

Memorandum

Department of Planning & Development Services



To: Michael O. Geisel, P.E.
City Administrator

From: Justin Wyse, AICP, PTP *JW*
Director of Planning and Development Services

Date: November 06, 2019

RE: Easement- City of Chesterfield

Summary

In recent history multiple developments have been both approved and constructed in the City of Chesterfield north of North Outer 40 Road and east of Boone's Crossing. As development occurs, the City promotes cross-access between developments and limits the amount of curb cuts along arterial roadways in accordance with all access management guidelines established in the City's Unified Development Code. As detailed in the attached easement, the developments consisting of Taubman Prestige Outlets of Chesterfield LLC, Plaza Inn LLC, and National Retail Properties LP all agree to grant cross-access through each property to the City of Chesterfield as the sole grantee for public use (pedestrian and vehicular).

This would authorize the City of Chesterfield to execute an easement with the Grantors (Taubman Prestige Outlets of Chesterfield LLC, Plaza Inn LLC, and National Retail Properties LP) for utilization of the access road internally between individual developments for public use. The easement stipulates that each grantor shall be solely responsible for any and all costs associated with any maintenance and possible replacement.

Action Recommended

This matter should be forwarded to the Planning and Public Works Committee for its consideration of the above-described easement. If recommended for approval by the Planning and Public Works Committee, the matter should then be forwarded to the full City Council to authorize execution of the attached easement.

Please forward to PPW for review and recommendation to the full council.

A handwritten signature in black ink, appearing to read "Michael O. Geisel".

2019-10-30

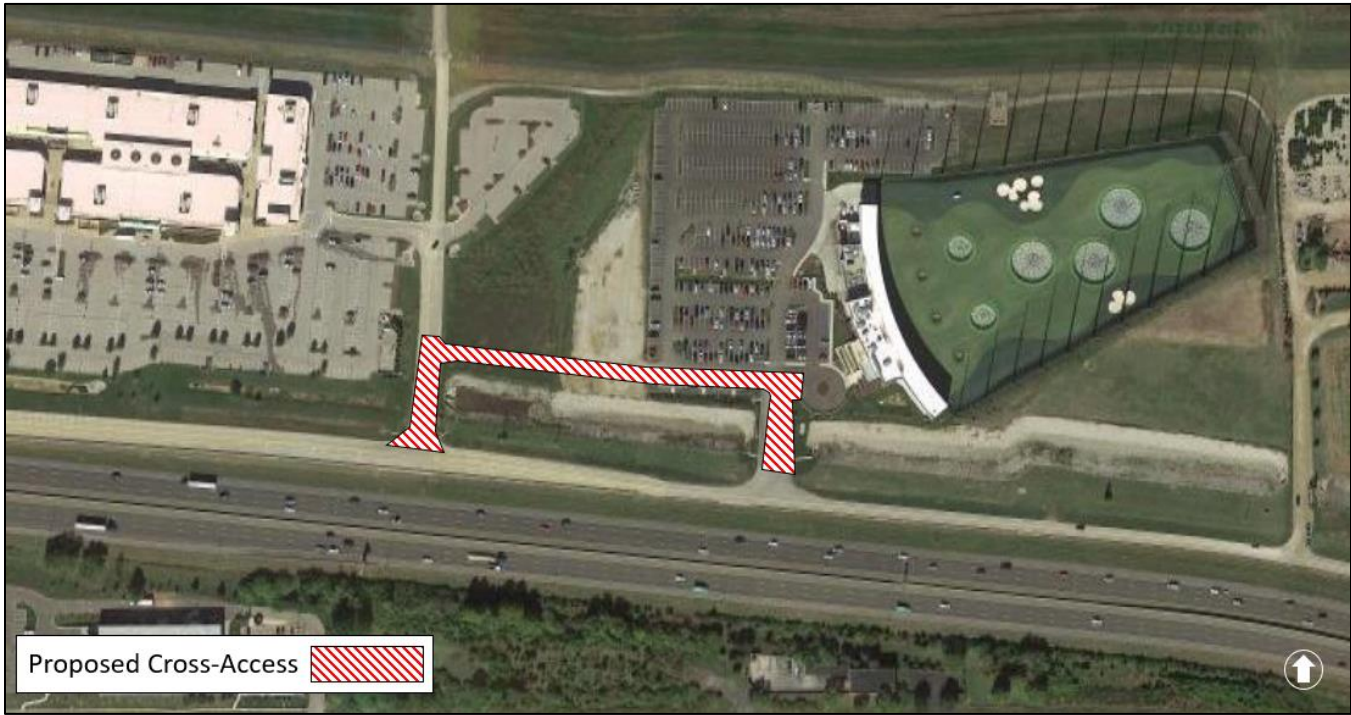


Figure 1. Aerial Photograph (Estimated location based on Exhibit)

Space Above for Recorder's Use Only

DOCUMENT COVER SHEET

TITLE OF DOCUMENT: Easement and Maintenance Agreement

DATE OF DOCUMENT: _____, 20____

GRANTOR: Taubman Prestige Outlets of Chesterfield LLC
200 East Long Lake Road
Suite 300
Bloomfield Hills, MI 48304

Plaza Inn LLC
16875 North Swift St.
Kansas City, MO 64116

National Retail Properties LP
450 S. Orange Ave, Suite 900
Orlando, FL 32801

GRANTEES: CITY OF CHESTERFIELD, MISSOURI

690 Chesterfield Parkway West
Chesterfield, Missouri 63017

LEGAL DESCRIPTION: Exhibit A attached hereto and incorporated herein by reference

REFERENCE BOOK & PAGE: N/A

Upon Recording Return to:
Robert Klahr, Esq.
Armstrong Teasdale LLP
7700 Forsyth Boulevard, Suite 1800
St. Louis, Missouri 63105

EASEMENT AND MAINTENANCE AGREEMENT

This EASEMENT AND MAINTENANCE AGREEMENT (this “*Agreement*”) is made and entered into as of this ___ day of _____, 20___ (the “*Effective Date*”) by and between Taubman Prestige Outlets of Chesterfield LLC, owner of a tract of Adjusted Lot 1 of land described in Deed Book 20091, Page 1215 of the St. Louis County Records (“*Taubman Parcel*”), Plaza Inn LLC (“*Plaza Inn*”), owner of Lot A (“*Plaza Inn Parcel*”) and National Retail Properties, LP (“*NRP*”), owner of Lot B of Summit-TopGolf, a subdivision as recorded in Plat Book 365, Pages 300 and 301 of said County Records (“*NRP Parcel*”) (collectively, Taubman, Plaza Inn and NRP are sometimes individually referred to as a “*Grantor party*” and or as “*Grantor*”), and the CITY OF CHESTERFIELD, MISSOURI, a political subdivision of the State of Missouri (the “*City*”) (the “*Grantee*”). All capitalized terms not defined herein shall have the meaning given in the Transportation Development Agreement (as defined hereinafter).

RECITALS:

A. Each Grantor is the owner of certain real property located in the City of Chesterfield, County of St. Louis, and State of Missouri described herein (the *Taubman Parcel*, *Plaza Inn Parcel* and the *NRP Parcel* are sometimes collectively referred to herein as the “*Grantor’s Property*”) and on Exhibit A attached hereto, on which Grantor has constructed or intends to construct various improvements, internal roads, ingress and egress, and parking lots (collectively, the “*Development*”); and

B. As part of the *Development*, each Grantor has constructed or will construct certain transportation related improvements, including without limitation an access road with the accompanying grading, drainage, pavement, curb, gutter, storm water facilities, signing, lighting, landscaping or other similar or related infrastructure or improvements in connection with such access road (the “*Access Road*”), which Access Road is located on each Grantor’s Property, as depicted on Exhibit A, attached hereto and incorporated herein by reference (the “*Easement Area*”); and

C. The City, Taubman Prestige Outlets of Chesterfield LLC (“*Taubman*”), Summit Ice Center Investors, L.L.C. (“*Summit Ice*”), Summit Outer Forty Investors, L.L.C. (“*Summit Investors*”) and together with Summit Ice, “*Summit*”) and The North Outer Forty Transportation Development District (collectively, the “*Interested Parties*”) entered into that certain Transportation Development Agreement dated July 1, 2012 (the “*Development Agreement*”), wherein the Interested Parties agreed to certain terms, conditions, obligations, and requirements in connection with the construction and development of Grantor’s Property; and

D. Pursuant to the *Development Agreement* and for other good and valuable consideration, the parties hereto agreed to enter into this Agreement whereby each Grantor would grant an easement in, upon and across the Access Road for the benefit of each Grantor and for the benefit of Grantee, while reserving the right and obligation to maintain the Access Road, and Grantee would accept said easement in exchange for the mutual promises and considerations provided herein and in the *Development Agreement*.

WITNESSETH:

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, Grantor and the Grantee hereby agree as follows:

1. Easement.

A. Each Grantor hereby grants, gives and conveys to each other and to Grantee a perpetual non-exclusive right, privilege and easement to use the Access Road from time to time

for the limited purpose of allowing (i) their respective tenants, subtenants, licensees, officers, employees agents, representatives, customers, invitees and (ii) members of the public ingress and egress (pedestrian and vehicular) (the “**Easement**”) to, over and across the Easement Area. Grantee’s Easement rights shall be shared in common with the invitees, licensees, employees, contractors and guests of each Grantor.

- B. Notwithstanding the language in recital B, it is acknowledged by the parties that: Taubman has already constructed the improvements contemplated by this Agreement; is not required to construct any additional improvements related to the Access Road or Easement; and that the portion of the Access Road on the Taubman parcel is accepted in its “as is” condition.
- C. Grantee shall not construct or otherwise locate any improvements within the Easement Area other than the existing improvements or additional improvements constructed in accordance with the Development Agreement or other sections of this Agreement, unless Grantee obtains the prior written consent of all Grantor parties.
- D. The rights granted herein are subject to all existing building and uses restrictions, easements, encumbrances, mortgages, rights of way and zoning ordinances.
- E. The Parties agree that its use of the Easement Area/Access Road shall be in compliance with all rules and regulations imposed by a Grantor and in compliance with all applicable laws and ordinances.

Each Grantor reserves the right to grant other rights to access the Grantor’s Property, including the Easement Area/Access Road that do not materially interfere with the rights granted to Grantee/other Grantors.

2. **Maintenance by Grantor.** Each Grantor shall be solely responsible for any and all costs associated with the maintenance and replacement, if necessary, of the Access Road on such Grantor’s Property and all improvements thereon, including all road paving, repair, snow and debris removal, or other necessary maintenance to make the Access Road safe and passable and in good condition.

3. **Use of Easement Area / Relocation.**

A. Grantor shall not obstruct or interfere with the normal use or appurtenances thereto and shall not place, erect, or install in the Easement Area any above grade structure, fixture, improvement, or other obstruction that will unreasonably interfere with the intended use of the Easement Area; provided, however, that the Grantor reserves the right to use and enjoy the Easement Area in such manner as Grantor shall deem proper, including, but not limited to, access (pedestrian and vehicular) over and across the Easement Area. Each Grantor shall have the right, from time to time, to periodically block all or portions of the Easement Area on its property: to perform routine maintenance and other improvements upon or near such area. Such grantor shall make commercially reasonable efforts to notify the other parties to this Agreement of such work in advance.

B. Each Grantor reserves the right to relocate the location of the Access Road and the Easement Area, in whole or in part, on its respective property at any time upon notice to the other parties; provided, however that such relocation does not materially reduce or unreasonably impair the usefulness or function of the Access Road for vehicular and pedestrian ingress and egress. The relocation shall be at Grantor’s sole cost and expense. Upon completion of the relocation such Grantor shall record in the St.

Louis County Records a memorandum setting forth the legal description of such new roadway as it exists on such Grantor's portion of Grantor's Property and the other parties to this Agreement shall execute and deliver any documents requested by such Grantor to release the easement granted hereunder with respect to the portions of the Access Road that is relocated.

4. **Default by Grantor; Remedies.** If at any time any Grantor shall, in the reasonable judgment of the Grantee or any other Grantor hereunder, fail to properly perform its obligations under this Agreement, then the Grantee or other Grantor may, in its sole discretion, after written notice to such non-performing Grantor and at least thirty (30) days' (or such additional time as is required by the Development Agreement or permitted hereunder) opportunity to cure, exercise its rights under this Agreement and as permitted by law.

5. **Indemnification.** Each party shall indemnify, hold harmless and defend the other parties from and against any and all of the claims, actions, suits, crossclaims, counterclaims, third party actions, damages, liabilities, and expenses, including reasonable attorneys' fees, sustained by the other parties to this Agreement or any third persons, in connection with loss of life, personal injury, bodily injury or damage to property, arising from or out of the negligence, willful misconduct, or violation of law by such party, its agents or contractors, and directly in connection with such party's breach of its obligations pursuant to this Agreement. It is understood by Grantee that the separate entities that comprise the Grantor (i.e. Taubman, NRP, and Plaza Inn) are entering into a single agreement out of convenience, but that there shall be no joint liability between or among such parties and that no Grantor shall be responsible for the costs, liabilities or obligations of any other Grantor.

6. **Estoppel.** If requested by either Grantee or any Grantor, the other parties will within ten (10) days provide a written statement for the benefit of the other party and its assignee or lender stating that the Development Agreement and this Agreement, as all may be amended from time to time, are in full force and effect without modification or default, if the same be true, and such other reasonable provisions as may be requested.

7. **Notices.** All notices, consents, approvals and other communications which may be or are required to be given by either Grantors or Grantee under this Agreement shall be properly given only if made in writing and sent by (i) hand delivery, (ii) U.S. Certified Mail, Return Receipt Requested, or (iii) a nationally recognized overnight delivery service (such as Federal Express, UPS Next Day Air, Purolator Courier or Airborne Express), with all delivery charges paid by the sender and addressed to Grantor or Grantee, as applicable, as follows, or at such other address as each may request in writing. Such notices shall be deemed received on the date of delivery. Notice to one Grantor party shall not be deemed notice to any other Grantor party. The refusal to accept delivery shall constitute acceptance and, in such event, the date of delivery shall be the date on which delivery was refused. Said addresses for notices are to be as follows:

If to Grantor: Taubman Prestige Outlets of Chesterfield LLC
200 East Long Lake Road
Suite 300
Bloomfield Hills, MI 48304

Plaza Inn LLC
16875 North Swift St.
Kansas City, MO 64116

National Retail Properties LP
450 S. Orange Ave, Suite 900

Orlando, FL 32801

If to Grantee: City of Chesterfield, Missouri
690 Chesterfield Parkway West
Chesterfield, Missouri 63017
Attn: City Administrator

With a copy to:

Armstrong Teasdale LLP
7700 Forsyth Blvd., Suite 1800
St. Louis, Missouri 63105
Attn: Robert Klahr

8. **Attorneys' Fees.** If a party brings an action against another other based upon this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs of litigation and court costs from the other party.

9. **Entire Agreement; Successor and Assigns.** This Agreement and any instruments to be delivered by the parties pursuant to the provisions hereof constitute the entire Agreement between the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. This Agreement, and the Easement granted herein, shall run with and bind Grantor's Property and shall run with and benefit the Easement Area, the Access Road thereon as an appurtenance thereto, and the real property adjacent thereto.

10. **Expiration / Contingency.** All rights of Grantee and obligations of Grantor to Grantee provided hereunder shall expire upon satisfaction and release of all "TDD Obligations" as such term is defined in the Development Agreement. The Easement for the benefit of the Grantors and all obligations of Grantors hereunder to each other Grantor shall remain in effect in perpetuity.

11. **Modification; Waiver.** This Agreement shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto (or their successors and assigns). The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

12. **Authorization.** The parties hereto represent and warrant that they have the authority and power to enter into this Agreement and to consummate the transaction provided for herein. This Agreement constitutes a legal binding, valid and enforceable obligation of the parties, and there are no claims or defenses, personal or otherwise, or offsets whatsoever to the enforceability or validity of this Agreement.

13. **Execution.** This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(The remainder of this page is intentionally left blank.)

GRANTEE:

CITY OF CHESTERFIELD, MISSOURI

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this _____ day of _____, 20____, before me personally appeared _____, the _____ of the City of Chesterfield, Missouri, known to me to be the person who executed the foregoing instrument, and did state that the seal affixed to the within instrument is the seal of said City and that said instrument was signed and sealed in behalf of said City by authority of its governing authority, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires: _____

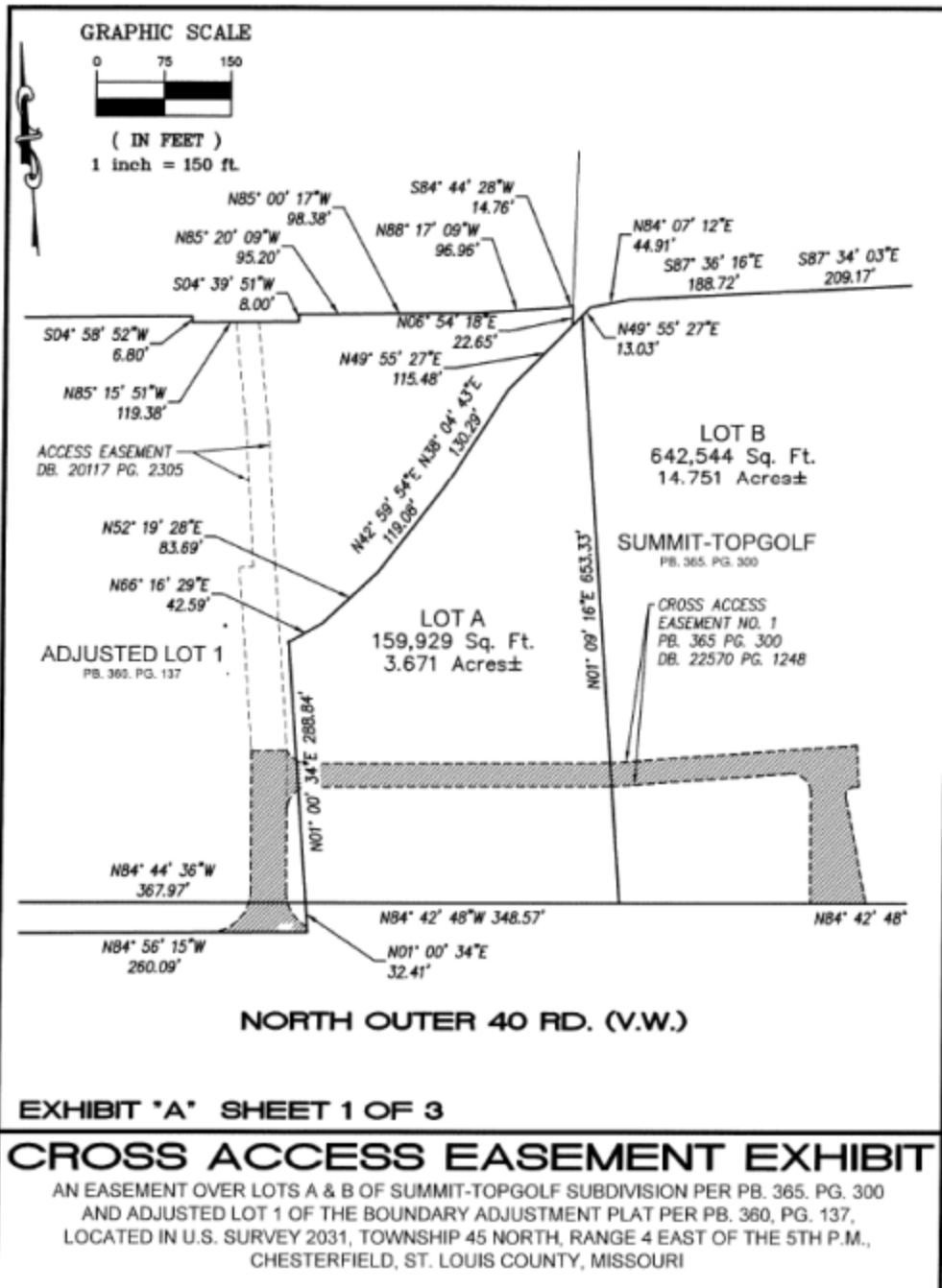
EXHIBIT A

LEGAL DESCRIPTION

A tract of land being Adjusted Lot 1 of the B.A.P. Per Plat Book 360, Page 138 & Lots A & B of Summit TopGolf per PB. 365 Pg. 300 located in U.S. Survey 2031, T45N, R4E of the 5th P.M. City of Chesterfield, St. Louis County, Missouri

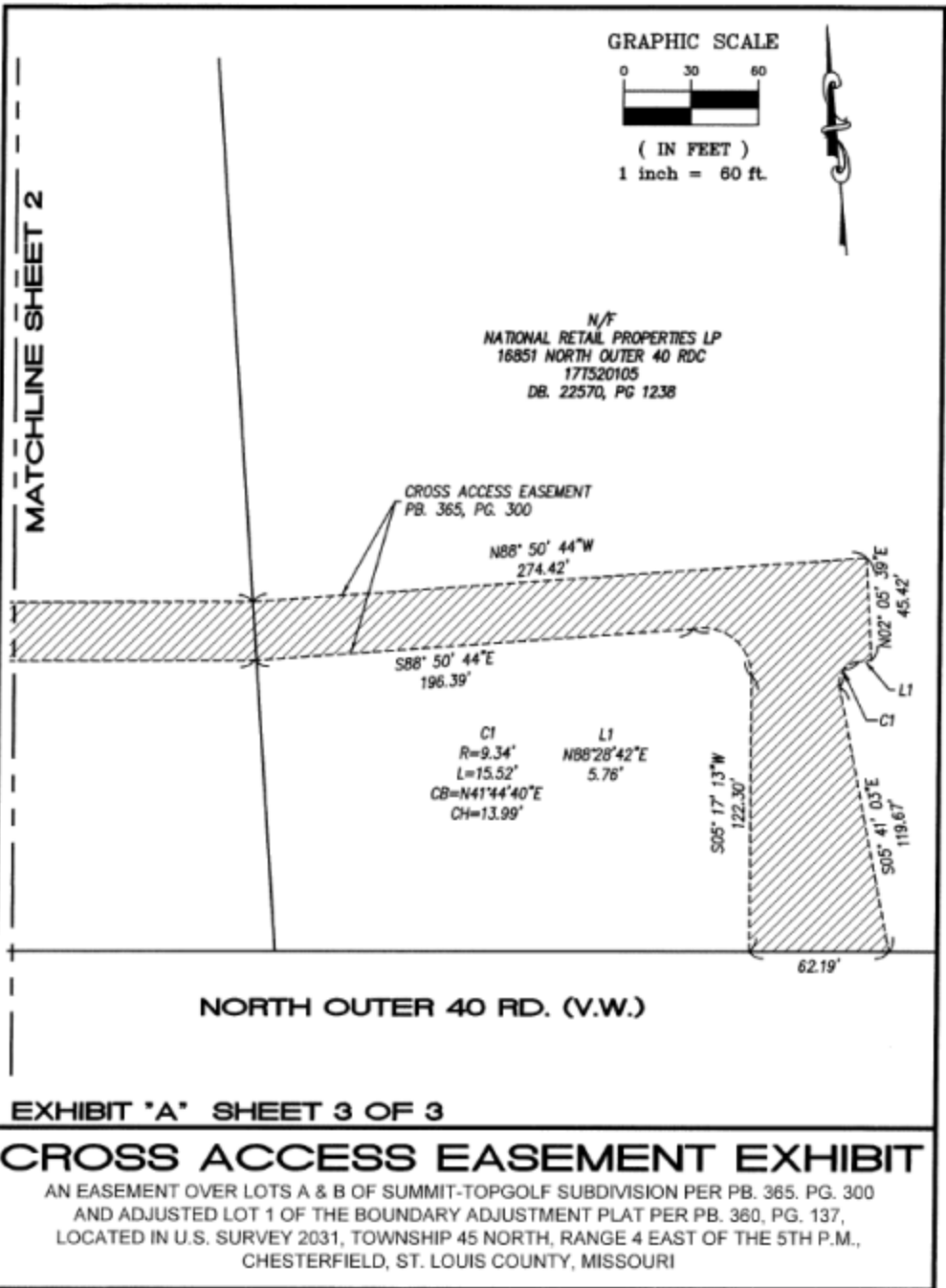
Easement Area

See Attached Pages



DATE: 2/23/19

6191\SURVEY\6191-CROSS ACCESS ESMNT.DWG



DATE: 2/23/19

6191\SURVEY\6191-CROSS ACCESS ESMNT.DWG