

**INDEMNIFICATION AND MAINTENANCE COVENANT AGREEMENT
RELATED TO USE OF EASEMENT
(Symphony Towers)**

This INDEMNIFICATION AND MAINTENANCE COVENANT AGREEMENT RELATED TO USE OF EASEMENT (the “**Agreement**”) is entered into as of this ___ day of December, 2008, by and between THE CITY OF COSTA MESA, a California municipal corporation (the “**City**”) and RREEF AMERICA REIT II CORP. CCCC2, a Maryland corporation (“**RREEF**”).

RECITALS

A. RREEF is the owner of record of that certain real property located in the City of Costa Mesa, County of Orange, State of California and more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (hereinafter the “**Property**”).

B. City holds an approximately twenty (20)-foot wide easement for storm drain purposes under and through a portion of the Property as shown and dedicated to City on the map of Tract No. 10950, attached hereto as **Exhibit B** and incorporated herein by this reference (hereinafter the “**Easement**”). City currently owns and maintains an approximately 54-inch diameter subterranean storm drain pipeline (the “**Storm Drain**”) within the Easement.

C. The City Council granted approval for development of a parking structure and related facilities upon the by action taken on January 16, 2007, Resolutions No. 07-7, 07-8 and 07-11, approving Preliminary Master Plan PA-05-47 (hereinafter the “**Development**”).

D. As part of the application for a Final Master Plan, RREEF requested that it be authorized to construct and maintain a parking structure and related facilities (hereinafter, the “**Parking Structure**”) over and upon said Easement in the approximate location as described in **Exhibit C** attached hereto and incorporated herein by this reference, as said area may be revised in accordance with this Agreement (hereinafter the “**Parking Structure Portion of the Easement Area**”). Said application also included a request to connect RREEF’s storm drainage system to the City’s storm drainage system by means of RREEF’s privately owned lateral drains (the “**Laterals**”), which are to serve the Property and other adjacent real property.

E. In exchange for granting RREEF authorization to construct and maintain the Parking Structure over and upon the Parking Structure Portion of the Easement Area and to connect the Laterals to the City’s storm drain system, City requires RREEF to enter into this Agreement.

F. This Agreement is solely intended for the protection and well-being of the City’s existing storm drain system within said easement. This Agreement is in no way associated with or in reference to other easements not owned by the City that may be affected by RREEF’s parking structure and/or related facilities construction.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises contained herein, the parties agree as follows:

1. RREEF's Right to Construct and Maintain Parking Structure Over and Upon the Parking Structure Portion of the Easement Area. City hereby grants to RREEF the right to construct, maintain, repair, reconstruct, and replace the Parking Structure over and upon the Parking Structure Portion of the Easement Area. Not by way of limitation of the foregoing, City reserves the right to approve the final plans and specifications for the Parking Structure in order to assure City that (i) the Parking Structure will not jeopardize the physical integrity of the Storm Drain and (ii) RREEF and City will be able to obtain reasonable access to the Storm Drain in order to perform maintenance and repair activities.

Notwithstanding Recital D and Exhibit C to this Agreement, it is understood that the Parking Structure Portion of the Easement Area shall mean the portion of the Easement upon and over which the Parking Structure is actually constructed and maintained, which for purposes of this Agreement shall be the area within the Easement between and including the manholes to be constructed by RREEF at either end of the Parking Structure within the Easement in accordance with Paragraph 3 below. In the event of any conflict between the actual location of the Parking Structure Portion of the Easement Area as reflected on Exhibit C to this Agreement and the location of the Parking Structure Portion of the Easement Area as actually constructed and determined in accordance with this Paragraph 1, the language of this Paragraph shall control.

2. Indemnification. RREEF shall defend, indemnify and hold harmless City and its elected and appointed boards, officers, agents and employees from and against any and all claims, liabilities, and losses of any nature whatsoever, including reasonable attorneys' fees and costs, for damage to property or persons, including death, arising out of or in any way connected with:

- a. The construction, connection, use, maintenance, reconstruction, replacement or operation of said Laterals;
- b. Rain or surface water, including any type of pollutant contained therein, deposited or retained upon the Property due to any failure of the Laterals, the connections to the City's storm drain and/or the portion of the public storm drain system located within the Parking Structure and any extension thereof for twenty (20) feet beyond the footprint of any building or structure to function as planned and/or intended;
- c. The discharge of any type of pollutant from the Property to the City's storm drain facilities, which discharge is not in material compliance with the requirements of the Water Quality Management Plan; and
- d. Any failure or collapse of or damage to the City's storm drain facilities over which the said Parking Structure is constructed or which are located in the vicinity of said Parking Structure. In the event of any such failure, collapse or damage, RREEF, in addition to defending, indemnifying and

holding the City harmless, shall also reimburse the City for all its costs, direct and indirect, to reconstruct said storm drain facilities.

The aforesaid indemnity obligation shall apply regardless of the fault or negligence of the indemnitor or indemnitees, excepting only that said indemnity obligation shall not apply if the claim, liability, or loss arises out of the sole, active negligence of the City.

Nothing in this Agreement is intended to transfer to the City or otherwise release RREEF or its respective successors and assigns from any liability which any of them may now or in the future have under federal, state or local laws or regulations relating to the discharge or release of any type of pollutant from or onto the Property, whether or not such discharge or release is in compliance with the Water Quality Management Plan or any other City requirement.

3. Maintenance and Repair of Easement. In consideration for City's authorizing RREEF to construct and maintain the Parking Structure within the Parking Structure Portion of the Easement Area pursuant to this Agreement, RREEF shall take all steps to maintain, repair, reconstruct, and replace (when reasonably necessary at the City's sole discretion), those storm drain facilities of the City, including, but not limited to, the existing 54-inch Reinforced Concrete Pipe storm drain, located within the Parking Structure Portion of the Easement Area. This maintenance and repair obligation shall include said Parking Structure Portion of the Easement Area and their extension for 20 feet beyond the footprint of any building or structure. Such maintenance and repair obligation shall include the obligation to maintain, repair, reconstruct, and replace (when reasonably necessary at the City's sole discretion) any screenwalls located within or immediately adjacent to the Storm Drain within the Parking Structure Portion of the Easement Area.

All such work shall be performed to City standards, as determined by City's Public Works Director or his/her designee. RREEF shall construct and maintain a manhole at either end of the Parking Structure Portion of the Easement Area that provides access to the Storm Drain. At least once per year, RREEF shall cause the entire portion of the Storm Drain within the Parking Structure Portion of the Easement Area to be visually inspected. Within thirty (30) days following said annual inspection, RREEF shall provide a report to the City's Public Works Director, or his designee regarding the condition of the storm drain and associated facilities including, but not limited to whether the inspection indicates that either routine or non-routine maintenance or repair work should be performed and which also identifies routine or non-routine maintenance or repair work which has been performed during the preceding year.

4. City's Right to Perform Maintenance and Repair Work. If RREEF does not timely perform its obligations under Paragraph 3 of this Agreement to maintain, repair, reconstruct, or replace (when reasonably necessary at the City's sole discretion) the Storm Drain and related facilities within the Parking Structure Portion of the Easement Area after its receipt of written notice from City and a reasonable opportunity to cure its default, then City shall have the right to enter onto the Parking Structure Portion of the Easement Area and perform such work at RREEF's expense. In addition, at any time that City determines that an emergency

condition exists, City reserves the right to enter onto the Parking Structure Portion of the Easement Area without notice to RREEF to perform such work as City may determine is necessary to protect the public health and safety or to preserve its facilities. In either such event, City shall take steps reasonably necessary to minimize damage to the Parking Structure; however, RREEF is responsible for damage to the Parking Structure in the event City, while exercising reasonable care to access the Storm Drain, damages the Parking Structure.

5. Screenwalls. Wherever screenwalls are located within or immediately adjacent to the existing public storm drain facilities on Property, RREEF shall bear the cost of reconstructing the walls in the event the City removes them or they are damaged due to City's maintenance operations on the public storm drain facilities on the Property.

6. Mitigation Monitoring and Reporting Program Requirements. RREEF shall implement and comply with all requirements set forth in the City-approved Mitigation Monitoring and Reporting Program, including without limitation Mitigation Measures Water Quality Condition No. 2, which requires implementation of any compliance with "Best Management Practices" identified in the City-approved Water Quality Management Plan applicable to the Property.

7. Successors and Assigns; Limitation on RREEF's Rights and Obligations. This Agreement and the covenants made herein shall inure to the benefit of and be binding on the successors, assigns, heirs and legal representatives (collectively, the "Successors") of the parties hereto. Upon the transfer or assignment by RREEF or any of its Successors of its or their interest in the Parking Structure Portion of the Easement Area, the rights and obligations of RREEF or such Successor hereunder automatically shall be transferred and assigned and the transferor or assignor shall be released from any further obligations hereunder as to City only. Unless RREEF or its Successor(s) have executed a separate agreement with RREEF, terminating any such obligation or liability as between RREEF and/or its Successor(s) and RREEF, any transfer or assignment shall not release RREEF and/or its Successor(s) from any liability or obligations as to RREEF with respect to occurrences, events, or omissions during the period of RREEF's or any of its Successor(s)' possession of the Property. Neither RREEF nor any Successor of RREEF shall assign its interest in the Parking Structure Portion of the Easement Area to any person or entity that does not have the financial capability of performing the transferor or assignor's obligations hereunder.

RREEF shall notify City of any such transfer or assignment within thirty (30) days of said transfer or assignment. Any Successor of RREEF shall execute a written acknowledgement consenting to the terms, conditions and obligations of this Agreement.

8. Covenants to Run. The parties hereby covenant and agree that this Agreement shall run with the land and be binding upon themselves, their successors, assigns, heirs and legal representatives and shall continue in effect for so long as (1) the Laterals remain connected to the City's storm drain system, (2) the Parking Structure remains located on or in the vicinity of the City's storm drain facilities; and/or (3) as to the obligations set forth in paragraph 6 only, the Mitigation Monitoring and Reporting Program remains in effect. The burden of the covenants herein shall be on the responsible party's interest in the Property, and the benefits shall run in

favor of the City. This Agreement shall be recorded against the Property in the records of the Recorder of Orange County.

9. Termination. RREEF or its Successor shall remove the subject Parking Structure from the Parking Structure Portion of the Easement Area within one hundred twenty (120) calendar days of written notification of termination of this Agreement by the City. The method of removal shall be subject to approval by the City Engineer. The City may terminate this Agreement only (i) upon a material breach of this Agreement by RREEF or a Successor of RREEF and the failure by RREEF or its Successor to cure said breach within a reasonable time after receipt of written notice from City that states the nature of the breach and the action required to be taken to cure said breach and/or (ii) if it is established that removal of the Parking Structure Portion of the Easement Area is required for the health, safety and necessity of the public. RREEF's or its Successor's failure to remove or modify the subject Parking Structure or any portion thereof, within the specified time will result in the City having the Parking Structure Portion of the Easement Area removed or modified at RREEF's or its Successor's sole cost and expense, plus administrative overhead costs.

10. Entire Agreement; Modifications in Writing. This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter set forth herein and supersedes all previous negotiations, discussions and agreements between the parties with respect to all or part of the subject matter hereof. This Agreement may be terminated or modified only by a written agreement executed by the parties hereto, or by their respective successors in interest.

11. Effective Date of Agreement. This Agreement shall become effective upon the date a duly executed and acknowledged original of this Agreement is recorded in the Official Records of the Recorder of Orange County.

12. Attorneys' Fees. In the event that any action or proceeding is brought arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees incurred both at trial and on appeal, including any necessary costs, expenses and expert fees.

[SIGNATURES FOLLOW ON NEXT PAGE]

EXECUTED in the County of Orange, State of California, as of the day and year first above written.

CITY OF COSTA MESA,
a municipal corporation

Dated: _____

By: _____
Mayor

ATTEST:

APPROVED AS TO FORM

By: _____
Deputy City Clerk

City Attorney

Dated: _____

RREEF AMERICA REIT II CORP.
CCCC2,
a Maryland corporation

By: _____
Its: _____

EXHIBIT A

Property Description

This certain real property located in the City of Costa Mesa, County of Orange, State of California, more particularly described as follows:

PARCEL 2 AND PARCEL 3, AS SHOWN ON THAT CERTAIN LOT LINE ADJUSTMENT MAP NO. 2005-04 RECORDED SEPTEMBER 19, 2005 AS INSTRUMENT NO. 2005000738604 AND RE-RECORDED SEPTEMBER 26, 2005 AS INSTRUMENT NO. 2005000758094, BOTH OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXHIBIT B

Recorded Easement

83-411938

SHEET 4 OF 8 SHEETS
SCALE: 1"=100'
ALL OF TENTATIVE
TRACT NO. 10950

TRACT NO. 10950

IN THE CITY OF COSTA MESA
COUNTY OF ORANGE
STATE OF CALIFORNIA

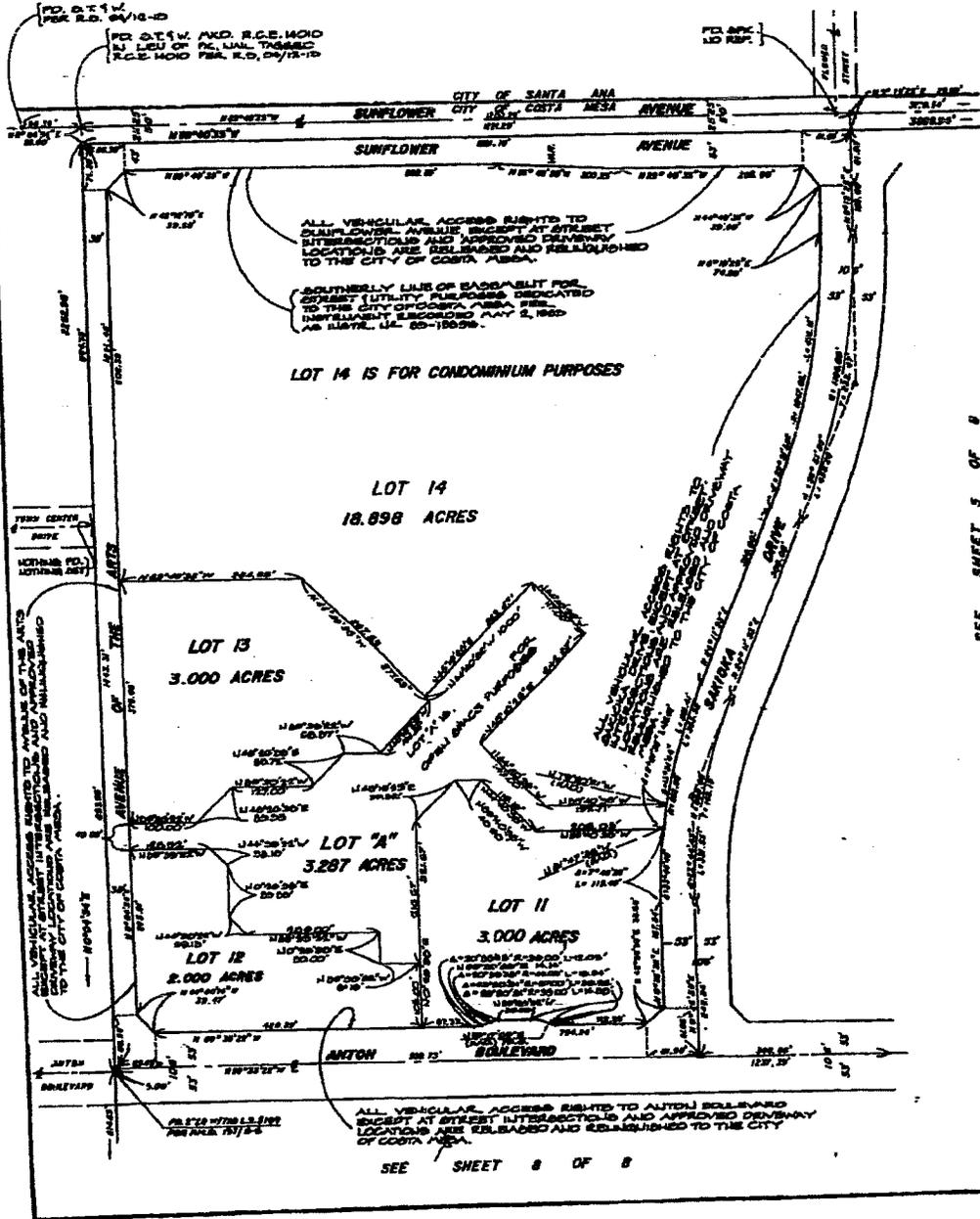
APPROVED FOR THE
CITY OF COSTA MESA
BY RESOLUTION NO. 10950
ORANGE COUNTY RECORDS
LIB. A. RECORDS County Recorder

PSOMAS AND ASSOCIATES
GEORGE R. PSOMAS L.S. 2304

162.616 ACRES (GROSS)



SEE SHEET 3 OF 8 SHEETS
FOR BASIS OF DEEDS AND
ADJUDICATION NOTES.



83-411938

SHEET 6 OF 8 SHEETS
SCALE: 1"=100'
ALL OF TENTATIVE
TRACT NO. 10950

TRACT NO. 10950

IN THE CITY OF COSTA MESA
COUNTY OF ORANGE
STATE OF CALIFORNIA

PHOMAS AND ASSOCIATES
GEORGE R. PHOMAS L.S. 2304

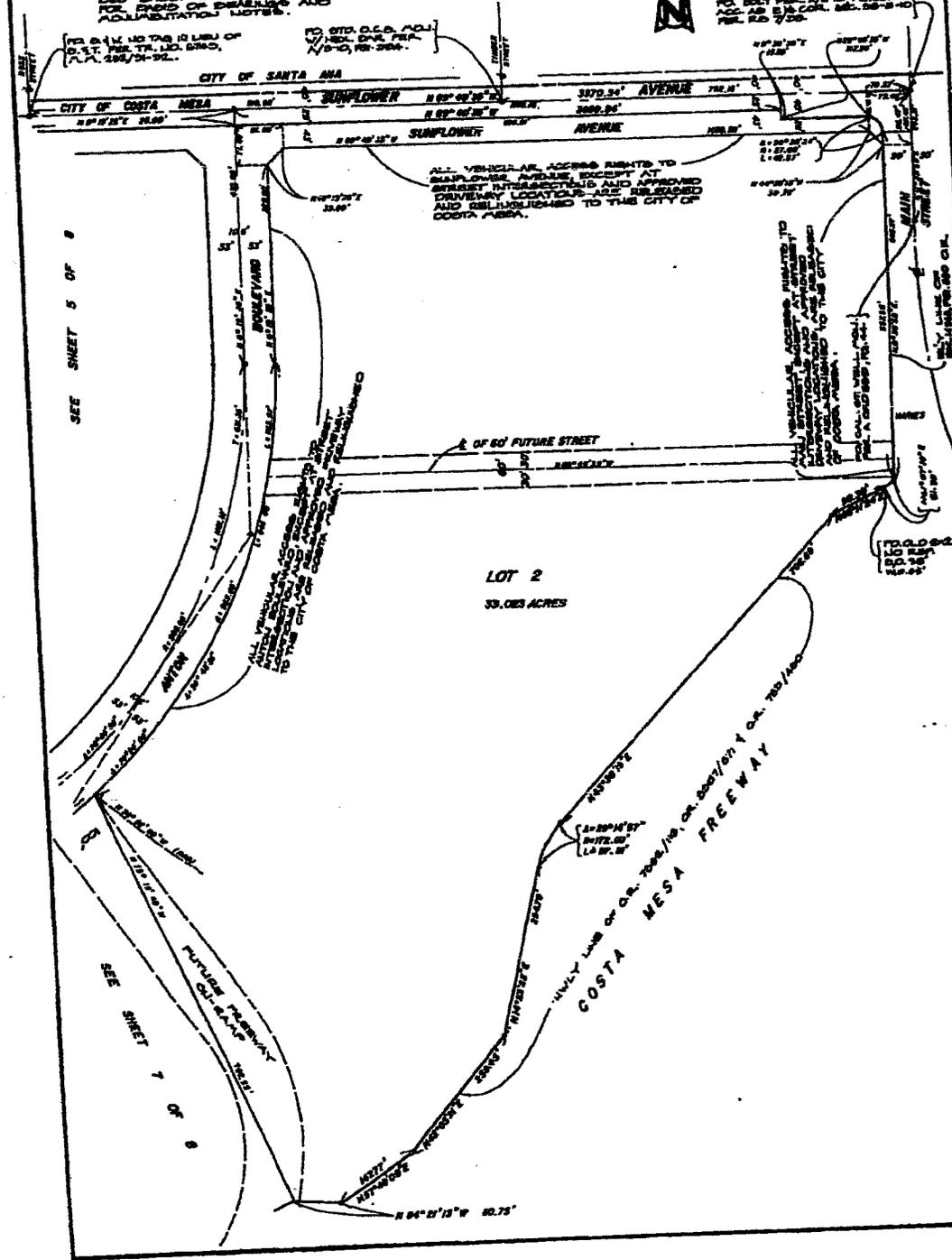
158.616 ACRES (GROSS)

SEE SHEET 5 OF 8 SHEETS
FOR BASIS OF ESTABLISHING AND
ADJUSTATION NOTES.

FOR S.A.M. NO. 128 IN LIEU OF
S.T. PER. TR. NO. 2380,
A.A. 288/24-25.

TO STD. C.C.S. NO. 1
NEED ONE PER.
1/2-10, PER. 2884.

TO BOLT PER. A/140, PER. 288
ACC. AS E.A. CON. SEC. 28-8-40
PER. RD 7/30.



SEE SHEET 5 OF 8

SEE SHEET 7 OF 8

SHEET 7 OF 8 SHEETS
SCALE: 1"=100'
ALL OF TENTATIVE
TRACT NO. 10950

TRACT NO. 10950

IN THE CITY OF COSTA MESA
COUNTY OF ORANGE
STATE OF CALIFORNIA

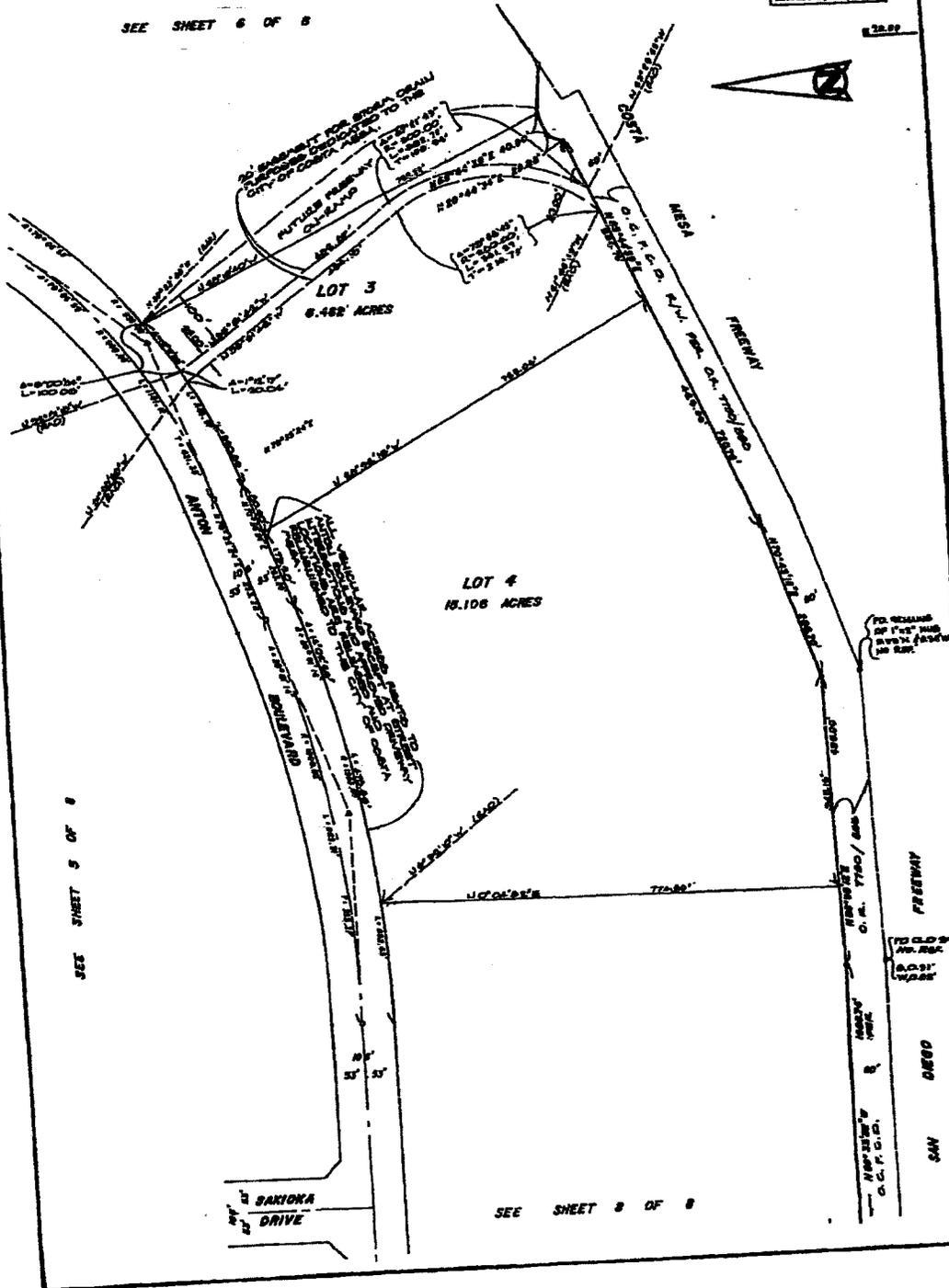
83-411938
168.616 ACRES (GROSS)

PSOMAS AND ASSOCIATES
GEORGE R. PSOMAS L.S. 2304

SEE SHEET 5 OF 8 SHEETS
FOR BASIS OF DEEDS AND
ADJACENT NOTES

RECORDED AND FILED
IN THE PUBLIC RECORDS
OF THE COUNTY OF ORANGE
CALIFORNIA
RECORDS SECTION
ON 04/11/2007

SEE SHEET 6 OF 8

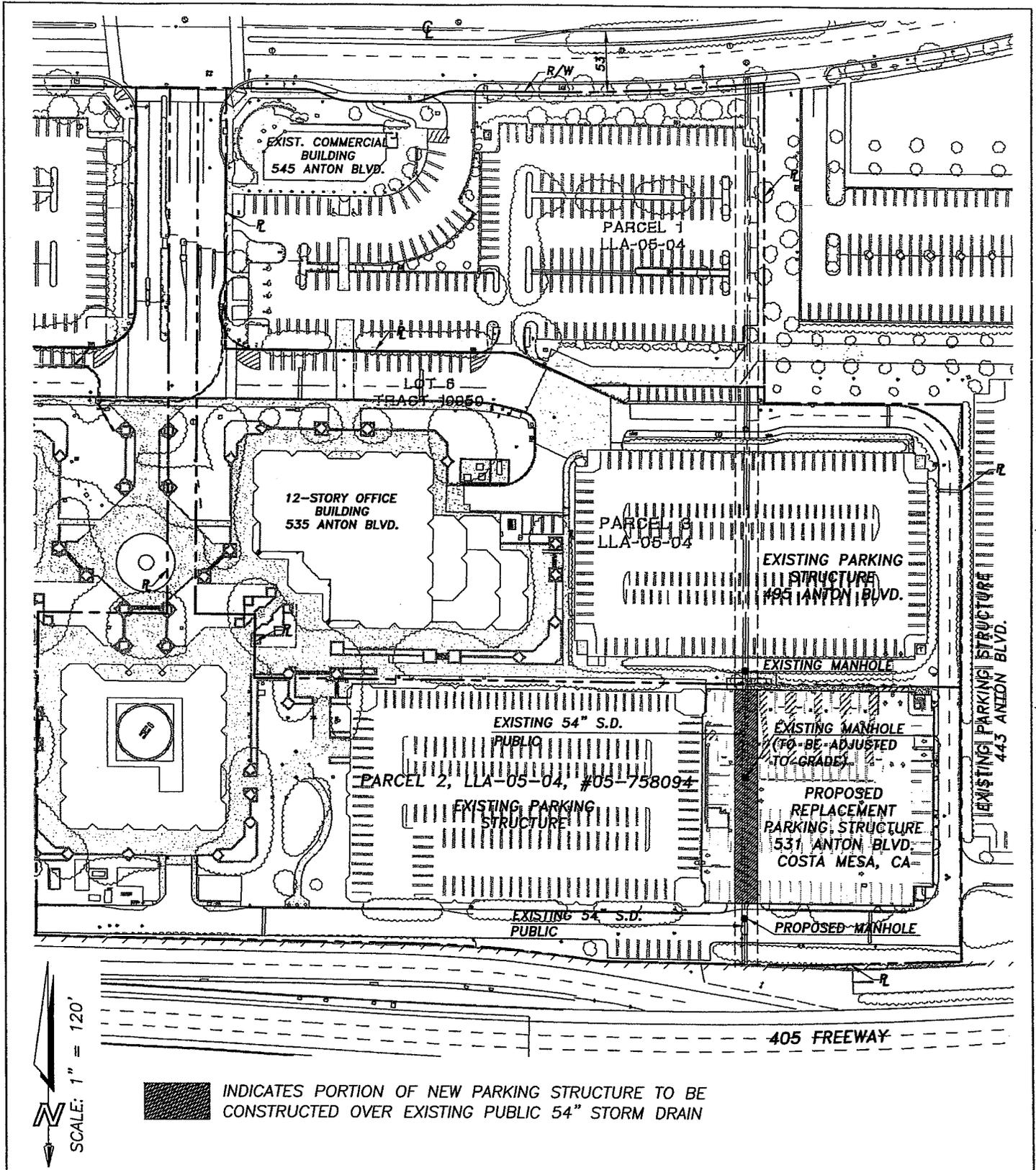


SEE SHEET 5 OF 8

SEE SHEET 8 OF 8

EXHIBIT C

Location of Proposed Parking Structure



FUSCOE
 ENGINEERING
 16795 Von Karman, Suite 100
 Irvine, California 92606
 tel 949.474.1960 • fax 949.474.5315
 www.fuscoe.com

SYMPHONY TOWERS
REPLACEMENT PARKING STRUCTURE
 COSTA MESA, CA
STORM DRAIN EXHIBIT
EXHIBIT "C"

