

This instrument was prepared by:

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State of South Dakota,
County of Charles Mix

I certify the within instrument was filed on
record the 14th day of February
2006 at 10:10 o'clock A.M. and re-
corded in book 50 of MR REC.
and page 216
Marion Weber
20060214

Register of Deeds

By _____ Dep.

**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS REGARDING STREETS AND IMPROVEMENTS**

THIS DECLARATION, made effective as of the 3rd day of February, 2006, by HIGBEE CUT, LLC, of Sioux Falls, South Dakota, hereinafter referred as "Declarant," fee owner of that certain real estate legally described as:

The North One-half of the Northwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) and the Northwest Quarter of the Northeast Quarter of the Southwest Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$), all in Section Twenty-nine (29), Township Ninety-six (96) North, Range Sixty-five (65) West of the 5th P.M., Charles Mix County, South Dakota;

all of which real estate shall herein be referred to as the "Property."

Declarant intends by this Declaration to impose upon the Property, and certain additional property described in Article 2 herein (the "Additional Property"), mutually beneficial restrictions regarding the easement for, use of, and maintenance of streets, roads and alleys (collectively, "Streets") located and to be located on or bounded on both sides by the Property, including any Additional Property, including without limitation Backdraft Drive and Cataract Court.

NOW, THEREFORE, Declarant does hereby impose and charge the Property with the covenants, agreements, easements, restrictions, conditions, and charges hereinafter set forth, hereby specifying that all of said declarations shall constitute covenants to run with the land and shall be binding on all parties having any right, title, or interest in the Property, including any Additional Property, or any portion of the Property, including any Additional Property, their heirs, successors, assigns, and all persons claiming under them, said declarations being intended to inure to the benefit of each owner of the Property, including any Additional Property, or any portion thereof and, further, said restrictions and covenants being designed to provide access to all of the lots comprising the Property, including any Additional Property, and to provide a mechanism for the use and maintenance of the Streets located or to be located on or bounded on both sides by the Property.

ARTICLE 1
Definitions

The following words when used in this Declaration shall have the meanings set forth below:

- (a) "Additional Property" shall mean any property which may be added to the Property, or any portion thereof, to the extent it is made subject to this Declaration by additional Supplemental Declarations as described in Article 2 below.
- (b) "Assessment" shall mean an annual or a special assessment assessed against any Lot pursuant to the provisions of Article 5 of this Declaration.
- (c) "Association" shall mean Higbee Cut Homeowners Assoc., as well as its successors and assigns. In the event Higbee Cut Homeowners Assoc. is dissolved, "Association", for purposes of this Declaration, shall mean the group, however organized, consisting of all owners of the Property, including any Additional Property.
- (d) "Board" shall mean the Board of Directors of the Association.
- (e) "Declaration" shall mean this instrument and all of the covenants, agreements, easements, restrictions, conditions, and charges set forth herein, as it may be amended from time to time as provided herein, together with all Supplemental Declarations filed in connection herewith.
- (f) "Lot" shall mean any plot of land shown upon any recorded subdivision plat of the Property, including any Additional Property, but excluding the Streets.
- (g) "Member" shall mean an Owner in its capacity as a member of the Association as provided in Article 4.
- (h) "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot except that, where a Lot is being sold on a contract for deed and the contract vendee is in possession, then the vendee and not the vendor shall be deemed to be the "Owner." Under no circumstances shall Owner refer to any mortgagee unless and until the mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (i) "Plats" shall mean all plats now of record or to be filed which encompass the Property and any Additional Property. The Plats shall include the plat of The North One-half of the Northwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) and the Northwest Quarter of the Northeast Quarter of the Southwest Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$), all in Section Twenty-nine (29), Township Ninety-six

(96) North, Range Sixty-five (65) West of the 5th P.M., Charles Mix County, South Dakota, and all plats of any Additional Property.

- (j) "Property" shall mean The North One-half of the Northwest Quarter of the Southwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) and the Northwest Quarter of the Northeast Quarter of the Southwest Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$), all in Section Twenty-nine (29), Township Ninety-six (96) North, Range Sixty-five (65) West of the 5th P.M., Charles Mix County, South Dakota;.
- (k) "Streets" shall mean any streets, roads and alleys shown on all Plats, whether dedicated to public use or owned by the Association. Streets shall also include all parking turnout areas and utility easements, if any, shown on the Plats.
- (l) "Supplemental Declaration" shall refer to the instruments recorded by the Declarant for purposes of subjecting any Additional Property to this Declaration, as further described in Article 2.

ARTICLE 2
Annexation of Additional Property

The annexation of any Additional Property may have the effect of subjecting all or a portion of the Additional Property described in any Supplemental Declaration to the covenants, agreements, easements, restrictions, conditions and charges set forth in this Declaration as though it was part of the Property and, further, all declarations herein shall constitute covenants to run with the land and shall be binding on all parties having any right, title or interest in such Additional Property, their heirs, successors, assigns, and all persons claiming under them.

ARTICLE 3
Easements for Streets
Utilities, and Parking

Subject to the language of any Plat, an easement for Streets, parking turnouts, and ingress and egress, for all Owners of the Property, including any Additional Property, their heirs, successors, assigns, licensees, invitees, and employees, is hereby reserved over, upon, and across the Streets. The areas upon which such easements are located shall be as depicted on the Plats. Said easements shall benefit all of the Owners of the Property, including any Additional Property, their heirs, successors, assigns, licensees, invitees, and employees. All Owners shall have the right to use, in common with all other Owners, their heirs, successors, assigns, licensees, invitees, and employees, the Streets, including all entrances and roads presently constructed or hereinafter constructed on the Streets provided, however, that:

- (a) the easements herein granted shall be used and enjoyed in such a manner as to cause the least possible interference with the other Owners.

- (b) the use of the Streets hereinabove granted shall be subject to such reasonable rules and regulations as the Association may establish, from time to time.

Subject to the language of any Plat, the Streets shall be used only for and by the respective Owners and their heirs, successors, assigns, licensees, invitees, and employees and shall not be used for parking, ingress, egress, and access for any use not associated with the Property, including any Additional Property. Except as provided in any Plat, the Streets shall not be dedicated to the public use unless the Members approve such dedication.

Subject to the language of any Plat, the Streets, together with any area located within ten (10) feet from any front Lot line, side street Lot line or rear Lot line and any area located within five (5) feet from any side interior Lot line, shall be subject to an easement for utilities, including, without limitation, water, electrical, telephone, natural gas and cable television. Subject to the language of any Plat, an easement shall also be granted across the Streets to the extent necessary to provide utility service to any Lot.

ARTICLE 4

Membership and Voting Rights in the Association

4.1 Governance of Association. Except as otherwise controlled below, the operation of the Association shall be governed by this Declaration.

4.2 Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

4.3 Association Responsibilities/Assessments. The Association shall be responsible for the construction, improvement, maintenance and repair of all of the Streets that are shown upon the Plats of the Property, including any Additional Property, and general upkeep of such Streets. The Association shall be responsible for maintenance, repair and operation of all utilities in connection with the Streets. The Association shall be responsible for the maintenance of any common easements used in connection with such Streets and common sites approved by the Association for the benefit of the Lots and the Owners thereof. The Association shall also have the duty to fix, levy, collect, and enforce payment of all charges and assessments therefor.

4.4 Votes. A Member shall be entitled to one vote for each Lot of which the Member is the sole Owner. If a Lot has more than one Owner, each Owner shall be a Member and the vote for such Lot shall be exercised as the Members holding an interest in that Lot among themselves determine, but in no event shall more than one vote per Lot be cast. Except as otherwise provided by applicable law, voting of the Members shall be conducted as described in the Declaration.

4.5 Meetings. The Members of the Association shall meet at least annually, upon ten (10) days prior notice to the Members. The Members of the Association may elect directors, officers, and committees. Notice of any meeting of Members may be waived in writing or by attendance of the meeting in person or by proxy.

4.6 Declarant's Votes and Rights. The Members shall have the right to elect the three (3) directors of the Association. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development, construction, promotion, marketing, sale or leasing of real estate within the Property, including any Additional Property.

ARTICLE 5
Covenant for Annual and Special Assessments

5.1 Creation of the Lien and Personal Obligation for Assessments. By acceptance of a deed therefor, whether or not it shall be so expressed in such deed, all Owners and all subsequent Owners of each Lot within the Property, including any Additional Property, shall be bound by and shall be deemed to covenant and agree to pay to the Association: (i) all annual assessments or charges referenced herein, and (ii) all special assessments for capital improvements or capital equipment to be owned by the Association, such assessments and charges to be established and collected as hereinafter provided. The annual and special assessments due with respect to each Lot, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien against each such Lot against which each such assessment or charge is made. Annual assessments shall become a lien upon each Lot as of the first day of January of the year in which such assessment is due and payable. Special assessments shall become a lien on the earliest date any part of the same is due and payable. Annual assessments and special assessments shall be due and payable as determined by the Board. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who, or entity that, is the Owner of such Lot at the time when the assessment fell due.

5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the cost of utilities and insurance, and construction, improvement, repair, maintenance, upkeep, and cleaning of the Streets, for the cost and upkeep of personal property, if any, owned by the Association, and to pay the expenses of the Association as provided herein. An adequate reserve fund funded from annual assessments may be maintained for maintenance, repair and replacement of those elements of the Streets that must be repaired or replaced on a periodic basis.

5.3 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, one or more special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of (i) capital improvements upon the Streets, or any portion thereof, or (ii) capital equipment owned or to be owned by the Association, provided that any such special assessment shall be approved by seventy-five percent (75%) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. In lieu of a special assessment, or a portion thereof, the Members, by seventy-five percent (75%) of the votes of the Members who are voting in person or by proxy, may authorize the Association to borrow all or a portion of the cost of such capital improvement or equipment, in which case the debt service therefore shall be funded through annual assessments.

5.4 Notice and Quorum for Any Action Authorized Under Section 5.3. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.3 shall be sent to all Members not less than ten (10) days or more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast a majority of all the votes of the Members shall constitute a quorum. If less than a majority of the outstanding votes are represented at a meeting, a majority of the votes so represented may adjourn the meeting to a future time without further notice. At such adjourned meeting held at the appointed future time, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

5.5 Date of Commencement of Annual Assessments; Due Dates. The Board shall fix the amount of the annual assessment provided for herein against each Lot subject to assessment at least thirty (30) days in advance of each annual assessment period. The initial annual assessment period shall commence on the first day of the month following the recording of this Declaration and run throughout and including the next succeeding December 31. The amount of annual assessments which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in this Article as the remaining number of months in the year bear to twelve. Each succeeding annual assessment period shall be a calendar year. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

5.6 Assessment. Beginning January 1, 2007, the Association will assess to the owner of each lot that is equal to or exceeds 12,000 sq. ft. a billing for \$100.00 necessary to cover all of the Association's expenses of operation, including but not limited to: road upkeep and maintenance. A billing of \$25.00 will be assessed to the owners of each lot that is less than 12,000 sq. ft. Each owner of a lot shall have ninety (90) days to pay the assessment. In the event the bill is not paid, the Homeowners Association shall have the right to claim a lien on the lot for the unpaid amount. A late charge of \$25.00 per month for each month or portion of a month the bill is unpaid plus reasonable attorney fees and all costs of foreclosure and collection shall be added to the amount of the lien. No owner may waive or otherwise escape liability for assessments provided herein by non-use or by abandonment of his/her lot. Increases in the assessment will be required from time to time in order to keep pace with the costs of operation. The Higbee Cut Homeowners Association Board of Directors may vote to increase the assessment not to exceed three percent (3%) per calendar year. The vote to increase the assessment will occur at the annual meeting and, if approved, will take effect the following calendar year, needing a 90% vote of the membership.

5.7 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. However, the lien of the assessments shall be superior to and prior to any homestead exemption now or hereafter provided by the laws of the State of South Dakota, and acceptance of a deed to any part of the Property, including any Additional Property, shall constitute a waiver of the homestead exemption by the grantee of the deed. Sale or transfer of any Lot shall not affect the assessment lien. However, the foreclosure of

any such first mortgage or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which become payable prior to the completion of such foreclosure or proceeding in lieu thereof or which become payable during any period of redemption and, if the assessments for which liens were extinguished cannot be collected in an action against the person or entity personally obligated to pay them, the Association shall bear such assessments as a common cost. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE 6
Residential Area Covenants

6.1 Land Use and Building Type. Lots shall be used for single or double family residential purposes, with the exception of appropriate recreational activity. Except as provided in Section 6.6, no building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single or double family dwelling. The provisions of this Article 6 shall apply only to residential Lots within the Property, including any Additional Property.

6.2 Code Compliance. All building construction must comply with the restrictions and requirements as provided for by the Ordinances and any amendments thereto of the County of Charles Mix and any other applicable governmental authority.

6.3 Building Standards The following standards shall be followed:

- (a) Building Construction. Structures may be site-built or modular provided they meet the most current edition of the Uniform Building Code (UBC). Structures that only comply with HUD housing standards will not be allowed. Specifically, mobile homes will not be allowed.
- (b) Single or Double Family Dwellings. Only structures that are designed to be single-family or double-family dwellings will be allowed.
- (c) Minimum Size of Structure. All primary residential structures shall have no less than 800 square feet of usable living space exclusive of attached garages, decks, porches, and patios. The garage area of the house, attached or detached, must be less than or equal to the living area. All such garages must be permanently constructed on solid permanent foundations. All computations in connection with determining the square footage of living area referred to above shall be exclusive of garages, porches, basements, and walk-out levels.

6.4 Maintenance of Insurance. Each Owner or occupant of any Lot shall be required to maintain personal liability insurance on their Lot(s) in the amount of five hundred thousand dollars (\$500,000.00). Proof of this coverage must be presented to the Association annually.

6.5 Residential Lot Building Locations. No building greater than 400 square foot and one story tall shall be located nearer than forty (40) feet to the front Lot line, nor nearer than forty

(40) feet from a side street Lot line, nor nearer than ten (10) feet to any side interior Lot line (the easement between Lot 29 and 30 is for the purpose of access only and is only restricted to the amount of the easement), nor nearer than forty (40) feet to the rear of any Lot except those lots that border the Northern edge of the property which will adhere to the 10 foot utility easement. For this purpose, eaves, steps and open porches shall not be considered part of a building or dwelling unit; provided that this shall not be construed to permit any portion of a building or dwelling unit to encroach upon another Lot or utility easement. This does not apply to lots 13, 14, 15, 16, 17, 18, 46, 47 and 48 as they are not residential lots.

6.6 Outbuildings, Temporary Structures. Except as provided herein, no outbuildings, other than garages as referenced above and outbuildings as described herein, may be located upon any Lot within the Property, including any Additional Property. Notwithstanding the foregoing, utility sheds and additional permanent detached buildings with no more square footage than the dwelling located on the Lot may be located on any Lot. The siding and roofing material of such a building need not be of the same type used on the dwelling.

6.7 Replatting and Subdividing. No one, except Declarant, shall at any time ever replat, subdivide, or resubdivide any Lot into a smaller Lot, or in any manner change the plat of the Property, including any Additional Property.

6.8 Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot within the Property, including any Additional Property, except that dogs, cats, or other usual and common household pets may be permitted upon a Lot, provided that they are not kept for any reason other than as household pets. However, those pets that are permitted to roam free or that, in the sole discretion of the Board, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owner or occupant of any Lot within the Property, including any Additional Property, shall be removed upon request of the Board. No horses shall be kept or stabled on any of such Lots.

6.9 Nuisances. No noxious, offensive, or illegal trade or activity, as defined by law or as defined by the Association shall be carried on upon any Lot within the Property, including any Additional Property, nor shall anything be done which may be or become an annoyance or nuisance, as defined by law, to the neighborhood or individuals residing or owning Lots therein. Business use of the Property, including any Additional Property, where the public is invited shall not be permitted, with the exception of appropriate recreational activity. Without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices outside a permitted structure, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property, including any Additional Property. No portion of any Lot shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of a Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding Lots. Lots shall be kept free of weeds, tall grass and unsightly or obnoxious growing things.

6.10 Vehicle Parking. No vehicles shall be permanently parked within the Property, including any Additional Property, without being garaged. No garbage or large commercial trucks exceeding 5 tons or commercial trailers exceeding 3 tons may be permanently parked or housed within the Property, including any Additional Property, even within garages. Semi tractors and trailers are expressly prohibited. Recreational vehicles, trailers, campers, camper trailers, snowmobiles, boats, and personal watercraft for personal use may be parked on any Lot. Notwithstanding the foregoing, vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted upon the Lots except within enclosed garages. Any vehicle or item parked in violation of this Section or in violation of parking rules promulgated by the Association may be towed and stored by said Association, all at the expense of the subject Owner. This does not apply to lots 13, 14, 15, 16, 17, 18, 46, 47 and 48 as they are not residential lots.

6.11 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish or storage area for any commercial equipment not contained within a dwelling. Trash, garbage or other waste shall be kept in sanitary containers, which containers shall be stored within garages or within properly screened areas. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and in conformance with applicable laws and rules of the Association.

6.12 Signs. Except as expressly set forth in this Section 6.15, no sign of any kind shall be displayed to the public view on any Lot. Declarant shall be allowed to erect and display such signs as shall be necessary to indicate to the public that Lots within the Property, including any Additional Property, are available for purchase, or signs that help to identify the property's owner. Further, Owners shall be allowed to erect and display such re-sale signs as shall be necessary to indicate to the public that their Lot is available for purchase, said signs to be in keeping with the size and type of re-sale signs typically used by realtors.

6.13 Vacant Lots. The persons owning vacant Lots must keep them neat and clean in appearance and must maintain them by spraying for weeds at least annually. Upon failure to do this, and after two weeks(14) days notice is given, the Association may perform such maintenance as necessary and bill the Lot Owner for the expense incurred and file a lien against said Lot.

6.14 Utilities. Utilities, including sanitary sewer, shall be the responsibility of the Lot Owner except to the extent installed by the Association as provided herein. All utilities except propane tanks shall be underground. Specifically, but not by way of limitation, all septic tanks shall be rated for burial underground and shall, in fact, be buried. No aboveground septic tanks shall be allowed on any of the Lots.

6.15 Intersection Sightlines. No fence, wall, hedge, tree or shrub that obstructs sightlines at intersections is permitted.

6.16 Fences and Walls. Fences and walls may be allowed where appropriate and necessary for screening, security, containment or aesthetic purposes, subject to compliance with

applicable laws, this Declaration and guidelines developed by the Association. No fence, wall, or hedge higher than six (6) feet shall be erected or maintained on any lot within the development.

6.17 Ditches/Driveways/Approaches. Any improvement, including approaches or driveways, erected upon the property shall be constructed in such a manner as to not impede or change the direction of water flow.

ARTICLE 7 General Provisions

7.1 Term. The easements referenced herein, and all easements shown upon the Plats, shall be perpetual in duration and, further, shall be deemed to run with the land and shall inure to the benefit of and be binding upon the Declarant and all Owners and their respective heirs, representatives, successors, and assigns. The balance of the covenants contained in this Declaration (not including such easements) shall be deemed to run with the land and shall be binding on all Owners and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration is first recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument, signed and recorded by Owners representing at least 75 % of the Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, which instrument terminates or otherwise modifies this Declaration. In no event shall a Lot become subject to a greater restriction or covenant without the written consent of the then Owner of the Lot.

7.2 Enforcement. Enforcement of this Declaration shall be by proceedings at law or in equity against any person or entity instituted by the Declarant, or any one Lot Owner, or the Association against any person or persons violating or attempting to violate any covenant herein, either to enjoin or restrain the violation, or to recover damages, or both.

7.3 Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when hand-delivered or mailed postage paid to the last known address of the person or entity who appears as such Lot Owner on the records of the Association at the time of such mailing.

7.4 Severability. Invalidation of any one of these covenants by judgment or court order shall not affect any of the other provisions, which shall remain in full force and effect.

7.5 Amendment. This Declaration may be amended by an instrument signed by Owners representing at least three-fourths (3/4) of the Lots.

IN WITNESS WHEREOF, Declarant has hereunto set its hand on the day and year first above written.

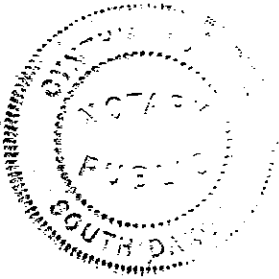
HIGBEE CUT, LLC

By *William R. Curry*
William R. Curry
Its Member

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

On this, the 10th day of February, 2006, before me, the undersigned officer, personally appeared William R. Curry, who acknowledged himself to be a Member of HIGBEE CUT, LLC, a limited liability company, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as Member.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Cynthia Konda
Notary Public, South Dakota
My Commission expires: 1-6-2012