

BILL NO. 2497

ORDINANCE NO. 2306

AN ORDINANCE PROVIDING FOR THE ACQUISITION BY PURCHASE OR CONDEMNATION OF EASEMENTS, BOTH PERMANENT AND TEMPORARY, CONTAINING 3.75 ACRES LOCATED AT 17827 N. OUTER 40 ROAD, CHESTERFIELD, MISSOURI 63005 AND OWNED BY THE SUCCESSFUL INVESTORS, LP, AND ANY UNKNOWN HEIRS, BENEFICIARIES AND OTHER PERSONS, AND LEGAL ENTITIES CLAIMING LEGAL INTEREST IN THE PROPERTY LOCATED ON THE NORTH SIDE OF I-64/US 40 IN THE CITY OF CHESTERFIELD FOR USE AS A PUBLIC RECREATIONAL TRAIL.

WHEREAS, the City of Chesterfield is a political subdivision located in St. Louis County, Missouri and duly incorporated under the Revised Statutes of Missouri; and,

WHEREAS, the City Council, having been duly elected and qualified and empowered to acquire property for public recreational trails within the City under Section 77.140 Revised Statutes of Missouri; and,

WHEREAS, the City, pursuant to Chapters 88 and 523 of the Revised Statutes of Missouri has the power, authority, and privilege to condemn private property for public use and to take said property for the public purposes designated therein; and,

WHEREAS, the City Council has determined that the City requires the acquisition of easements necessary to establish the Monarch Chesterfield Levee Trail, a public recreational trail and to install, operate, and maintain said trail; and,

WHEREAS, the City, in order to provide for said recreational trail, has identified easements, both permanent and temporary, located on parcels of private property as being necessary for the establishment of said recreational trail, which said easements are required on a tract of property that is currently owned by The Successful Investors, LP, and any unknown heirs, beneficiaries and other persons, and legal entities claiming a legal interest in the subject property containing approximately 3.75 acres and located at 17827 N. Outer 40 Road, Chesterfield, Missouri 63005.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, AS FOLLOWS:

Section 1. The City has determined that it is necessary and proper for the City to acquire a permanent easement containing approximately .20 acres, a temporary construction license containing 3.55 acres on property located at 17827 N. Outer 40 Road, Locator No. 17V630059, legally described as set forth on Exhibit A attached hereto and made a part hereof, for the purpose of establishing and maintaining a public recreational trail for the benefit of the citizens of the City of Chesterfield.

Section 2. The City Attorney on behalf of the City Council is authorized to take such action as is necessary to acquire said easements from the current owners, The Successful Investors, LP, and

any unknown heirs, beneficiaries and other persons, and legal entities claiming a legal interest in the subject property for such sum as may be established under condemnation proceedings instituted by the City or negotiated, pursuant to the Revised Statutes of Missouri and Supreme Court Rule 86.

Section 3. The City Administrator on behalf of the City Council is authorized to take such action as is necessary to institute condemnation proceedings through the City's power of eminent domain and to acquire said property pursuant to the authority granted to the City by the Revised Statutes of Missouri.

Section 4. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 6th day of NOVEMBER, 2006.


MAYOR

ATTEST:


CITY CLERK

PERMANENT HIKING, BIKING AND WALKING TRAIL EASEMENT

THIS INDENTURE, made and entered into this _____ day of _____ 2006, Between, **The Successful Investors LP** at 17795 North Outer Forty Road, Chesterfield, MO 63005, "Grantor"; and, **The City of Chesterfield**, a 3rd class city organized under the Statutes of the State of Missouri with offices at 690 West Chesterfield Parkway, Chesterfield, Missouri 63017 "Grantee".

WITNESSETH, that Grantor for and in consideration of the sum of One Dollar and No/100 (\$1.00) and other valuable consideration paid by the Grantee, the receipt and sufficiency of which is hereby acknowledged, does by these presents, grant unto Grantee a permanent non-exclusive easement to construct, repair, replace, improve, operate and maintain a hiking, biking and walking trail improvements atop the existing Monarch-Chesterfield levee structure upon premises located at:

Parcel 31: 17827 North Outer Forty Road – Locator # 17V630059*

Permanent Easement: Parcel 31 – 8,495 Square Feet

* As more particularly described in Exhibit A, attached hereto and beginning at Page 4 and incorporated herein by reference.

The undersigned agrees not to obstruct or interfere with the normal use or maintenance of such recreational trail and appurtenances thereto and further agrees that no structure, fixture, improvement, or other obstruction above or below ground that will interfere with the purposes aforesaid will be placed, erected, installed, or permitted on the above described easement; provided, however, that Grantor reserves the right to use and enjoy the easement area in such manner as Grantor shall deem proper, including, but not limited to, all existing access (pedestrian and vehicular) over and across the easement area to real estate owned by Grantor on each side of the existing Monarch-Chesterfield Levee structure, to the extent that Grantor's use does not adversely or unreasonably interfere with Grantee's use thereof in accordance with the terms hereof.

TO HAVE AND TO HOLD said easement unto the City of Chesterfield, Missouri and to its assigns and successors forever.

The Grantor does hereby covenant to the Grantee that they are lawfully seized and possessed of the fee ownership of the land and the real estate above described and that they have a good and lawful right to convey it, or any part thereof, that it is free from all encumbrances, and that they shall forever warrant and defend the title thereto against the lawful claims of all persons claiming by, through or under Grantor but none other.

This easement is being granted by Grantor to Grantee as a greenway system of trails or part of a dedicated system of trails and therefore Grantor is entitled to immunity from civil liability for certain injuries to person or property as more fully described in Section 258.100 of the Missouri Revised Statutes.

The existence of this easement upon Grantor's property shall not negatively impact, affect or impair density or green space calculations for any current or future use or development of Grantor's property.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the said Grantor has executed these presents the day and year first above written.

OWNER/GRANTOR:

_____ Date: _____
The Successful Investors LP

GRANTEE:

_____ Date: _____
**City Administrator
City of Chesterfield, Missouri**

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

On this _____ day of _____, 2006, before me appeared _____ to me personally known, who, being by me duly sworn, did say that he/she is the _____ of The Successful Investors LP, and that said instrument was signed on behalf of said limited liability company by authority of its members, and said _____ acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY 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:

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

On this _____ day of _____, 2006 before me, the undersigned, a Notary Public, appeared _____, City Administrator of Chesterfield, Missouri to me personally known, who, being by me duly sworn, he said that he is the City Administrator of the City of Chesterfield, Missouri a body politic and corporate duly authorized, incorporated and existing under and by virtue of the laws of the State of Missouri, and that said instrument was signed in behalf of the City of Chesterfield by authority of its Board, and said official acknowledged said instrument was executed for the purposes therein stated and signed as a free act and deed of said City.

Notary: _____
Date: _____

EXHIBIT A

Legal Description

Parcel 31: 17827 North Outer 40 Road – Locator # 17V630059

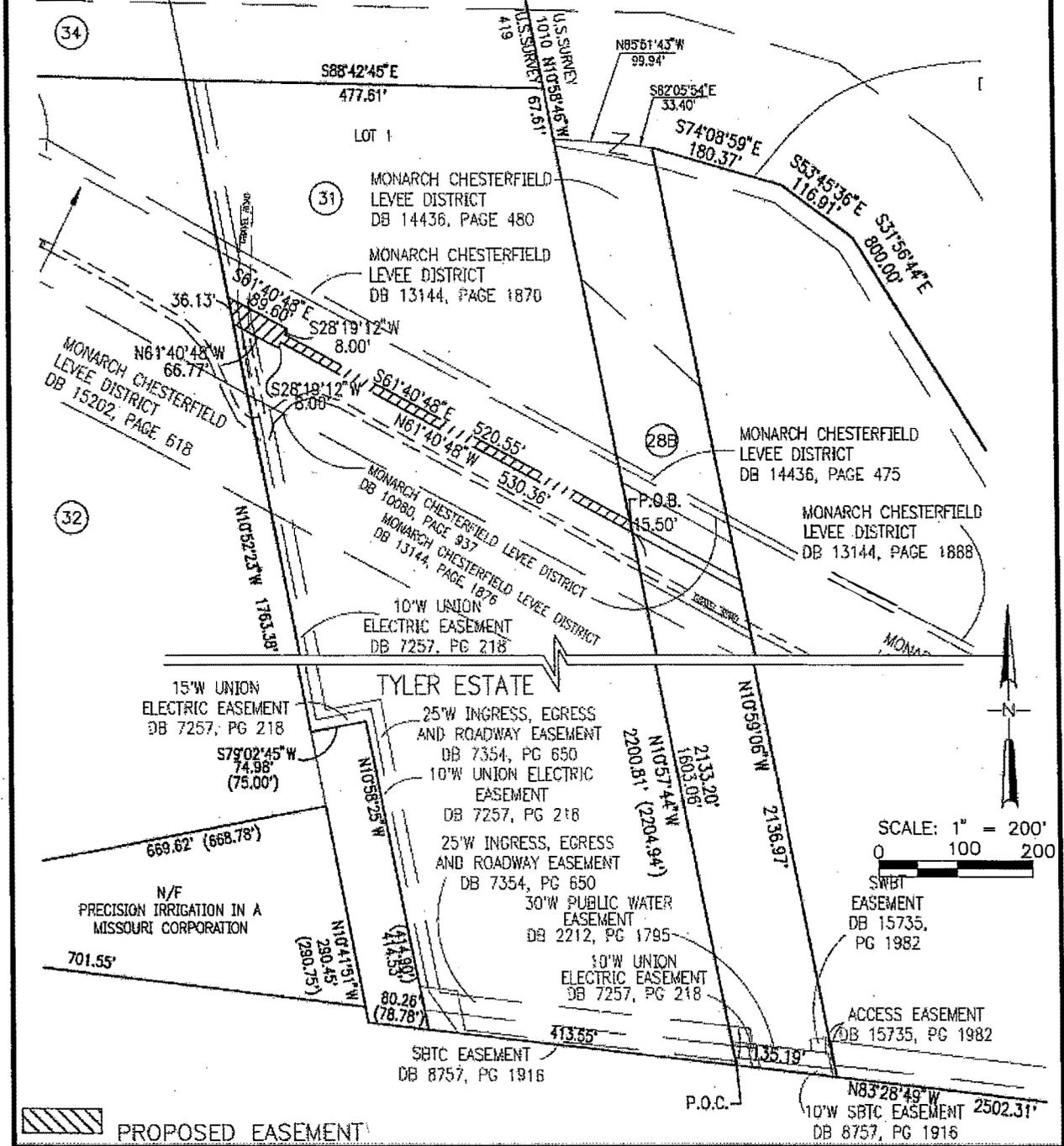
A Variable Width **PERMANENT HIKING, BIKING AND WALKING TRAIL EASEMENT** across Part Lot 1 in the **Subdivision of the Spencer Tyler Estate**, Township 45 North, Range 3 East of the 5th P.M., and being more particularly described as follows:

Commencing on Grantor's easterly property line, also being the easterly line of said Lot 1, where said line intersects with the northerly right of way line of North Outer 40 Road, Interstate 64 (State Route 40TR); **THENCE** North 10 degree 57 minutes 44 seconds West on said easterly property line, 1,603.06 feet to the **Actual Point Of Beginning** of said Variable width Permanent Bike Trail Easement; **THENCE** leaving said easterly property line, North 61 degrees 40 minutes 48 seconds West, 530.36 feet; **THENCE** South 28 degrees 19 minutes 12 seconds West, 8.00 feet; **THENCE** North 61 degrees 40 minutes 48 seconds West, 66.77 feet to a point on the westerly line of said Lot 1; **THENCE** North 10 degrees 52 minutes 23 seconds West on said westerly line, 36.13 feet; **THENCE** leaving said westerly line, South 61 degrees 40 minutes 48 seconds East, 89.60 feet; **THENCE** South 28 degrees 19 minutes 12 seconds West, 8.00 feet; **THENCE** South 61 degrees 40 minutes 48 seconds East, 520.55 feet to said Grantor's easterly property line; **THENCE** South 10 degrees 57 minutes 44 seconds East on said easterly property line, 15.50 feet to the Point Of Beginning.

Said **PERMANENT HIKING, BIKING AND WALKING TRAIL EASEMENT** containing 8,495 square feet, more or less, and being situated in the City of Chesterfield, St. Louis County, Missouri.

EASEMENT PLAT

PART OF LOT 1 OF SPENCER TYLER ESTATE
 TOWNSHIP 45 AND 46 NORTH, RANGE 3 EAST OF THE FIFTH P.M.
 CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI



PROPOSED EASEMENT

DATE:
12-30-05

KdG
 Kuhlmann
 Design
 Group, Inc.

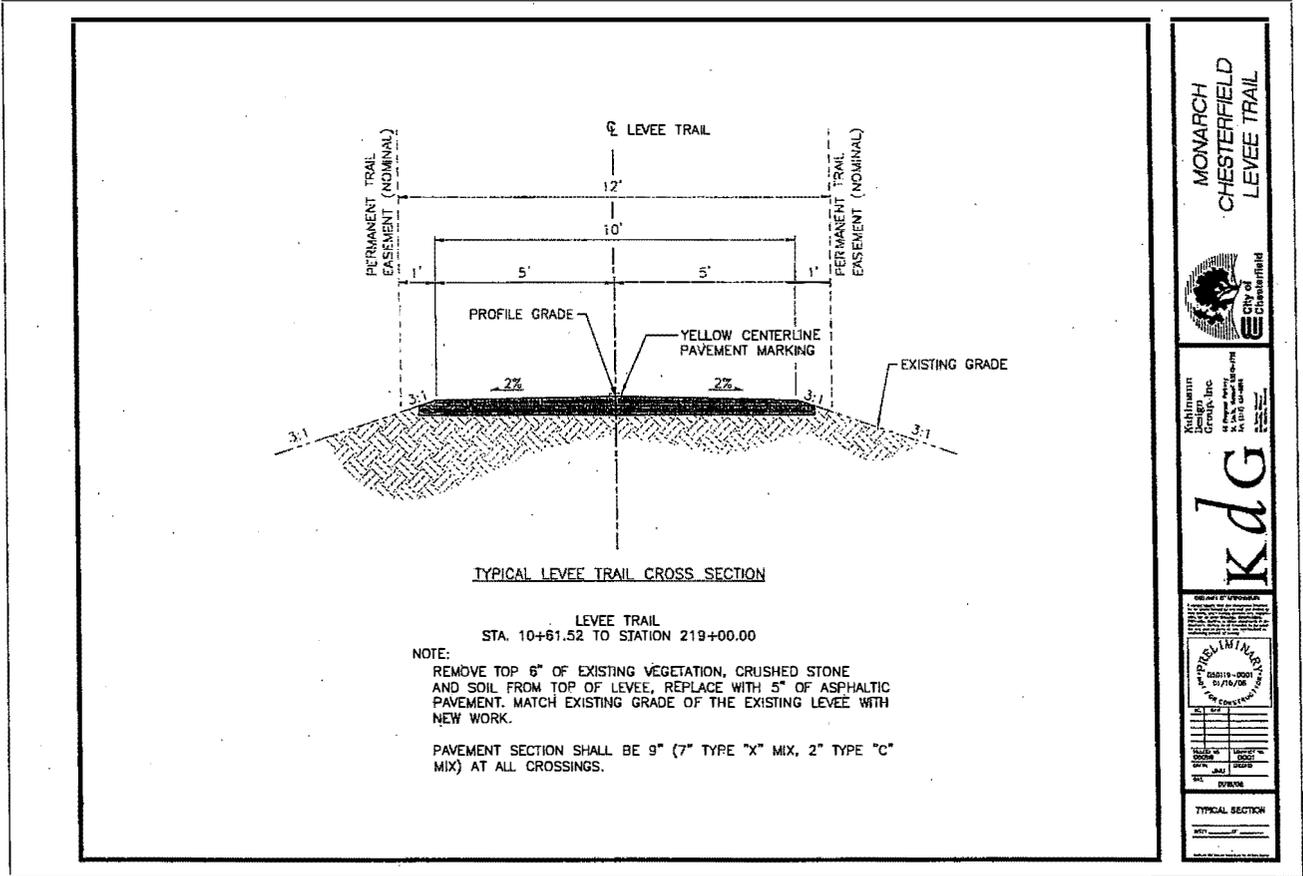
66 Progress Parkway
 St. Louis, Missouri 63043
 Tel: (314) 621-8898
 (618) 234-8898
 St. Louis, Missouri
 Belleville, Illinois

LEGEND
 (C) CALCULATED
 (R) RECORDED PLAT
 (D) RECORDED DEED

SHEET 1 OF 1

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 050119-0001 (EASEMENT_BDR)

EXHIBIT "A"



CONSTRUCTION DETAIL

Trail Description: Trail atop Monarch-Chesterfield Levee to be 10' wide, 5" of asphalt pavement. Section increases to 9" of asphalt pavement at levee crossings.

TEMPORARY CONSTRUCTION LICENSE

THIS INDENTURE made and entered into this _____ day of _____ 2006, between **The Successful Investors LP** at 17795 North Outer Forty Road, Chesterfield, MO 63005, "Grantor" and **The City of Chesterfield**, a 3rd class city organized under the Statutes of the State of Missouri with offices at 690 West Chesterfield Parkway, Chesterfield, Missouri 63017 "Grantee".

WITNESSETH, that Grantor, for and in consideration of the sum of One Dollar and No/100 (\$1.00) and other valuable consideration paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, does by these presents, grant unto Grantee a Temporary Construction License upon the following described premises, situated in the County of St. Louis and State of Missouri, to wit: all the real estate described in Exhibit A beginning at Page 3 and incorporated herein by this reference as shown hachured on the attached plat marked Exhibit B Page 4 and made a part hereof.

SAID Temporary Construction License is granted for the purpose of making cuts, fills and sloping embankment, constructing drives, providing working room and implementing any and all other related construction items for the construction of the Monarch-Chesterfield Levee Hiking, Biking, and Walking Trail. This Temporary Construction License shall terminate upon the granting or denial of acceptance by the City of Chesterfield or its assigns of the Monarch-Chesterfield Levee Hiking, Biking, and Walking Trail.

Grantor covenants that no installation will be placed on the above platted land as will interfere with the proper construction of the aforementioned project until this license is terminated.

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EXHIBIT A

Legal Description

Parcel 31: 17827 North Outer 40 Road – Locator # 17V630059

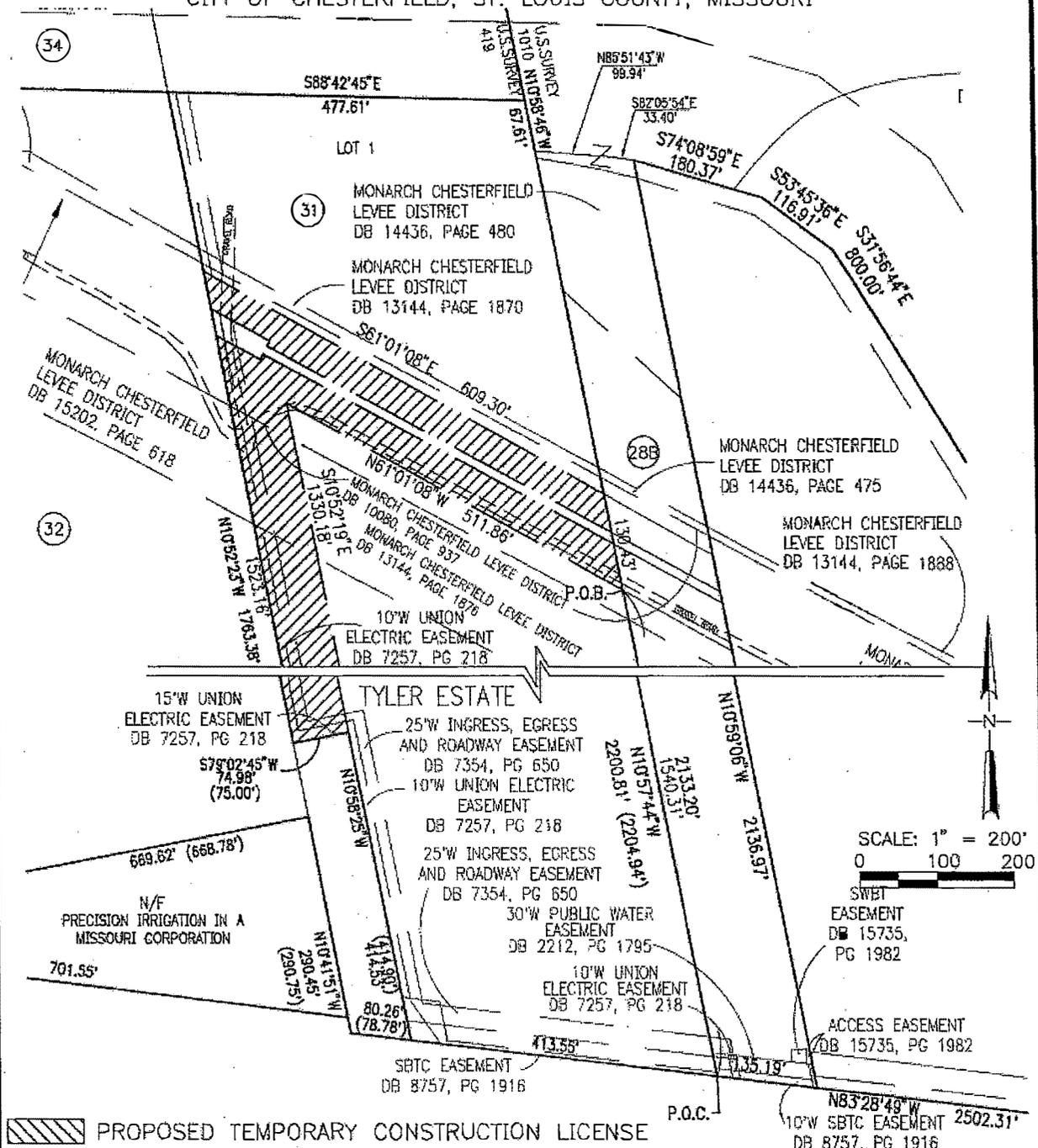
A **TEMPORARY CONSTRUCTION LICENSE** across Part Lot 1 in the **Subdivision of the Spencer Tyler Estate**, Township 45 North, Range 3 East of the 5th P.M., and being more particularly described as follows:

Commencing on Grantor's easterly property line, also being the easterly line of said Lot 1, where said line intersects with the northerly right of way line of North Outer 40 Road, Interstate 64 (State Route 40TR); **THENCE** North 10 degrees 57 minutes 44 seconds West on said easterly property line, 1,540.31 feet to the **Actual Point Of Beginning** of said Temporary Construction License; **THENCE** leaving said easterly property line, North 61 degrees 01 minutes 08 seconds West, 511.86 feet; **THENCE** South 10 degrees 52 minutes 19 seconds East, 1,330.18 feet to a point on the westerly line of said Lot 1; **THENCE** South 79 degrees 02 minutes 45 seconds West on said westerly line, 74.98 feet; **THENCE** continuing on said westerly line, North 10 degrees 52 minutes 23 seconds West, 1,523.16 feet; **THENCE** leaving said westerly line, South 61 degrees 01 minutes 08 seconds East, 609.30 feet to said Grantor's easterly property line, **THENCE** South 10 degrees 57 minutes 44 seconds East on said easterly property line, 130.43 feet to the Point of Beginning. **Less and Excepting** that part separately conveyed by Grantor to Grantee contemporaneously herewith as a **PERMANENT HIKING, BIKING AND WALKING TRAIL EASEMENT**.

Said **TEMPORARY CONSTRUCTION LICENSE** containing 154,550 square feet, more or less, and being situated in the City of Chesterfield, St. Louis County, Missouri.

TEMPORARY CONSTRUCTION LICENSE PLAT

PART OF LOT 1 OF SPENCER TYLER ESTATE
 TOWNSHIP 45 AND 46 NORTH, RANGE 3 EAST OF THE FIFTH P.M.
 CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI



PROPOSED TEMPORARY CONSTRUCTION LICENSE

DATE:
12-30-05

KdG
 Kuhlmann
 Design
 Group, Inc.

66 Progress Parkway
 St. Louis, Missouri 63043
 Tel: (314) 621-8898
 (618) 234-8898
 St. Louis, Missouri
 Belleville, Illinois

LEGEND
 (C) CALCULATED
 (R) RECORDED PLAT
 (D) RECORDED DEED

SHEET 1 OF 1

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EXHIBIT "B"