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Fidelity National Title Company

438388

RECORDING REQUESTED BY:

Mercy Housing California XXXIX
A Limited Partnership
3120 Freeboard Drive, Suite 202
West Sacramento, California 95691

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826
Attention: Steven R. Becker, P.G.
Supervising Senior Engineering Geologist
San Joaquin & Legacy Landfills Office
Brownfields & Environmental Restoration Program

Doc #: 2010-131794
Thu Oct 07 07:17:04 PDT 2010
Page: 1 of 23 Fee: \$79.00
Kenneth W Blakemore
San Joaquin County Recorders
Paid By: FIDELITY NATL TITLE INS CO



ACCOMMODATION ONLY
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TITLE COMPANY IS AN ACCOMMODATION ONLY.
IT HAS NOT BEEN EXAMINED AS TO ITS EXECU-
TION, OR AS TO ITS EFFECTS UPON TITLE.

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: County of San Joaquin APN(s) 149-261-09 through -17 and 149-262-01 through -19, Gleason Park Apartments, and DTSC site code number 102016)

This Covenant and Agreement ("Covenant") is made by and between Mercy Housing California XXXIX, a Limited Partnership (the "Covenantor"), the current owner of property situated in Stockton, County of San Joaquin, State of California, described in Exhibit "A" and depicted in Exhibit "B," attached, (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5, that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I STATEMENT OF FACTS

1.01. The Property, totaling approximately 3.5 acres is more particularly described and depicted in the attached Exhibits "A" and "B". The Property is located in the area now generally bounded by East Church Street on the South, South American Street on the West, South Stanislaus Street on the East, and East Lafayette Street on

the north. A parcel not included in this Property is located between the Property's northern boundary and East Lafayette Street. The Property is also generally described as San Joaquin County Assessor's Parcel No.(s): 149-261-09 through -17 and 149-262-01 through -19.

1.02. The Property has been assessed by the Department under a Voluntary Cleanup Agreement (Docket No. HSA-VCA 09/10 – 005) with the City of Stockton Economic Development Department in accordance with Health and Safety Code, division 20, chapter 6.8 under the oversight of the Department. The Preliminary Endangerment Assessment (PEA) including a Health Risk Assessment (HRA) were submitted and reviewed under the following titled documents: Phase I Environmental Site Assessment, Gleason Park Property, Raney Geotechnical, September 8, 2008; Phase II Environmental Site Assessment – Soil Sampling And Analytical Testing, Gleason Park Property, Raney Geotechnical, October 10, 2008; Update Phase I Environmental Site Assessment, Gleason Park Property, Raney Geotechnical, May 28, 2009; Draft PEA, Gleason Park Property, Raney Geotechnical, December 23, 2009; HRA, Gleason Park Property, ERM-West, Incorporated, December 16, 2009; and, Addendum To Draft PEA, Gleason Park Property, March 8, 2010 including the Revised Lead Human Health Screening Risk Assessment for Restricted Land Use, Gleason Park Property, ERM, March 5, 2010. The documents listed above were reviewed as a PEA equivalent report. The PEA equivalent report was approved by the Department on March 23, 2010. The PEA equivalent report and HRA requires a Covenant as part of the site remediation, because lead, which is a hazardous substance, as defined in Health and Safety Code section 25316, and a hazardous material as defined in Health and Safety Code section 25260, remain above unrestricted cleanup goals at depths of 9 feet or more below the surface of the Property.

1.03. As detailed in the Addendum to Draft Preliminary Endangerment Assessment and the Revised Lead Human Health Screening Risk Assessment for Restricted Land Use approved by the Department on March 23, 2010, all or a portion of the surface and subsurface soils within 10 feet of the surface of the Property contain hazardous substances, as defined in Health and Safety Code section 25316, which include the following contaminants of concern in the ranges set forth below: lead . Statistics based upon samples collected for PEA equivalent report purposes indicated the following: 103 samples collected; Concentration range detected equaled 3.2 – 310 milligrams of lead per kilogram of soil (i.e. parts per million, ppm); Mean, or average lead concentration, equaled 93.2 ppm; the 95th Upper Confidence Limit (UCL) of the arithmetic mean equaled 125 ppm; The 95th UCL (i.e. 125 ppm) is less than the California Human Health Screening Level (CHHSL) advisory concentration for use as commercial property (i.e. 320 ppm lead) but greater than the current (Revised CHHSL For Lead issued by California Environmental Protection Agency dated September 2009) residential land use advisory number of 80 ppm (prior to September the CHHSL residential advisory number was 150 ppm). Based on the proposed land use restrictions found in the Addendum to Draft Preliminary Endangerment Assessment, and the Revised Lead Human Health Screening Risk Assessment for Restricted Land Use which used the current Revised California Human Health Screening Levels For Lead, the Department concluded that use of the Property for high density residential use (i.e.

multi-family residences) would be acceptable based upon compliance with a Department approved Soil Management Plan. The Department approved the Soil Management dated April 21, 2010 (April 2010 Soil Management Plan). The April 2010 Soil Management Plan identifies that produce gardening at the site is prohibited. This prohibition is due to the fact that lead left at the site can be a source of exposure to residents via uptake through produce root system, thereby exposing residences to lead in the soil.

Groundwater is found at 30 feet below ground surface at a site located approximately 250 feet northwest of the Property. Three soil samples collected from the Property containing lead at concentrations ranging from 140 – 250 ppm were subject to Waste Extraction Testing (WET) analyses. The corresponding results ranged from 6.4 - 10.0 milligrams per liter (ppm). The highest WET result soil sample (i.e. 10 ppm) was analyzed for soil pH and additional WET analysis using deionized water. The pH value was 7.7 (near neutral, 7.0 being neutral) and the deionized water WET result was less than 0.10 ppm. Given these results it appears that the lead concentrations in soil at the Property do not pose a threat to groundwater.

1.04. Exhibit C is a diagram of the proposed Landscape Planting Plan (Planting Plan) for the proposed Property development. The first of ten diagrams that make up Exhibit C identifies the site proposed Planting Plan. The letters A through I located on the first diagram identify the additional nine Exhibit C diagrams that are sections of the general diagram enlarged to 8.5" x 11" size diagrams.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, and all successors in interest including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed.

This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.04. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.05. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering the Covenant.

ARTICLE IV
RESTRICTIONS AND REQUIREMENTS

4.01. Soil Management Plan (SMP). Management of property soils requires compliance with the following:

- (a) No activities that will disturb the soil at or below grade (e.g., excavation, grading, removal, trenching, filling, earth

movement, mining, or drilling) shall be allowed on the Property without complying with the approved April 2010 SMP.

- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) All areas as depicted in Exhibit C including landscaped areas are subject to the approved April 2010 SMP.

4.02. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Use of Property soils for growing fruits or vegetables.

4.03. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.04. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant, and shall submit an annual inspection report to the Department for its approval by (January 15th) of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual inspection report (e.g., drive by, fly over, walk in, etc.). The annual inspection report shall also describe how Exhibit C corresponds to the actual landscaping of the final development. In addition, the annual inspection report shall describe how the April 2010 SMP is being complied with and implemented, including notifications to tenants, construction and landscape workers. If violations are noted, the annual inspection report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within (30 days) of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant, and demand that the violation cease immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department within **(30 days)** of its original transmission.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02. Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03. Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Joaquin within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Mercy Housing California
3120 Freeboard Drive, Suite 202
West Sacramento, California 95691
Attention: Wendy Saca or Stephan Daues
Project Developer

and

To Department:

Department of Toxic Substances Control
Brownfields and Environmental Restoration Program
8800 Cal Center Drive
Sacramento, California 95826
Attention: Allen Wolfenden
Performance Manager
San Joaquin and Legacy Landfills Office
Brownfields and Environmental Restoration Program

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

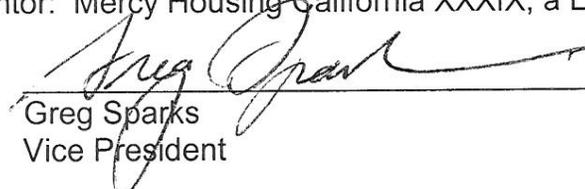
7.04. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05. Statutory References. All statutory references include successor provisions.

7.06. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

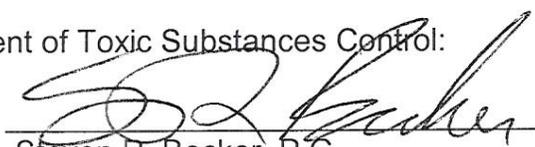
IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Mercy Housing California XXXIX, a Limited Partnership

By: 
Title: Greg Sparks
Vice President

Date: July 13, 2010

Department of Toxic Substances Control:

By: 
Title: Steven R. Becker, P.G.
Supervising Senior Engineering Geologist
San Joaquin and Legacy Landfills Office
Brownfields and Environmental Restoration Program

Date: September 7, 2010

**California
All-Purpose Acknowledgment**

State of California

County of Sacramento } SS.

On September 7, 2010 before me, Florence L. Howard, Notary,
personally appeared Steven R. Becker, P. G.

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Florence L. Howard
Signature of Notary Public



My commission expires on:

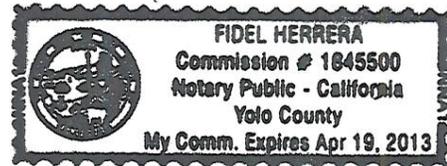
Phone No.: (916) 255-1689

State of California
County of Yolo

On July 13, 2010 before me, Fidel Herrera, Notary Public

(space above this line is for name and title of the officer/notary),
personally appeared Greg Sparks, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they
executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) 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,



 (seal)
Signature of Notary Public

EXHIBIT A

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

All that certain real property located in the County of San Joaquin, State of California, described as follows:

PARCEL THREE:

Portions of American Street and Sonora Street, and a portion of Blocks 43 and 52, as shown on that certain Map entitled, East of Center, according to the Official Map of the City of Stockton, described as follows:

Commencing at the southeasterly corner of Block 42, East of Center, said corner bearing North 78°20'47" East from the southwesterly corner of said Block 42; thence northerly along the east line of said Block 42, North 11°40'42" West 151.66 feet to a point at the midpoint on said east line of Block 42, said midpoint being the POINT OF BEGINNING; thence leaving said east line and continuing easterly, North 78°21'00" East 80.80 feet to a point at the midpoint on the west line of said Block 43; thence continuing easterly, North 78°21'00" East 303.14 feet to a point at the midpoint on the east line of said Block 43, said point also being on the west line of said Stanislaus Street; thence southerly along said east line of Block 43 and said west line of Stanislaus Street and the extensions thereof running along the east line Block 52, South 11°42'33" East 515.86 feet, to the southeasterly corner of said Block 52, said corner also being at the intersection of said west line of Stanislaus Street and the north line of Church Street; thence westerly along the south line of said Block 52 and along the north line of said Church Street, South 78°23'03" West 303.42 feet, to the southwesterly corner of Block 52, said corner also being at the intersection of said north line of Church Street and the east line of said American Street; thence continuing westerly along the projected north line of said Church Street, South 78°23'03" West 40.40 feet to the intersection of said north line of Church Street with the centerline of said American Street; thence northerly along said centerline of American Street, North 11°40'40" West 296.84 feet to a point on the southerly boundary of that certain 0.61 acre parcel of land described in deed to Visionary Home Builders of California, recorded as Document Number 2008-022308, San Joaquin County Records; thence continuing in a counter-clockwise direction along said 0.61 acre parcel boundary, through the following four (4) courses:

(1) thence continuing in an easterly direction along a curve concave to the west, said curve having a beginning radial bearing of North 19°25'16" West, a radius of 35.50 feet, an arc length of 82.59 feet and a central angle of 133°17'50" to the beginning of a reverse curve;

(2) thence continuing along said reverse curve being concave to the northeast and having a radius of 19.50 feet, an arc length of 17.37 feet and a central angle of 51°02'24";

(3) thence North 11°40'42" West 90.31 feet;

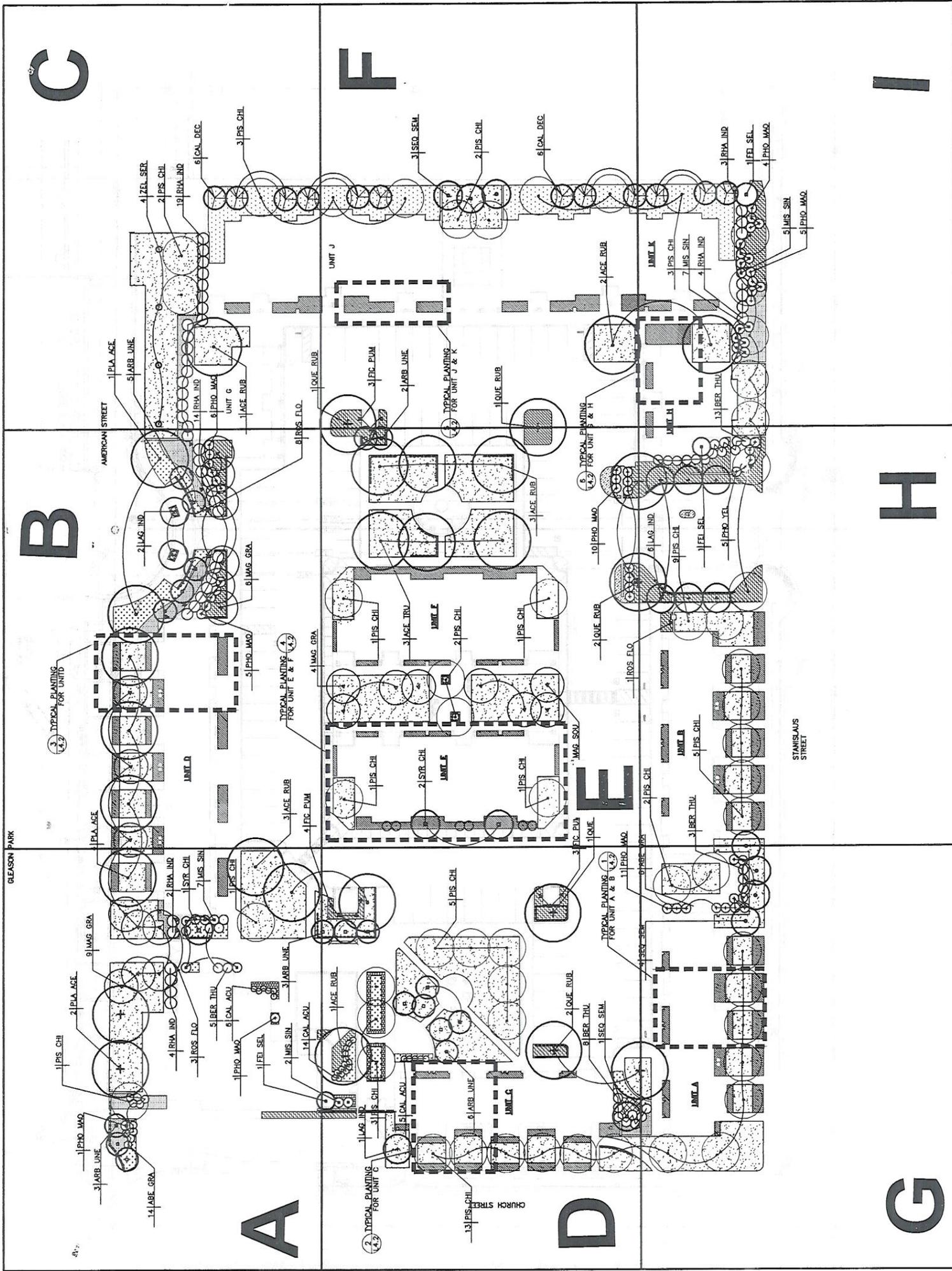
(4) thence South 78°22'00" West 50.70 feet to a point on the east line of Block 42;

thence leaving said 0.61 acre parcel boundary and northerly along said east line of Block 42, North 11°40'42" West 50.53 feet, more or less, to the POINT OF BEGINNING of the herein described parcel.

Being Parcel 2 Lot Merger (NLM 09-02) recorded April 21, 2009, Instrument No. 2009-59485, Official Records.

EXHIBIT B

EXHIBIT C



C

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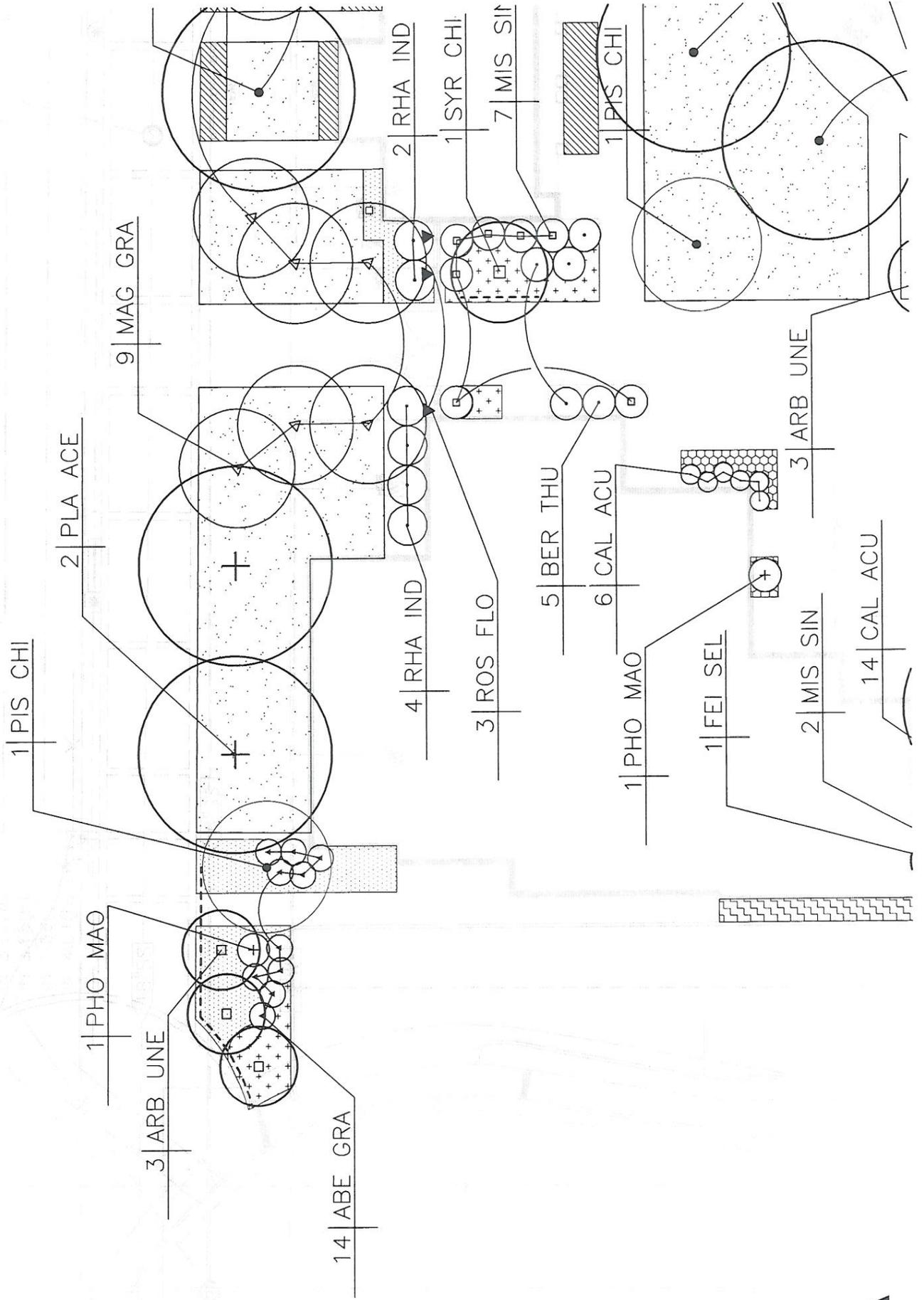
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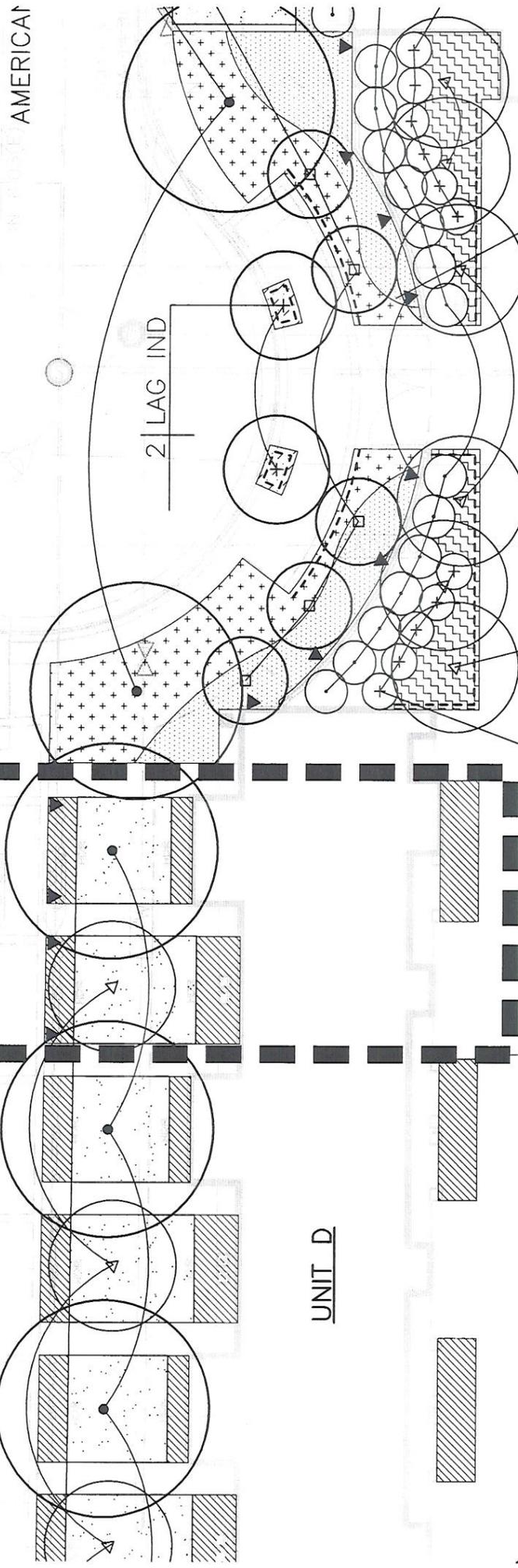


B

SONORA STREET

3 TYPICAL PLANTING FOR UNITD FOR UNITD
L4.2

PLA ACE



UNIT D

3 ACE RUB

4 FIC PUM

4 TYPICAL PLANTING FOR UNIT E & F L4.2

4 MAG GRA

5 PHO MAO

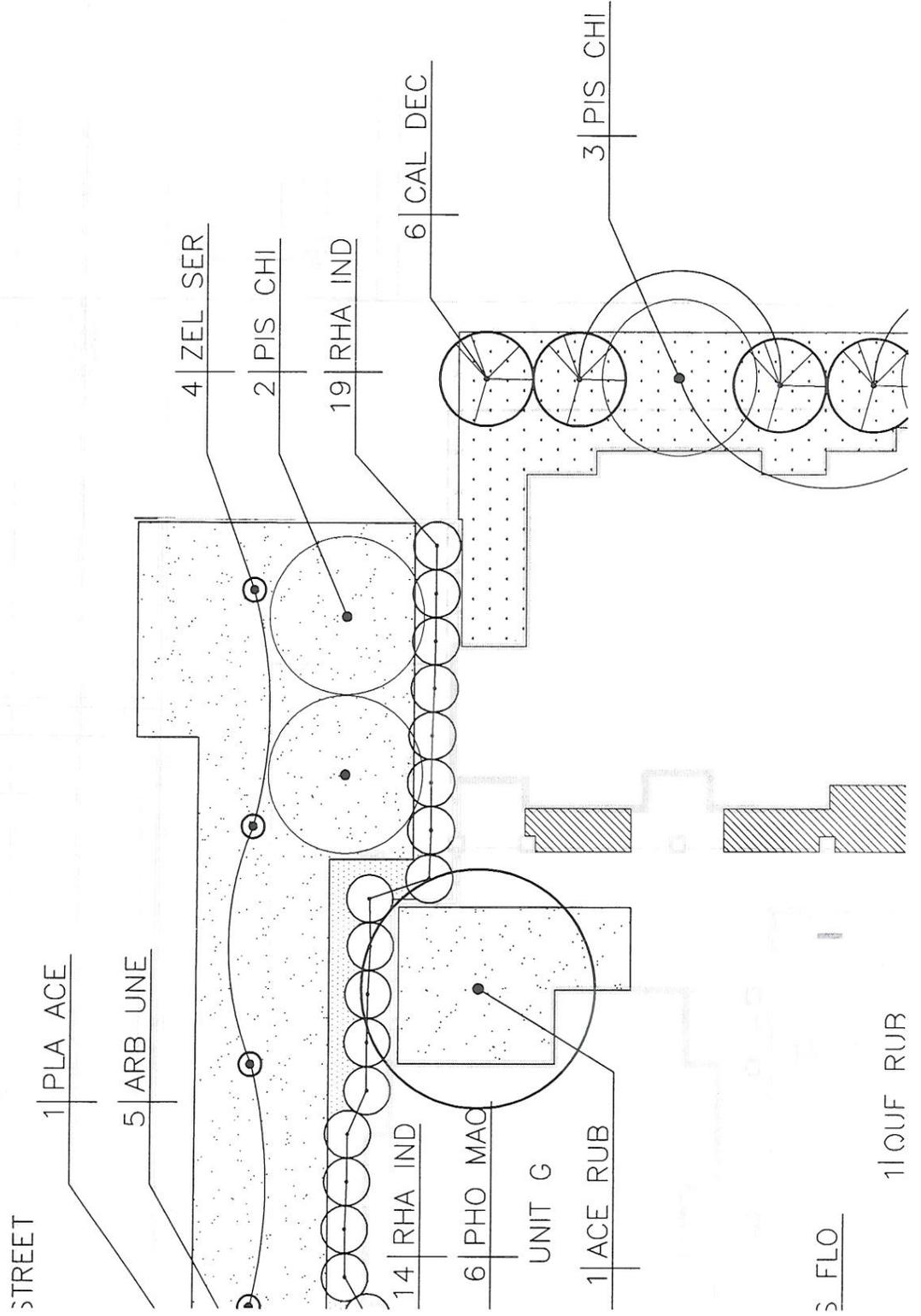
6 MAG GRA

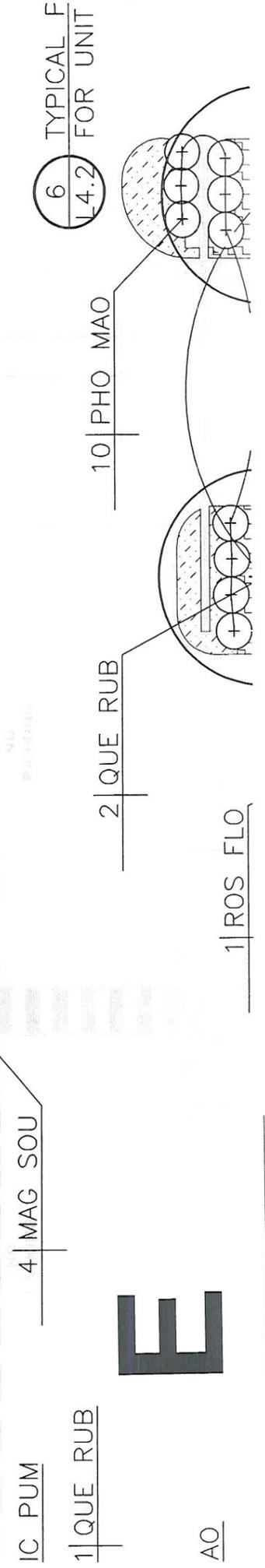
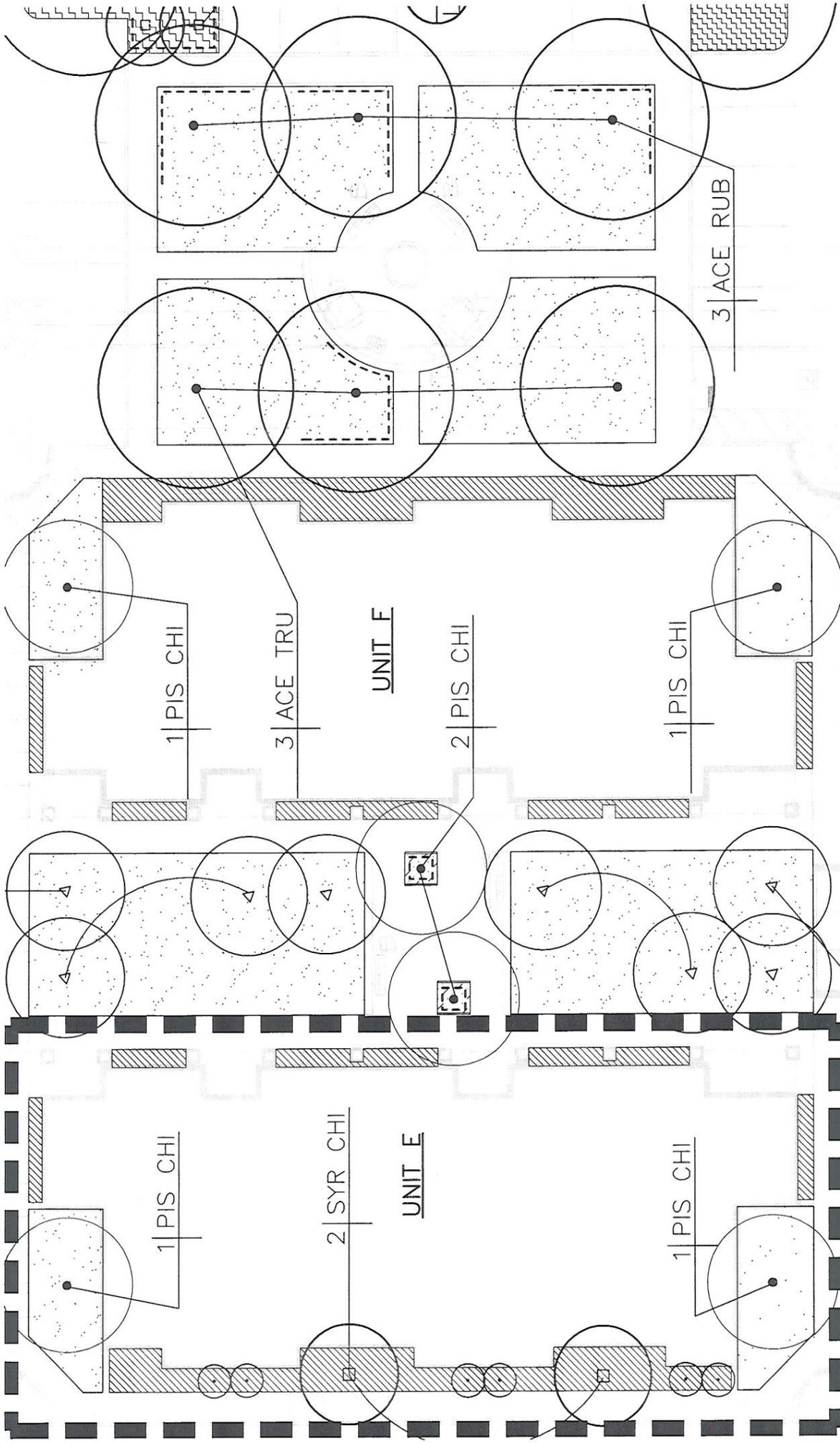
2 LAG IND

AMERICAN

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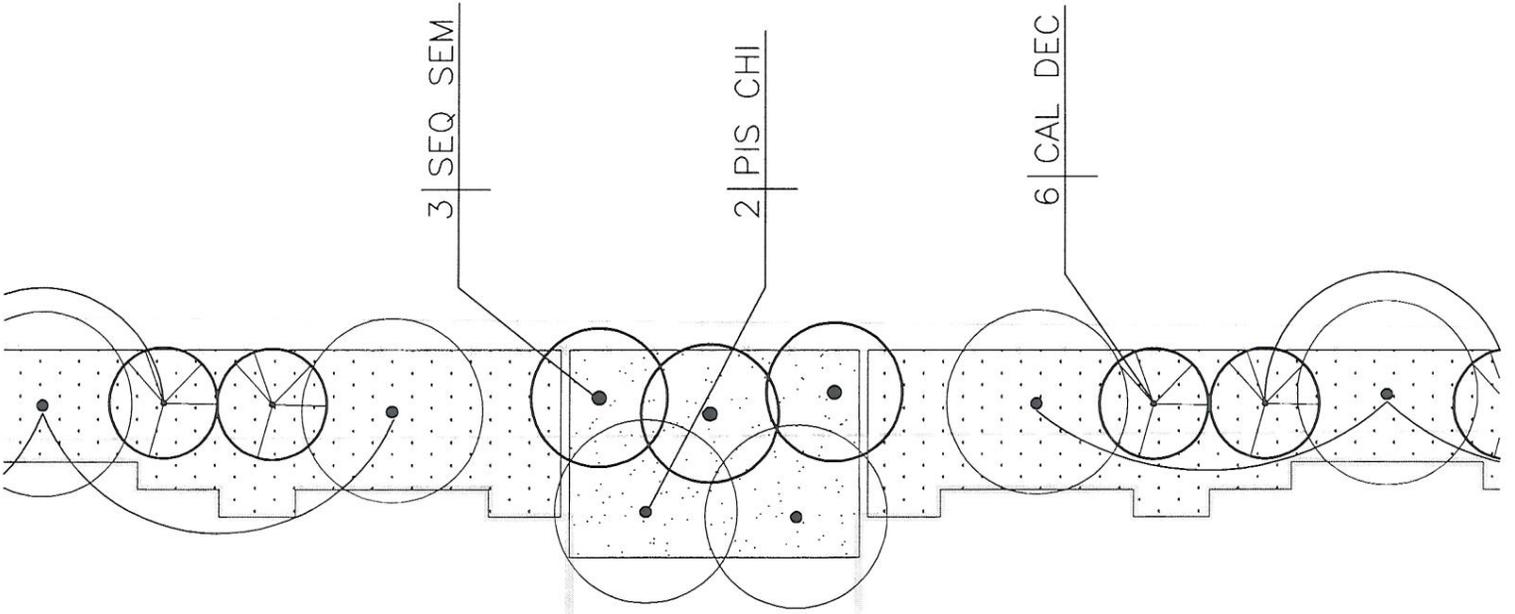




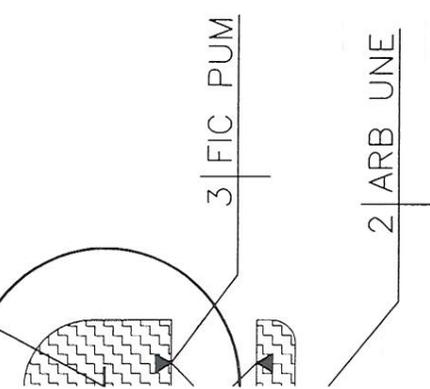
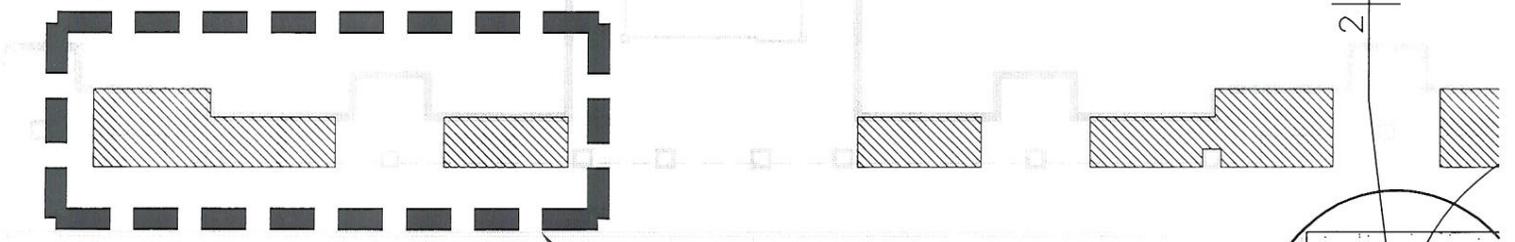
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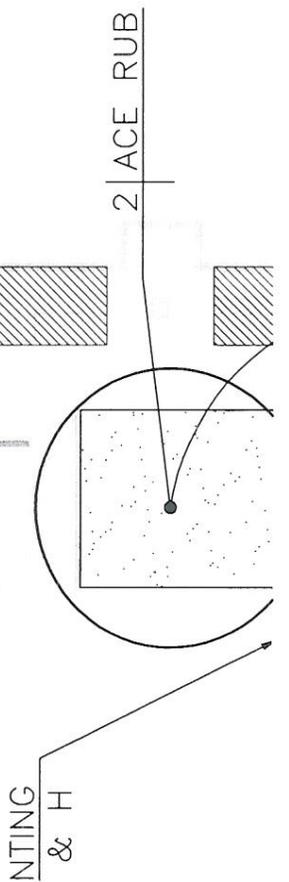
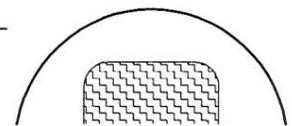


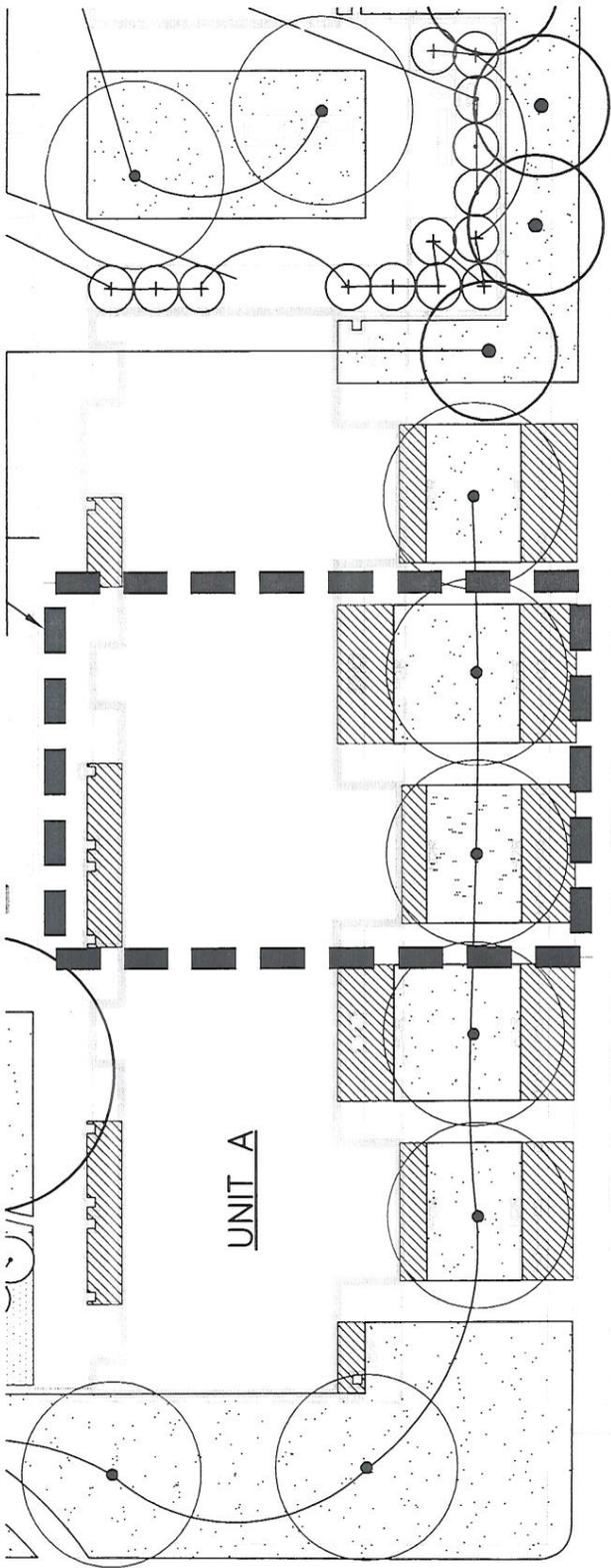
UNIT J

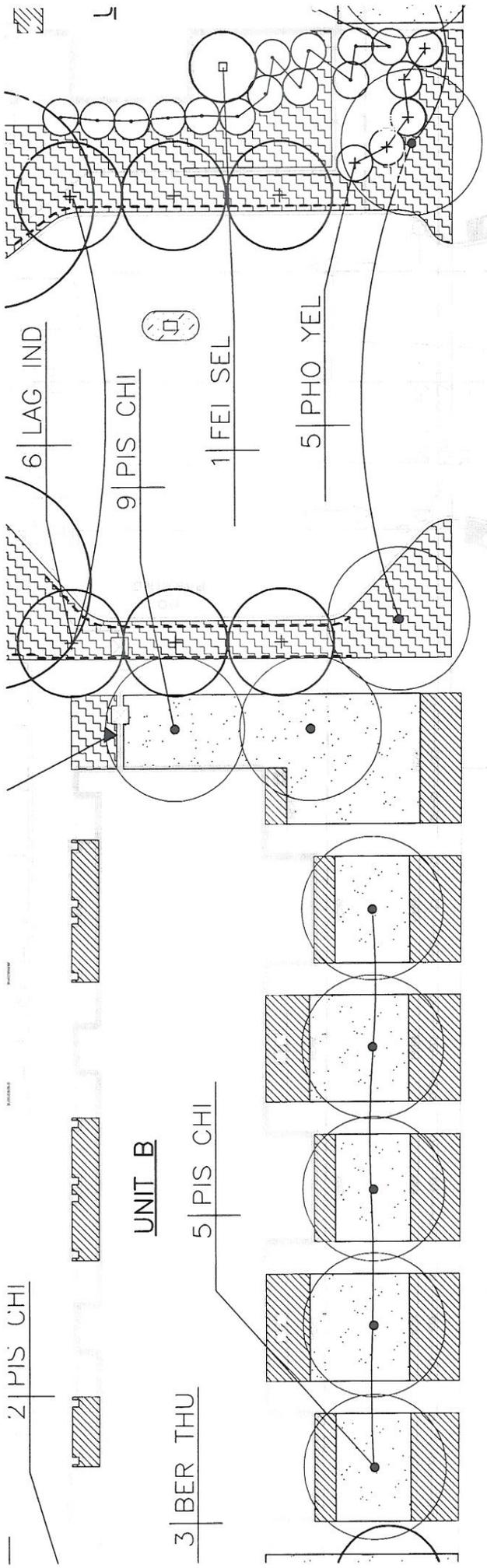


TYPICAL PLANTING FOR UNIT J & K

1 QUE RUB







STANISLAUS
STREET

H