

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY  
AND ESCROW INSTRUCTIONS**

**APN: 418-401-09  
5191 North 6th Street**

This Agreement for Purchase and Sale of Real Property (Agreement) is entered into by and between the PROACTIVE ENTERPRISE, LLC, a California limited liability company (Seller) and the CITY OF FRESNO, a municipal corporation (City).

**RECITALS**

- A. Seller is the owner of an approximately 27,007 square foot parcel of property located in the City of Fresno known as Assessor's Parcel Number (APN) 418-401-09 (Seller's Parcel).
- B. City desires to purchase the Seller's Parcel, consisting of an approximate 7,657 square foot building located on the estimated 27,007 square foot parcel, and more particularly defined in Section 1 below (the Subject Property) for the construction of a community center.
- C. On February 28, 2020, City provided Seller with a Letter of Intent to purchase the Subject Property and the parties have been engaged in active negotiations for the purchase and sale of the Subject Property.
- D. City now wishes to purchase from Seller and Seller now wishes to sell to City the Subject Property subject to the terms and conditions contained herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

- 1 **Subject Property.** The Subject Property is situated in the City of Fresno, County of Fresno, State of California, being approximately 7,657 SF in size, within APN 418-401-09 as more specifically described in Exhibit "A" and depicted on Exhibit "B", attached hereto and incorporated herein by reference.
- 2 **Fee Title.** Seller shall grant the Subject Property to City in fee, free and clear of all liens, encumbrances, and restrictions of record.
- 3 **Purchase Price.** City shall pay Seller Six Hundred and Seventy-Five Thousand Dollars (\$675,000) (the Purchase Price) for the Subject Property.
- 4 **Effective Date.** The Effective date of this Agreement shall be upon its duly authorized execution by the City and the payment of the Purchase Price to Seller.
- 5 **Right to Sell.** Seller represents and warrants that it holds fee title to the Subject Property, that such property is free of all liens and encumbrances, and that it has the authority to enter into this Agreement. Seller agrees to hold the City harmless and reimburse the City for any and all losses and expenses as to the Subject Property by reason of any change in ownership or lease of said Subject Property held by any tenant of the Seller.

6 **Escrow Instructions.** The sale shall be completed through an External Escrow to be opened at Fidelity National Title Company (Attn: Bernadette Watson, Escrow Officer). Said escrow shall be opened upon the following terms and conditions, and the Seller and City by their signature to this Agreement make this paragraph their escrow instructions:

a. **Deposits.** The City shall deposit the sums specified in Paragraph 3 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from said title company as follows:

i. **Initial Deposit.** Within five (5) days of the Effective Date, City shall deposit with Escrow Holder the sum of Twenty Five Thousand Dollars (\$25,000) (the Initial Deposit). The Initial Deposit shall be applied to the Purchase Price at Close of Escrow.

ii. **Balance of Purchase Price.** City shall pay the balance of the Purchase Price, less the Initial Deposit to in good funds through Escrow, not later than the close of business on the day before the Close of Escrow. Escrow Holder will forward to both City and Seller a separate accounting of all funds received and disbursed for each party, and copies of all signed and recorded documents deposited into Escrow, with the recording and filing date and information endorsed thereon.

Payment of said sums, less Seller's cost to clear title, if any, may be made to Seller only when Escrow Holder possesses and is in a position to deliver to the City a fully executed and acknowledged and recorded deed to the Subject Property free and clear of all liens, encumbrances and restrictions of record.

b. **Feasibility Period.** City shall have the right to examine the feasibility of the Subject Property for a period of forty-five (45) days after the parties have executed this Agreement (the Feasibility Period).

i. **Access.** City shall have the right to access the Subject Property, at all times following execution of this Agreement by the parties, for the purpose of conducting all studies, inspections, evaluations, tests or surveys of the Subject Property that City elects to have performed, upon reasonable notice to Seller. City agrees to indemnify and hold Seller free and harmless from any and all liability, loss, cost, damage or expense that Seller may sustain or incur by reason of or in connection with such entry, studies, inspections, evaluations, tests or surveys conducted by City during the Feasibility Period.

ii. **Feasibility Package.** Seller shall deliver to City a feasibility package within five (5) days of execution of this Agreement. The following shall be included as due diligence in the package:

1. Any documents relating to special assessment or bonds;

2. All known current litigation affecting the property;

3. All environmental reports;
  4. Copy of all fees paid; and
  5. All Plans and any history on repairs/maintenance
- iii. **Expiration of Feasibility Period.** If City has not given notice of termination and cancellation on or before the expiration of the Feasibility Period, the Initial Deposit shall be non-refundable and released and paid to Seller by Escrow Holder on the next business day immediately following the expiration of the Feasibility Period without need for further instructions, notice, or demand from either party.
- iv. **Termination and Cancellation of Agreement.** If City, in its sole and absolute discretion, decides to terminate and cancel this Agreement by timely delivery of a termination and cancellation notice on or before expiration of the Feasibility Period, then the entire Initial Deposit, and any accrued interest thereon, shall be immediately refunded to City by Escrow Holder without the need for further instruction, notice, or demand from either party.
- c. **Defects in Title.** The City reserves the right to accept title to the property interest to be acquired by City herein subject to certain defects in any or all matters of record title to the property. In consideration for Seller receiving the total sum as stated in Paragraph 3, the undersigned Seller covenants and agrees to indemnify and hold the City harmless from any and all claims and demands third parties may make or assert and causes of action third parties may bring which arise out of or are in connection with the foregoing defects in title to the property. The Seller's obligation herein to indemnify and hold harmless the City shall not exceed the amount paid to the Seller under specified in Paragraph 3.
- d. **Financial Liabilities.** It is understood that Seller shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the Subject Property.
- e. **Costs.** The parties shall each pay one half of the escrow fee; Seller shall provide City with a CLTA policy of title insurance; recording fees (if any) shall be as customary in Fresno County; all other closing costs shall be paid by the City; Sellers will pay any cost to convey the title to the Subject Property.
- f. **Disbursement.** Disbursements of the Purchase Price shall be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.
- g. **Close of Escrow.** Close of Escrow for the purchase and sale of the Subject Property shall occur no later than thirty (30) days from the expiration of the Feasibility Period. The following Conditions of Sale must be met prior to Close of Escrow:

- i. City's approval of contents of preliminary title report and exceptions;
- ii. City's approval of any engineering reports;
- iii. No pending litigation against property and no notices of violation of law;
- iv. City's approval of Preliminary title report approval;
- v. City's approval of physical inspection of the property;
- vi. City's completion and approval of the Feasibility Study;
- vii. Approval of this Agreement by the City Council of the City of Fresno prior to execution by City.
- viii. Escrow Holder is in possession of a good and sufficient grant deed, duly executed by Seller, in the form attached hereto as Exhibit C.

7 **Commission.** At the Close of Escrow, and through escrow, Seller shall pay a commission equal to six percent (6%) of the purchase price, split equally between City's Broker (Cushman & Wakefield Pacific) and Seller's Broker (Marcus & Millichap).

8 **Indemnity.** Seller shall indemnify, hold harmless, and defend the City, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Seller, City, or any other third party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or materials (as now or hereafter defined in any law, regulation, or rule) in, on, or about the Property on or before the effective date of this Agreement. This indemnity shall include, without limitation, any claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), or any other federal, state or local law whether statutory or common law, ordinance, or regulation. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean up or disposal costs and attorneys' fees, and damages. The Seller's obligation herein to indemnify and hold harmless the City shall not exceed the amount paid to the Seller specified in Paragraph 3.

9 **Miscellaneous Provisions:**

- a. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- b. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be Fresno, California.

- c. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
- d. **Severability.** The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.
- e. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- f. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- g. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.
- h. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- i. **Exhibits and Attachments.** Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.
- j. **Non-Material Changes.** The City Manager of the City, or designee, may execute any supplemental escrow instructions and may make minor modifications to this Agreement, the exhibits, and the documents referenced herein, provided such modifications do not constitute a material change to this Agreement.
- k. **Extent of Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Seller.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the Effective date of this Agreement as defined above.

CITY OF FRESNO,  
a California municipal corporation

PROACTIVE ENTERPRISE, LLC.  
a California Limited Liability Company

By: \_\_\_\_\_  
Wilma Quan                      Date  
City Manager

By: A. Sanyan 6/9/20  
Name: Arutyun Sanyan      Date  
Title: CFO

RECOMMENDED FOR APPROVAL:

By: [Signature] 6/09/20  
Name: MARINA ISEUNTS      Date  
Title: president

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: [Signature] 6.9.20  
Raj Singh Badhesha      Date  
Senior Deputy

ATTEST:  
YVONNE SPENCE, MMC CRM  
City Clerk

By: \_\_\_\_\_  
Date  
Deputy

Attachments:

1. Exhibit A – Legal Description
2. Exhibit B – Exhibit Map
3. Exhibit C – Grant Deed

# Exhibit A

EXHIBIT "A"

APN 418-401-09  
Grant Deed

Lot 7 and Lot 8 of map of College Town – Tract 2065, according to the map thereof recorded in Volume 23 of Plats, at Page 46, Fresno County Records, lying in Section 11, Township 13 South, Range 20 East, Mount Diablo base and Meridian, in the City of Fresno, County of Fresno, State of California.

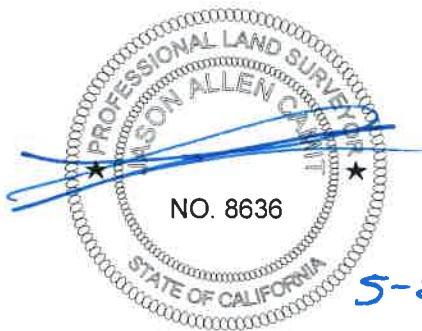
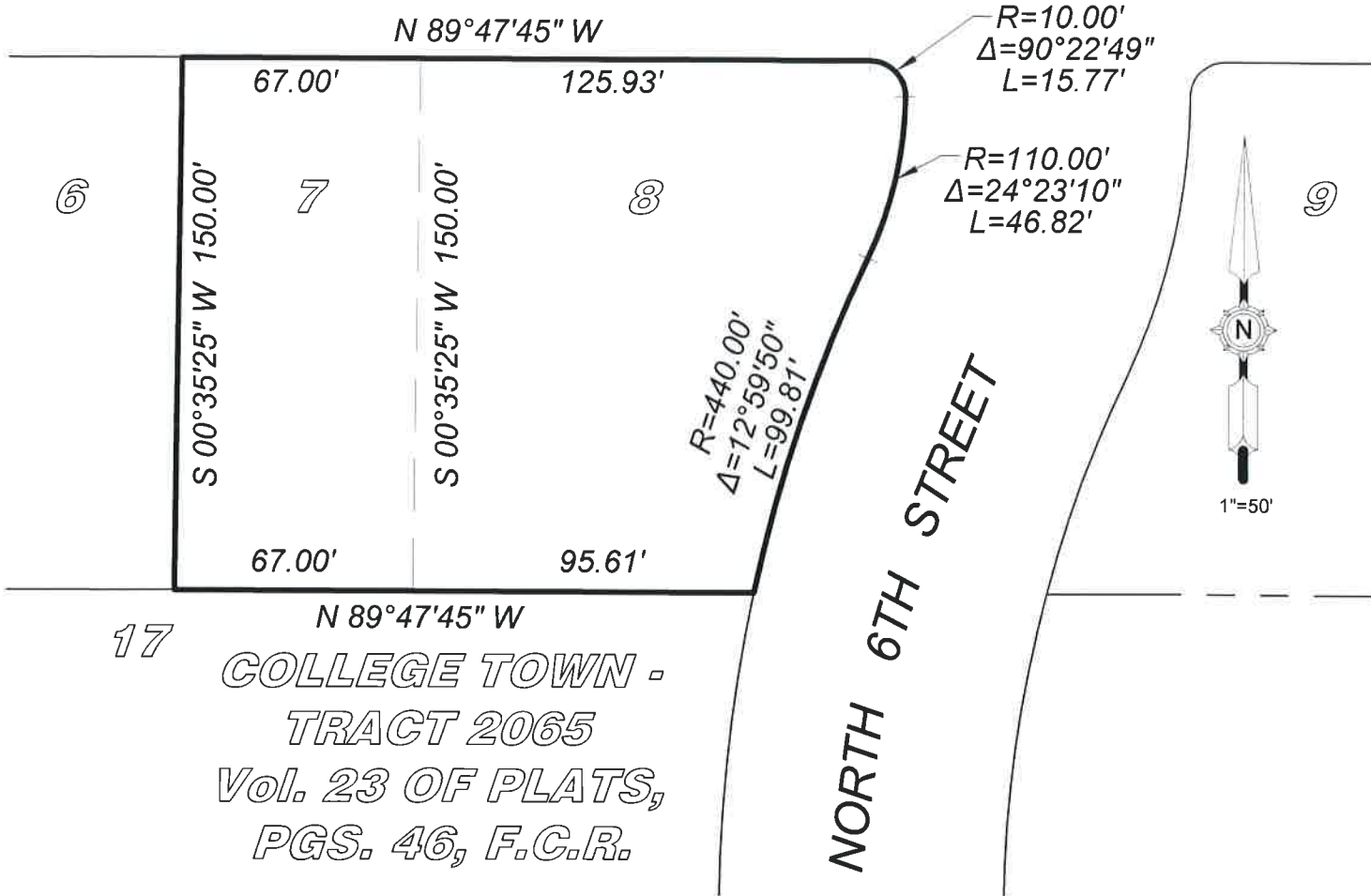




# Exhibit B

# EXHIBIT "B"

## EAST SAN JOSE AVENUE



INDICATES AREA TO BE DEEDED. 27,720 S.F. ±

NOTE:  
 DATA BASED ON MAP OF COLLEGE TOWN - TRACT 2065, IN  
 VOLUME 23 OF PLATS, AT PAGES 46, FRESNO COUNTY RECORDS.

REF. & REV. 2020-XXX 15-A-XXXX PLAT 1658	<b>CITY OF FRESNO</b> DEPARTMENT OF PUBLIC WORKS		PROJ. ID _____ RES TYPE _____ FUND NO. _____ ORG. NO. _____
	LOT 7 AND LOT 8 OF MAP OF COLLEGE TOWN - TRACT 2065, VOLUME 23 OF PLATS, AT PAGE 46, FRESNO COUNTY RECORDS		DR. BY _____ J.A.C. _____ CH. BY _____ J.A.C. _____ DATE MAY 29, 2020 SCALE 1" = 50'
			SHEET NO. <u>1</u> OF <u>1</u> SHEETS

# Exhibit C

**Recording Requested By:**  
Public Works Department  
City of Fresno  
No Fee-Gov't. Code Sections  
6103 and 27383

**When Recorded, Mail To:**  
Public Works Department  
City of Fresno  
2600 Fresno Street  
Fresno, CA. 93721-3623  
ATTN: ROW

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 418-401-09

**GRANT DEED**

Proactive Enterprises, LLC, GRANTOR, hereby GRANTS to the City of Fresno, a municipal corporation, GRANTEE, all that certain real property situated in the City of Fresno, County of Fresno, State of California, more particularly described and shown as follows:

See Exhibits "A" and "B", which are attached and incorporated herein

Proactive Enterprises, LLC

By: \_\_\_\_\_ Dated: \_\_\_\_\_

By: \_\_\_\_\_ Dated: \_\_\_\_\_

2020-XXX  
15-A-XXXX

EXHIBIT "A"

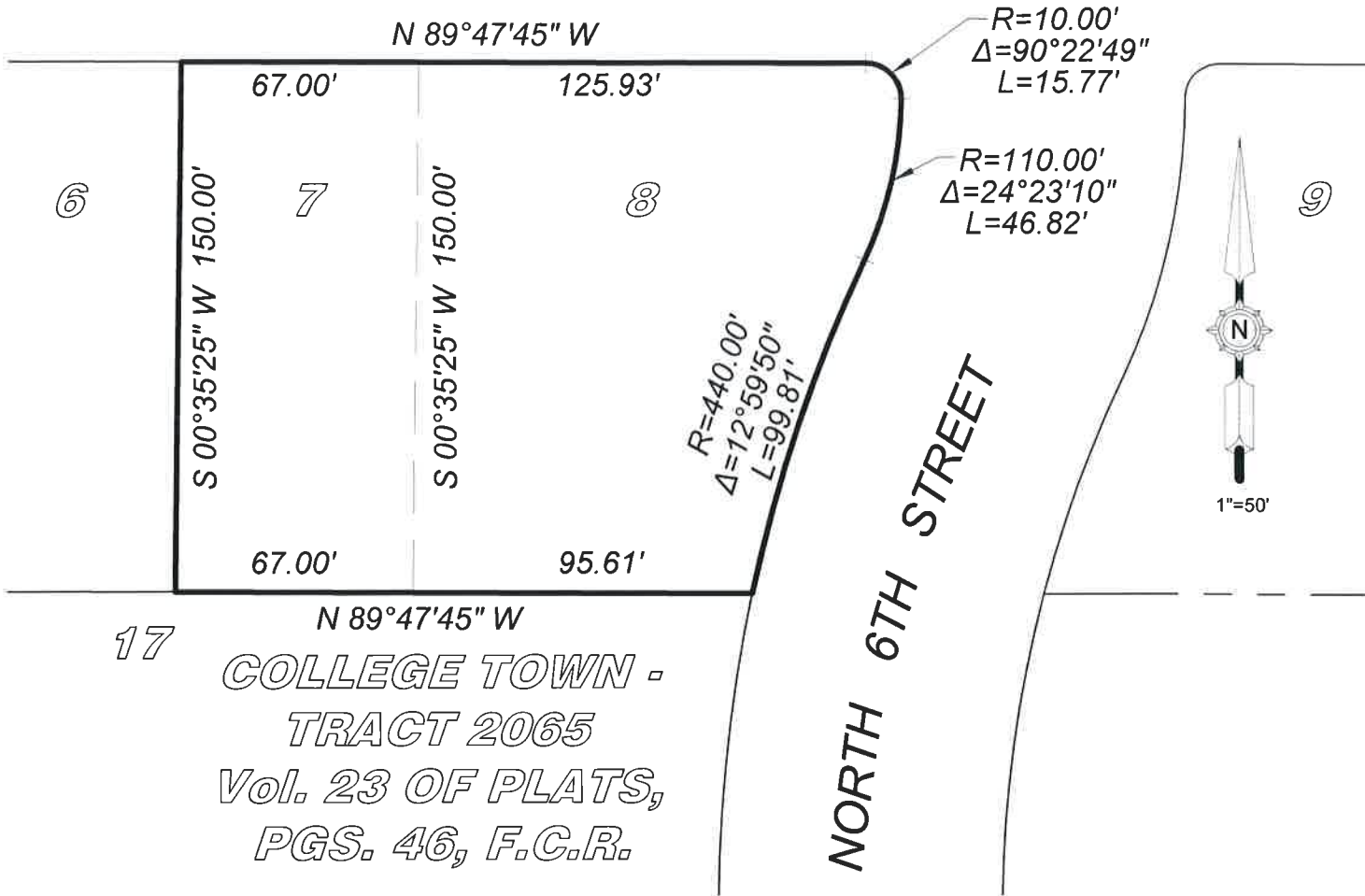
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# EXHIBIT "B"

## EAST SAN JOSE AVENUE

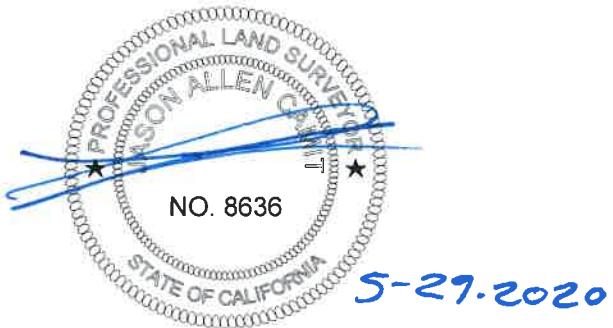


17  
**COLLEGE TOWN - TRACT 2065**  
**Vol. 23 OF PLATS, PGS. 46, F.C.R.**



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			DR. BY J.A.C.
			CH. BY J.A.C.
			DATE MAY 29, 2020
			SCALE 1" = 50'
			SHEET NO. 1 OF 1 SHEETS