Manager.

(b) Liability Insurance. Lessee shall obtain and maintain in full force and effect during the Term of this Lease the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance**:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than one million dollars ($1,000,000)

combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of Lessee or any officer, agent, or employee of Lessee under this Lease. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with Lessee's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If Lessee owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If Lessee or Lessee's employees, officers, or agents will use personal automobiles in any way in the performance of this Lease, Lessee shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of Lessor's Risk Manager, demonstrated by other evidence of coverage acceptable to Lessor's Risk Manager, which shall be filed by Lessee with the Public Works Department prior to commencement of performance of any of Lessee's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Lease by its Lessor number or title and department; shall be kept current during the Term of this Lease; shall provide that Lessor shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying 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.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, Lessee shall also file with the evidence of coverage an endorsement from the insurance provider naming Lessor, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Lessee shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of Lessee not covered by this Lease, then the limits in the applicable certificate relating to the additional insured coverage of Lessor shall pertain only to liability for activities of Lessee under this Lease, and that the insurance provided is primary coverage to Lessor with respect to any insurance or self-insurance programs maintained by Lessor. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by Lessor's Risk Manager, Lessee shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, Lessor's Risk Manager, which approval shall not be denied unless the Lessor's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Lease and the risks of liability associated with the activities required of Lessee by this Lease. At the option of and upon request by Lessor's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects Lessor, its officers, employees, agents and volunteers or Lessee shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. Lessee agrees to require all contractors and subcontractors and any other entity or person who is involved in providing services on the Lease Area to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

14. Permits. During the Term of this Lease, Lessee shall obtain and comply fully with the terms and conditions of any building permit, use permit, use permit modification, and/or other permit required by state or federal law, or by the Napa County Code for any of the activities conducted or facilities constructed by Lessee on the Lease Area. All costs associated with any application for and compliance with the conditions of such permits shall be borne by Lessee.

15. Signs. With Lessor's consent, Lessee may install signage at Lessee's sole cost and expense.

16. Destruction. If, during the Term of the Lease, the Lease Area and any improvements are totally or partially destroyed from any cause, rendering the Lease Area totally or partially inaccessible or unusable, neither Lessor nor Lessee shall have any obligation to restore the Lease Area or improvements. Lessee may elect to terminate this Lease as of the date of the damage or destruction by so notifying Lessor in writing no more than thirty (30) days following the date of damage or destruction. Should Lessee elect to terminate this Lease under this Section 16, the requirements of Section 10 above for removal of Lessee's Facilities and equipment shall be enforced.

17. Cancellation and Termination for Lessee's Convenience. Lessee shall have the right to cancel and terminate this Lease for convenience annually on June 30 of every year. Lessee shall give at least ninety (90) days' written notice to Lessor of such cancellation and termination for convenience.

18. Default. If Lessee defaults in the payment of Rent or in the performance of any of the other covenants or conditions of this Lease, Lessor shall give Lessee written notice of such default and if Lessee does not cure such default within five (5) days after the giving of such notice, then Lessor may either terminate this Lease forthwith or continue this Lease in full force and effect

for such time as Lessor specifies by written notice to Lessee. Upon Lessor's election to terminate this Lease due to default by Lessee, Lessee shall immediately quit and surrender the Lease Area to Lessor and comply with the obligations to remove its property from the Lease Area. If this Lease is terminated by Lessor for such default, Lessor may at any time thereafter resume possession of the Lease Area by any lawful means and remove Lessee or other occupants and their effects.

19. Surrender. Upon the Term's End, as extended if at all, or upon termination of this Lease, Lessee shall surrender and deliver up the Lease Area to Lessor in as good order and condition as the same were upon the Commencement Date of this Lease, or, if better than the condition of the Lease Area on the Commencement Date, such better condition in which the Lease Area was brought to by the Parties in compliance with the provisions of this Lease during the Term or any renewals or extensions thereof. If Lessee, with Lessor's consent, remains in possession of any portion of the Lease Area after the Term's End or after termination of the Lease, such continued possession by Lessee shall be deemed to be a month-to-month tenancy terminable on 30 days' written notice given at any time by either party. All provisions of this Lease shall apply to such holdover month-to-month tenancy.

20. Notices. Any notice under this Lease must be in writing and must be personally served or sent by certified mail, postage prepaid, to the last address of the Party to whom the notice is to be given, as designated by such Party in writing. Alternatively, notice may be provided via facsimile or electronic mail, if the Party to be noticed has expressly authorized such delivery method for the notice in question. Lessor and Lessee hereby designate their current addresses for Notice as follows:

Lessor: Napa County Director of Public Works
1195 Third Street, Suite 101
Napa, CA 94559

Lessee: Napa County Office of Education
2121 Imola Avenue
Napa, CA 94559

Any such notice, demand or request or other communication shall be deemed to have been given at the time it is duly deposited in any United States Postal Office. Notice delivered via any other means shall be deemed to have been given as of its receipt.

21. Time is of the Essence. Time is of the essence of this Lease, and of all of the terms, covenants, conditions and obligations contained herein.

22. Successors and Assigns. The covenants, terms, conditions, provisions and undertakings in this Lease shall extend to and be binding upon the successors and assigns of the respective Parties.

23. Authority. Each of the persons executing this Lease on behalf of a Party represents and warrants that such Party is a duly organized and validly existing entity under California law, that it has full right and authority to enter into this Lease and that the persons

signing on behalf of such Party are authorized to do so and have the power to bind such Party to this Lease.

24. Interpretation. The headings used herein are for reference only. The terms of this Lease are set out in the text under the headings. This Lease shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

25. Venue. This Lease is made and entered into in Napa County, California. The venue for any legal action filed by either Party to this Lease for the purpose of interpreting or enforcing any provision of this Lease shall be the Superior Court of California, County of Napa, a unified court. The appropriate venue for arbitration, mediation or similar legal proceedings under this Lease shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Lease.

26. Effect of Illegality; Severability. If any section, paragraph, subdivision, sentence, clause or phrase of this Lease shall, for any reason, be adjudged by any court of competent jurisdiction to be unconstitutional, unenforceable or invalid, such judgment shall not affect the validity or enforceability of the remaining portions of this Lease.

27. Attorney's Fees. In the event of any controversy, claim or dispute relating to this Lease or its breach, the prevailing Party shall be entitled to recover from the non-prevailing Party, in addition to any other relief that may be granted, its reasonable expenses, attorneys' fees and costs.

[Remainder of this page left blank intentionally.]

28. Entire Agreement. This Lease and the AUE Agreement contain the entire agreement between the Parties relating to the subject hereof. All modifications, amendments, or revisions of this Lease shall be in writing and signed by the Party against whom enforcement of any such waiver, change, modification or discharge is sought.

29. Counterparts. This Lease may be executed in original counterparts, all of which evidence only one agreement, binding on all Parties.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date and year stated above.

NAPA COUNTY OFFICE OF EDUCATION

By: Barbara Nemko
DR. BARBARA NEMKO, Superintendent

By:
JOSHUA SCHULTZ, Deputy Superintendent

NAPA COUNTY, a political subdivision of the State of California

By:
~~BRAD WAGENKNECHT, Chair~~ of the Board of Supervisors Ryan Gregory, Vice Chair

APPROVED AS TO FORM Office of County Counsel By: *Jason M. Dooley* Deputy County Counsel Date: November 19, 2018	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: 12/4/18 Processed By: Deputy Clerk of the Board	ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors By: Jose Luis Valdez

A notary public or other officer completing this certificate verifies only the identity of the Individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Napa} ss.

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature

N/A

EXHIBIT "A"

LEGAL DESCRIPTION

The land referred to herein is situate in the State of California, County of Napa, City of Calistoga, being a portion of the lands described in the Final Order of Condemnation recorded on January 30, 1976 in Book 985 of Official Records at Page 88, Napa County Records, and is more particularly described as follows:

Beginning at the most western corner of Parcel A, said corner being on the northerly line of the City street known as Washington Street, as the same is shown on Map No. 2762, recorded on April 12, 1976 in Book 19 of Surveys at Page 70, Napa County Records; thence along the west line of said Parcel A, North 30°15' East, 146.25 feet to the most northern corner of said Parcel A; thence departing the west line of said Parcel A on the prolongation of the northerly line of said Parcel A, North 59°06' West, 168.95 feet; thence parallel with said west line of said Parcel A, South 30°15' West, 148.17 feet to the northerly line of Washington Street; thence along said northerly line, South 59°45' East, 168.94 feet to the point of beginning.

The Basis of Bearing used in the above description is based on said Map No. 2762, recorded on April 12, 1976 in Book 19 of Surveys at Page 70, Napa County Records.

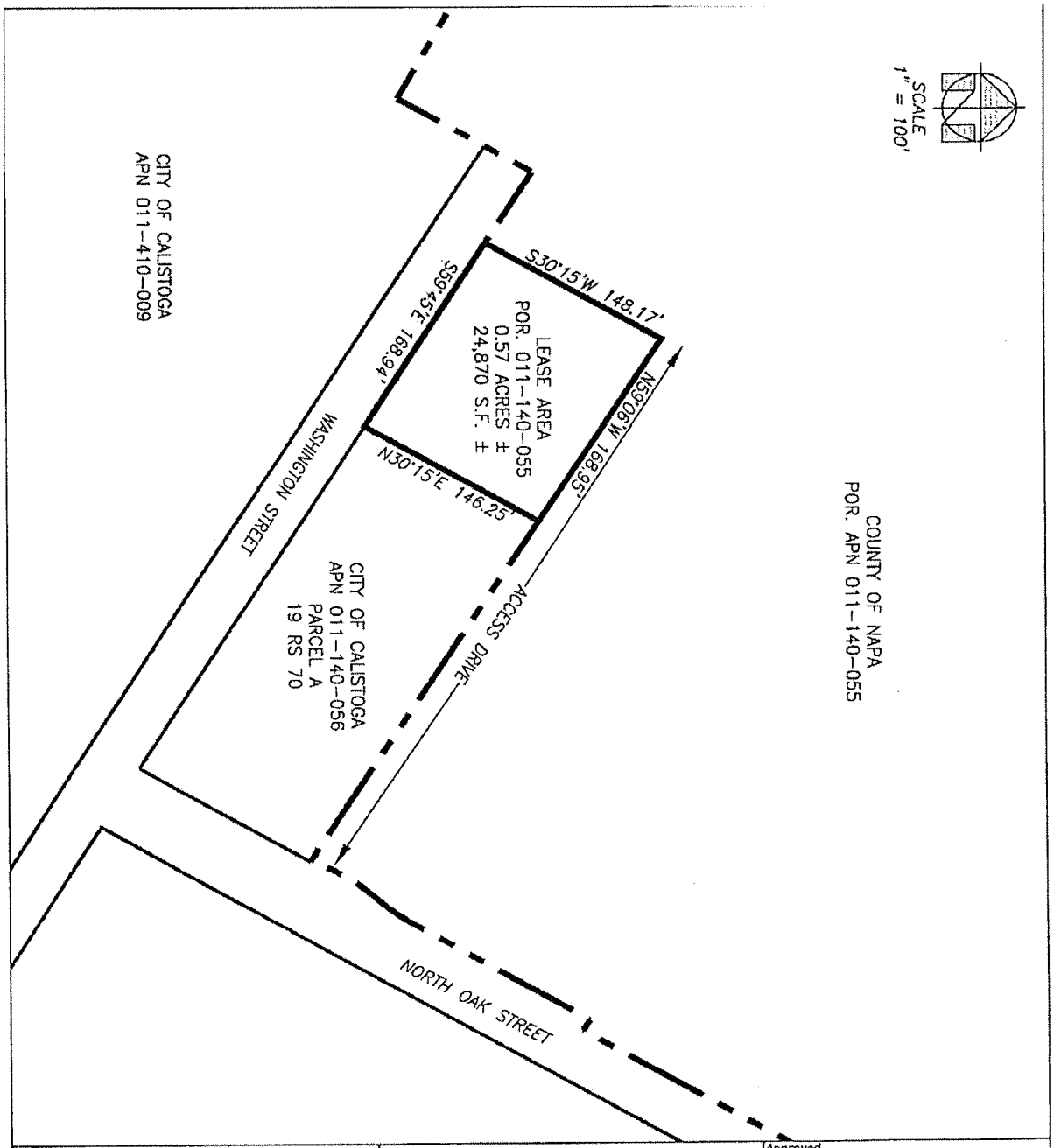
End Description

Containing 0.57 acres, more or less.



Prepared by Danielle L. Goshert, PLS 8491
County Surveyor, Napa County, California
August 27, 2018

EXHIBIT "B"



NAPA COUNTY DEPARTMENT OF PUBLIC WORKS 1195 THIRD STREET * ROOM 101 * NAPA, CA 94559 PHONE 707-253-4351 * FAX 707-253-4627 STEVEN E. LEDERER Director of Public Works	EXHIBIT '_' PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR LEASE AREA NAPA COUNTY, CALIFORNIA	Approved Drawn D. Goshert — Scale 1" = 100' Date August 2018 — Sheet No. 1 Project — of 1