

Memorandum #08-92

To: Al Viereck, Interim City Manager
From: Dave Mingo, AICP Community Development Director
Subject: Planning Commission Action #07-059 / Resolutions #08-05 and 08-06
Date: May 5, 2008

Attached are the documents associated with the proposed Majestic Heights Addition to the City of Yankton. In order as they appear in your packet are:

1. Resolution #08-06 with support documents: The plat resolution including the Planning Commission action sheet (Planning Commission action number 07-059) and plat of Phase 1 of the proposed subdivision.
2. Developer's Agreement: The standard Developer's Agreement with additional language in Section II for specific items that are unique to the proposal. This has been signed by the developer.
3. Articles of Incorporation of the Majestic Heights Homeowner's Association: This document provides a mechanism for the property owners in the development to account for the costs associated with common areas and other development specific improvements. The document has been reviewed by the City Attorney, public works and planning staff.
4. Declaration of Covenants, Conditions, Restriction and Easements Running with the Land: The document has been reviewed by the City Attorney, public works and planning staff. Much of this document is based on the preference of the developer. City staff did recommend the inclusion of items 10 and 11 which helps make future owners aware of maintenance policies.
5. Resolution #08-05 with support documents: The annexation resolution for the 40 acre tract that is proposed to become Majestic Heights. The required map and the signed voluntary petition of annexation are also attached.

Please note that the agenda places the plat review before the annexation. The developer has requested this because they do not want the property annexed unless the plat is approved. The order in which the items are placed on the agenda does not impact the project from a city perspective. The previously required "Addendum to the Developer's Agreement" regarding rural water issue indemnification is not included in this action. The city's special counsel has reviewed this information and recommends that the commission proceed with business as usual.

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The Planning Commission has recommended approval of the project subject to City Commission review of legal issues. Staff recommends approval of the plat and annexation based on legal counsel review.

Respectfully submitted,

Dave Mingo, AICP
Community Development Director

Recommendation: It is recommended that the City Commission approve the proposed plat and annexation.

_____ I concur with this recommendation.

_____ I do not concur with this recommendation.

Al Viereck, Interim City Manager

RESOLUTION #08-06

WHEREAS, it appears from an examination of the plat of the Lot 1 Thru Lot 4 of Block 5, Lot 1 Thru Lot 9 of Block 6 and Lot 1 & Lot 2 of Block 7, Majestic Heights Addition, Located in the SE ¼, SE ¼ of Section 11 – T93N – R56W in Yankton County, South Dakota prepared by Travis J. Kropuenske of Johnson Engineering a registered land surveyor in the state of South Dakota; and,

WHEREAS, such plat has been prepared according to law and is consistent with the City's overall Comprehensive Development Plan.

NOW, THEREFORE BE IT RESOLVED by the Board of City Commissioners of the City of Yankton, South Dakota, that the plat for the above described property is hereby approved.

Adopted:

C.N. Gross, Mayor

ATTEST:

Ann Clough, Deputy Finance Officer

PLAT REVIEW

ACTION NUMBER: 07-059

E.T.J. MEMBER ACTION REQUIRED: No

APPLICANT / OWNER: Kent E. Lehr, as Trustee of Clara Billars Irrevocable Trust

ADDRESS / LOCATION: West side of the 1100 Block of West City Limits Road.

PROPERTY DESCRIPTION: Lot 1 Thru Lot 4 of Block 5, Lot 1 Thru Lot 9 of Block 6 and Lot 1 & Lot 2 of Block 7, Majestic Heights Addition, Located in the SE ¼, SE ¼ of Section 11 – T93N – R56W in Yankton County, South Dakota.

ZONING DISTRICT: ETJ R-4 Multiple Family Residential.

PREVIOUS ACTION: None.

COMMENTS: The proposed plat represents Phase I of the planned Majestic Heights Subdivision. Phase I contains 15 lots of which two are designated for stormwater detention purposes in the plans on file in the Department of Public Works. Lot 4, Block 5 and Lot 2, Block 7 are stormwater detention basin lots. Future Lot 8, Block 1 will also serve as a detention facility. Once completed, the development will include 69 single family lots.

The proposed plat meets the requirements of the Subdivision Ordinance and Zoning Ordinance. Basic design information for the entire 40 acre site has been submitted and approved by city engineering staff to ensure that the subdivision can be developed as presented. Detailed construction plans for all of the infrastructure associated with Phase I has been submitted and approved by city engineering staff. The site is not directly adjacent to Marne Creek so the stormwater management plans of the city dictate that detention basins are constructed and stormwater be detained on the site. The detention basins will be dry except during rain events.

The attached Developer's Agreement, Homeowner's Association and Covenants define how the development will occur and designate responsibilities for specific items. The Developer has done a good job of responding to ordinance requirements.

This property is currently outside the city limits. The owner wants the property to be annexed and have all city services. Past subdivisions such as this would be annexed as a part of the development process and thus have access to all city utilities including water for domestic use and fire protection. Guidance from legal council will be necessary prior to final City Commission action because of the pending BY Water complaint against the city. Staff is requesting a Planning Commission recommendation at this time so that the process will not be delayed once a legal recommendation is available.

Staff recommends that the plat of Phase I of Majestic Heights Subdivision, Developer's Agreement and Homeowner's Association documents including covenants be recommended for approval by the Planning Commission. The recommendation should be contingent upon the advise from legal counsel regarding the issues associated with the BY Water complaint.

HEARING SCHEDULE:

November 13, 2007: Planning Commission reviews plat and makes recommendation to the City Commission.

December 10, 2007 or: Pending legal counsel advice the City Commission reviews the
Later Date plat and makes a final decision.

Planning Commission results: The Planning Commission recommended approval of the proposed plat and Developer's Agreement contingent upon legal council review.

Prepared by:
The City of Yankton
PO Box 176
Yankton, SD 57078

Developer's Agreement

Majestic Heights Addition, Located in the SE ¼, SE ¼ of Section 11 – T93N – R56W in Yankton County, South Dakota

This agreement made this 16th day of October, 2007, between Clara Billars Trust, hereinafter called "Developer" and the City of Yankton, a municipal corporation of the State of South Dakota, located in Yankton County, hereinafter called the "City".

WHEREAS, the Developer is the owner of approximately 40 acres of land adjacent to the City, proposed for annexation and development herein, said land being described as follows to wit:

SE ¼, SE ¼ of Section 11 – T93N – R56W in Yankton County, South Dakota

WHEREAS, the Developer desires to improve land for residential purposes; and

WHEREAS, the Planning Commission of the City has recommended to the City Commission that the proposed subdivision of the above described land be given final approval when the plat thereof has been presented to the Planning Commission and City Commission on the condition that the Developer enter into an agreement with the City relative to the manner and method by which said land is to be developed; that the developer not be in default as to said agreement and all laws and regulations governing said development; and

WHEREAS, the Developer agrees to develop said land as herein described in accordance with this agreement, all City Ordinances, and all laws, plans and regulations governing said development.

NOW, THEREFORE, IN CONSIDERATION OF THE GRANTING OF APPROVAL OF A PLAT OF THE ABOVE DESCRIBED LAND AND THE DEVELOPMENT THEREOF BY THE CITY COMMISSION, the Developer does hereby agree to improve and develop said land as follows and as otherwise regulated by City Ordinances and all laws, plans and regulations governing said development.

Section I. Improvements. Standard for all Subdivisions

A. Roads and Streets. The Developer hereby agrees:

1. To grade and surface all roads and streets in the above described property in accordance with the plat of said subdivision and the plans and specifications on file in the Office of the Director of Public Works.
2. That roads and streets will be completed and presented to the City before occupancy is permitted.
3. That no occupancy will be permitted until roads and streets have been dedicated to and accepted by the City.

B. Sanitary Sewer. The Developer hereby agrees:

1. To construct, furnish, install and provide a complete sewerage system throughout the entire subdivision, all in accordance with the plans, specifications and drawings on file in the Office of the Director of Public Works. Materials oversizing expenses resulting from City service requirements that are over what the developer would normally be responsible for will be reimbursed to the developer by the City.
2. That construction of a sanitary sewer will be completed and acceptable to the City before any occupancy is permitted.
3. That no occupancy will be permitted until the sanitary sewer lines have been dedicated to and accepted by the City.

C. Water. The Developer hereby agrees:

1. To construct, install, furnish and provide a complete system of water distribution throughout the entire subdivision in accordance with the plans and specifications on file in the office of the Director of Public Works. Materials oversizing expenses resulting from City service requirements that are over what the developer would normally be responsible for will be reimbursed to the developer by the City.
2. That construction of the system of water distribution will be completed and acceptable to the City before any occupancy is permitted.
3. That no occupancy will be permitted until the water distribution system has been dedicated to and accepted by the City.

D. Surface Water Drainage. The Developer hereby agrees:

1. To construct, install, furnish and provide adequate facilities for storm and surface water drainage throughout the entire subdivision in accordance with the plans and specifications on file in the office of the Director of Public Works.
2. That construction of surface and storm water drainage facilities shall be completed and acceptable to the City before occupancy is permitted.
3. To provide facilities to transmit the existing surface drainage across the subdivision. These facilities shall be designed to accommodate the anticipated storm water flows resulting from development of the adjacent property if applicable. The Developer further agrees to provide proper facilities to transmit the surface drainage from the subdivision to a stream, waterway or dedicated easement that has adequate capacity to transmit the anticipated flows from the subdivision and adjacent property.

E. Sidewalks. The Developer hereby agrees:

1. To construct, install, furnish and provide a complete system of sidewalks along all public streets and dedicated pedestrian walkways within the entire subdivision in accordance with the plans and specifications on file in the office of the Director of Public Works.
2. The construction of all sidewalks shall be completed for each lot by either the Developer or owner prior to permitting occupancy of the property.

F. Street Lights. The Developer hereby agrees:

1. To install a street lighting system in the subdivision according to a plan prepared by the Northwestern Energy Company and on file in the office of the Director of Public Works.

E. Landscaping. The Developer hereby agrees:

1. To plant street trees (one per lot) at least six (6) feet in height and one and one half (1 1/2) inches in diameter at breast height in accordance with the species and the time schedule on file in the Department of Parks and Recreation.

Section II. Provisions Specific to This Subdivision

1. The Developer agrees to petition the city for annexation of the 40 acre addition upon request for approval of any plat therein. The City will annex the 40 acre parcel prior to the initial plat being recorded. The recording of said annexation will be contingent upon the Developer receiving approval of the initial plat.
2. The Developer shall produce a homeowner's association document addressing the perpetual maintenance of the stormwater detention facilities and the West City Limits Road Right-of-Way including sidewalks along WCLR. The document shall stipulate that the City will not maintain any alleys that are gravel until such time that they are paved in accordance with City standards. Utilities will be installed and garbage collected as in subdivisions with no alleys until such time that the alleys have been paved by the developer or involved property owners. It

is recommended that the Homeowner's Association develop a standard for uniform fencing and the maintenance thereof in the backs of lots along West City Limits Road and Billars Road. The City shall review the association document to verify that it addresses applicable issues. Said document shall be completed and recorded at such time the initial plat is recorded.

3. The Developer shall construct 15th Street at such time that 50 percent of the lots in the subdivision are platted or upon any lot adjacent to 15th Street being platted. 15th Street shall be oversized both in width and thickness. It shall be a concrete street. Materials oversizing expenses resulting from City service requirements that are over what the Developer would normally be responsible for will be reimbursed to the Developer by the City. The City agrees to pay the cost for oversizing 15th Street and associated infrastructure to collector street standards in accordance with the City's oversizing policy. The Developer may file a cost recovery for costs associated with the north half of the infrastructure. Recovery could be expected if / when the landowner to the north requests access to 15th Street infrastructure.

4. The Developer shall construct Billars Road at such time that 50 percent of the lots in the subdivision are platted or upon any residential lot adjacent to Billars Road being platted. For the purposes of this agreement, Lots 1 and 2, Block 7 are not considered adjacent to Billars Road. Lot 8 of future Block 3 is adjacent to Billars Road. Materials oversizing expenses resulting from City service requirements that are over what the Developer would normally be responsible for will be reimbursed to the Developer by the City. The City agrees to pay the cost for any oversizing that is required in Billars Road. The Developer may file a cost recovery for costs associated with the west half of the infrastructure. Recovery could be expected if / when the landowner to the west requests access to Billars Road infrastructure.

5. The proposed east – west alley on the south side of the development may be improved and a cost recovery filed so that the Developer may recover appropriate costs from the landowner to the south at such time that access is requested.

6. All alley right-of-ways need to be 20 feet in width (this is correctly depicted in the preliminary plat on file in the Office of the Director of Public Works).

7. The Developer will be responsible for installation of all sidewalks on uninhabitable parcels (i.e. detention ponds). These sidewalks should be installed for each phase in said uninhabitable parcels once 50% of the developed lots have been built on.

8. Parking and access:

- a. No on-street parking to be allowed on Billars Road from Hwy. 314 to 11th Street. The street will be striped for three lanes to provide for a turning lane.
- b. No driveways will be allowed on Billars Road from Hwy. 314 to 11th Street and on 12th Street from Claire Street to WCLR. Adjacent lots should be accessed from either 11th Street or Claire Street.

Addendums to this section of the Developer's Agreement may be necessary as future phases of the subdivision are submitted. Addendums will be implemented in the same manner as this original agreement.

Section III. Dedication

Subject to all of the other provisions of this agreement and the exhibits hereto attached the Developer shall, without charge to the City, upon completion of all of the above described improvements, unconditionally give, grant, convey and fully dedicate the same to the City, its successors and assigns forever free and clear of all encumbrances. After such dedication, the City shall have the right to connect or integrate other sewer or water facilities provided hereunder as the City decides, with no payment or award to, or constitute acceptance of any improvement by the City.

Section IV. Miscellaneous Requirements.

A. Deed Restrictions. The Developer hereby agrees to execute and record all deed restrictions, if any, before approval of the final plat and file a copy thereof in the office of the City Finance Officer.

B. Survey Monuments. The Developer hereby agrees to properly place and install all survey or other monuments required by statute or ordinance prior to final plat approval. Interior piping shall be installed after the improvements are completed; before the sale of any lot and prior to the City's final street acceptance.

C. Grade. The Developer hereby agrees to furnish to the Director of Public Works a copy of a plan showing the street grade in front of each lot and/or finished yard grade. This information shall be provided prior to the issuance of any building permits for each phase of the project.

D. Reimbursement of Costs to the City. The Developer hereby agrees to reimburse the City for any costs incurred by the City for engineering, inspection, administrative and legal expenses.

1. Engineering and administrative costs shall be based on regular City pay rate (or overtime, if applicable) plus all fringe benefits for any time actually spent on the project with a maximum of 2 1/2% of construction costs to be charged to the Developer. Any costs for outside consultants shall be charged at the rate the consultant charges the City.

2. Legal costs shall be based on the statements of the City Attorney with no overhead added by the City. Legal costs shall not be incurred without prior notice given to the Developer.

3. The City shall immediately inform the Developer of any excessive or unusual costs which may arise under this section.

Section V. Roads, Sanitary Sewer, Water and Storm Water Guaranty.

The Developer shall guarantee the improvement described in this agreement against defect due to faulty materials or workmanship which appear within a period of one year from the date of acceptance by the City as herein provided and shall pay for any damages resulting there from to City property.

Section VI. Method of Improvement.

The Developer hereby agrees to engage contractors for all work included in this agreement who are qualified to perform the work and who shall be listed as qualified for such work by the City. The Developer further agrees to use materials and make the various installations in accordance with the approved plans and specifications made a part of this agreement by reference and including those standard specifications of the City.

Section VII. Issuance of Occupancy Permits.

The Developer hereby agrees no occupancy shall be permitted until all streets, public utilities and improvements have been installed and are approved for connection by the City of Yankton. No building permits shall be issued until the improvements in Section I., A., B., C. and D. are contracted for and copies of the executed contract are supplied to the City.

The Developer agrees to cooperate with the City to prevent the occupancy of any dwelling units before required improvements have been accepted. The City will not be obligated to provide any services to any unit built in the Subdivision until all required improvements have been accepted and may terminate any services provided during construction if a unit is occupied before an occupancy permit is issued by the City.

Section VIII. City Responsibility.

The Developer hereby understands the City will perform no repair, maintenance or snow removal or provide utility services on any improvements until accepted by the City.

Section IX. Transferability.

The Developer hereby agrees that it is further acknowledged that this agreement shall be binding upon any grantees, heirs, devisees, legatees or assigns of the undersigned with the same force and effect and validity as agreed by the undersigned personally.

IN WITNESS WHEREOF, the Developer has caused this Agreement to be signed this 16 day of October, 2007.

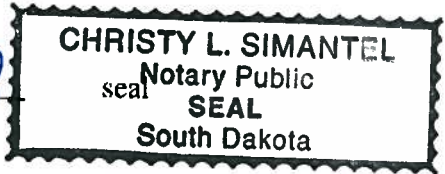
by: [Signature]
Trustee

by: _____

ss: State of South Dakota
County of ~~Yankton~~ Bonhomme

Be it remembered that on this 16th day of October, 2007, before me the undersigned, a notary public within and for the County and State aforesaid, personally appeared Kent E. Lehr and _____ known to me to be the persons who are described in and who executed the within and foregoing instrument and certificate and acknowledged to me that he executed the same.

Christy L. Simantel
Notary Public



Bonhomme
Yankton County, South Dakota
My commission expires on: 10-28-2009

Accepted pursuant to Resolution adopted by the Board of City Commissioners of the City of Yankton this _____ day of _____, 2007.

Curt Bernard, Mayor

ATTEST:

Al Viereck, Finance Officer

**ARTICLES OF INCORPORATION
OF
MAJESTIC HEIGHTS HOMEOWNERS' ASSOCIATION**

The undersigned for the purpose of forming a South Dakota Non-Profit Corporation under and pursuant to the South Dakota Non-Profit Corporation Act, does hereby adopt the following Articles of Incorporation.

ARTICLE I

NAME: The name of the corporation is MAJESTIC HEIGHTS HOMEOWNERS' ASSOCIATION.

ARTICLE II

DURATION: The period of existence of the corporation is perpetual.

ARTICLE III

PURPOSES FOR WHICH FORMED: The corporation is organized and shall be operated for the following purposes:

A. To promote the collective and individual property and civic interests and rights of all persons, firms and corporations owning property described as follows, to-wit:

Southeast Quarter of the Southeast Quarter (SE1/4 SE1/4), Section Eleven (11), Township Ninety-three (93), Range Fifty-six (56), Yankton County, South Dakota, (hereinafter "Property").

B. To enforce the DECLARATIONS OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RUNNING WITH THE LAND, which was filed for record in the office of the Yankton County Register of Deeds on the ____ day of _____, 2007, at _____ o'clock _____.m., in Book _____, Page _____, on the Properties, as well as other covenants, conditions, restrictions and easements as shall be subsequently approved by the Corporation and changes thereto;

C. To exercise all rights, powers and privileges conferred by the laws of the State of South Dakota upon nonprofit corporations;

D. To fix assessments or charges to be levied against the Property;

E. To provide, acquire, construct, improve and maintain rights of way, roads, water lines, electric utilities, and common areas; and,

F. To do such other things as are suitable, proper or incidental to the purposes of the corporation or necessary or desirable in order to accomplish them.

The foregoing enumeration of said powers is made in furtherance, and not in limitation, of the powers conferred upon this corporation by law and is not intended, by the mention of any

particular power to limit or restrict any lawful power to which this corporation may be otherwise entitled.

ARTICLE IV

MEMBERSHIP: There shall be one class of members. The qualifications and rights shall be as follows:

Every person, whether natural or legal, owning an interest in the Property shall be a member of the Corporation. The foregoing is not intended to include mortgagees or other persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the estate in the Property.

ARTICLE V

CAPITALIZATION: This is a non-profit, non-stock corporation and no dividends or pecuniary profit will be declared or paid to the Members of the corporation. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its members, directors or officers, but the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.

ARTICLE VI

NO PECUNIARY GAIN TO MEMBERS. This Corporation does not and shall not afford a pecuniary gain incidently or otherwise to its members.

ARTICLE VII

LIABILITY AND INDEMNIFICATION. The Members of this Corporation shall not be liable for corporate obligations except as provided for and authorized under covenants, conditions, restrictions and easements applicable to the Property. The Corporation shall indemnify each officer and director, including former officers and directors, to the full extent permitted by the South Dakota Non-Profit Corporation Act.

ARTICLE VIII

MANAGEMENT: The management and affairs of this corporation shall be managed by a Board of not less than one (1) nor more than five (5) Directors. The Directors are to be elected by the Members. The names and addresses of the persons or entities who are to serve as directors until a successor is elected are:

Carol Breck
226 Marina Dell Avenue
Yankton, SD 57078

Kent I.ehr
521 Main Street
Scotland, SD 57059

Robert W. Klimisch
2704 Pine Street
Yankton, SD 57078

ARTICLE IX

INCORPORATOR: The names and addresses of each incorporator are:

Carol Breck
226 Marina Dell Avenue
Yankton, SD 57078

Kent Lehr
521 Main Street
Scotland, SD 57059


Robert W. Klimisch
2704 Pine Street
Yankton, SD 57078

ARTICLE X

REGISTERED AGENT: The principal office, initial registered office and the name of the initial registered agent at such address is: Robert W. Klimisch, 2704 Pine Street, Yankton, South Dakota 57078.

These Articles are hereby executed in duplicate at Yankton, South Dakota, this _____ day of August, 2007.


IN WITNESS WHEREOF, we have hereunto set our hands and official seals.



Carol Breck



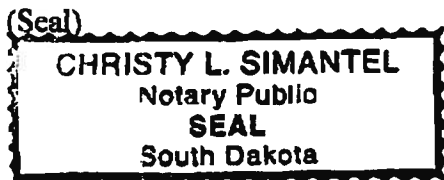
Kent Lehr

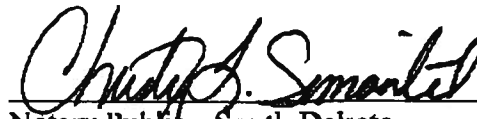


Robert W. Klimisch

State of South Dakota)
)ss
County of Bon Homme)

On this the 22nd day of August, 2007, before me, the undersigned officer, personally appeared **Kent Lehr**, known to me or satisfactorily proven to me to be the person named in and who executed the foregoing Articles of Incorporation, acknowledged the same to be his own free act and deed for the purposes therein expressed.

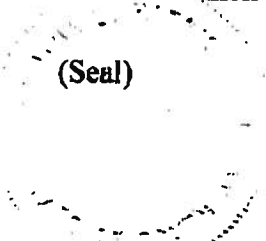




Notary Public - South Dakota
My Comm. Exp.: 10-28-2009

State of South Dakota)
)ss
County of Yankton)

On this the 23rd day of August, 2007, before me, the undersigned officer, personally appeared **Carol Breck and Robert W. Klimisch**, known to me or satisfactorily proven to me to be the persons named in and who executed the foregoing Articles of Incorporation, acknowledged the same to be their own free act and deed for the purposes therein expressed.



(Seal)

Tabitha R. Harbo
Notary Public - South Dakota
My Comm. Exp.: 11-29-2009

STATE OF SOUTH DAKOTA)
)ss
COUNTY OF YANKTON)

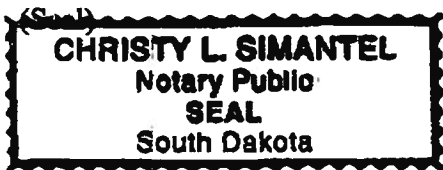
The undersigned, each for himself, being first duly sworn, deposes and says that they are the incorporators named in the foregoing Articles of Incorporation and they are the applicants for a charter to establish a corporation in accordance with said Articles of Incorporation under the laws of the State of South Dakota, that such corporation is not formed for the purpose of enabling any corporation or corporations to avoid provisions of 37-1 of the 1967 Compiled Laws and acts amendatory thereto relating to unlawful trusts and combinations and restrains of trade.

Carol Breck
Carol Breck

[Signature]
Kent Lehr

[Signature]
Robert W. Klimisch

Subscribed and sworn to before me this 22nd day of August, 2007.



Christy L. Simantel
Notary Public - South Dakota
My Comm. Exp.: 10-28-2009

Subscribed and sworn to before me this 23rd day of August, 2007.

Yakitha L. Hanson
Notary Public - South Dakota
My Comm. Exp.: 11-29-2009

(Seal)

CONSENT OF REGISTERED AGENT

I, Robert W. Klimisch, consent to act as Registered Agent for Majestic Heights Homeowners' Association, Inc.

Dated this 23rd day of August, 2007.

Robert W. Klimisch
Robert W. Klimisch

Document Prepared By:
Robert W. Klimisch
GOETZ & KLIMISCH
311 W. Third St.
P. O. Box 708
Yankton, SD 57078
605/665-9495

**DECLARATIONS OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS RUNNING WITH THE LAND**

THIS DECLARATION, made this ____ day of _____, 2007, by _____, of _____, SD 57_____, (hereinafter referred to as "Developer") being the owners of the following described property, to-wit:

Southeast Quarter of the Southeast Quarter (SE1/4 SE1/4), Section Eleven (11), Township Ninety-three (93), Range Fifty-six (56), Yankton County, South Dakota (hereinafter "Property").

WHEREAS, Developer desires to provide for the preservation of values and amenities for the Property and to promote the health, safety, and welfare of owners of the Property by placing restrictive covenants, conditions and restrictions running with the land on the Property;

WHEREAS, the Developer has formed a homeowners' association entitled Majestic Heights Homeowners' Association for the purposes of construction and maintenance of rights of way, fixing assessments and charges to be levied against the Property and enforcing these Declarations and each and every thing necessary, suitable, incidental to or proper for the accomplishment of these and similar purposes; and,

NOW THEREFORE, the Developer hereby declares the following Declarations of Covenants, Conditions, Restrictions and Easements Running with the Land, and the Property, shall be subject thereto, and all conveyances of parties having or acquiring any right, title or interest, of the Property shall be subject thereto, and all grantees shall be deemed to have consented to the same.

ARTICLE I. DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit)

shall have the following meanings:

(a) "Association" shall mean and refer to a homeowners' association formed by the Developer entitled Majestic Heights Homeowners' Association for the purposes of construction and maintenance of rights of way, fixing assessments and charges to be levied against the Property, and enforcing these Declarations and each and every thing necessary, suitable, incidental to or proper for the accomplishment of these and similar purposes.

(b) "Common Area" shall mean all Property (including the improvements thereto) owned by the Developer or Association for the common use and enjoyment of the Owners, together with all streets, roads, public ways, rights of way, ditches, the storm water retention facility, the West City Limits Road right of way, and the sidewalk along the West City Limits Road right of way.

(c) "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions Running with the Land applicable to the Property recorded in the office of the Register of Deeds, Yankton County, South Dakota.

(d) "Developer" shall mean and refer to Clara Billars Irrevocable Trust dated October 5, 2006, their successors and assigns.

(e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

(f) "Property" shall mean and refer to that certain real property described in the Declaration.

ARTICLE II. PROPERTY RIGHTS

1. No construction, improvement, or alteration of any structure, single family private dwelling home, outbuilding, dog kennel, dog house, horse stable, horse shelter or fence shall be made, erected, altered, placed or permitted on the Property without such request being submitted and approved in writing by the Developer or from the Association.

2. Easements and rights-of-way are or shall be expressly created for the installation, construction and maintenance of utilities for the Property including but not limited to gas, water, telephone, electricity, sewer and drainage. Such easements will not be unreasonably withheld from any Owner for the benefit of any another Owner.

3. No modular, precut, or pre-built structure, including but not limited to trailers or mobile homes, or structures of any kind of what is commonly known as "off-site pre-manufactured construction" shall be placed or built on the Property to be used as a temporary or permanent residence without approval in writing from the Developer or from the Association.

4. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted, except one sign consisting of not more than six square feet advertising a Lot as "For Sale" without written approval from the Developer or from the Association.

5. The Owners shall keep their Property, together with adjoining rights of way, mowed and in a clean and neat condition, free and clear of refuse, waste, rubble, debris, trash, yard waste, garbage or noxious weeds.

6. No repair of any boat, automobile, motorcycle, truck, camper or similar vehicle requiring a continuous time period in excess of forty-eight (48) hours shall be permitted at any time; nor shall any vehicle offensive to the neighborhood be visibly stored, parked or abandoned on the Property.

7. No unused building material, junk or rubbish shall be left exposed on a Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

8. The Owners shall pay all reasonable costs associated with the development, maintenance or repair of any storm drainage/water shed area and/or basin at the direction of the Developer or the Association.

9. The Owners shall pay all reasonable costs associated with the development, maintenance, repair or replacement of any Common Area at the discretion of the Developer or the Association.

10. The Association will provide for the perpetual maintenance of the storm water retention facilities and the West City Limits Road right of way including the sidewalks along the road with the cost thereof to be paid by the owners.

11. The City of Yankton will not be required to maintain any alleys that are gravel until such time that they are paved in accordance with City standards.

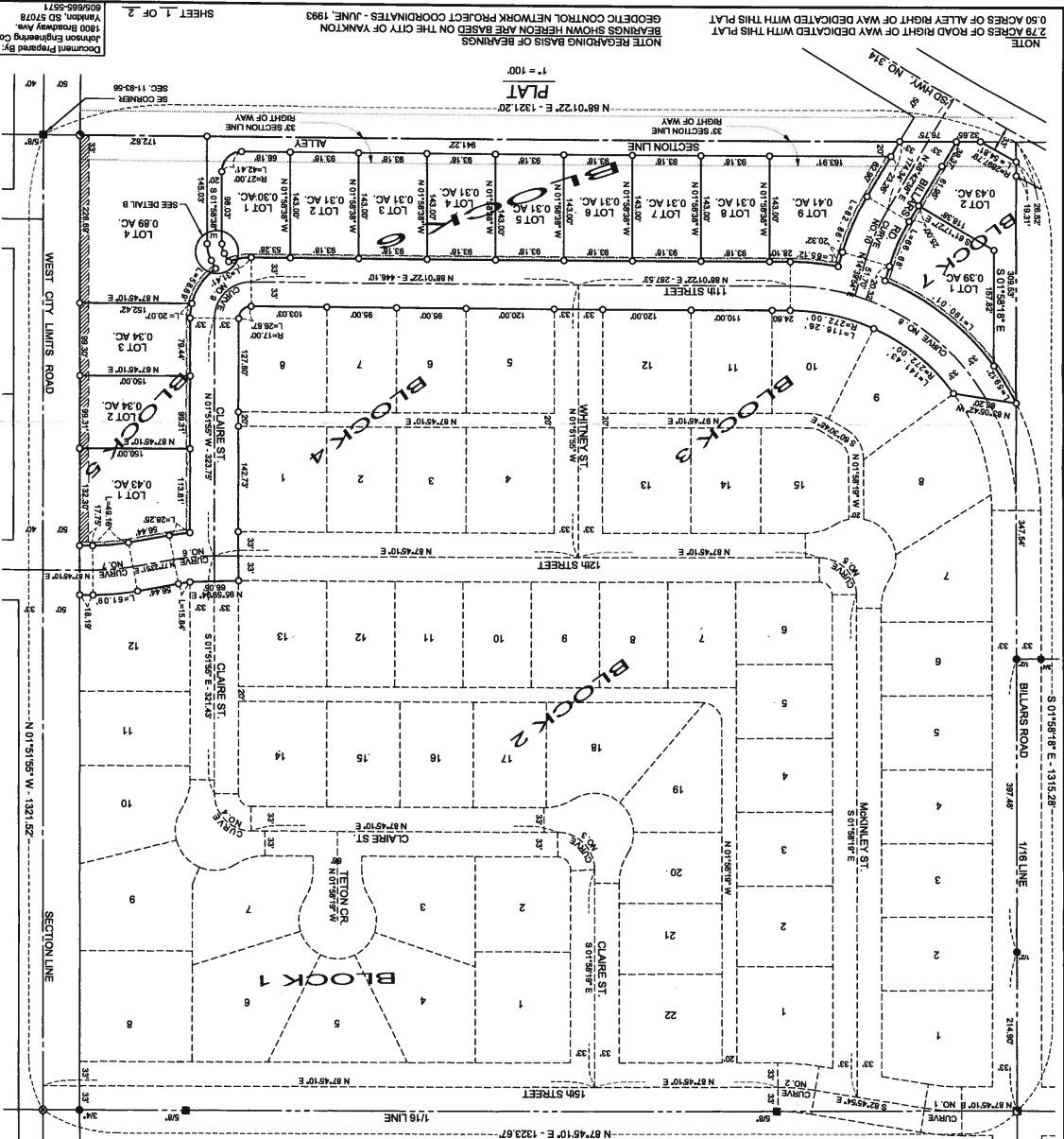
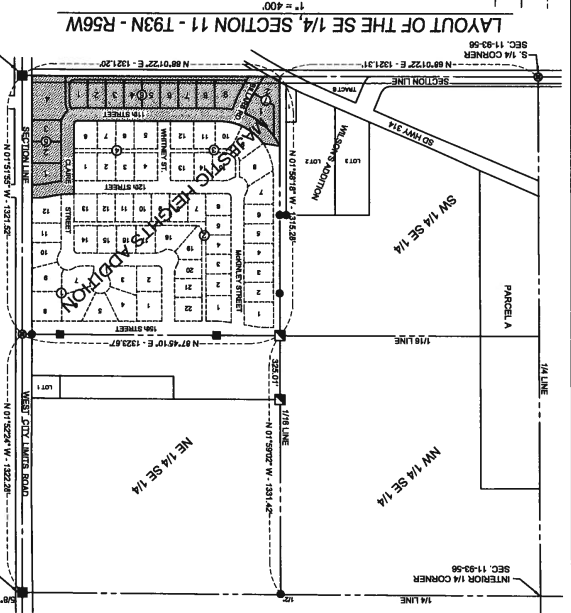
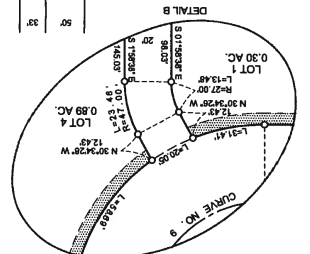
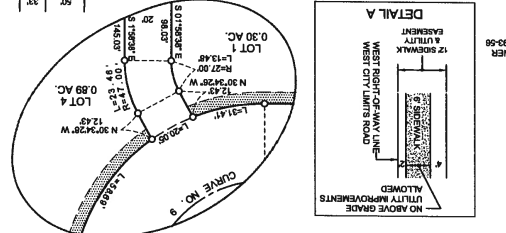
12. The Association will develop a standard for uniform

LOCATED IN THE SE 1/4 OF SECTION 11 - T93N - R56W
 IN YANKTON COUNTY, SOUTH DAKOTA

PLAT OF

- LEGEND**
- FOUND STEEL PIPE - SIZE AS SHOWN
 - FOUND REBAR - SIZE AS SHOWN
 - FOUND SPIKE
 - ⊗ FOUND 5/8" REBAR W/ CAP STAMPED TOM WEEK PELS 2912
 - FOUND 3/4" X 16" STEEL PIPE W/CAP STAMPED JOHNSON LS 2919
 - SET 3/4" X 16" STEEL PIPE W/CAP STAMPED TJK RLS 8841
 - PROPOSED FUTURE PLATTING
 - - - 5' UTILITY EASEMENT
 - 12' SIDEWALK AND UTILITY EASEMENT ALONG WEST CITY LIMITS ROAD
- SEE DETAIL A

CURVE NUMBER	Δ	D	L	R	T	E
1	87°39'	18'47.08"	50.48'	305.00'	25.30'	1.00'
2	87°59'	18'47.08"	50.48'	305.00'	25.30'	1.00'
3	90°18'31"	114'35.30"	78.28'	50.00'	60.24'	20.95'
4	90°22'52"	114'35.30"	78.28'	50.00'	60.24'	20.95'
5	90°18'31"	114'35.30"	78.28'	50.00'	60.24'	20.95'
6	102°11'18"	18'47.08"	55.12'	305.00'	27.64'	1.25'
7	102°11'18"	18'47.08"	55.12'	305.00'	27.64'	1.25'
8	90°07'19"	18'47.08"	479.12'	305.00'	128.55'	5.00'
9	89°53'17"	114'35.30"	78.44'	50.00'	48.80'	20.64'
10	14°02'44"	18'47.08"	74.77'	305.00'	37.57'	2.37'



NOTE REGARDING BASIS OF BEARINGS
 BEARINGS SHOWN HEREON ARE BASED ON THE CITY OF YANKTON
 GEODETIC CONTROL NETWORK PROJECT COORDINATES - JUNE, 1993

NOTE
 2.79 ACRES OF ROAD RIGHT OF WAY DEDICATED WITH THIS PLAT
 0.80 ACRES OF ALLEY RIGHT OF WAY DEDICATED WITH THIS PLAT

Document Prepared By
 Johnson Engineering Co.
 1800 Broadway Ave.
 Yankton, SD 57103
 605-665-5571

RESOLUTION NO. 08-05

WHEREAS, Kent E. Lehr, as Trustee of Clara Billars Irrevocable Trust has petitioned the City of Yankton, pursuant to SDCL 9-4-1, to annex certain real property into the corporate limits of the City of Yankton.

NOW, THEREFORE, BE IT RESOLVED by The Board of City Commissioners of the City of Yankton, South Dakota, that:

1. The following described real property is hereby annexed into the corporate limits of the City of Yankton, South Dakota:

DESCRIPTION OF TRACT TO BE ANNEXED

The Southeast Quarter (SE1/4), of the Southeast Quarter (SE1/4) Section Eleven (11), Township Ninety-three (93), Range Fifty-Six (56), Yankton County, South Dakota.

Said annexed property containing 40 acres total, more or less.

Adopted this _____ day of _____, 20__.

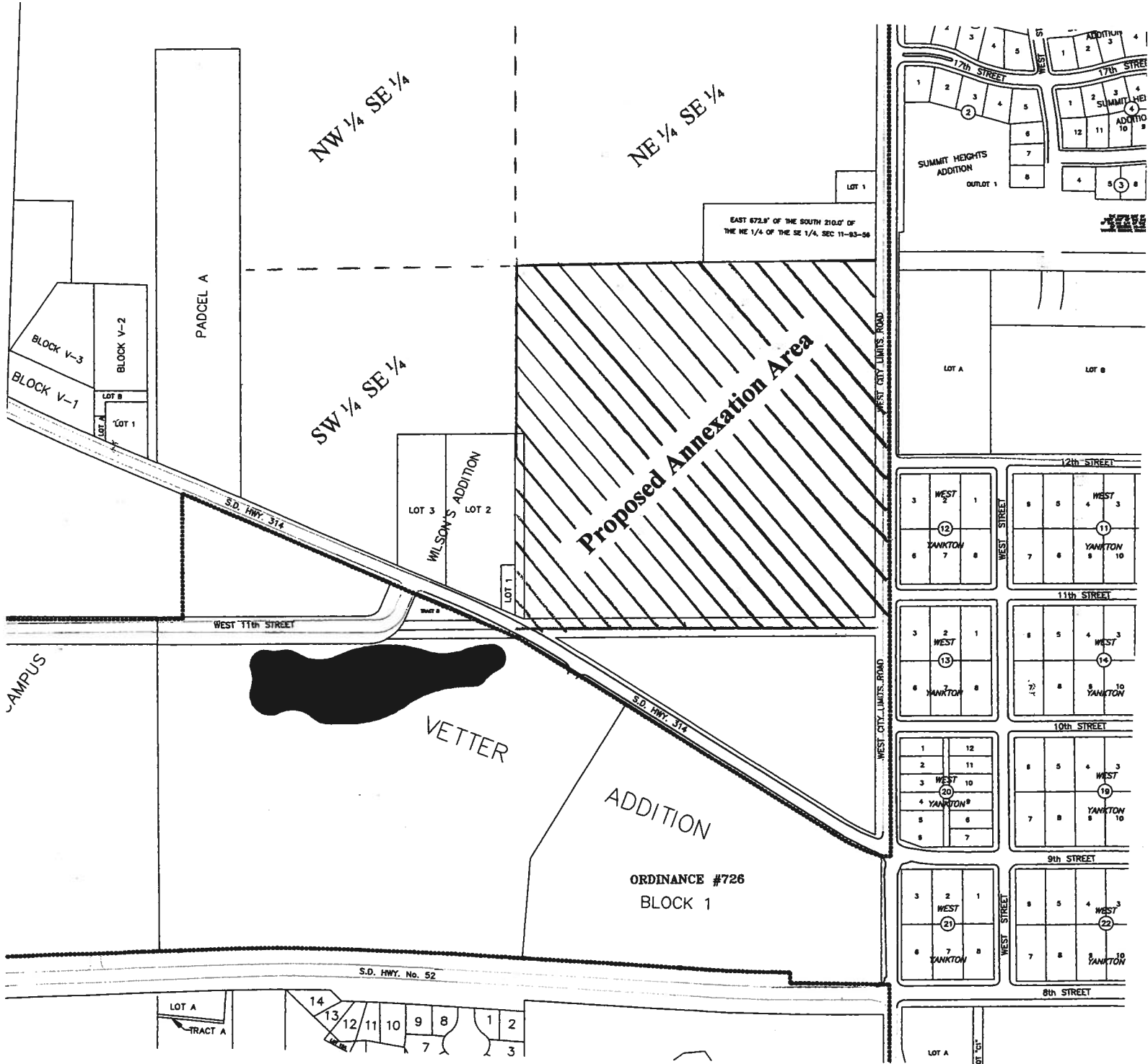
C.N. Gross, Mayor

ATTEST:

Ann Clough, Deputy Finance Officer

ANNEXATION LOCATION MAP

SE ¼, SE ¼ of Section 11 – T93N – R56W in Yankton County, South Dakota



PETITION OF ANNEXATION

To: The Honorable Mayor and
Board of City Commissioners of
the City of Yankton, South Dakota

The undersigned landowner(s), pursuant to SDCL 9-4-1, respectfully petition the Mayor and Board of City Commissioners of the City of Yankton, South Dakota, for annexation to the City of Yankton of the following described unincorporated territory in the County of Yankton, State of South Dakota, to-wit;

DESCRIPTION OF TRACT TO BE ANNEXED


The Southeast Quarter (SE1/4), of the Southeast Quarter (SE1/4) Section Eleven (11), Township Ninety-three (93), Range Fifty-Six (56), Yankton County, South Dakota.

Said annexed property containing 40 acres total, more or less.

And in support of the said petition, the petitioner(s) show the Board of City Commissioners:

1. That said territory abuts upon and is contiguous to the City of Yankton, South Dakota;
and
2. That the petitioner(s) is the sole and absolute owner(s) of not less than three-fourths of the value of the territory sought to be annexed to the City of Yankton, South Dakota;
and
3. That the petitioner(s) claim that there are not, as of the date of signing, any registered voters aside from the petitioner(s) residing in the territory petitioned to be annexed.

This petition is accompanied by a map of the territory to be annexed, showing with reasonable certainty the territory to be annexed, the boundaries thereof, and its relationship to the established corporate limits of the City of Yankton, South Dakota.

<u>Signature of Petitioner(s)</u>	<u>Address of Petitioner(s)</u>	<u>Date of Signing</u>
	Scotland, SD	1-24-08
Kent E. Lehr, as Trustee of Clara Billars Irrevocable Trust		