



City of Brighton

REPORT FROM THE CITY MANAGER TO CITY COUNCIL

April 19, 2018

SUBJECT: APPROVAL OF AGREEMENT WITH ST. PAUL'S CHURCH FOR THE CONSTRUCTION OF THE MILLPOND BANDSHELL AND AMPHITHEATER

BACKGROUND

- The City of Brighton has an existing permanent easement with St. Paul's Church for the "construction, maintenance, repair and use of terraced landscaping/seating and for park purposes."
- City Council approved the Millpond Bandshell and Amphitheater Site Plan on October 19, 2017.
- The Downtown Development Authority (DDA) has awarded the contract for the project which is set to begin at any time.
- The attached Utilization Agreement was drafted by the DDA's attorney to facilitate the DDA's usage of the Easement as outlined in the Easement Agreement.
- The Utilization Agreement has been provided to the Church and staff is anticipating receipt of an executed copy by early next week.

RECOMMENDATION

It is recommended that City Council authorize the City Manager to execute the Easement Utilization Agreement.

Prepared by: Nate Geinzer, City Manager

Reviewed &

Approved by: Nate Geinzer, City Manager

Attachments: Utilization Agreement
Easement Agreement

EASEMENT UTILIZATION AGREEMENT

This Agreement made this ____ day of April, 2018, by and among St. Paul's Episcopal Church of Brighton, a Michigan ecclesiastical corporation (Church), of 200 W. St. Paul Street, Brighton, Michigan 48116, the City of Brighton, a Michigan Municipal Corporation (City), of 200 North First Street, Brighton, Michigan 48116 and the City of Brighton Downtown Development Authority, a Michigan Public Body Corporate (DDA), of 200 North First Street, Brighton, Michigan 48116.

RECITALS

1. On August 13, 1996 a certain Easement Agreement was executed by and among the church, the city and First of America Bank.
2. This Easement was recorded on November 21, 1996 in Liber 2112 Pages 7055 through 7069, inclusive, Livingston County, Michigan records.
3. First of America Bank executed the easement in its capacity as Mortgagee on a Mortgage given by the church which included the real estate described in said Easement.
4. Pursuant to the terms of said Easement, the Church conveyed to the City a permanent easement for the construction, maintenance, repair and use of terraced landscaping/seating and for park purposes across the real estate described and delineated in Exhibit (1) of said Easement.
5. The Easement specifically provided that the Easement would not be assignable without the written approval of the Church and City.
6. The DDA desires to utilize the Easement for the same purposes set forth in the terms of the Easement, specifically, the construction, maintenance, repair, use and for park purposes, and the Church and City are agreeable to this utilization of the Easement by the DDA.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and other valuable non-monetary consideration from the DDA, the Church, City and DDA agree as follows:

1. The DDA may forthwith utilize the real estate subject to the Easement for the purposes set forth therein pursuant to the plans and specifications set forth in a certain "Band Shell Plan" prepared by Lindhout Associates, architects, which have been previously submitted to the Church; and
2. The DDA shall abide by and adhere to all applicable terms and provisions of said Easement.
3. All terms and provisions of said Easement remain in full force and effect.

ST. PAUL EPISCOPAL CHURCH OF
BRIGHTON, a Michigan ecclesiastical
Corporation

Dated: _____

By:
Its: Warden

CITY OF BRIGHTON, a Michigan
Municipal Corporation

Dated: _____

By: Nate Geinzer
Its: City Manager

CITY OF BRIGHTON DOWNTOWN
DEVELOPMENT AUTHORITY, a
Michigan Public Body Corporate

Dated: _____

By: Robert W. Herbst
Its: Chairperson

ORDER 2112 PAGE 0755

EASEMENT

15/9
35/9

KNOW ALL MEN BY THESE PRESENTS, that ST. PAUL'S EPISCOPAL CHURCH OF BRIGHTON, a Michigan ecclesiastical corporation, (CHURCH) of 200 West St. Paul, Brighton, Michigan being the Owner of Record of the real estate described and delineated in the attached three page document entitled "Easement For Amphitheater Seating", prepared by Desine, Inc. Engineers and labelled Exhibit "1", and FIRST OF AMERICA BANK, a Michigan banking association, (Mortgagee) whose address is 207 North Michigan Avenue, Howell, Michigan 48843, the Mortgagee of a mortgage given by the CHURCH to the Mortgagee, for valuable non-monetary consideration from the CITY OF BRIGHTON, a Michigan municipal corporation, (CITY) whose address is 200 North First Street, Brighton, Michigan 48116, located in the County of Livingston, State of Michigan, do hereby convey to the City of Brighton a permanent Easement for the construction, maintenance, repair and use of terraced landscaping/seating and for park purposes across the real estate described and delineated in Exhibit "1".

IT IS FURTHER ACKNOWLEDGED, UNDERSTOOD AND AGREED AS FOLLOWS:

1. The terraced landscaping/seating to be constructed upon the real estate over which the Easement will traverse is depicted and delineated on the attached one page document entitled "Amphitheater Seating", dated May 13, 1996, prepared by Lindhout Associates Architects AIA P.C. and labelled Exhibit "2".
2. The CITY shall obtain the written approval of the CHURCH prior to making any significant change in the design of the terraced landscaping/seating as depicted on Exhibit "2" or the type of materials to be used. The approval shall not be unreasonably withheld.
3. The CITY shall maintain the terraced landscaping/seating including the fence that is depicted on

REC'D NOV 21 P 2:51
 KERRY HAVIL AND
 REGISTERED CLERK
 OF LIVINGSTON COUNTY MI
 48843

RECORDED

LINES 2112 PAGE 0756

Exhibit "2". The CITY shall prevent erosion of the real property over which the Easement traverses.

4. If the terraced landscaping/seating becomes unsafe or dilapidated, the CHURCH shall notify the CITY in writing of the condition and the CITY shall eliminate the unsafe or dilapidated condition. If the CITY fails to eliminate the unsafe or dilapidated condition in a reasonable amount of time, the CHURCH shall be entitled to terminate the Easement upon written notification to the CITY.

5. The CITY agrees to hold harmless and defend the CHURCH and its employees with regard to any claims or suits for personal injury and/or property damages brought against the CHURCH including, but not limited to, its patrons, its employees or pedestrians who are injured and/or damaged as a result of the CITY'S use of the easement for park purposes unless such claims or suits arise solely from the negligence of the CHURCH or from the willful misconduct of its employees. In doing so, the CITY agrees to add the CHURCH as an additional insured on its General Liability Policy. The CHURCH agrees that the CITY'S obligation to hold harmless and defend the CHURCH will be satisfied fully by the aforementioned insurance policies as long as the aforementioned insurance policies are in full force and effect. The CITY agrees that any lapse in either or both of the aforementioned insurance policies will not effect its obligation, as agreed herein, to hold harmless and defend the CHURCH. In addition the CITY agrees, subject to the approval of the CITY, to select and compensate the attorney(s) who will handle such suits.

6. The City Council will not grant final approval of Civic Event Applications which propose to use the amphitheater or gazebo parts of the Mill Pond park area until after the proposed dates of all said applications have been reviewed by the CHURCH. If the CHURCH notifies the City Manager of events already scheduled at the CHURCH on any of the same dates shown on the

CHUR2112 PAGE0757

pending Civil Events applications list then neither the City Council or City Staff shall grant approval of said pending applications unless the dates for same have been changed so as to not conflict with scheduled events at the CHURCH. The CHURCH will need to provide written notification of any conflicts with pending civic events applications within one week after receipt of same from City Staff. The City Manager is then responsible for presenting all said civic event applications to the City Council for final approval. The preceding will not be construed to mean that the CHURCH may preempt or cause a cancellation of a previously scheduled event utilizing the amphitheater or gazebo parts of the Mill Pond park area including those events already scheduled and approved by the City Council at the time of this easement agreement's execution by both the CITY and CHURCH.

7. The CHURCH shall be permitted to use the real property over which the Easement traverses and which is described in Exhibit "1" in any manner that does not interfere with the CITY'S use.

8. The City shall have the right to allow the public to use the real property over which the Easement traverses as a park.

9. The CHURCH and Mortgagee shall not construct any building or structure within the Easement.

10. The CHURCH shall be entitled to include the real property over which the Easement traverses and which is described in Exhibit "1" in determining the side yard setback for the CHURCH property.

11. The Easement shall run with the land.

12. The Easement shall not be assignable without the written approval of the CHURCH and CITY.

13. The conveyance is exempt from any revenue tax by virtue

2112 MS0758

of Section 6(h) of the Michigan Real Estate Act, ^{Transfer} 1993 PA 330 as amended.
Dated this 13th day of AUGUST, 1996.

Witnesses:

ST. PAUL'S EPISCOPAL CHURCH
OF BRIGHTON, a Michigan
ecclesiastical corporation

[Signature]
PAT BLANKENSHIP

By: [Signature]
Keenan J. Cluskey
Its: Senior Warden

[Signature]
DIANNE E. NELSON

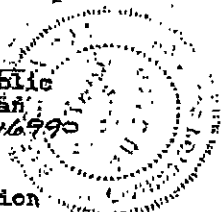
By: [Signature]
June Jenkins
Its: Vestry Secretary

[Signature]
Rosie L. Proctor

STATE OF MICHIGAN)
COUNTY OF LIVINGSTON) SS

On this 13 day of August, 1996, before me, a Notary Public, in and for said County and State, personally appeared KEENAN J. CLUSKEY, Senior Warden and JUNE JENKINS, Vestry Secretary on behalf of St. Paul's Episcopal Church of Brighton, and he/she acknowledged said instrument to be the free act and deed of St. Paul's Episcopal Church of Brighton.

[Signature]
BARBARA A. COX, Notary Public
Livingston County, Michigan
My Commission Expires: 11/06/99



Witnesses:

FIRST OF AMERICA BANK, a
Michigan banking association

[Signature]
Eila M. Mrozek

By: [Signature]
William R. Anderson
Its: VICE PRESIDENT

STATE OF MICHIGAN)
COUNTY OF LIVINGSTON) SS

On this 13th day of August, 1996, before me, a Notary Public, in and for said County and State, personally appeared William R. Anderson on behalf of First of America Bank and he/she acknowledged said instrument to be the free act and deed of First of America Bank.

EILA M. MROZEK
NOTARY PUBLIC - LIVINGSTON COUNTY, MI
MY COMMISSION EXPIRES 11/09/99

[Signature]
Notary Public
Livingston County, Michigan
My Commission Expires:

Prepared by and when recorded return to:
BRENNAN & BURNS
Ms. Theresa M. Brennan
133 W. Grand River, Brighton, Michigan 48116-1600

Recording fee:
Tax Identification No.: 18-30-304-074
wp/b-ddn.2

LIBER 2112 PAGE 0759

EASEMENT FOR AMPHITHEATER SEATING

A permanent easement for a amphitheater seating, more particularly described as follows: Commencing at the South 1/4 Corner of Section 30, Town 2 North, Range 6 East, City of Brighton, Livingston County, Michigan; thence West 661.15 feet along the South line of said section and the centerline of Main Street; thence N 20°00' W 180.22 feet along the Westerly line of West Street for a PLACE OF BEGINNING; thence S 70°00' W 44.00 feet along the former centerline of the now vacated Mill Street; thence N 20°00' W 110.00 feet; thence N 70°00' E 36.50 feet along the Southerly line of a Burial Ground as recorded in Liber 29, pages 55 & 56 Livingston County Records; thence S 20°00' E 92.00 feet; thence N 70°00' E 7.50 feet; thence S 20°00' E 18.00 feet along said westerly line of West Street to the Place of Beginning.

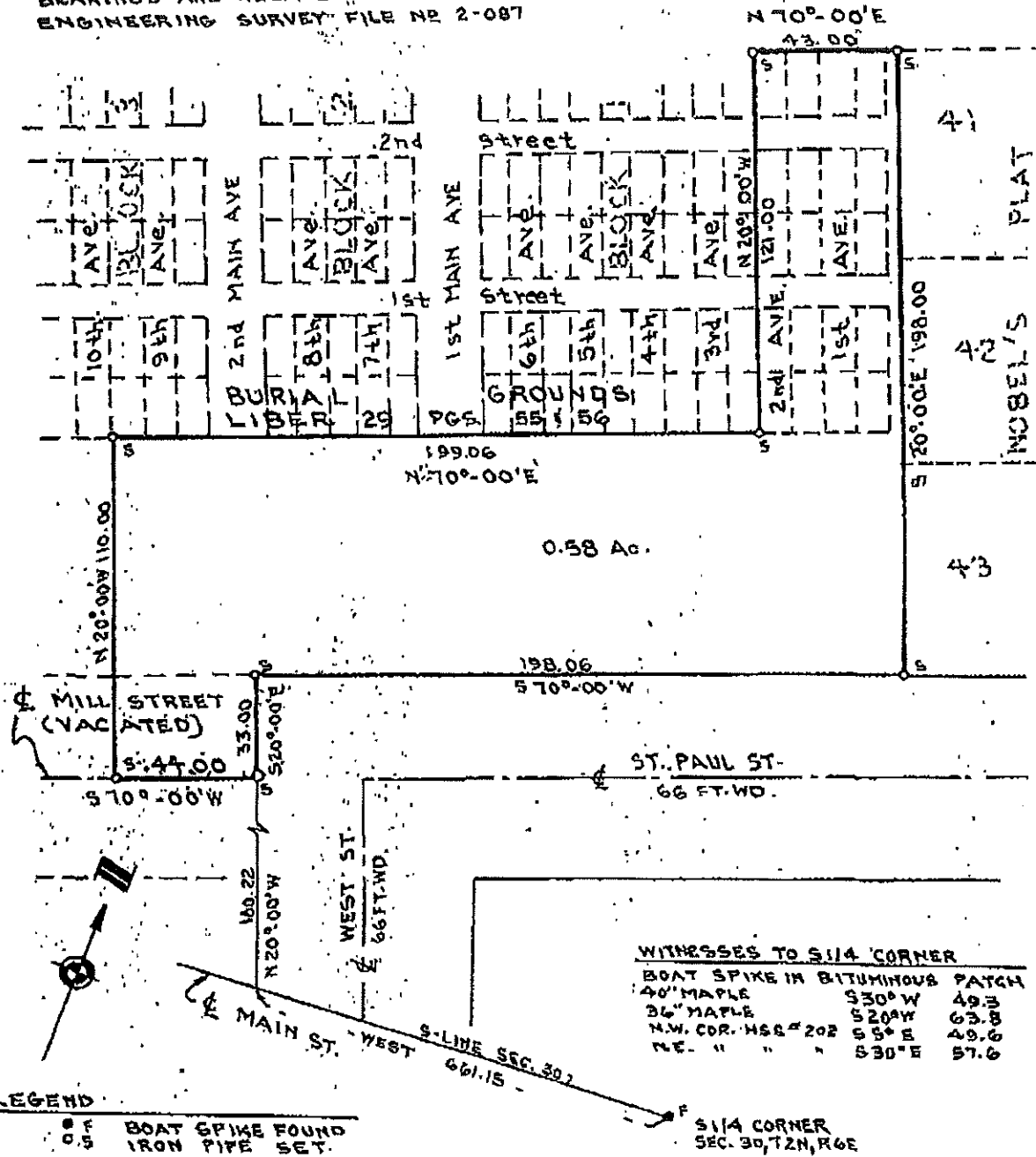
NOTE: Description is based on a ^{two page} survey by Atwell-Hicks, Inc. Job Number 34769, Dated 1-11-1983, a copy of which is attached hereto.

Prepared by:
Desine Inc. Engineers
7011 Grand River Road
Brighton, MI 48116
(810) 227-9533

Exhibit "1"

LIBER 2112 PAGE 0760

BEARINGS ARE RELATED TO WASHTENAW
ENGINEERING SURVEY FILE NO 2-087



I HEREBY CERTIFY THAT I HAVE SURVEYED AND MAPPED THE LAND ABOVE PLATTED AND/OR DESCRIBED ON DEC. 30, 1982, AND THAT THE RATIO OF CLOSURE ON THE UNADJUSTED FIELD OBSERVATIONS OF SUCH SURVEY WAS 1/ 21,000, AND THAT ALL OF THE REQUIREMENTS OF P.A. 132 1970 HAVE BEEN COMPLIED WITH

Paul A. Schwiner
 REGISTERED LAND SURVEYOR NO. 24612

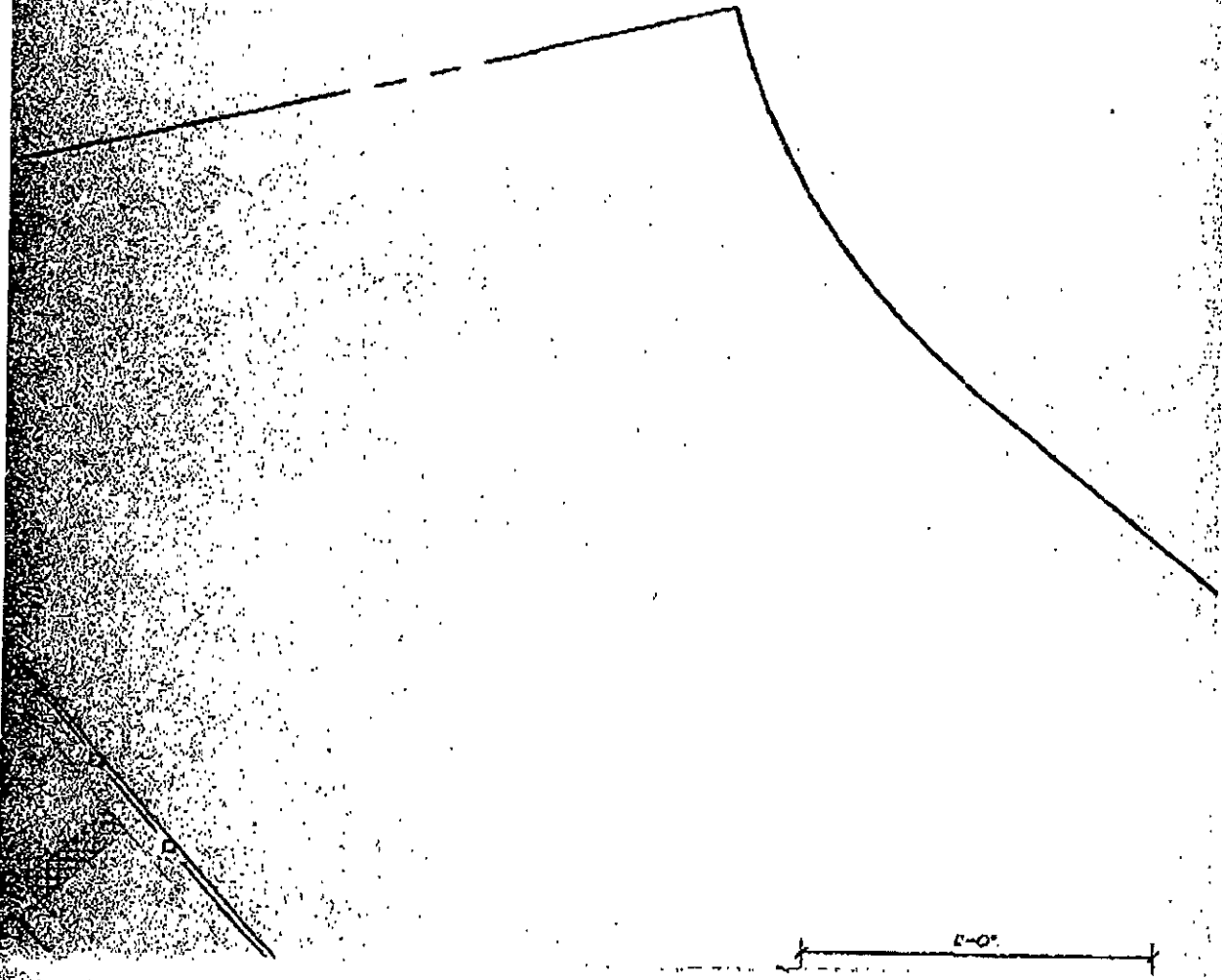
CLIENT ST. PAUL'S CHURCH	ATWELL-HICKS, INC. LAND SURVEYORS • CIVIL ENGINEERS • PLANNERS ANN ARBOR	
SURVEY OF A 0.58 AC. PARCEL OF LAND IN Noble's Plat	SCALE: 1 INCH = 40 FEET DIMENSIONS IN FEET	DR. CPM CK. PVB
	BOOK 801 PAGE 39	SHEET 1 OF 2
SECTION 30 TOWN 2 NORTH, RANGE 6 EAST CITY OF BRIGHTON LIVINGSTON COUNTY, MICHIGAN	DATE JAN. 11, 1983	569-5
	JOB 34769	

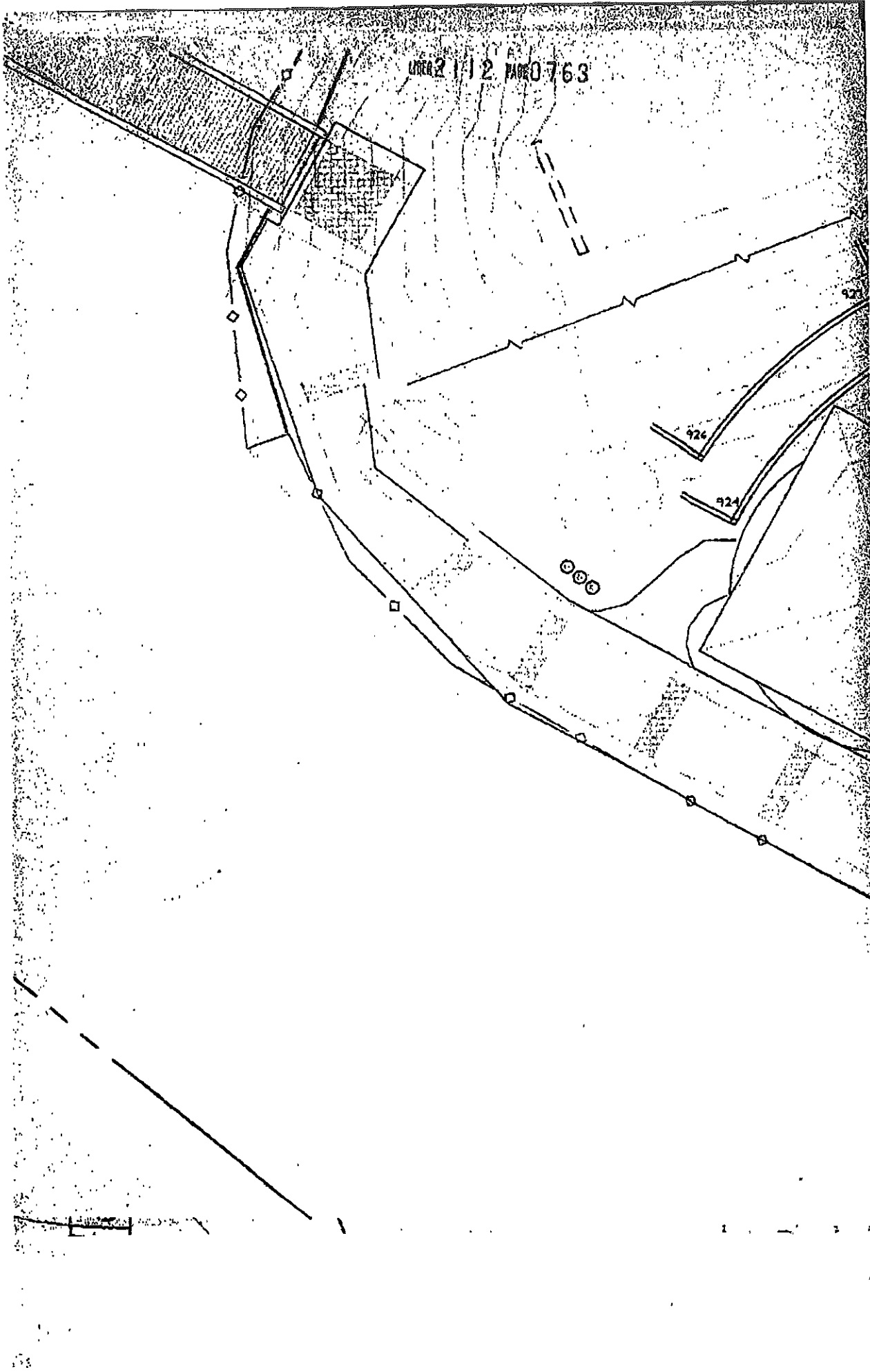
UBB 2112-NBC0761

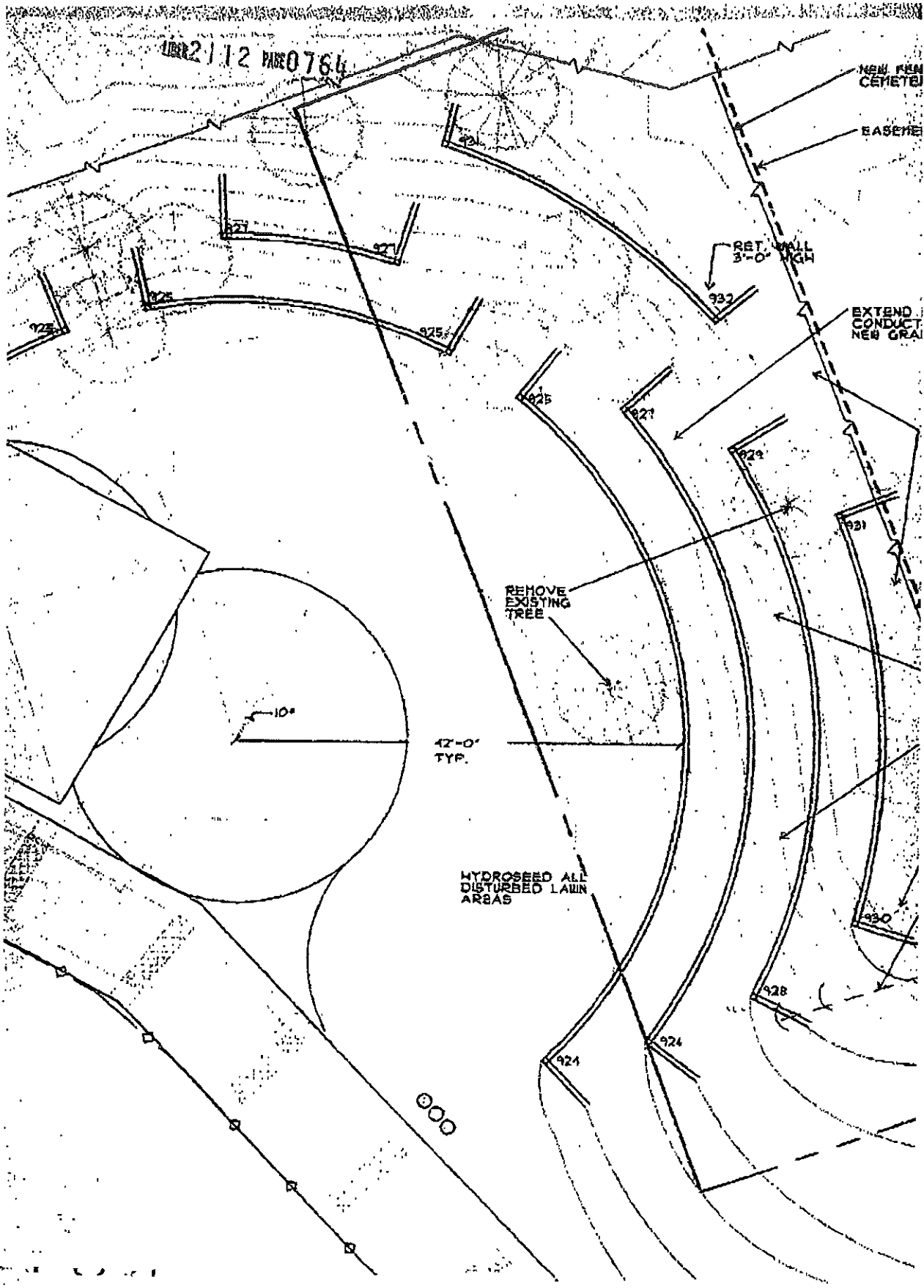
Commencing at the S ¼ Corner, Section 30, Township 2 North, Range 6 East, City of Brighton, Livingston County, State of Michigan; thence West 661.15 feet along the south line of said Section and centerline of Main Street; thence N 20°-00' W 180.22 feet along the westerly line of West Street to a PLACE OF BEGINNING; thence S 70°-00' W 44.00 feet along the former centerline of the now vacated Mill Street; thence N 20°-00' W 110.00 feet; thence N 70°-00' E 199.06 feet along the southerly line of a Burial Ground as recorded in Liber 29, pages 55 & 56 Livingston County Records; thence N 20°-00' W 121.00 feet along the westerly line of the 2nd Avenue of said Burial Ground; thence N 70°-00' E 43.00 feet to the N.W. Corner of Lot 41, Section 2 of Noble's Plat of the Village (now city) of Brighton; thence S 20° E 198.00 feet along the west line of Lot's 41, 42, 43 of said Noble's Plat; thence S 70°-00' W 198.06 feet along the northerly line of St. Paul Street; thence S 20° E 33.00 feet along the westerly line of said West Street to the Place of Beginning, being a part of the SW ¼ of said Section 30 and containing 0.58 Acres of land more or less. Subject to easements of record, if any.

CLIENT ST PAUL'S CHURCH		ATWELL-HICKS, INC.	
SURVEY OF A 0.58 AC. PARCEL OF LAND IN Noble's Plat		LAND SURVEYORS • CIVIL ENGINEERS • PLANNERS ANN ARBOR	
		SCALE: 1 INCH = FEET DIMENSIONS IN FEET	DR. CH. PYS
SECTION 30 TOWN 2 NORTH, RANGE 6 EAST CITY OF BRIGHTON LIVINGSTON COUNTY, MICHIGAN		BOOK 801 PAGE 39	SHEET 2 OF 2
		DATE JAN 11, 1983	569-5A

UNIT 2 | F2 | PAGE 07.62







LIBER 2112 PAGE 0765

TO MATCH
FENCE

LINE

EXISTING
OR TO
E ELEVATION

NEW SHRUBS ALONG
SECOND SIDE OF FENCE
20' TOTAL

NEW FENCING TO
MATCH CEMETERY
FENCE

REMOVE EXISTING
LANDSCAPING

REMOVE ONE SECTION
OF EXISTING FENCE
RELOCATE POST

RELOCATE GUY WIRE
AND UTILITY POLE

TERMINATE NEW
FENCE AT RELOCATED
FENCE POST

9506

sheet no.

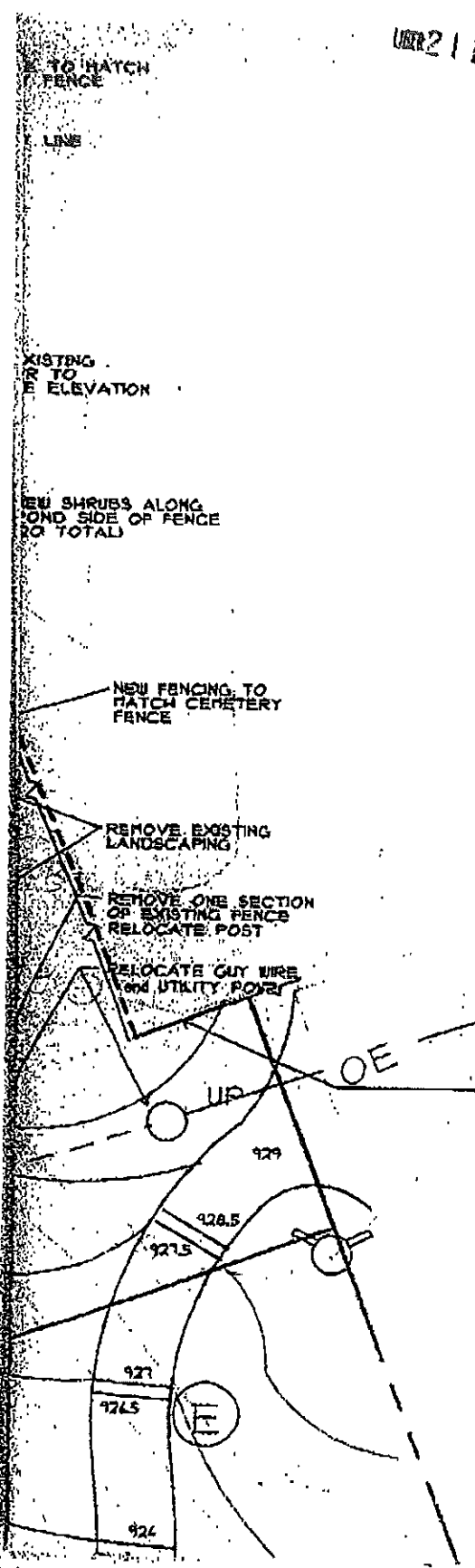
06

Lindhout Associates architects aia pc

39201 seven mile road, livonia, michigan 48152-1094 (313) 462-0700

10315 e. grand river, suite 300, brighton, michigan 48116-9510 (810) 227-5668

A.



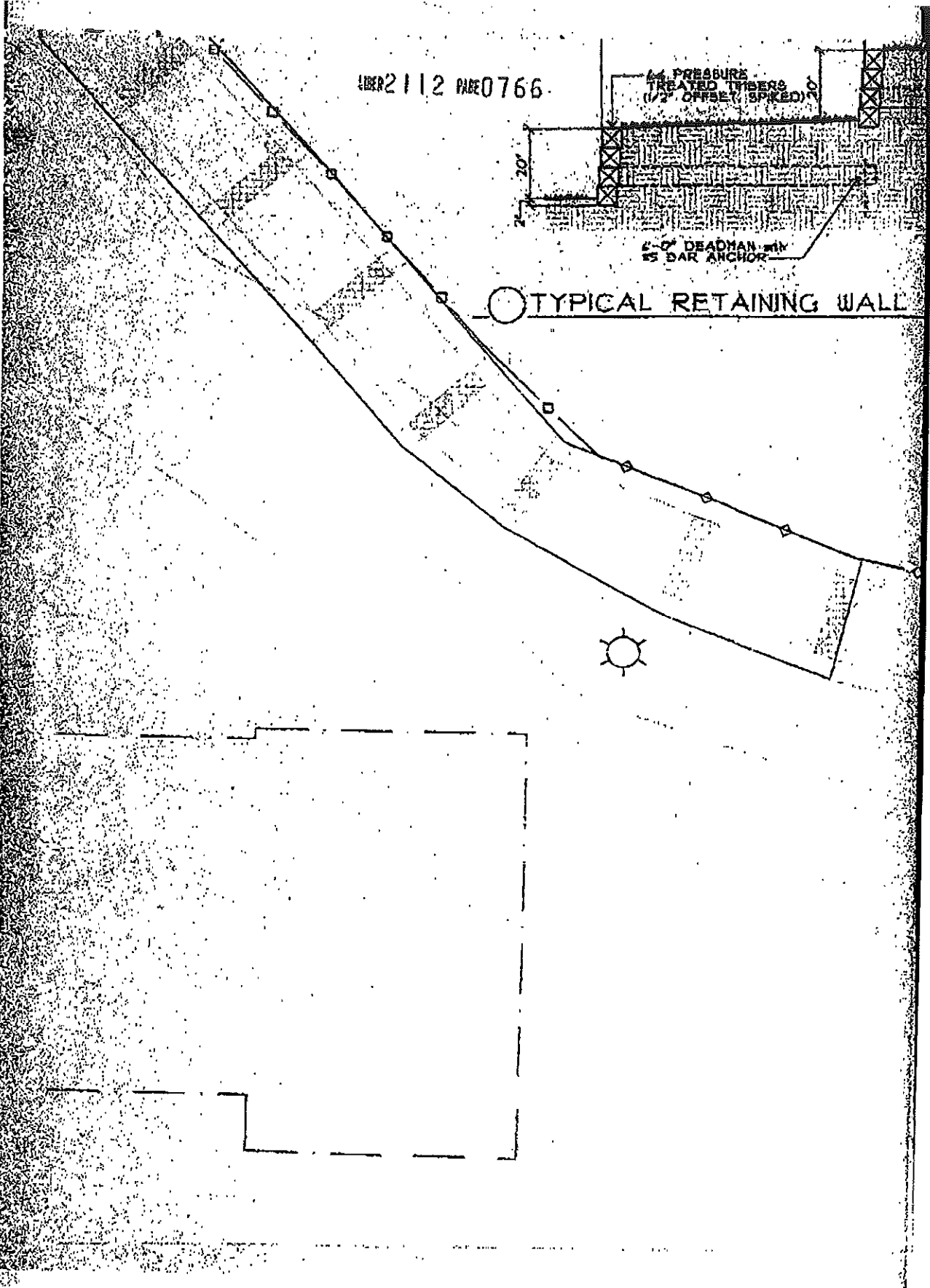
LIBER 2112 PAGE 0766

4" PRESSURE TREATED TIMBERS (1/2" OFFSET, SPIKED)

2'-20"

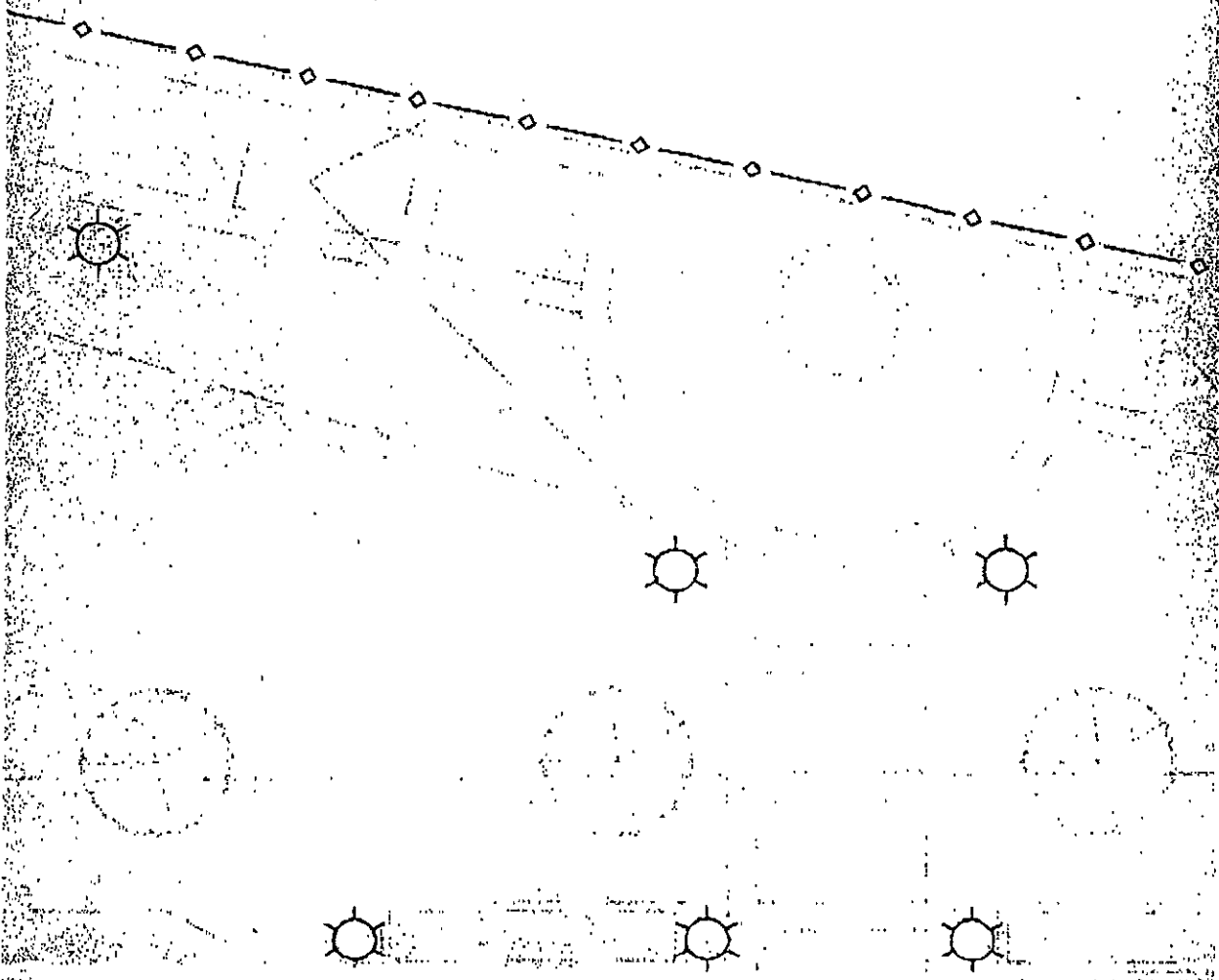
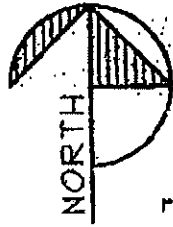
2" DEADMEN WITH 55 BAR ANCHOR

TYPICAL RETAINING WALL

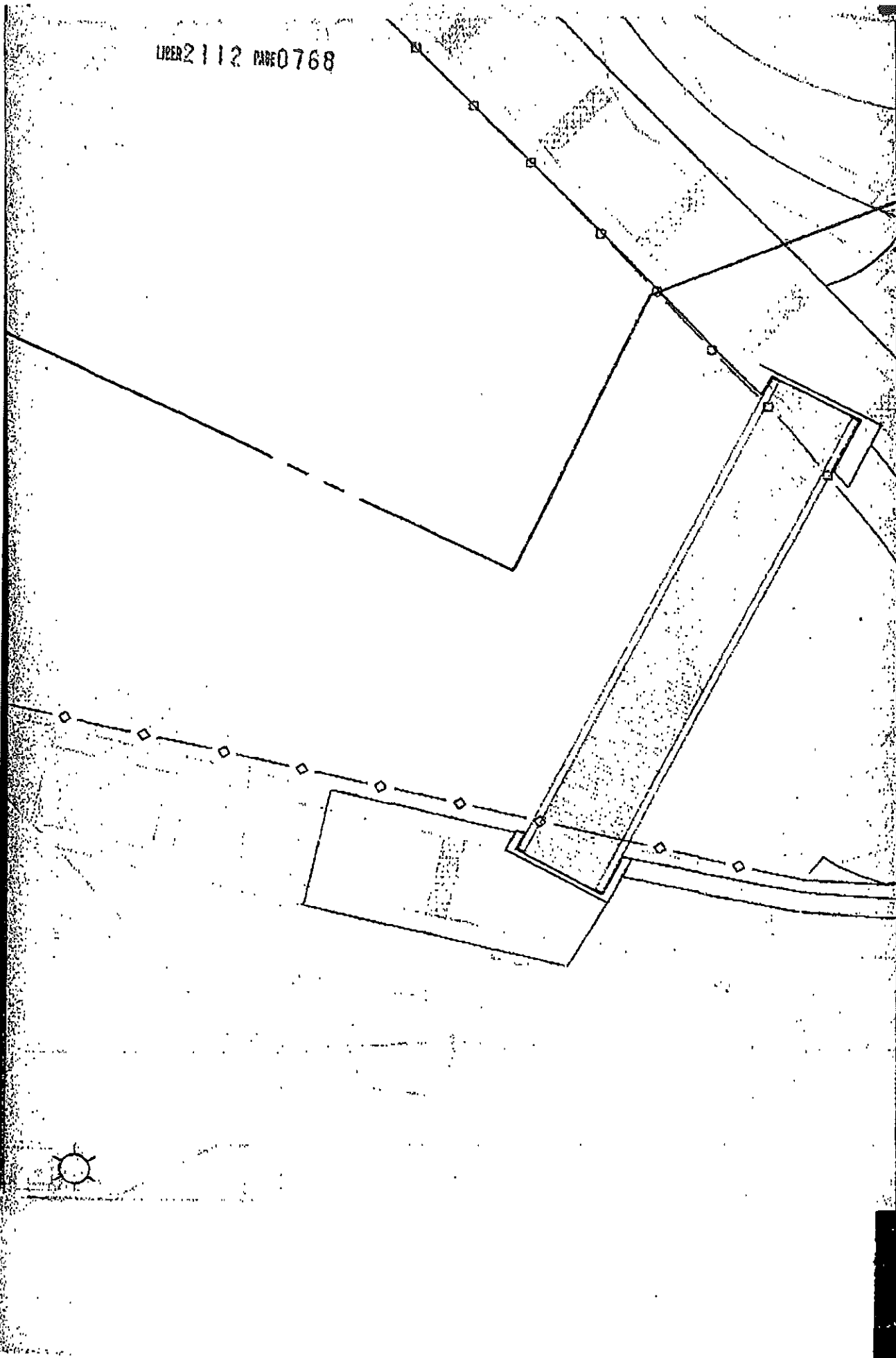


LIBR 2112 PAGE 0767

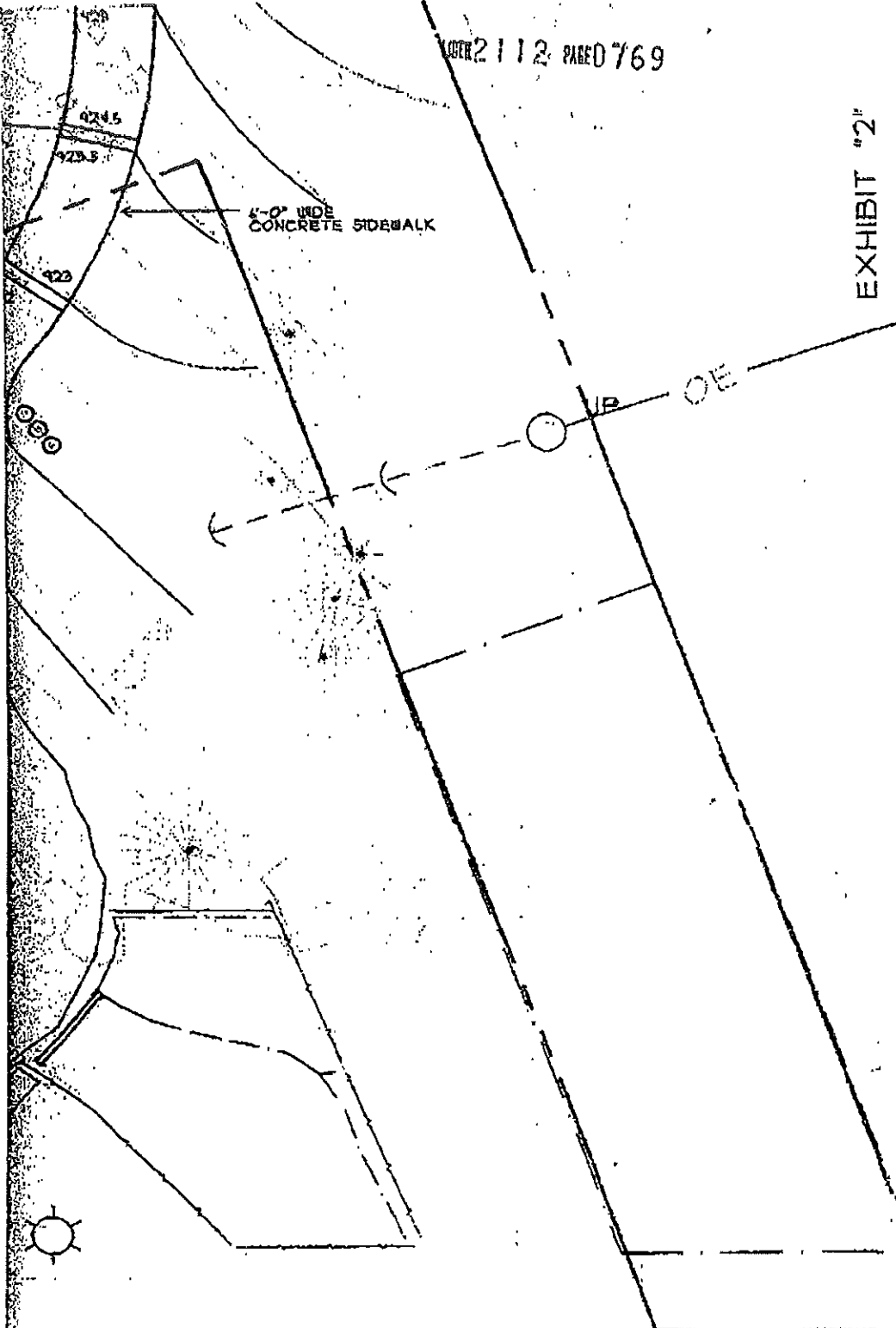
SECTION.



LICER2112 PAGE0768



BOOK 2112 PAGE 0769



MILLPOND PARK DEVELOPMENT for
CITY of BRIGHTON D.C.
 BRIGHTON, MICHIGAN
 AMPHITHEATER SEATING

<p>9' mjk 8' d 88' d</p>	<p>05-13-96 date</p>	<p>BULLETIN NO. 4 listed for</p>
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