

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
ASPEN HEIGHTS MEADOWS SUBDIVISION**

Lots One (1) through Twenty-five (25), inclusive, of the Aspen Heights Meadows Subdivision, a subdivision of H.E.S. 499 located in Sections 34 and 35, Township 3 North, Range 1 East, B.H.M., Lawrence County, South Dakota, except that part taken for public use by Judgment on Declaration of Taking filed as Document No. 78-984, subject to easements, reservations and restrictions of record, as shown on a plat thereof, recorded in the Office of the Lawrence County Register of Deeds, Deadwood, South Dakota, as Document #96-

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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR ASPEN HEIGHTS MEADOWS SUBDIVISION**

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THIS DECLARATION, made this \_\_\_\_\_ day of \_\_\_\_\_, 1996, by  
BRAD J. JONES and CLARIS E. JONES, husband and wife, of P. O. Box  
870, Lead, SD 57754, hereinafter referred to as "Jones", and

WHEREAS, Jones are the owners of the following described real  
property, to-wit:

Lots One (1) through Twenty-five (25), inclusive, of the  
Aspen Heights Meadows Subdivision, a subdivision of  
H.E.S. 499 located in Sections 34 and 35, Township 3  
North, Range 1 East, B.H.M., Lawrence County, South  
Dakota, except that part taken for public use by Judgment  
on Declaration of Taking filed as Document No. 78-984,  
subject to easements, reservations and restrictions of  
record, as shown on a plat thereof, recorded in the  
Office of the Lawrence County Register of Deeds,  
Deadwood, South Dakota, as Document #96-\_\_\_\_\_,

which real property shall hereinafter be referred to as  
the "Property", and

WHEREAS, Jones intend to sell lots within the Property and by  
this declaration imposes on the lots within the Property covenants,  
conditions, and restrictions under a general scheme or plan for the  
benefit of the lotowners, now therefore,

WITNESSETH:

Jones hereby declare the lots within the Property above  
described shall be sold and conveyed subject to the following  
covenants and restrictions, which are imposed to protect the value  
of the lots, to promote the purpose of the development of the  
Property, to maintain the aesthetic qualities, and to protect and  
promote the general welfare of the owners of the Property, which

covenants and restrictions shall run with the land and be binding on all parties having any right, title or interest in the Property or any portion thereof, and their heirs, successors and assigns.

1. HOMEOWNERS ASSOCIATION. There shall exist a homeowners association known as "Aspen Heights Meadows Homeowners Association", hereinafter referred to as "*Homeowners Association*". Upon purchase of a lot, every lotowner shall automatically become a member of the Homeowners Association as provided by the Articles of Incorporation and By-Laws thereof, which shall continue until the lotowner no longer holds property or until the lotowner assigns his interest therein subject to such restrictions or limitations as may be imposed. Status as a member shall automatically terminate without notice upon termination of ownership and any assigned or transferred interest shall automatically terminate upon termination of the assignor's or transferor's ownership interest.

2. DEVELOPMENT STANDARDS. The Homeowners Association shall establish reasonable procedural rules, regulations, restrictions, architectural standards, design guidelines and development standards, which shall be implemented by the Architectural Committee. The guidelines shall include, among other things, restrictions and limitations set forth below:

2.1. Single Family Residential Use. The Property shall be used for single family residence purposes only, except for Lot 11, and not for any business, trade, commercial or industrial purpose. No lot shall have more than one residence. Lot 11 shall be subject to this restriction except in the event the Property is rezoned or conditional use permit issued authorizing upon Lot 11 commercial activities consistent with the recreational

activities of the area to include snowmobiling, cross-country skiing, hunting, and mountain recreational activities, bed and breakfast, restaurant, cabins, and support facilities.

2.2. Architectural Control. No building, fence, wall, shelter belts or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the same shall have been submitted to and approved by the Architectural Committee, which approval shall not be unreasonably withheld. In the event said committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and the proponent of the same shall be deemed to have fully complied therewith.

2.3. Fencing. The property is located in open range. Livestock may be located upon private and Forest Service property. That if any lotowner desires not to have livestock upon their property, it shall be the lotowner's duty and obligation to fence their property boundaries or portion of the property they wish to exclude livestock from, and they shall be solely responsible for the repair and maintenance of such fence constructed. In the event any lotowner elects not to construct a fence, they expressly understand and assume the consequences, resultant damages, and risks of livestock being upon the property. The Homeowners Association shall be responsible to fence and maintain the fences on the north boundary of the Property as may be required by law, and such other fences surrounding the property, as it may deem necessary and appropriate, with the cost of such to be paid for by the Homeowners Association.

2.4. Dwelling Requirements. No dwelling shall be constructed, erected or maintained which does not have a minimum of 864 square feet of living space or 1,500 total square feet for split level or two level dwellings, excluding garage, subject to the right of the Architectural Committee to consider specific plans deviating from these limitations taking into consideration difference in topography, location of lots, lot sizes and shapes to effect the general plan of providing for continued attractiveness and desirability of the subdivision as a whole. All plans for construction shall be submitted to the Architectural Committee and any request for variance to minimum size requirements for approval. Construction of all dwellings shall be of new materials, new construction, and permanently set on a foundation. No

structures shall be moved in onto any lot from any other lot within or from the outside of the above described Property. No modular or mobile homes, single or doublewide, shall be permitted.

All changes or additions to the approved plans before, during, or after construction must be approved by the Architectural Committee before the alteration is implemented. Failure to obtain such approval may result in the requirement that such change or alteration be restored to the original condition, in which event, shall be done at the owner's sole cost and expense.

Outbuildings may be of pole or barn type construction, but shall complement the dwelling structure by having the same or similar roofing materials and siding, with a minimum of sixteen inch (16") soffitts. No dwelling or outbuilding shall have metal or vinyl roofs or siding, except architectural steel commonly used in residential construction, and such other products as are expressly approved by the Architectural Committee.

The color combinations of exterior material must be subtle and tasteful to blend with the neighborhood and landscape. Earthen tones, beiges and grays are acceptable. Extreme contrast in colors of paint, stains, or masonry are discouraged. Roofing materials must be of darker tones. All color schemes must be approved by Architectural Committee.

Exterior materials will consist of stucco, native stone, brick and wood materials, including shingles, natural logs, timbers, and similar-type siding materials. Construction shall substantially conform and utilize materials recommended to minimize fire risk as such may now or hereinafter be recommended by the United States Forest Service or South Dakota State Fire Advisory Council.

Site grading must be accomplished with minimum disruption to the lot without altering natural discharge points of surface drainage from the lot, and without creating conditions that could precipitate unnecessary soil erosion, slippage, or subsistence. No excessive excavation or fill will be permitted on any lot except where specifically allowed by the Architectural Committee. Any disturbed soil on the lot shall be reseeded to restore natural conditions.

2.5. Set Back Requirements. The minimum building setbacks for all structures constructed on any lot shall be one-third the depth of the lot from the front and fifty (50) feet

from each side line and back lot line subject to any setback requirement as shown on the plat and subject to the Architectural Committee approving a variance due to the difference in topography, location of lots, lot sizes and shapes in order to effect the general plan of providing for continued attractiveness and desirability of the subdivision as a whole. Regardless of the minimum setback requirements, it is the intent no building and no septic waste disposal drainfield system shall be constructed in the lower laying areas where subsurface waters may exist.

2.6. Easements. Easements for installation, maintenance, repair and removal of utilities and drainage facilities over, under, and across the property are reserved with a twelve (12) foot strip adjacent to all lot lines. Full rights of ingress and egress shall be had by the Homeowners Association, or its successors in interest, and any bona fide utility company at all times over the easement areas for the installation, operation, maintenance, repair, or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easements, or with the use, maintenance, operation, or installation of such utility.

2.7. Roads. It is expressly understood that the main access road through the subdivision is a road for which there is no governmental obligation to repair or maintain. It is expressly stated and acknowledged that Lawrence County does not now and in its sole discretion may not ever maintain the main road going through the subdivision, or the road from Highway 385 to the subdivision. It is also understood that the United States Forest Service is not obligated to repair or maintain the main access road through the subdivision. It is expressly acknowledged that any maintenance on this road, including repair, snow removal or dust control, is currently the obligation of the parties desiring maintenance to be performed and no third party is obligated to provide maintenance, repair, snow removal or dust control. Roads or easements providing access to the lots in the Property are shown on the recorded map and plat as set forth in Document # \_\_\_\_\_ in the Office of the Lawrence County Register of Deeds, Deadwood, South Dakota, or any amendments thereto. Each lotowner shall be responsible to construct their access road from the main road going through the subdivision, which construction shall comply with standard county specification for private drive access roads, including the installation of a culvert of proper dimension, but not less than twelve inches in

diameter, and shall have continuing responsibility to properly maintain the access road and culvert and perform such repairs and maintenance as becomes necessary from time to time. Each lotowner must provide parking and sufficient driveway space for the parking of the vehicles using the property.

- 2.8. Continuity of Construction. The exterior of all structures commenced in the development shall be pursued diligently to completion and shall be completed within twelve (12) months of the commencement of construction unless such completion is prevented by inclement weather.
- 2.9. Landscaping. All natural surface areas disturbed by construction shall be returned promptly to a natural condition and replanted in lawns, native grasses, shrubs or trees. All noxious weeds shall be controlled by the lotowner. Gardens for domestic consumption only will be permitted. All gardens shall be set back at least the same distance as building set back requirements.
- 2.10. Trailers or Temporary Structures. No trailer house or mobile home, tent, basement or other temporary structures shall be permitted on any of such Property except mobile tool houses during the construction.
- 2.11. Peace and Quiet. No noxious or offensive activity shall be carried on within the Property; nor shall anything be done or permitted which shall constitute a public nuisance therein; nor shall any firearms be discharged within the Property. No motor vehicles, cars, buses, tractors or trailers that are not kept in normal running condition, in average daily use and properly licensed, shall be kept on the Property. Snowmobiles, ATV's, dirt bikes, trail bikes, motorcycles, and any other type of recreation vehicle shall not be used on the lot, on any adjoining property, or on any road within the area, except for the sole purpose of ingress and egress, and in that event, the operation of the vehicle shall be done in accordance with property safety and to avoid noise disturbance.
- 2.12. Signs/Antennas. No signs, billboards or other advertising structures of any kind shall be erected, constructed or maintained on any lot for any purpose whatsoever except for identification of a road or fire district; however, it shall be permissible to display on any lot one sign of not more than three square feet for the limited purpose of advertising the land for sale or lease by the lotowner or his agent, and it shall be permissible to display signs of reasonable size for the purposes of advertising the Property during the



construction and sale period by Jones. Television, radio and other antennas are to be located so as to be inconspicuous as possible.

- 2.13. Trash. No garbage or trash shall be kept, maintained, or contained on any lot so as to be visible from another lot or the road. No incinerator shall be kept or maintained on any lot. No refuse pile, garbage, or unsightly objects shall be allowed to be placed, accumulated, or allowed to remain anywhere on a lot. The Homeowners Association, or its successor in interest, shall have the sole discretion in determining whether or not an object is deemed unsightly.
- 2.14. Animals/Livestock. No animals, livestock, horses or poultry with the exception of no more than a total of two animals of any combination of dogs, cats and other pets for household enjoyment and not for commercial purposes. When outside, such pets shall be accompanied, supervised and controlled by the lotowner and in no event shall any pet be allowed to create noise or to trespass upon the properties of other lotowners or run loose upon the Property. Upon any infraction hereof, the Board of Directors of the Homeowners Association or its designated committee, may upon its own initiative or shall upon any complaint of any lotowner, give notice to the owner of the lot in which the pet is located and the matter shall be considered and the determination of the Board of Directors or its committee as to whether or not the pet shall be allowed to continue to reside within the Property shall be deemed conclusive, and the owner of the pet shall comply with such determination.
- 2.15. Rules. The Homeowners Association may adopt such rules and regulations in regard to restricting or prohibiting parking on the streets, storage of vehicles, type of vehicles, fences, storage, outbuildings, speed limits, and other matters as it may deem reasonable and appropriate for the benefit of the Property and may delegate to the Architectural Committee the power to oversee and enforce such rules.
- 2.16. Lot Size. No lot shall be subdivided into smaller lots or conveyed in less than full or original dimensions than as originally conveyed by Jones without the express consent and approval of Jones.
- 2.17. Tanks. No elevated tanks of any kind shall be erected, placed or permitted on any part of such premises, including tanks for storage of fuel or natural gas unless they are buried or walled sufficiently to conceal them to maintain the attractiveness and desirability of the

subdivision as a whole, which must be approved by the Architectural Committee.

- 2.18. Mailboxes. Mailboxes or other containers for delivery or receipt of newspapers shall be of such specifications and shall be located in such areas as designated by the Architectural Committee.
- 2.19. Non-Liability. Plans and specifications approved or rejected by the Architectural Committee or any changes, recommendations, or alterations required by the Architectural Committee as to style, exterior design, appearance, and location is not to be construed as a representation of approval for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications, neither the Architectural Committee, the members thereof, or the Homeowners Association assume any responsibility for the design or any defect in the design. Said parties shall not be liable to any owner or other person for any damage, loss, or prejudice suffered or claimed on account of the approval or disapproval of any plans, drawings, and specifications, whether or not defective, or the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.
- 2.20. Waste Disposal Systems. Each lotowner shall be responsible to construct a sewer waste disposal system upon their lot in compliance with all state and county statutes, rules, and regulations. Any septic tank disposal system or other disposal system shall be designed by a licensed engineer, constructed consistent with such plan, and shall thereafter be monitored, reviewed, and inspected as necessary and appropriate to assure proper maintenance and continued safe operation.
- 2.21. Miscellaneous. No fireplaces, incinerators, open fire pits or related structures or devices shall be constructed or operated except as permitted by applicable state and federal laws. All electric wiring, wiring devices, fixtures and service connections shall be in compliance with the National Electrical Code, or other applicable electrical code.

### 3. COVENANT FOR ASSESSMENTS.

- 3.1. Assessments. Each lotowner, whether or not it shall be so expressed in any deed or document of conveyance, shall be deemed to covenant and agree to pay to the Homeowners Association general assessments or charges levied on a monthly, quarterly, semi-annual or annual basis, and

special assessments or charges to be fixed, established and collected from time to time, as hereinafter provided. The general assessments and special assessments, together with interest thereon at the judgment rate from time to time from and after the date the same becomes due and payable, together with costs of collection, shall be a charge on each lot subject to assessment and shall be a continuing lien against which such assessment is made. Each assessment, together with interest thereon and costs of collection, shall also be the joint and several personal obligation of the person, group of persons or entity who was the lotowner of such lot at the time when the assessment became due and payable.

3.2. Amount. It shall be the duty of the Board of Directors of the Homeowners Association to determine the amount of the general assessment, if any, for each lot subject to assessment. The general assessment for any lot subject to assessment for any assessment period shall become due and payable and a lien against the lot on such date as specified by the Board of Directors. The Board of Directors shall make reasonable efforts to determine the amount of the general assessment against each lot subject to assessment for each assessment period and to give written notice of the assessment for each lot to the lotowner thereof, together with the due dates of periodic installments if such assessment is allowed by the decision of the Board of Directors to be paid in installments, at least thirty (30) days prior to the first day of such assessment period. The Board of Directors shall prepare and maintain a roster of the lots and the general assessment currently applicable thereto and shall make such roster available for the inspection of lotowners on request. Assessments may be collected on a monthly, quarterly, semi-annual or annual basis in the discretion of the Board of Directors of the Homeowners Association.

3.3. Increases. Increase in the general assessments from and after \_\_\_\_\_ 1, 1997, for lots subject to assessment may be increased over the maximum amount by the Board of Directors of the Homeowners Association by not more than an additional ten percent (10%) each year thereafter without a vote of the membership. The maximum general assessments may be increased above the limit which may be imposed by the Board of Directors, by a resolution approved by sixty percent (60%) of the votes of the membership present at an annual meeting or at a special meeting called for that purpose.

3.4. Special Assessments. Special assessments, in addition to the general assessments authorized, may be imposed by the

Homeowners Association from time to time by levy of a special assessment for such purposes as the Homeowners Association deems necessary, provided, however, that any special assessment shall only be levied by a resolution approved by sixty percent (60%) of the votes of the Stockholders present at an annual meeting or at a special meeting called for that purpose. Any special assessment shall be on a per lot basis only.

- 3.5. Date of Commencement. The general assessments for each lot shall commence on the first day of the month following date of purchase or date of contract for deed of the lot by the lotowner and any assessment shall be pro-rated for the balance of the assessment period in relation to the general assessments, which would have been imposed on the lot if so subject and shall become due and payable and a lien on the lot as of the date of purchase by contract or conveyance by deed, whichever occurs first.
- 3.6. Exclusion. Notwithstanding the provisions as hereinabove set forth, Jones, or their assigns or successors in interest, excluding lotowners, shall not be required to pay general assessments or special assessments for any lot in which it has an interest; provided, the foregoing limitations shall not apply to any lot within the Property owned by Jones, or their assigns or successors, in which the same has been built upon and is ready for occupancy.
- 3.7. Reserve Fund. The Homeowners Association may establish and maintain a reserve fund for replacements and reserve fund for general operating expenses by the allocation and payment monthly or such other term to such reserve fund of an amount to be designated from time to time by the Board of Directors of the Homeowners Association. Such fund or funds shall be conclusively deemed to be a common expense of the Homeowners Association. Such fund or funds shall be deposited in such accounts as is deemed appropriate in the discretion of the Board of Directors. The reserve for replacements may be expended only for the purpose of effecting improvements on the property or replacement of improvements and for operating contingencies of non-recurring nature. The proportionate interest of any lotowner in any reserve shall be considered an appurtenance of the lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the lot which it appertains and shall be deemed to be transferred with such lot.
- 3.8. Certificate. The Homeowners Association shall, upon demand at any reasonable time, furnish to any lotowner

liable for assessment a certificate in writing signed by an officer or other authorized agent of the Homeowners Association, stating whether such assessment is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A charge as may be determined by the Board of Directors may be levied in advance by the Homeowners Association for each certificate so issued.

4. BREACH OF PAYMENT OF ASSESSMENTS. Any general or special assessment levied pursuant to these covenants and declarations which is not paid on the date when due shall be delinquent and shall, together with the interest thereon at the judgment rate and costs of collection, become a continuing lien upon the lot against which such assessment is levied; and such assessment shall be binding upon such lot in the hands of the lotowner thereof, his heirs, devisees, personal representatives and assigns. The obligation of such lotowner to pay such assessment, however, shall also remain his personal, joint and several obligation.

If the assessment is not paid within thirty (30) days after the due date, the Homeowners Association may bring an action at law against the lotowner personally obligated to pay the same or may foreclose the lien against the lot in the amount provided by law. In either event, the Homeowners Association shall also recover from such owner or out of the proceeds of such foreclosure accrued interest and costs of collection, including but not limited to, reasonable attorney's fees. No lotowner may waive or otherwise escape liability for the assessments provided for in this declaration by non-use or abandonment of his lot.

The lien of the assessments provided for in this declaration

shall be subordinate to the lien of any first mortgage now or hereafter placed upon any lot subject to assessments; provided, however, that sale or transfer pursuant to a decree of foreclosure, or any other proceedings in lieu of foreclosure shall not relieve such lot from liability for any assessments becoming due after such sale or transfer nor from any lien of any such subsequent assessments.

That in a voluntary conveyance of a lot, the grantee of the lot shall be jointly and severally liable with the grantor for all unpaid assessments against the lot at the time of conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

5. RIGHTS OF FIRST MORTGAGEES. Other provisions of this Declaration notwithstanding, the Homeowners Association, the Board of the Homeowners Association, and the lotowners shall not, without the prior written approval of all first mortgagees of record of lots, totally abandon all the covenants and restrictions established by this declaration. No first mortgagee of record of any lot shall:

- A. Be required to cure any breach of this Declaration which is not readily curable as to a lot acquired by such mortgagee by foreclosure or by conveyance in lieu of foreclosure; provided, however, that such mortgagee is liable for all assessments which become due after such foreclosure or conveyance in lieu of foreclosure, or
- B. Be affected by any amendment to this Declaration which may affect their security position unless written consent thereto is given or unless prior to such amendment all such first mortgagees of record have been given thirty (30) days advance written notice of the proposed amendment and at least two-thirds of such mortgagees have given their written approval to such amendment.

Upon written request therefor, first mortgagees of record shall be given written notice by the Board of Directors of the Homeowners Association of any default in payment of assessments or in the discharge of other obligations pursuant to this Declaration not cured within the time provided by the lotowner of a lot in which such mortgagee has a security interest.

First mortgagees of record of lots shall have the right to examine the books and records of the Homeowners Association at reasonable times and to obtain, upon written request therefor, annual reports and financial data prepared by the Homeowners Association.

6. DURATION AND AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Homeowners Association, its legal representatives, successors and assigns, or any lotowner for a term of ten years from the date of recordation of the Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each. However, this Declaration may be amended at any time, except where permanent easements or other permanent rights or interests are herein created, or rights or interests are created in third persons, by an instrument signed by lotowners who have title to sixty percent (60%) of the lots described within the Property, and placed of record wherein this Declaration is recorded. No such amendment shall be effective unless written notice of the proposed amendment is sent to every lotowner thirty (30) days prior to action being

taken on the proposed amendment. No change of circumstances or conditions shall operate to amend any of the provisions of this Declaration, which may be amended only in the manner hereinabove provided. None of the provisions of this Declaration shall be construed as a condition subsequent or as creating a possibility of reverter.

7. INCORPORATED BY REFERENCE ON RESALE. In the event any lotowner sells or otherwise transfers his lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants and restrictions set forth in this Declaration, although the failure to do so shall not be deemed to defeat, alter, or terminate these covenants and restrictions as set forth in this Declaration as to said Property transferred.

8. NOTICES. Any notice required to be sent to any lotowner of a lot under the provisions of this Declaration shall be deemed to have been given when mailed by first class mail, postage prepaid, to such lotowner at his last known address.

9. ENFORCEMENT. If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Homeowners Association, its successor, or any lotowners in the Property to pursue enforcement of these covenants and restrictions by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restriction, either to restrain or enjoin violation or to recover damages. The failure or forbearance by Property lotowners or Jones to enforce any covenant or restriction herein contained





ARTICLES OF INCORPORATION  
OF  
ASPEN HEIGHTS MEADOWS HOMEOWNERS ASSOCIATION, INC.

\*\*\*\*\*

**KNOW ALL MEN BY THESE PRESENTS:**

Executed by the undersigned for the purpose of forming a South Dakota Corporation under SDCL 47-22, and known as the South Dakota Nonprofit Corporation Act.

**ARTICLE ONE**

The name of this corporation shall be ASPEN HEIGHTS MEADOWS HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as "Corporation".

**ARTICLE TWO**

The Corporation is organized exclusively to provide a non-profit entity within the meaning of §§ 501(c)(4), 528 or any other applicable section of the Internal Revenue Code of 1954 (or the corresponding provisions of any future United States Internal Revenue law) to implement the provisions and to perform the functions as set forth in the Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision, Lawrence County, South Dakota, and to carry out such purposes as may be adopted by the Board of Directors.

The Corporation shall have the power to do any lawful act for which nonprofit corporations may be organized under the South Dakota Nonprofit Corporation Act.

The Corporation shall have the power of indemnification and defense of actions as set forth in SDCL 47-22-65.1 through 47-22-65.8, inclusive.

**ARTICLE THREE**

The duration of the Corporation shall be perpetual.

**ARTICLE FOUR**

There shall be one class of membership. Every lotowner of the Aspen Heights Meadows Subdivision, Lawrence County, South Dakota, shall be a member of the Corporation and shall have one (1) vote per lot. A "member" as referred to herein shall mean the record owner(s), whether one or more persons or entities, of the fee

simple title of any lot within Aspen Heights Meadows Subdivision, Lawrence County, South Dakota, except contract sellers, in which event the contract purchaser shall be deemed for purposes of this Corporation to be the member and excluding those having such interest solely as security for the performance of an obligation. The rights of the member may be exercised by any other party or entity upon such party or entity having the express written consent of the member. Each member of the Corporation, signified by ownership of a lot in Aspen Heights Meadows Subdivision, Lawrence County, South Dakota, shall be entitled to one vote for each lot owned and shall be entitled to vote, in person or by proxy, on each matter submitted to a vote of the members.

A member's right to vote on matters brought before a meeting of the Corporation's membership shall be suspended upon that member's failure to pay any general or special assessment, fee, judgment, penalty, dues or other charge when due, as determined by the Corporation's Board of Directors. If suspended, a member's voting rights may be reinstated upon full payment of any general or special assessment, fee, judgment, penalty, dues or other charge, plus interest and costs of collection, including but not limited to, reasonable attorney's fees, if any, to the Corporation, as determined by the Corporation's Board of Directors.

A member's voting rights may also be suspended by the Board of Directors in the event of a material violation of any rules, regulations, covenants, laws, conditions or restrictions applicable to Aspen Heights Meadows Subdivision, Lawrence County, South Dakota. In the event a member's voting rights have been suspended by the Board of Directors because of said violation, that member's voting rights may be reinstated by the Board of Directors with or without a hearing, or by a majority vote of the members of the Corporation.

#### ARTICLE FIVE

The number of directors of this Corporation shall be one or more. The number of directors may be increased or decreased by amendment to the By-Laws. The names and addresses of the directors

constituting the initial Board of Directors who shall serve until their successors are elected and shall qualify are as follows:

Brad J. Jones  
P. O. Box 870  
Lead, SD 57754

Claris E. Jones  
P. O. Box 870  
Lead, SD 57754

#### ARTICLE SIX

No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its trustees, members, directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Two hereof. No substantial part of the activities of the Corporation shall be the carrying on or propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) of any political campaign on behalf of any candidate for public office.

#### ARTICLE SEVEN

The address of the Corporation's registered office is P. O. Box 726, 129 West Illinois Street, Spearfish, SD 57783, and the name of its registered agent at such address is Thomas E. Brady.

#### ARTICLE EIGHT

No provision is made for the regulation of the internal affairs of the Corporation. All other necessary provisions shall be addressed by the By-Laws of the Corporation.

#### ARTICLE NINE

The names and addresses of the incorporators are as follows:

Brad J. Jones  
P. O. Box 870  
Lead, SD 57754

Thomas E. Brady  
129 West Illinois St.  
P. O. Box 726  
Spearfish, SD 57783

Claris E. Jones  
P. O. Box 870  
Lead, SD 57754



BY-LAWS  
OF  
ASPEN HEIGHTS MEADOWS  
HOMEOWNERS ASSOCIATION, INC.

\*\*\*\*\*

ARTICLE 1. MEETINGS OF MEMBERSHIP.

Section 1. Every lotowner of the Aspen Heights Meadows Subdivision, Lawrence County, South Dakota, shall be a member and shall have one (1) vote per lot and shall be entitled to vote, in person or by proxy, on each matter submitted to a vote of the membership. A "member" as referred to herein shall mean the record owner(s), whether one or more persons or entities, of the fee simple title of any lot within Aspen Heights Meadows Subdivision, Lawrence County, South Dakota, except contract sellers, in which event the contract purchaser shall be deemed to be the member, and excluding those having such interest solely as security for the performance of an obligation. The rights of the member may be exercised by any other party or entity upon such party or entity having the express written consent of the member.

Section 2. An annual meeting of the membership shall be held each year on the \_\_\_\_\_, for the purpose of electing officers and for the transaction of such other business as may come before the meeting and shall be held at the principal office of the Corporation located at \_\_\_\_\_, South Dakota, or at any place or building in Lawrence County, South Dakota.

Section 3. A special meeting of the membership to be held at a location as prescribed for as the annual meeting, may be called

at any time by the President, and in his absence by the Vice President, or by a majority of the directors. It shall be the duty of the directors, President, or Vice President to call a meeting upon written request of the membership who are entitled to cast sixty percent (60%) of the total votes of all classes of common stock.

Section 4. Written notice of each meeting of the members shall be given by or at the direction of the Secretary, or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of Aspen Heights Meadows Homeowners Association, Inc. or supplied by such member to Aspen Heights Meadows Homeowners Association, Inc. for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and in the case of a special meeting, the purpose of the meeting.

Section 5. The President, or in his or her absence, the Vice President, shall preside at all such meetings.

Section 6. The presence at the meeting of membership entitled to cast, or proxies entitled to cast, twenty percent (20%) of the votes of the total of all classes of stock shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the membership entitled to vote thereat shall have power to adjourn the meeting

from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 7. At all meetings of the membership, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

Section 8. Each member shall be entitled to one vote on each matter submitted to a vote at a meeting of membership which stock may be voted in person or by proxy, and the membership shall possess the right to cumulative voting for election of directors.

Section 9. A member's right to vote on matters brought before a meeting of the membership shall be suspended upon that member's failure to pay any general or special assessment as provided by Article VI hereof, fee, judgment, penalty, dues or other charge when due, as determined by the Board of Directors. If suspended, a member's voting rights may be reinstated upon full payment of any general or special assessment, fee, judgment, penalty, dues or other charge, plus interest and costs of collection, including but not limited to, reasonable attorney's fees, if any, to the Corporation, as determined by the Board of Directors.

A member's voting rights may also be suspended by the Board of Directors in the event of a material violation of any rules, regulations, covenants, laws, conditions or restrictions applicable to Aspen Heights Meadows Subdivision, Lawrence County, South Dakota. In the event a member's voting rights have been suspended



by the Board of Directors because of said violation, that member's voting rights may be reinstated by the Board of Directors with or without a hearing, or by a majority vote of the members of the Corporation.

Section 10. Membership shall continue until the lotowner no longer holds property or until the lotowner assigns his interest therein subject to such restrictions or limitations as may be imposed. Status as a member shall automatically terminate without notice upon termination of ownership, and any assigned or transferred interest shall automatically terminate upon termination of the assignor's or transferor's ownership interest.

## **ARTICLE II. BOARD OF DIRECTORS.**

Section 1. The affairs of Aspen Heights Meadows Homeowners Association, Inc. shall be managed by a Board of Directors of not less than one (1) nor more than five (5) directors. Directors must be members.

Section 2. The term of office of directors shall be three years and shall be staggered.

Section 3. Any director may be removed from the board, with or without cause, by a majority vote of the membership of Aspen Heights Meadows Homeowners Association, Inc. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the board and shall serve for the unexpired term of his predecessor.

Section 4. No director shall receive compensation for any service he may render to Aspen Heights Meadows Homeowners Association, Inc. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Section 6. Nomination for election to the Board of Directors shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The nominating committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more members. The nominating committee shall be appointed by the Board of Directors prior to each annual meeting of the membership to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 7. Election to the Board of Directors shall be by secret written ballot. At such election the membership or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of Article I hereof. The persons receiving the largest number of votes shall be elected.

Section 8. A regular meeting of the Board of Directors shall be held after the annual meeting.

Section 9. Special meetings of the Board of Directors shall be held when called by the President of Aspen Heights Meadows Homeowners Association, Inc., or by one-third of the directors, after not less than three (3) days notice to each director.

Section 10. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the board.

Section 11. The Board of Directors shall have the power to:

- (a) Adopt, publish, and enforce rules and regulations and restrictions or requirements governing the use of the roads within the Property, and the personal conduct of the membership and their families and guests thereon, and to establish penalties for the infraction thereof;
- (b) Suspend the voting rights of a member during any period in which such stockholder shall be in default in the payment of any assessment levied by Aspen Heights Meadows Homeowners Association, Inc. Such rights may also be suspended after notice of hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- (c) Exercise for Aspen Heights Meadows Homeowners Association, Inc. all powers, duties and authority vested in or delegated to Aspen Heights Meadows Homeowners Association, Inc. and not reserved to membership by other provisions of these By-Laws or Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision;
- (d) Declare the office of member of the Board of Directors to be vacant in the event such director shall be absent from three consecutive regular meetings of the Board of Directors; and

- (e) Contract with or employ a management agent at a rate of compensation to be established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize, including without limitation:
- (1) Collection of the assessments provided for in the Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision and enforcement of liens therefor in a manner consistent with law and the provisions of the Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision.
  - (2) Care, upkeep, maintenance and surveillance of the roads, water system and common areas within the Property;
  - (3) Employment of such personnel as may be required for the maintenance and efficient operation of the corporation in the discharge of its duties;
  - (4) Provision of such other services, including accounting services, as may be consistent with law and the provisions of the Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision.

Section 12. It shall be the duty of the Board of Directors to:

- (a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the membership at the annual meeting of the membership, or at any special meeting when such statement is requested in writing by one-fourth of membership entitled to vote;
- (b) Supervise all officers, agents and employees of Aspen Heights Meadows Homeowners Association, Inc. and to see that their duties are properly performed;
- (c) As more fully provided in the Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision, to:
  - (1) Fix the amount of the annual assessments against each Lot at least thirty (30) days in advance of each annual assessment period.
  - (2) Send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

- (3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same, as the Board of Directors may determine.
- (d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessments has been paid. A reasonable charge may be made by the board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
- (e) Procure and maintain adequate liability and hazard insurance;
- (f) Cause the roads and fences to be maintained or improved as may be deemed appropriate.
- (g) Take any action as necessary and deemed appropriate to enforce these By-Laws or Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision.

### ARTICLE III. OFFICERS.

Section 1. The officers of Aspen Heights Meadows Homeowners Association, Inc. shall be a President and Vice President, who shall at all times be members of the Board of Directors, a Secretary, a Treasurer, and such other officers as the Board of Directors may from time to time by resolution create.

Section 2. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the membership.

Section 3. The officers of Aspen Heights Meadows Homeowners Association, Inc. shall be elected annually by the board and shall hold office for one year unless the officer shall sooner resign, shall be removed, or otherwise be disqualified to serve.

Section 4. The board may elect such other officers as the affairs of Aspen Heights Meadows Homeowners Association, Inc. may require, each of whom shall hold office for such period, have such authority, and perform such duties as the board may from time to time determine.

Section 5. Any officer may be removed from office with or without cause by the board. Any officer may resign at any time giving written notice to the board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. A vacancy in any office may be filled by appointment by the board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer replaced.

Section 7. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. The duties of the officers are as follows:

- (a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.
- (b) The Vice President shall act in the place and stead of the President in the event of his absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of the Vice President by the board.

- (c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the board and membership; keep the corporate seal of Aspen Heights Meadows Homeowners Association, Inc. and affix it on all papers requiring said seal; serve notice of meetings of the board and membership; keep appropriate current records showing the names of the membership together with their addresses, and shall perform such other duties as required by the Board.
- (d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of Aspen Heights Meadows Homeowners Association, Inc., and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each member.

#### **ARTICLE IV. COMMITTEES.**

The Board of Directors shall appoint special committees, including an Architectural Committee, and such other committees as deemed appropriate in carrying out its purposes.

#### **ARTICLE V. BOOKS AND RECORDS.**

The books, records and papers of Aspen Heights Meadows Homeowners Association, Inc. shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision, Articles of Incorporation, and By-Laws shall be available for inspection by any member at the principal office of the Corporation, where copies may be purchased at reasonable cost.

**ARTICLE VI. ASSESSMENTS.**

As more fully provided in the Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision, each member is obligated to pay to Aspen Heights Meadows Homeowners Association, Inc., general and special assessments which are secured by a continuing lien upon the lot against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the judgment rate, and Aspen Heights Meadows Homeowners Association, Inc. may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot.

**ARTICLE VII. FISCAL YEAR.**

The fiscal year of Aspen Heights Meadows Homeowners Association, Inc. shall begin on the 1st day of January and shall end on the 31st day of December of every year except that the first fiscal year shall begin on the date of incorporation of Aspen Heights Meadows Homeowners Association, Inc.



**ARTICLE VIII. DECLARATION OF COVENANTS.**

The Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision recorded in the Office of the Lawrence County Register of Deeds as Document #96-\_\_\_\_\_, together with any amendments thereto, are incorporated herein by reference.

In case of any conflict between the Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision and Improvements and these By-Laws, the Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision shall control.

**ARTICLE IX. AMENDMENT OF BY-LAWS.**

These By-Laws may be repealed or amended, or new By-Laws may be adopted at any annual or special meeting of the membership called for that purpose, by a vote representing a majority of a quorum of the membership present in person or by proxy.

**IN TESTIMONY WHEREOF**, we, being all of the directors of Aspen Heights Meadows Homeowners Association, Inc., have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
Brad J. Jones

\_\_\_\_\_  
Claris E. Jones

(CORPORATE SEAL)

Prepared By:  
THOMAS E. BRADY, P.C.  
129 W. Illinois St., P. O. Box 726  
Spearfish, SD 57783-0726  
Telephone: (605) 642-9000

## PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between BRAD J. JONES and CLARIS E. JONES, husband and wife, of P. O. Box 870, Lead, SD 57754, hereinafter referred to as "**Sellers**"; and \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as "**Buyer(s)**",

**WITNESSETH:**

Sellers agree to sell and Buyer(s) agree to purchase the following described real property, to-wit:

Lot \_\_\_\_\_ of Aspen Heights Meadows Subdivision, a subdivision of H.E.S. 499 located in Sections 34 and 35, Township 3 North, Range 1 East, B.H.M., Lawrence County, South Dakota, except that part taken for public use by Judgment on Declaration of Taking filed as Document No. 78-984, subject to easements, reservations and restrictions of record, as shown on a plat thereof, recorded in the Office of the Lawrence County Register of Deeds, Deadwood, South Dakota, as Document #96-\_\_\_\_\_, and subject to Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision filed as Document #96-\_\_\_\_\_ in the Office of the Lawrence County Register of Deeds, Deadwood, South Dakota, and By-Laws, Rules and Regulations adopted by Aspen Heights Meadows Homeowners Association, Inc., or any amendments thereto,

upon the following terms and conditions mutually understood and agreed to by and between the parties as follows:

1. **PURCHASE PRICE AND PAYMENT:** The total purchase price for the above described property shall be the sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), payable  
as follows:

- a. Earnest money in the sum of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_), receipt of which is hereby  
acknowledged by Sellers.
  - b. The balance of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
shall be due and payable on date of closing.
2. **CLOSING AND DATE OF POSSESSION:** Closing shall occur within  
\_\_\_\_\_ (\_\_\_) days from the date of this agreement, and Buyer(s)  
shall be entitled to possession of the above described premises on  
date of closing.
3. **CONVEYANCE:** Sellers shall convey the real premises  
hereinabove described to Buyer(s) by a good and sufficient warranty  
deed, which instrument of conveyance shall be delivered to Buyer(s)  
upon payment of the purchase price in full.
4. **TAXES:** Sellers agree to pay all real estate taxes on said  
property prorated to the date of closing; Buyer(s) agree to pay all  
subsequent real estate taxes.
5. **TITLE INSURANCE:** Sellers agree to furnish to Buyer(s), as  
soon after closing as possible, a title insurance policy certified  
to a current date showing good and marketable title in Buyer(s).
6. **COVENANTS/REGULATIONS:** The above property is subject to  
Declaration of Covenants, Conditions and Restrictions for Aspen  
Heights Meadows Subdivision, filed in the Office of the Lawrence  
County Register of Deeds as Document #96-\_\_\_\_\_, and shall be  
subject to By-Laws, Rules and Regulations adopted by Aspen Heights

Meadows Homeowners Association, Inc., or any amendments thereto. Buyer(s) acknowledge receipt of copies of said documents, that they understand and have reviewed the same, and hereby agree to be bound by the terms and provisions thereof.

7. MINERAL INTEREST: Sellers make no representations in regard to the ownership of any mineral interests in and to said real property, although agree to convey any and all mineral interests now held or hereinafter acquired by Sellers as said mineral interests may exist.

8. HOLD HARMLESS: Buyer(s) agree to hold Sellers harmless from any causes of action or damages that may be incurred or claimed by any person as the result of the Buyer(s)' use, occupation and possession of the above-described real property.

9. SEWER: Buyer(s) acknowledge that Sellers have made no representations or have made no agreement wherein Sellers shall be responsible to provide sewer services to the real property above described. The sewer system shall be designed and located by a qualified professional who shall certify as to the design and location, and who shall be responsible to oversee the installation to verify compliance with the design. Buyer(s) shall be responsible to pay any and all costs associated therewith, and to properly maintain, repair, and service the installed system so that the system remains in compliance with applicable federal, state, and county rules and regulations.

10. UTILITIES: Sellers shall be obligated to see there exists electrical service to the lot line on or before September 1, 1997.

Buyer(s) shall be obligated to pay the utility company for any connection or hookup fees.

Sellers shall be obligated to see there exists telephone service to the lot line on or before September 1, 1997. Buyer(s) shall be obligated to pay U.S. West Communications for any connection or hookup fees.

11. ROADS: It is expressly understood that the main access road through Aspen Heights Meadows Subdivision is a road for which there is no governmental obligation to repair or maintain. The parties expressly understand and acknowledge that Lawrence County does not now and, in its sole discretion, may not ever maintain the main road going through said subdivision, or the road from Highway 385 to the subdivision. It is also understood that the United States Forest Service is not obligated to repair or maintain the main access road through the subdivision. The road is a public highway which is used for many purposes, including logging, public access, and forest management.

12. FENCING: The above described property is located in open range. Livestock may be located upon private and Forest Service property. If Buyer(s) desire not to have livestock upon their property, it shall be Buyer(s)' duty and obligation to fence their property boundaries or portion of the property they wish to exclude livestock from, and Buyer(s) shall be solely responsible for the repair and maintenance of such fence constructed. In the event Buyer(s) elect not to construct a fence, they expressly understand and assume the consequences, resultant damages, and risks of

livestock being upon the property. The Aspen Heights Meadows Homeowners Association, Inc., shall be responsible to fence and maintain the fences on the north boundary of the subdivision as may be required by law, and such other fences surrounding the property, as it may deem necessary and appropriate, with the cost of such to be paid for by the Aspen Heights Meadows Homeowners Association, Inc.

13. FIRE PREVENTION: Construction of improvements upon the above described property shall substantially conform and utilize materials recommended to minimize fire risk as such may now or hereinafter be recommended by the United States Forest Service or South Dakota State Fire Advisory Council. Buyer(s) acknowledge receipt of a copy of the fire prevention videotape and acknowledge they have viewed the videotape.

14. PUBLIC SERVICES: There is no assurance that public or emergency services are available, including but not limited to law enforcement, fire prevention or suppression, ambulance, and medical.

15. SHORT FORM AGREEMENT: The parties hereto agree to execute contemporaneously with this agreement a Short Form Purchase Agreement, which shall be recorded to provide public notice of this transaction.

16. OTHER DOCUMENTS: The parties hereby mutually agree to execute any and all other documents necessary or needed in order to effectuate the purposes of this agreement.

17. WRITTEN MEMORANDUM: This agreement constitutes a memorandum of the final meeting of the minds between the parties hereto of all prior negotiations had by the parties in reference to all matters covered herein; and, this agreement is to be binding upon the respective heirs, executors, administrators and assigns of the parties hereto.

*IN WITNESS WHEREOF*, the parties have hereunto set their hands the day and year first above written.

**SELLERS:**

\_\_\_\_\_  
Brad J. Jones

\_\_\_\_\_  
Clariss E. Jones

**BUYER(S):**

\_\_\_\_\_  
  
\_\_\_\_\_

State of South Dakota )  
                          ) ss.  
County of Lawrence   )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me, the undersigned officer, personally appeared Brad J. Jones and Clariss E. Jones, known to me to be the persons whose names subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

State of )  
County of ) ss.  
 )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



Prepared By:  
THOMAS E. BRADY, P.C.  
129 W. Illinois St., P. O. Box 726  
Spearfish, SD 57783-0726  
Telephone: (605) 642-9000

**SHORT FORM \_\_\_\_\_ AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, by and between BRAD J. JONES and CLARIS E. JONES, husband and  
wife, of P. O. Box 870, Lead, SD 57754, hereinafter referred to as  
"Sellers"; and \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_,  
hereinafter referred to as "Buyer(s)".

**WITNESSETH:**

For and in consideration of the sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), Sellers  
agree to sell and Buyer(s) agree to purchase the following described real  
property, to-wit:

Lot \_\_\_\_\_ of Aspen Heights Meadows Subdivision, a subdivision of  
H.E.S. 499 located in Sections 34 and 35, Township 3 North, Range 1  
East, B.H.M., Lawrence County, South Dakota, except that part taken  
for public use by Judgment on Declaration of Taking filed as  
Document No. 78-984, subject to easements, reservations and  
restrictions of record, as shown on a plat thereof, recorded in the  
Office of the Lawrence County Register of Deeds, Deadwood, South  
Dakota, as Document #96-\_\_\_\_\_, and subject to Declaration of  
Covenants, Conditions and Restrictions for Aspen Heights Meadows  
Subdivision filed as Document #96-\_\_\_\_\_ in the Office of the  
Lawrence County Register of Deeds, Deadwood, South Dakota, and By-  
Laws, Rules and Regulations adopted by Aspen Heights Meadows  
Homeowners Association, Inc., or any amendments thereto.

Simultaneously with the execution hereof, Sellers and Buyer(s) have  
made and executed a separate written document entitled " \_\_\_\_\_  
" containing the terms, provisions and details of the sale.

The parties hereto mutually agree and intend to utilize this Short  
Form \_\_\_\_\_ for the purpose of effecting public record of the  
aforesaid transaction.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

**SELLERS:**

\_\_\_\_\_  
Brad J. Jones

\_\_\_\_\_  
Claris E. Jones

**BUYER(S):**

\_\_\_\_\_  
\_\_\_\_\_

State of South Dakota    )  
                                  ) ss.  
County of Lawrence        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me, the undersigned officer, personally appeared Brad J. Jones and Claris E. Jones, known to me to be the persons whose names subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

State of \_\_\_\_\_ )  
                                  ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the persons whose names \_\_\_\_\_ subscribed to the within instrument and acknowledged that \_\_\_\_\_ executed the same for the purposes therein contained.

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

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

Prepared By:  
THOMAS E. BRADY, P.C.  
129 W. Illinois St., P. O. Box 726  
Spearfish, SD 57783-0726  
Telephone: (605) 642-9000

## CONTRACT FOR DEED

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between BRAD J. JONES and CLARIS E. JONES, husband and wife, of P. O. Box 870, Lead, SD 57754, hereinafter referred to as "**Sellers**"; and \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as "**Buyer(s)**",

### **WITNESSETH:**

Sellers agree to sell and Buyer(s) agree to purchase the following described real property, to-wit:

Lot \_\_\_\_\_ of Aspen Heights Meadows Subdivision, a subdivision of H.E.S. 499 located in Sections 34 and 35, Township 3 North, Range 1 East, B.H.M., Lawrence County, South Dakota, except that part taken for public use by Judgment on Declaration of Taking filed as Document No. 78-984, subject to easements, reservations and restrictions of record, as shown on a plat thereof, recorded in the Office of the Lawrence County Register of Deeds, Deadwood, South Dakota, as Document #96-\_\_\_\_\_, and subject to Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision filed as Document #96-\_\_\_\_\_ in the Office of the Lawrence County Register of Deeds, Deadwood, South Dakota, and By-Laws, Rules and Regulations adopted by Aspen Heights Meadows Homeowners Association, Inc., or any amendments thereto,

upon the following terms and conditions mutually understood and agreed to by and between the parties as follows:

1. **PURCHASE PRICE AND PAYMENT:** The total purchase price for the above described property shall be the sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ), payable  
as follows:

- a. The sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ) earnest money, receipt of which is acknowledged by Century 21/Spearfish Realty.
- b. The sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ) due and payable on date of closing.
- c. The balance of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ), together with interest on the unpaid balances from time to time remaining at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum, shall be payable in \_\_\_\_\_ equal monthly installments of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ). Interest shall begin on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and the first monthly payment shall be due on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and on or before the \_\_\_\_\_ day of each and every month thereafter until principal and interest have been paid in full. Payments to be made to the escrow agent hereinafter designated.

2. **CLOSING/DATE OF POSSESSION/COSTS:** Closing shall occur within \_\_\_\_\_ ( \_\_\_\_\_ ) days from the date of this agreement, and Buyer(s) shall be entitled to possession of the above described premises on date of closing. Sellers agree to pay the attorney's fees incurred in the preparation of this agreement and matters incidental thereto. Title company closing costs shall be shared equally by Buyer(s) and Sellers. Buyer(s) agree to pay the initial escrow set up fee. Sellers agree to pay the monthly escrow fee.

3. **LATE PAYMENT FEE:** In the event any payment is not received by the escrow agent on or before the \_\_\_\_\_ day after the due date of any payment, then a \_\_\_\_\_ Dollar (\$ \_\_\_\_\_ ) late payment fee shall become immediately due and payable.

4. **PREPAYMENT:** Buyer(s) shall have the right and privilege of paying any part or all of the unpaid balances hereunder at any time

during the term of this contract without penalty for unearned interest.

5. **CONVEYANCE:** Sellers shall convey the real premises hereinabove described to Buyer(s) by a good and sufficient warranty deed, which instrument of conveyance is to be executed and signed by Sellers contemporaneously with the execution and signing of this agreement and placed in escrow with the escrow agent hereinafter named and by such escrow agent delivered to Buyer(s) upon payment of the purchase price in full.

6. **TAXES:** Sellers agree to pay all real estate taxes on said property prorated to the date of closing; Buyer(s) agree to pay all subsequent real estate taxes.

7. **TITLE INSURANCE:** Sellers agree to furnish to Buyer(s), as soon after closing as possible, a title insurance policy certified to a current date showing good and marketable title in Buyer(s).

8. **COVENANTS/REGULATIONS:** The above property is subject to Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision, filed in the Office of the Lawrence County Register of Deeds as Document #96-\_\_\_\_\_, and shall be subject to By-Laws, Rules and Regulations adopted by Aspen Heights Meadows Homeowners Association, Inc., or any amendments thereto. Buyer(s) acknowledge receipt of copies of said documents, that they understand and have reviewed the same, and hereby agree to be bound by the terms and provisions thereof.

9. **MINERAL INTEREST:** Sellers make no representations in regard to the ownership of any mineral interests in and to said real

property, although agree to convey any and all mineral interests now held or hereinafter acquired by Sellers as said mineral interests may exist.

10. **HOLD HARMLESS:** Buyer(s) agree to hold Sellers harmless from any causes of action or damages that may be incurred or claimed by any person as the result of the Buyer(s)' use, occupation and possession of the above-described real property.

11. **SEWER:** Buyer(s) acknowledge that Sellers have made no representations or have made no agreement wherein Sellers shall be responsible to provide sewer services to the real property above described. The sewer system shall be designed and located by a qualified professional who shall certify as to the design and location, and who shall be responsible to oversee the installation to verify compliance with the design. Buyer(s) shall be responsible to pay any and all costs associated therewith, and to properly maintain, repair, and service the installed system so that the system remains in compliance with applicable federal, state, and county rules and regulations.

12. **UTILITIES:** Sellers shall be obligated to see there exists electrical service to the lot line on or before September 1, 1997. Buyer(s) shall be obligated to pay the utility company for any connection or hookup fees.

Sellers shall be obligated to see there exists telephone service to the lot line on or before September 1, 1997. Buyer(s) shall be obligated to pay U.S. West Communications for any connection or hookup fees.

13. **ROADS:** It is expressly understood that the main access road through Aspen Heights Meadows Subdivision is a road for which there is no governmental obligation to repair or maintain. The parties expressly understand and acknowledge that Lawrence County does not now and, in its sole discretion, may not ever maintain the main road going through said subdivision, or the road from Highway 385 to the subdivision. It is also understood that the United States Forest Service is not obligated to repair or maintain the main access road through the subdivision. The road is a public highway which is used for many purposes, including logging, public access, and forest management.

14. **FENCING:** The above described property is located in open range. Livestock may be located upon private and Forest Service property. If Buyer(s) desire not to have livestock upon their property, it shall be Buyer(s)' duty and obligation to fence their property boundaries or portion of the property they wish to exclude livestock from, and Buyer(s) shall be solely responsible for the repair and maintenance of such fence constructed. In the event Buyer(s) elect not to construct a fence, they expressly understand and assume the consequences, resultant damages, and risks of livestock being upon the property. The Aspen Heights Meadows Homeowners Association, Inc., shall be responsible to fence and maintain the fences on the north boundary of the subdivision as may be required by law, and such other fences surrounding the property, as it may deem necessary and appropriate, with the cost of such to be paid for by Aspen Heights Meadows Homeowners Association, Inc.

15. **FIRE PREVENTION:** Construction of improvements upon the above described property shall substantially conform and utilize materials recommended to minimize fire risk as such may now or hereinafter be recommended by the United States Forest Service or South Dakota State Fire Advisory Council. Buyer(s) acknowledge receipt of a copy of the fire prevention videotape and acknowledge they have viewed the videotape.

16. **PUBLIC SERVICES:** There is no assurance that public or emergency services are available, including but not limited to law enforcement, fire prevention or suppression, ambulance, and medical.

17. **ASSIGNMENT:** Buyer(s) shall not assign any right, title or interest acquired hereunder without first securing written approval and consent of the Sellers. Sellers shall not unreasonably withhold their consent and approval to any assignment proposed by Buyer(s) to financially responsible parties.

18. **ESCROW AGENT:** The parties agree that Old West Escrow Co., Inc., Rapid City, South Dakota, shall be and act as escrow agent for the parties under the terms of this agreement, and that the warranty deed, title insurance policy, short form contract, and this agreement are to be placed in escrow with said escrow agent. Sellers hereby authorize said escrow agent, or any of its officers and employees, to deliver said documents to Buyer(s) upon payment of the purchase price in full and to deduct the cost of transfer tax.



19. **DEFAULT:** Time is of the essence of this agreement and if any payment is not paid in full when due or should Buyer(s) fail or default in the performance of any of the obligations or in compliance with the conditions of this agreement, Sellers shall notify Buyer(s) of such default and Buyer(s) shall have thirty (30) days time thereafter in which to correct same. All notices of default shall be given to Buyer(s) by Sellers by certified mail; and, should Buyer(s) fail to correct the default within the thirty days thereafter, this agreement shall be in default and the full amount remaining unpaid may, at Sellers' option, become immediately due and payable and failure on the part of Buyer(s) to cure such default shall give Sellers the right to foreclose this agreement as provided by the laws of the State of South Dakota.

20. **SHORT FORM AGREEMENT:** The parties hereto agree to execute contemporaneously with this agreement a Short Form Contract for Deed, which shall be recorded to provide public notice of this transaction.

21. **OTHER DOCUMENTS:** The parties hereby mutually agree to execute any and all other documents necessary or needed in order to effectuate the purposes of this agreement.

22. **WRITTEN MEMORANDUM:** This agreement constitutes a memorandum of the final meeting of the minds between the parties hereto of all prior negotiations had by the parties in reference to all matters covered herein; and, this agreement is to be binding upon the respective heirs, executors, administrators and assigns of the parties hereto.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands the day and year first above written.

**SELLERS:**

\_\_\_\_\_  
Brad J. Jones

\_\_\_\_\_  
Claris E. Jones

**BUYER(S):**

\_\_\_\_\_  
  
\_\_\_\_\_

State of South Dakota    )  
                                  ) ss.  
County of Lawrence        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me, the undersigned officer, personally appeared Brad J. Jones and Claris E. Jones, known to me to be the persons whose names subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

State of                        )  
                                  ) ss.  
County of                     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_

\_\_\_\_\_, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

(SEAL)

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public

Prepared By:  
THOMAS E. BRADY, P.C.  
129 W. Illinois St., P. O. Box 726  
Spearfish, SD 57783-0726  
Telephone: (605) 642-9000

### WARRANTY DEED

**BRAD J. JONES** and **CLARIS E. JONES**, husband and wife, *Grantors*, of P. O. Box 870, Lead, SD 57754, for and in consideration of \_\_\_\_\_ (\$ \_\_\_\_\_), **GRANT, CONVEY AND WARRANT TO**

\_\_\_\_\_,  
*Grantee* \_\_\_\_\_, of \_\_\_\_\_,  
the following described real estate in the County of Lawrence in the State of South Dakota, to-wit:

Lot \_\_\_\_\_ of Aspen Heights Meadows Subdivision, a subdivision of H.E.S. 499 located in Sections 34 and 35, Township 3 North, Range 1 East, B.H.M., Lawrence County, South Dakota, except that part taken for public use by Judgment on Declaration of Taking filed as Document No. 78-984, subject to easements, reservations and restrictions of record, as shown on a plat thereof, recorded in the Office of the Lawrence County Register of Deeds, Deadwood, South Dakota, as Document #96-\_\_\_\_\_, and subject to Declaration of Covenants, Conditions and Restrictions for Aspen Heights Meadows Subdivision filed as Document #96-\_\_\_\_\_ in the Office of the Lawrence County Register of Deeds, Deadwood, South Dakota, and By-Laws, Rules and Regulations adopted by Aspen Heights Meadows Homeowners Association, Inc., or any amendments thereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Brad J. Jones

\_\_\_\_\_  
Claris E. Jones

State of South Dakota    )  
                                  ) ss.  
County of Lawrence        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me, the undersigned officer, personally appeared Brad J. Jones and Claris E. Jones, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.  
IN WITNESS WHEREOF, I have set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_