CITY OF DARDENNE PRAIRIE
2032 HANLEY ROAD
DARDENNE PRAIRIE, MO 63368

BOARD OF ALDERMEN
SPECIAL MEETING AGENDA
MARCH 29, 2017
5:30 p.m.

CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL
- Mayor Zucker
- Alderman Klingerman
- Alderman Nay
- Alderman Gotway
- Alderman Koch
- Alderman Wandling
- Alderman Santos

OPEN FORUM

NEW BUSINESS

1. **Bill # 17-19**
   AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE A PRE-ANNEXATION AGREEMENT WITH THOMAS DREW GILMER, TRUSTEE OF THE HARRY V. GILMER IRREVOCABLE TRUST DATED AUGUST 28, 1996

CLOSED SESSION
Roll call vote to hold closed session pursuant to RSMo 610.021 section _____
- Litigation and Privileged Communications (1)
- Real Estate (2)
- Personnel (3)
- Labor (9)
- Bid Specs (11)
- Audit (17)

RETURN TO REGULAR MEETING AGENDA

ADJOURNMENT

BILL NO. 17-19

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE A PRE-ANNEXATION AGREEMENT WITH THOMAS DREW GILMER, TRUSTEE OF THE HARRY V. GILMER IRREVOCABLE TRUST DATED AUGUST 28, 1996

WHEREAS, Thomas Drew Gilmer, Trustee of the Harry V. Gilmer Irrevocable Trust dated August 28, 1996 (the "Owner"), the owner of certain property located in St. Charles County, Missouri (the "Property"), more particularly described in **Exhibit A** and **Exhibit B**, attached hereto and incorporated herein by reference, expressed interest in voluntarily annexing the Property into the City of Dardenne Prairie, Missouri; and

WHEREAS, the Board of Aldermen desires to enter into a Pre-Annexation Agreement with the Owner, whereby the Owner will execute a Petition requesting voluntary annexation of the Property into the City of Dardenne Prairie; and

WHEREAS, the Property is contiguous and compact to the present corporate limits of the City of Dardenne Prairie, Missouri; and

WHEREAS, the Board of Aldermen of the City of Dardenne Prairie, Missouri, does hereby find and determine that annexation of the Property is reasonable and necessary to the proper development of the City; and

WHEREAS, the City of Dardenne Prairie, Missouri, is able to furnish normal municipal services to said area within a reasonable time after annexation;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI AS FOLLOWS:

SECTION 1. Pursuant to the provisions of Missouri Revised Statute Section 71.014, the Property, as described in **Exhibit A** and **Exhibit B**, attached hereto and incorporated herein by reference, and lying adjacent and contiguous to the present corporate limits of the City, is hereby annexed into the City of Dardenne Prairie, Missouri.

SECTION 2. The boundaries of the City of Dardenne Prairie, Missouri, are hereby altered so as to encompass the Property.

SECTION 3. The Property shall be part of Ward 1 of the City of Dardenne Prairie.

SECTION 4. The form, terms, and provisions of the Pre-Annexation Agreement attached hereto, marked as **Exhibit C**, and incorporated herein by reference, by and between the City of Dardenne Prairie, Missouri, and Thomas Drew Gilmer, Trustee of the Harry V. Gilmer

Irrevocable Trust dated August 28, 1996, be and they hereby are approved and the Mayor is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is further authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

SECTION 5. The City Clerk of the City of Dardenne Prairie is hereby ordered to cause three (3) certified copies of this Ordinance to be filed with the Office of the Registrar of St. Charles County.

SECTION 6. Effective Date: This Ordinance shall take effect and be in force from and after its passage by the Board of Aldermen and its approval by the Mayor of the City of Dardenne Prairie, Missouri.

SECTION 7. Savings Clause: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

SECTION 8. Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

[The remainder of this page is intentionally left blank.]

Read two (2) times, passed, and approved this _____ day of _____, 2017.

_____
As Presiding Officer and as Mayor

Attest:

_____
City Clerk

Approved this _____ day of _____, 2017.

_____
Mayor

Attest:

_____
City Clerk

Exhibit C

PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement ("Agreement") is made and entered into this ____ day of _____, 2017 (the "Effective Date"), by and between the City of Dardenne Prairie, Missouri, a municipal corporation organized and existing pursuant to the laws of the State of Missouri (the "City"), and Thomas Drew Gilmer, Trustee of the Harry V. Gilmer Irrevocable Trust dated August 28, 1996, (the "Owner") (sometimes collectively referred to herein as the "Parties").

WHEREAS, Owner owns or may claim an interest in certain real estate (the "Property") located in St. Charles County, Missouri, more particularly described in **Exhibit A and Exhibit B**, which are attached hereto and incorporated by reference herein; and

WHEREAS, the unincorporated areas comprising the Property are contiguous and compact to the existing corporate limits of the City; and

WHEREAS, Owner desires to enter into this Agreement in order to affirm their desire and intention to consent to and cooperate in the annexation of the Property into the City in accordance with the provisions of Section 71.014, RSMo. (the "Statute"); and

WHEREAS, Owner, subject to the terms of this Agreement, being the Owner of all fee interests of record in the Property, agrees to execute a verified petition requesting annexation of the Property in accordance with the terms of this Agreement; and

NOW THEREFORE, as an exercise of the City's authority, and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Execution of Annexation Petition**. Contemporaneously with the execution of this Agreement, Owner agrees to execute the petition (the "Petition") in the form attached hereto as **Exhibit C** and incorporated by reference herein.

2. **Obligations of the BOA**. Upon execution of the Petition, and upon presentation of said Petition to the Board of Aldermen (the "BOA"), the City agrees to annex the Property subject to the terms of this Agreement and pursuant to the terms of the Statute.

3. **Obligation of City Upon Annexation**. Upon approval of this Agreement, the City, by its duly authorized officers, agrees to extend and provide to the Property such City services and/or City utilities as are presently provided to other owners of real estate located within the City.

4. **Zoning of Property and Development After Annexation**. The property identified on **Exhibit A**, hereinafter sometimes referred to as the "Southern Parcel" is presently zoned in St. Charles County under the R 1-A, Residential classification. The property identified on **Exhibit B**, hereinafter sometimes referred to as the "Northern Parcel" is presently zoned Agricultural. The Owner has indicated their desire to develop the Southern Parcel for a commercial use and to seek

zoning consistent with their desire to so develop the Southern Parcel. The Owner has indicated their desire to develop the Northern Parcel for a higher density development than would be permitted if the Northern Parcel were developed in a manner consistent with the property that adjoins the Northern Parcel, which property is currently developed with single-family residences on varying sized lots, common ground and Highway 364. Specifically, the Owner has indicated their desire and intention to develop the Northern Parcel with a density of dwellings of as much as four (4) units per acre. The Owner has indicated they are not considering developing the Northern Parcel as apartments that would be leased to occupants.

Upon annexation, the City shall promptly consider a rezoning for a PUD Application or commercial zoning designation for development of the Southern Parcel for commercial uses consistent with commercial property near highway interchanges, including, without limitation, restaurants, retail, lodging, and service businesses. Upon annexation the City shall promptly consider a rezoning for a PUD Application or residential zoning designation for development of the Northern Parcel with a density of dwellings of as much as four (4) units per acre, in accordance with the ordinances of the City. However, nothing contained in this Agreement shall be deemed as the City's approval of the Owner's Rezoning Application or PUD Application.

City agrees as part of the development process to evaluate in good faith and to consider the economic feasibility and appropriateness of establishing a Community Improvement District, Neighborhood Improvement District or Transportation Development District for the Southern Parcel if requested by Owner. Owner understands that City must consider certain economic analyses and the particular public improvements identified in the formation documents in connection with exercising its legislative discretion whether to adopt an ordinance authorizing any such districts and the terms and conditions of any such approval, and that the Board may not prospectively abrogate its obligation to consider all relevant factors.

City agrees to either pass an ordinance abating or rebating to Owner any city real estate taxes levied on the Northern Parcel and Southern Parcel, respectively, that are payable to the City prior to the respective sale of each of the Northern Parcel and Southern Parcel by Owner to a third party.

5. **City's Failure to Perform/Owner' Option to Deannex**. If the City for any reason fails to perform any of the City's obligations pursuant to this Agreement, or, if the City does not approve either: (1) a rezoning of the Northern Parcel for higher density residential use of as much as four units per acre as requested by the Owner and of the Southern Parcel for commercial use with user consistent with commercial property near highway interchanges, including without limitation, restaurants, retail, lodging, and service businesses, then Owner may, as their sole remedy and to the extent permitted by law, at Owner's sole option, cost and expense, seek de-annexation from the City of any parcel that is not rezoned, which de-annexation the City shall promptly approve by passing an ordinance deannexing the property that is not rezoned from the City and filing any necessary applications or documents with St. Charles County, Missouri. Upon such de-annexation, Owner shall have no further liability to the City under this Agreement. Notwithstanding anything in this Agreement to the contrary, in no event shall this Agreement be construed to authorize the Owner to de-annex other real property owned by Owner and located within the City.

6. **Notices**. Any notices permitted or required under this Agreement shall be deemed given upon the date of personal delivery or 48 hours after deposit in the United States mail, postage fully prepaid, return receipt requested, addressed to City at:

David Zucker, Mayor
City of Dardenne Prairie
2032 Hanley Road
Dardenne Prairie, Missouri 63368

with a copy to:

David T. Hamilton, Esq.
Hamilton Weber LLC
200 North Third Street
Saint Charles, Missouri 63301

addressed to Owner:

Trustee of the Harry V. Gilmer Irrevocable
Trust dated August 28, 1996
c/o Dee Bax
Dutchman Realty
5055 Highway N, Suite 215
Cottleville, MO 63304

with a copy to:

Brad Goss, Esq.
SmithAmundsen
120 South Central, Suite 700
St. Louis, MO 63105

or at any other address as any party may, from time to time, designate by notice given in compliance with this paragraph.

7. **Time**. Time is of the essence in each party's performance under this Agreement.

8. **Survival**. Any of the terms and covenants contained in this Agreement which require the performance of either party after consummation of the annexation shall survive consummation of the annexation.

9. **Waiver**. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of any provision or a waiver of the provision itself for any other provision.

10. **Law Governing**. This Agreement shall be governed and construed in accordance with the laws of the State of Missouri, excluding that State's choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of Missouri, excluding that State's choice-of-law principles.

11. **Attorneys' Fees**. In any action arising out of this Agreement, other than de-annexation referenced in ¶ 5, the parties agree that the prevailing party shall be entitled to reasonable attorneys' fees to be fixed by the trial court or appellate court, and all actual costs, fees and expenses incurred by the prevailing party. In the case of any de-annexation proceeding pursuant to ¶ 5, each party agrees to bear their own attorneys' fees and costs, notwithstanding the provisions of this ¶ 11.

12. **Presumption**. Neither this Agreement nor any paragraph thereof shall be construed against any party due to the fact that said Agreement or any paragraph thereof was drafted by said party.

13. **Titles and Captions**. All paragraph titles or captions contained in this Agreement are for convenience only and shall neither be deemed part of the context nor affect the interpretation of this Agreement.

14. **Pronouns and Plurals**. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

15. **Entire Agreement**. This Agreement contains the entire understanding between and among the Parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. No subsequent agreement, representation or promise made by either party hereto, or by or to any employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

16. **Prior Agreements**. This document is the entire, final and complete agreement of the Parties pertaining to the agreement to annex the Property, and supersedes and replaces all prior or existing written and oral agreements between the Parties or their representatives relating to the Property.

17. **Agreement Binding**. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties hereto. This Agreement shall run with the land and shall apply to all persons hereinafter acquiring interest in the Property.

18. **Further Action**. The Parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

19. **Good Faith, Cooperation and Due Diligence**. The Parties hereto covenant, warrant and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the Parties pursuant to this Agreement. All promises and covenants are mutual and dependent.

20. **Counterparts**. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the Parties hereto even though all the Parties are not signatories to the original or the same counterpart.

21. **Parties in Interest**. Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

22. **Savings Clause**. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

23. **Separate Counsel**. The Parties acknowledge that City has been represented in this transaction by David T. Hamilton and Hamilton Weber LLC, and that Owner had the opportunity to consult counsel of their own choosing. The Parties expressly acknowledge that they have sought and obtained, or had the opportunity to seek and obtain, their own separate counsel in relation to this transaction to have the benefit of such counsel in entering into this Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AS OF THE EFFECTIVE DATE.

CITY OF DARDENNE PRAIRIE, MISSOURI

By:_____
David Zucker, Mayor

Attest:_____
City Clerk

OWNER
THOMAS DREW GILMER, TRUSTEE OF THE HARRY V. GILMER IRREVOCABLE TRUST DATED AUGUST 28, 1996

By:_____
Thomas Drew Gilmer, Trustee

By:_____

STATE OF MISSOURI)
) ss.
COUNTY OF ST. CHARLES)

On this _____ day of _____, 2017, before me appeared David Zucker, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the City of Dardenne Prairie, Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and that said instrument was signed and sealed on behalf of said City, by authority of its Board of Aldermen; and said David Zucker acknowledged said instrument to be the free act and deed of said City.

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

_____
Notary Public

STATE OF MISSOURI)
) ss.
COUNTY OF ST. CHARLES)

On this _____ day of _____, in the year 2017, before me, _____, a Notary Public in and for said state, personally appeared Thomas Drew Gilmer of the Harry V. Gilmer Irrevocable Trust dated August 28, 1996, known to me to be the person who executed the within Pre-Annexation Agreement, and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I set my hand and affixed my official seal in the County and State aforesaid, on the day and year above written.

_____
Notary Public

24560555v2

EXHIBIT A

[LEGAL DESCRIPTION]

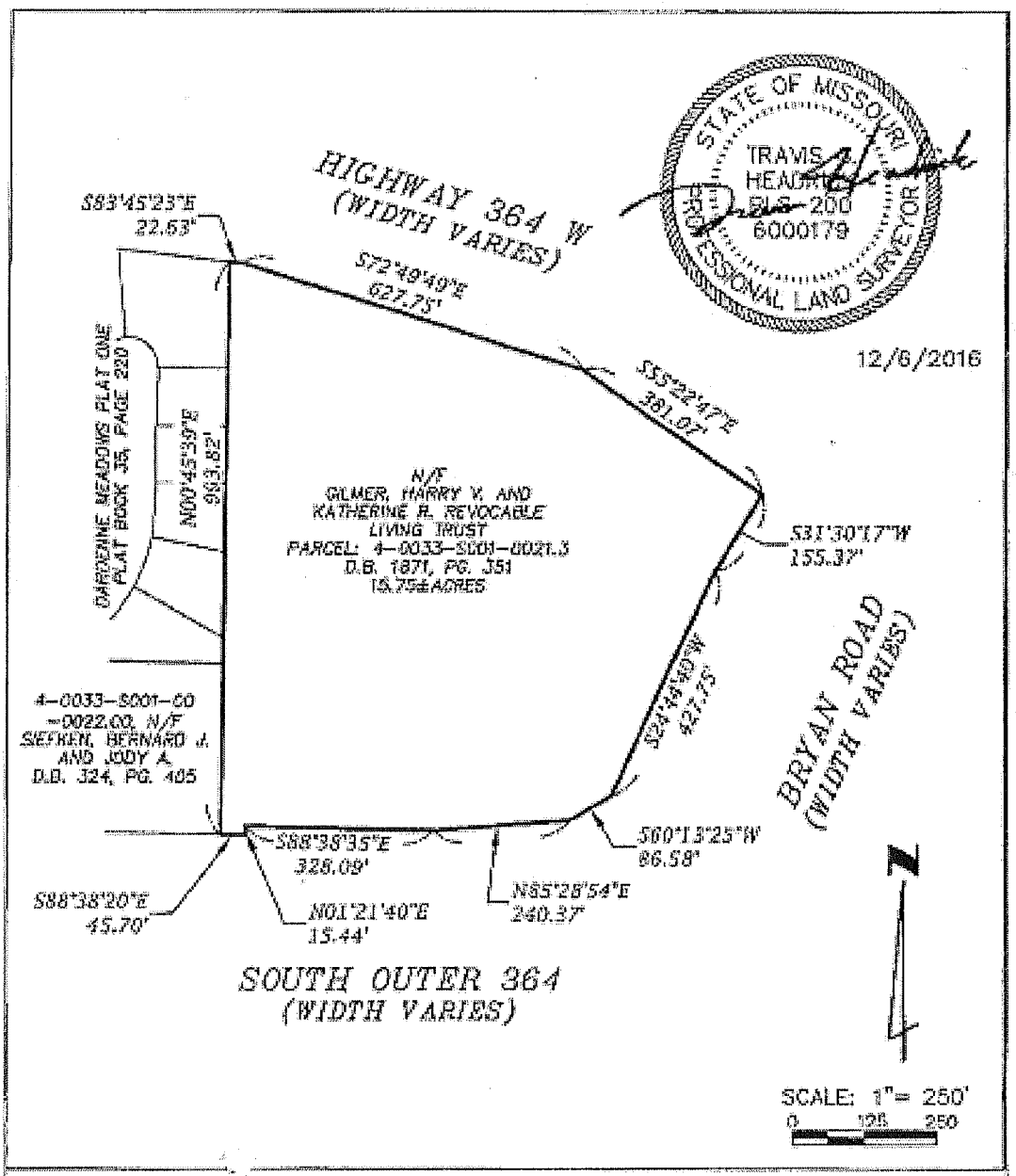

EXHIBIT "A" INITIAL:

A TRACT OF LAND BEING PART OF SECTION 1 IN TOWNSHIP 46 NORTH, RANGE 2 EAST, SITUATED IN ST. CHARLES COUNTY, MISSOURI

DECEMBER 2016

PARCEL ID: 4-0033-S001-00-0021.3000000
GILMER, HARRY V & KATHERINE R REVOCABLE LIVING TRUST
7467 HWY N

DESCRIPTION

A TRACT OF LAND BEING PART OF SECTION 1 IN TOWNSHIP 46 NORTH, RANGE 2 EAST, SITUATED IN ST. CHARLES COUNTY, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTH RIGHT-OF-WAY LINE OF THE SOUTH OUTER ROAD OF STATE HIGHWAY 364 (STATE HIGHWAY N), BEING 30.49 FEET PERPENDICULAR DISTANCE NORTH OF STATION 1+186.164; THENCE PARALLEL WITH SAID HWY N CENTERLINE, SOUTH 88°38'35" EAST, 45.70 FEET TO A POINT; THENCE NORTH 01°21'40" EAST, 15.44 FEET TO A POINT; THENCE SOUTH 88°38'35" EAST, 328.09 FEET TO A POINT; THENCE NORTH 85°28'54" EAST, 240.37 FEET TO A POINT; THENCE NORTH 60°13'25" EAST, 86.58 FEET TO A POINT; THENCE NORTH 24°44'40" EAST, 427.75 FEET TO A POINT; THENCE NORTH 31°39'17" EAST, 155.37 FEET TO A POINT; THENCE NORTH 55°22'47" WEST, 181.07 FEET TO A POINT; THENCE NORTH 72°49'49" WEST, 627.75 FEET TO A POINT; THENCE NORTH 83°45'23" WEST, 22.63 FEET TO A POINT; THENCE SOUTH 00°45'39" WEST, 993.82 FEET TO THE POINT OF BEGINNING, ACCORDING TO CALCULATIONS BY ALTEA, LLC.

STATE OF MISSOURI
TRAVIS G. HEADRICK
NUMBER
PLS-2006000170
PROFESSIONAL LAND SURVEYOR

12-6-2016

EXHIBIT B
[LEGAL DESCRIPTION]

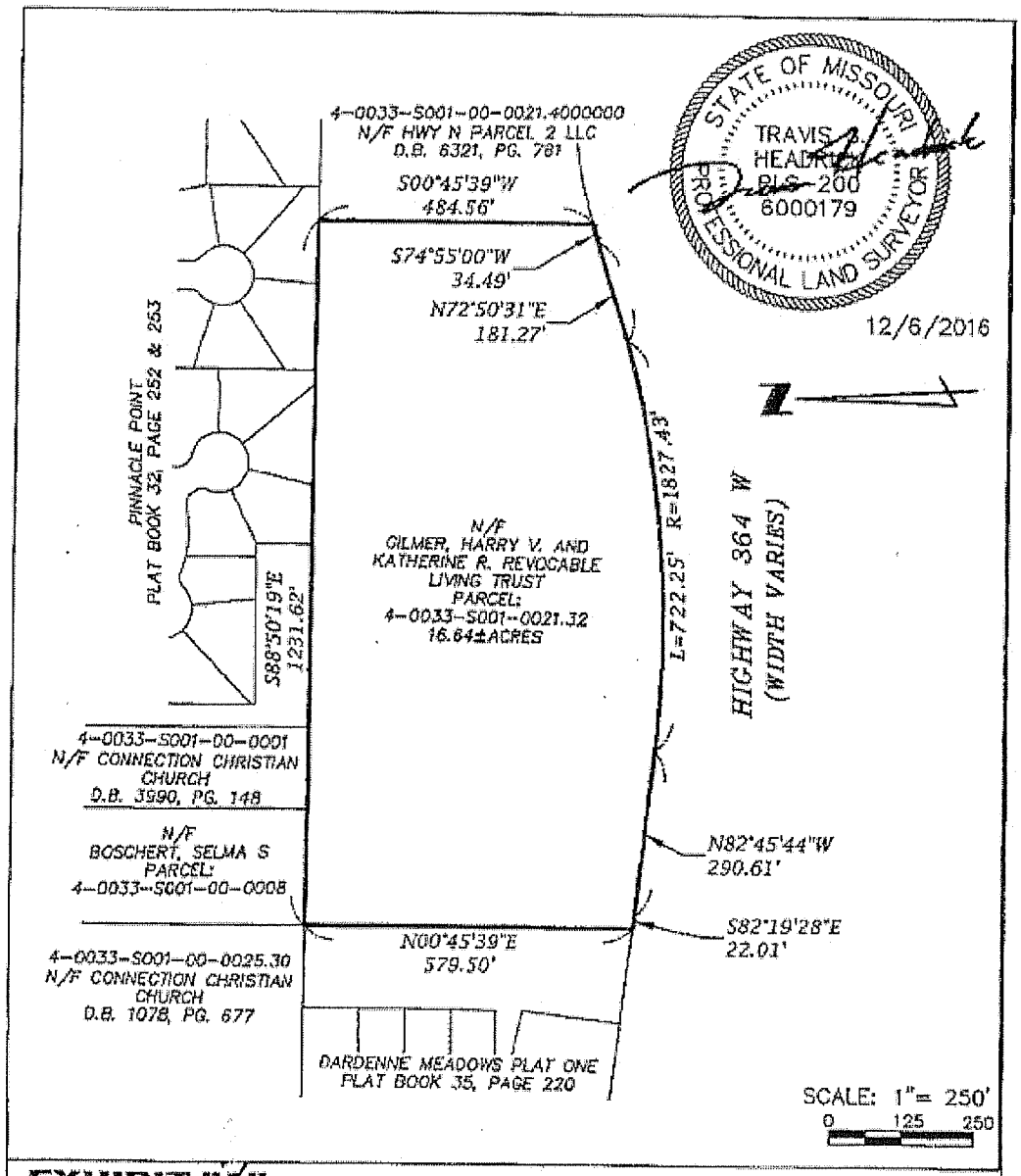

EXHIBIT "A"

INITIAL:

A TRACT OF LAND BEING PART OF SECTION 1 IN TOWNSHIP 46 NORTH, RANGE 2 EAST, SITUATED IN ST. CHARLES COUNTY, MISSOURI

DECEMBER 2016

PARCEL ID: 4-0033-S001-00-0021.3200000
GILMER, HARRY V & KATHERINE R REVOCABLE LIVING TRUST
HWY N

DESCRIPTION

A TRACT OF LAND BEING PART OF SECTION 1 IN TOWNSHIP 46 NORTH, RANGE 2 EAST, SITUATED IN ST. CHARLES COUNTY, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERN RIGHT-OF-WAY LINE OF MO ROUTE 364, BEING 260.87 FEET PERPENDICULAR DISTANCE NORTH OF STATION 2+993.249(M); THENCE SOUTH 82°19'28" EAST, 22.01 FEET TO A POINT; THENCE SOUTH 82°45'44" EAST, 290.61 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 1827.43 FEET, AN ARC DISTANCE OF 722.25 FEET, THE CHORD FOR WHICH IS NORTH 86°14'21" EAST, 717.56 FEET, TO A POINT; THENCE NORTH 72°50'31" EAST, 181.27 FEET TO A POINT; THENCE NORTH 74°55'00" EAST, 34.49 FEET TO A POINT; THENCE NORTH 00°45'39" EAST, 484.56 FEET TO A POINT; THENCE NORTH 88°50'19" WEST, 1231.62 FEET TO A POINT; THENCE SOUTH 00°45'39" WEST, 579.50 FEET TO THE POINT OF BEGINNING, ACCORDING TO CALCULATIONS BY ALTEA, LLC.

STATE OF MISSOURI
TRAVIS G. HEADRICK
NUMBER
PLS-2006XX0178
PROFESSIONAL LAND SURVEYOR

12-6-2016

EXHIBIT C

CITY OF DARDENNE PRAIRIE, MISSOURI

THOMAS DREW GILMER,	)	
TRUSTEE OF THE HARRY	)	
V. GILMER IRREVOCABLE	)	SS:
TRUST DATED AUGUST 28, 1996	)	
	)	
Petitioner,	)	

PETITION FOR VOLUNTARY ANNEXATION

Thomas Drew Gilmer, Trustee of the Harry V. Gilmer Irrevocable Trust dated August 28, 1996 ("Petitioner") hereby petitions the City of Dardenne Prairie, Missouri, for annexation of the real estate described on Exhibit A and Exhibit B (the "Property"), attached hereto and incorporated by reference herein. In support of the Petition, Petitioners state:

1. Petitioner requests, subject to the terms of the Pre-Annexation Agreement attached hereto as Exhibit C, that the Property described on Exhibit A and Exhibit B be annexed by the City of Dardenne Prairie as permitted in Mo. Rev. Stat. 71.014.

2. Petitioner is the Owner of all fee interests of record in the Property described on Exhibit A and Exhibit B.

3. No part of the Property is located in any incorporated municipality.

4. The Property is contiguous to and compact to the existing corporate limits of the City of Dardenne Prairie.

5. The length of the contiguous boundary common to the existing City limits of the City of Dardenne Prairie, Missouri and the Property is at least fifteen percent (15%) of the length of the total perimeter of the Property.

WHEREFORE, subject to the terms of the Pre-Annexation Agreement attached hereto as Exhibit C, Petitioner requests that the Property described on Exhibit A and Exhibit B be annexed into the corporate limits of the City of Dardenne Prairie, Missouri.

IN WITNESS WHEREOF, the undersigned has set his hand as of the _____ day of March, 2017.

THOMAS DREW GILMER,
TRUSTEE OF THE HARRY V.
GILMER IRREVOCABLE TRUST
DATED AUGUST 28, 1996

By: _____
Thomas Drew Gilmer, Trustee

STATE OF MISSOURI)
) ss.
COUNTY OF ST. CHARLES)

On this _____ day of _____, in the year 2017, before me, Thomas Drew Gilmer, a Notary Public in and for said state, personally appeared Thomas Drew Gilmer of the Harry V. Gilmer Irrevocable Trust dated August 28, 1996, known to me to be the person who executed the within Petition for Voluntary Annexation, and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I set my hand and affixed my official seal in the County and State aforesaid, on the day and year above written.

_____
Notary Public