

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RESERVATIONS
FOR THE ASPEN HILLS DEVELOPMENT II

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS FOR THE ASPEN HILLS DEVELOPMENT II is made and entered into this 17th day of October, 2000, by CANNON RIVER INVESTMENTS, INC., a South Dakota Corporation, with a mailing address at 42-160th Street, River Falls, County of St. Croix, Wisconsin, 54022, hereinafter referred to as "Declarant".

WHEREAS, Declarant owns the following described real property, to wit:

Township Six (6) North, Range Two (2) East, Black Hills Meridian, Lawrence County, South Dakota:

Section 28: South Half Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$)
Section 29: Southwest Quarter Southeast Quarter and East
 Half Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$)

consisting of approximately 197.17 acres which shall hereinafter be referred to as the "Development".

WHEREAS, Declarant intends to impose the following covenants, conditions, restrictions and reservations upon the Development as hereinafter set forth.

NOW THEREFORE, the Declarant does hereby declare and make the following covenants and impose the following conditions, restrictions and reservations, hereinafter "Declaration", upon the Development as legally described above:

ARTICLE I
PROPERTY SUBJECT TO DECLARATION

Section 1: General Declaration. It is Declarant's intent to subdivide several Lots by either plat or eloquent description of the whole of the Development. Declarant intends to sell and convey such Lots and as they are sold, each such Lot shall become subject to this Declaration and any additional covenants, conditions, restrictions and private easements as may be imposed upon any such Lot by Declarant.

Declarant declares that all of the real property within the Development which shall be subdivided into and designated Lots, whether by plat or eloquent description, shall be limited to single family residential use, shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon, or otherwise used, improved or transferred, in whole or in part subject to this Declaration and any additional covenants, conditions, restrictions and private easements as may be imposed by Declarant as amended or

modified from time to time.

Section 2: Property Description. The property to be covered by this Declaration shall be any Lot conveyed out of the whole of the Development. The Development contains 197.17, more or less in Lawrence County and is generally described as:

Township Six (6) North, Range Two (2) East, Black Hills Meridian, Lawrence County, South Dakota:

Section 28: South Half Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$)
Section 29: Southwest Quarter Southeast Quarter and East Half Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$)

ARTICLE II DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings unless a contrary intent is clearly evident:

(a) "Articles" shall mean the Articles of Incorporation of the Aspen Hills Development Homeowners Association as the same may from time to time be amended or supplemented.

(b) "Assessment" shall mean any charge levied and assessed as either a general or special assessment against any Lot, Owner or Lessee for the promotion of recreation, health, safety and welfare of the residents of the Aspen Hills Development II as established by the Aspen Hills Development Homeowners Association's Board of Directors in accordance with the Homeowner Association Bylaws.

(c) "Association" shall mean the Aspen Hills Development Homeowners Association, Inc., a South Dakota nonprofit corporation incorporated on August 26, 1998 provided the Aspen Hills Development Homeowners Association, Inc. amends its Articles of Incorporation and Bylaws permitting it to extend its jurisdiction over the property in this Declaration. If the Aspen Hills Development Homeowners Association, Inc. does not amend its Articles of Incorporation and Bylaws permitting it to extend its jurisdiction over the property described in this Declaration, then such terms shall mean the appropriate homeowners association organized to administer and enforce this Declaration and to enforce the rights, powers, and duties set forth in this Declaration, its Articles of Incorporation and Bylaws and shall include its successors and assigns.

(d) "Board" or "Board of Directors" shall mean the Board of Directors of the Aspen Hills Development Homeowners Association, Inc. or, in the event the Aspen Hills Development Homeowners Association, Inc. fails or refuses to amend its Articles of Incorporation and Bylaws to extend jurisdiction over the property

covered by this Declaration, then the homeowners association organized to administer and enforce this Declaration as referenced in (c) above, as the same may from time to time be amended or supplemented.

(e) "Bylaws" shall mean the Bylaws of the Aspen Hills Development Homeowners Association, Inc. or, in the event the Aspen Hills Development Homeowners Association, Inc. fails or refuses to amend its Articles of Incorporation and Bylaws to extend jurisdiction over the property covered by this Declaration, then the homeowners association organized to administer and enforce this Declaration as referenced in (c) above, as the same may from time to time be amended or supplemented.

(f) "Covenants" shall mean the covenants, conditions, restrictions and reservations set forth in this Declaration.

(g) "Declarant" shall mean Cannon River Investments, Inc., a South Dakota Corporation.

(h) "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Reservations for Land within the Aspen Hills Development II.

(i) "Deed" shall mean a deed or other instrument conveying title to a Lot.

(j) "Designee" shall mean any person designated by a Member to exercise certain rights of such Member.

(k) "Lot" shall mean any area of real property within the Aspen Hills Development II subdivided as described in Article I out of the whole of such Development, whether described by eloquent description or designated as a Lot or similar designation on any plat recorded and approved by Declarant.

(l) "Member" shall mean any person owning, leasing or otherwise holding or possessing a Lot.

(m) "Membership" shall mean a membership in the Association and the rights granted to Owners, Lessees, and Declarant pursuant to the Association Articles or By-laws.

(n) "Owner" (when capitalized) shall mean the record holder of legal title in any Lot including contract sellers. In the case of Lots, the title to which is vested of record in a trustee pursuant to the laws of South Dakota, legal title shall be deemed to be in the Trustor. An Owner shall include any person who holds record title to a Lot in joint ownership with any other person or holds an undivided interest in any Lot.

(o) "Single Family" shall mean a group of one or more persons

each related to the other by blood, marriage, or legal adoption.

(p) "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property.

ARTICLE III RESTRICTIVE COVENANTS

Section 1. Access Drive. Each Lot shall be accessed by a private driveway constructed with proper drainage and culverts.

Section 2. Animals. No more than a total of two of any combination of dogs and cats for household enjoyment and not for commercial purpose shall be allowed. All animals are to be restrained, kept on a leash or fenced. No more than two horses shall be allowed on any Lot provided that appropriate shelter is constructed with a minimum of 150 feet set back from the front Lot line, which must be approved in writing by the Board of Directors or its representative prior to construction.

Section 3. Antennae and Satellite Dishes. Television and radio antennae and satellite dishes are to be located as inconspicuously as possible. They shall be located at the side or rear of the home.

Section 4. Approval and Conformity. No building, fence, storage shed, pool, spa, or other structure or improvement of any type shall be commenced, erected or maintained upon the property, nor shall there be any additions or changes to the exterior of any residence or other structure except in compliance with plans and specifications approved in writing by the Board of Directors or its representative. All construction must be in accordance with external design and location in relation to surrounding structures to topography.

Section 5. Building Setbacks. The minimum building setbacks for all structures on any Lot shall be sixty (60) feet from the center of the road easement and thirty (30) feet from all other Lot lines.

Section 6. Changes in Construction. All exterior changes or additions to the approved plans before, during or after construction shall be approved in writing by the Board of Directors or its representative prior to the changes or additions being implemented.

Section 7. Continuity of Construction. The exterior of all structures started in the Development shall be completed within twelve (12) months of commencement of construction unless

completion is prevented by inclement weather.

Section 8. Dwelling. No dwelling shall be constructed, erected, or maintained without a minimum of the following finished square footage (excluding garages):

Ranch Style Home	1,200 sq.ft.
Split Foyer Home	1,200 sq.ft.
One and one-half Story Home	1,000 sq.ft. main floor 500 sq.ft. second floor
Two Story Home	1,000 sq.ft. main floor 500 sq.ft. second floor
Tri-Level Home or More	800 sq.ft. average per floor

All dwellings shall have a minimum of a two car garage either attached or detached to the dwelling which shall be finished on the exterior in the same manner as the dwelling.

All unfaced visible surfaces of concrete masonry or concrete foundation walls and piers, must receive a stucco, mortar-wash, paint, rock, stone or brick finish and shall blend unobtrusively with adjacent materials. Surfaces of more than 24 inches in height, may not be painted or mortar finish washed.

All plans for construction must be submitted for written approval to the Board of Directors or its representative.

All buildings shall be of new materials, new construction, and set on a permanent foundation. No houses shall be moved onto any Lot from any other location. Homes constructed of pre-fabricated wall and roof sections are allowed. Mobile, single or double-wide homes are not permitted.

All structures must comply with the latest editions of the local, state, and national building codes, rules and regulations, including, but not limited to the following:

- U.B.C. Standards of the Uniform Building Code
- U.S.F.A. United States Fire Administration
- N.E.C.A. National Electrical Code Association
- South Dakota State Plumbing Code

Section 9. Easements. Easements for installation and maintenance of utilities, public or private, including water or sewer services, are reserved with a twenty (20) foot strip adjacent to all Lot lines. Special easements will also exist for access to individual Lots as described in deeds for Lots over which such easements shall cross.

Section 10. Exterior Colors. The color combinations of exterior materials must be subtle and tasteful to blend with the environment. Earthen tones are required. Extreme contrast in color of paints, stains, and masonry are discouraged. Roofing materials must be of darker tones. All color schemes must be approved in writing by the Board of Directors or its representative.

Section 11. Fences. The construction of any type of fence must have prior written approval of the Board of Directors or its representative.

Section 12. Firearms. No firearms shall be discharged within the Development.

Section 13. Fireplaces (Outdoors) and Fires. No outdoor fireplaces, incinerators, open fire pits, or related structures or devices shall be operated except as permitted by applicable State or Federal Laws.

Section 14. Garbage and Trash. No garbage or trash shall be maintained on any Lot so as to be visible from neighboring property or any road way. All garbage and trash will be placed in tight garbage cans of the type in normal use in this locality, and shall be disposed of at least every seven days. No refuse pile, garbage or unsightly objects are allowed on any Lot.

Section 15. Gardens. Gardens for domestic consumption only will be permitted. All gardens shall be set back at least thirty (30) feet from any Lot line.

Section 16. Association. Each person who purchases a Lot or enters into a contract for deed to purchase a Lot as described above shall join and thereafter continue to be a member of the Association and shall be bound by all rules and regulations as may be promulgated and approved by said Association.

Section 17. Hunting. No hunting shall be allowed in the Development.

Section 18. Landscaping. All landscaping must be completed within six months after substantial completion of a dwelling. The extent of landscaping shall be determined by the Lot Owner. All ground disturbed by construction shall be returned to a natural condition or landscaped within six months.

Section 19. Logging. Removal of more than ten trees of 8" or more in diameter requires prior approval in writing by the Board.

Section 20. Lot Size. Any Lot consisting of at least nine acres may be divided into two Lots, but no more than two Lots. Once a Lot originally created and conveyed by Declarant has been

subdivided into two Lots, neither of the resulting two Lots shall be further subdivided. Subdivided Lots, creating two Lots out of one Lot, shall be subject to general and special assessments on a proportionate basis, based upon the size of each respective Lot. However, two or more adjacent Lots may be combined into one Lot and conveyed as one Lot. Replatted Lots, combining two or more adjacent Lots, shall be subject to general and special assessments as a single Lot after the Lots have been replatted and filed in the Lawrence County Register of Deeds Office. Should any replatted Lots be subsequently separated and replatted into multiple Lots, all additional Lots created shall be subject to all assessments which would have accrued against each Lot except for the combination into a single Lot.

Section 21. Lot Restrictions. No more than one single family dwelling may be constructed on any Lot.

Section 22. Mining. No portion of the Development shall be used to explore for or remove oil or mineral of any kind.

Section 23. Nuisances. No Owner of a Lot shall permit anything to be done or kept on or within his Lot, or on or about the Development, which will obstruct or interfere with the rights of other Owners occupancy or other authorized persons to use and enjoy the Development. Use and enjoyment includes unreasonable noise and barking dogs. No Owner may permit any nuisance nor commit or allow an illegal act to occur on their Lot.

Section 24. Outdoor Storage. No outdoor storage of any material, firewood containers, automotive accessories, equipment, or other items shall be kept or stored between the home and the roadway(s) fronting the property.

Section 25. Residential Use. Each Lot shall be used only for single family residential purposes. However, Owners, may use a portion of their home for limited business purposes. Businesses requiring regularly scheduled appointments shall not be allowed. No extraordinary traffic is allowed.

Section 26. Roads. All roads within the Development are for Owners and their guests. No parking is allowed on the roads or utility accesses.

Section 27. Safe Conditions. Without limiting any other provision in this Article, each Owner shall maintain his Lot in a safe, sound, and sanitary condition and repair at all times. Owners shall correct any condition and refrain from any activity which might interfere with other Owners.

Section 28. Sewage Disposal Systems. Only engineered sewage disposal systems shall be permitted in the Development. All septic tanks must be pumped at least tri-annually and evidence of pumping

must be provided to the Board of Directors or their agent prior to the third annual meeting of the Board following installation of the septic system, and on a continual basis thereafter.

Section 29. Signs. No signs, billboards or other advertising devices shall be used on any Lot except for identification of a residence, road, speed, direction or sale. Signs may be directive or informative, and will not be more than eight square feet in size. Signs erected by the Association are exempt. Sale signs must be removed the day of the closing of the sale.

Section 30. Temporary Structures. No trailer, basement, tent, shack, garage, barn, or other outbuildings shall be built on any Lot for use as a residence, either temporarily or permanently.

Section 31. Utilities. Electrical and telephone service lines are located near the property line. The extension of services from these locations to a residence is the responsibility of the Owner. All utility lines shall be placed underground from the edge of the property line to the residence. No utility extensions shall be undertaken without notification and written approval by the Board.

Section 32. Vehicles. No more than one properly licensed motor vehicle, trailer, or other type of motorized or non-motorized vehicle, not in normal daily use may be kept on any Lot. Equipment of this type shall not be kept between the home and the roadway(s) fronting the property.

Section 33. Violation of Law. No Owner shall permit anything to be done or kept in his or her Lot which would be in violation of any local, state or federal law.

ARTICLE IV COVENANTS FOR ASSESSMENT

Section 1. Determination by Board. It is the duty of the Board of Directors of the Association to determine the amount of the general assessment for each Lot subject to assessment. General assessments are due and payable on dates specified by the Board. The Board shall make reasonable efforts to determine the amount of the general assessment and to give written notice of the assessment for each Lot to the Owner with due dates of periodic installments to be paid. The Board shall maintain a roster of the Lots and the general assessments due and shall make the roster available for the inspection of a Member on request. Assessments may be collected on a monthly, quarterly, semi-annual or annual basis at the discretion of the Board.

Section 2. Owner Responsibility. Each Owner, whether or not it is expressed in any deed or document of conveyance, agrees to pay to the Association general assessments or charges levied on a

monthly, quarterly or annual basis, and special assessment or charges to be fixed, established and collected from time to time as hereinafter provided. The general assessments, together with interest thereon at the statutory judgment rate, 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 the Lot upon which such assessment is made. Each assessment, together with interest thereon and costs of collection, in addition to becoming a lien against each Lot, shall also be a joint and several personal obligation of the person, group of persons or entity who was the Owner of such Lot at the time when the assessment became due and payable or who acquired ownership thereafter.

Section 3. Purpose. General or special assessments shall be used to promote the welfare and safety, and to protect the investment of the Owners and residents of the Development. Assessments shall be used for, but not be limited to, the following:

- (a) Operating Expenses
- (b) Management and Administration
- (c) Taxes
- (d) Insurance Costs
- (e) Reserves
- (f) Improvements
- (e) Maintenance

Section 4. General Assessments. The general assessment for each Lot shall begin on the first day of the month following the date of purchase or date of contract for deed of the Lot by the Owner. Any assessment shall be prorated for the balance of the assessment period in relation to the general assessment, which would have been imposed if so subject and shall become due and payable and a lien on the Lot.

Section 5. Special Assessments. Special assessments, in addition to the general assessments, may be imposed by the Board for capital improvements or capital replacements. Special assessments shall only be levied by a resolution approved by two-thirds of the votes of the property Owners present or represented by proxy at an annual meeting or at a special meeting called for that purpose. Any special assessment shall be on a per Lot basis only.

Section 6. Reserves. The Board may establish a reserve fund for replacements and for general operating expenses by the allocation and payment monthly or other term of an amount to be designated. Such fund or funds shall be deemed to be a common expense of the Association and shall be deposited in F.D.I.C insured accounts as the Board deems appropriate. The reserve for replacements may be used only for improvements on the property or

replacement of improvements or for operating contingencies of a non-recurring nature. The proportionate interest of any Lot Owner in any reserve shall be considered an appurtenance to the Lot and shall not be separated from the Lot which it appertains and shall be deemed to be transferred with the Lot.

Section 7. Notice of Payment Status. The Board shall, upon request at any reasonable time, furnish to any Lot Owner liable for assessment, a certificate signed by an officer or other authorized agent of the Board stating whether any such assessment, whether general and/or special, is paid or unpaid. A charge may be levied for each certificate issued.

Section 8. Breach of Payment. Any general or special assessment not paid on the date due shall be deemed delinquent, shall accrue interest at the statutory rate of interest for judgments in South Dakota and it, with the cost of collection, shall become a continuing lien on the Lot. The assessment shall be binding upon the Lot Owner, his heirs, devisees, personal representatives and assigns. The obligation of an Owner to pay an assessment shall also remain his or her personal, joint and several obligation. (See Article V. Section 5. Enforcement).

ARTICLE V GENERAL

Section 1. Administration. Covenants shall be administered by the Board. The Board is empowered and has the right to implement, provide, perform and to enforce any or all of the following within the Development:

- (a) All of the provisions in this Declaration of Restrictive Covenants, the Articles of Incorporation, and the By-Laws of Aspen Hills Development Homeowners Association, Inc. having jurisdiction to enforce these Covenants.
- (b) Regulations, maintenance and improvements of all roads within the Development.
- (c) Reasonable rules and regulations, which Owners, their families, guests and visitors shall comply with.
- (d) Penalties for violations of rules, regulations and failure to pay assessments.
- (e) Constructions, improvements, and maintenance to any Association property necessary.
- (f) Contract with third parties for necessary services.
- (g) Purchase or lease of any equipment necessary for construction, maintenance, or improvements.

- (h) The amount, payment period, payment schedule and levy assessments pursuant to these covenants.

Section 2. Duration and Amendments: 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 Association, its legal representatives, successors and assigns. However, this Declaration may be amended at any time, except where permanent easements or other permanent rights of interests are created, or rights or interests are created in third persons, by an instrument signed by Owners of a majority of the Lots described within the Property, (one vote per Lot owned) and the Declarant (regardless of whether Declarant owns a Lot of record at the time of Amendment or not), and placed on record where this Declaration is recorded. No such amendment shall be effective unless written notice of the proposed amendment is sent to every Owner and Declarant 30 days prior to action being taken on the proposed amendment. No change of circumstances or conditions shall amend any of the provisions of this Declaration, which may be amended only in the manner described. None of the provisions of this Declaration shall be construed as a condition subsequent or as creating a possibility of reverter.

Section 3. Incorporation by Reference on Resale: If any Owner sells or transfers a Lot, any deed effecting the transfer shall contain a provision incorporating these covenants, conditions and restrictions. Failure to do so shall not be deemed to defeat, alter or terminate any of these covenants, conditions and restrictions.

Section 4. Notices: Any notice required to be sent to any Owner of a Lot or any first mortgagee, shall be deemed to have been given when mailed by first class mail to the Owner or mortgagee at the address appearing on the records of the Association at the time of the mailing. It shall be the duty of each Owner to provide written notice of addresses or changes of address to the Association.

Section 5. Enforcement:

- A. If any person violates any of the provisions of this document it shall be lawful for the Declarant, the Association or any Lot Owner in the Development to initiate proceedings to enforce the provisions of this document, to restrain the person violating them and recover damages, actual and punitive.
- B. These covenants and restrictions shall be enforced by the Declarant, the Association or any Lot Owner. Enforcement of these covenants and restrictions shall be by legal proceedings against any person violating any covenant or restriction either to restrain or enjoin

violation or to recover damages, and against the property or any Lot to enforce any lien created by these covenants. The failure of the Association to enforce any covenant or restriction shall in no event be deemed a waiver or work as an estoppel of the right to do so on the part of any Lot Owner or Declarant.

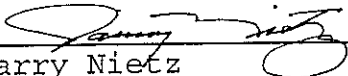
- C. If an assessment is not paid within thirty (30) days after the due date, the Association may bring action against the Owner. The Association may also foreclose a lien against the Lot in the amount provided by law. In either event, the Association shall recover from the Owner or out of the proceeds of a foreclosure, accrued interest and costs of collection, including but not limited to, reasonable attorney's fees. No Owner may waive or otherwise escape liability for assessments provided for in the Declaration by non-use or abandonment of his Lot.
- D. 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.
- E. Invalidation of any of the covenants by court order shall not affect any of the remaining covenants which shall remain in effect.

Section 6. Invalidity and Severability: All of these covenants, conditions and restrictions are deemed severable. In the event any one or more of these covenants, conditions and restrictions is declared invalid, all remaining covenants, conditions and restrictions shall remain in effect.

Section 7. Binding Effect and Compliance: Each Owner, the Owner's heirs and assigns or any person acquiring any rights or privileges therefrom shall be fully bound by and shall comply with the provisions of this declaration, by the By-Laws and Articles, decisions and resolutions of the Board or their authorized agent and any amendments adopted to these Covenants or By-Laws or Articles of Incorporation. Failure to comply with these provisions, decisions or resolutions shall be grounds for action to recover sums due or for damages, or action for injunctive relief.

Dated this 17TH day of OCTOBER, 2000.

CANNON RIVER INVESTMENTS, INC.


By: Garry Nietz
As: Power of Attorney for Cannon
River Investments, Inc.

STATE OF WISCONSIN)
) SS.
COUNTY OF ST. CROIX)

On the 17th day of October, 2000, before me, a Notary Public, personally appeared Garry Nietz, Attorney in Fact for Cannon River Investments, Inc., known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he signed the same.

SEAL

GEORGEANN BROWN
NOTARY PUBLIC
STATE OF WISCONSIN

Georgeann Brown
Notary Public
My commission expires: 11-9-2003



DOC. NO. 2000-4558

2000, Oct. 19

11:30 A.M.

Judy R. Mewerton

REGISTER OF DEEDS
LAWRENCE COUNTY
SOUTH DAKOTA

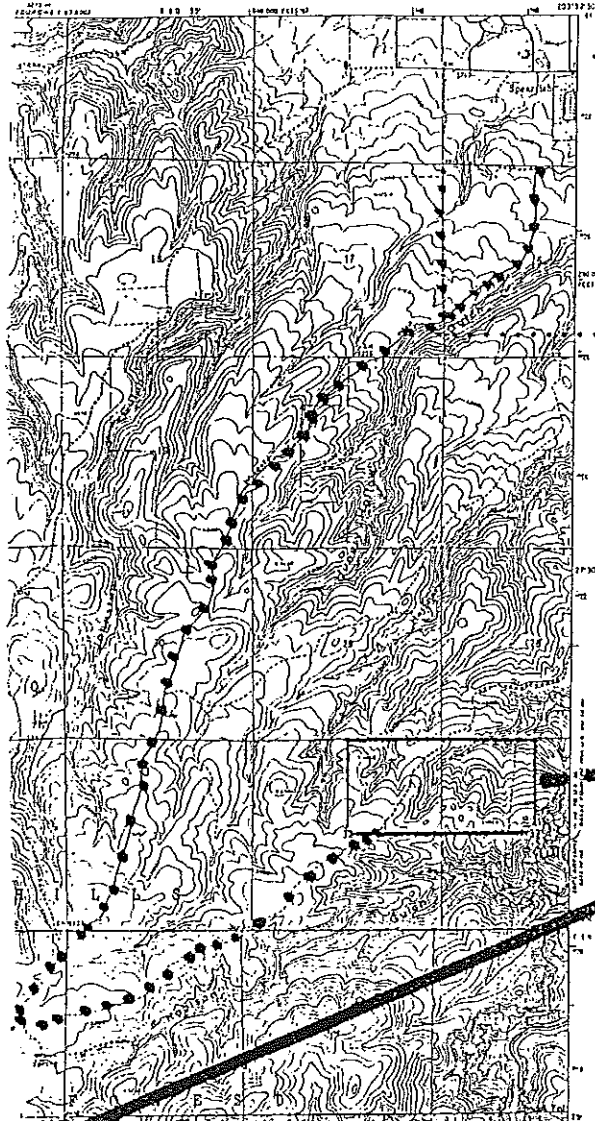
FEE \$ 34.00

13 pages

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Aspen Hills

MAURICE QUADRANGLE
SOUTH DAKOTA-LAWRENCE CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)
DATE 12/20/50 BY QUAD/STG

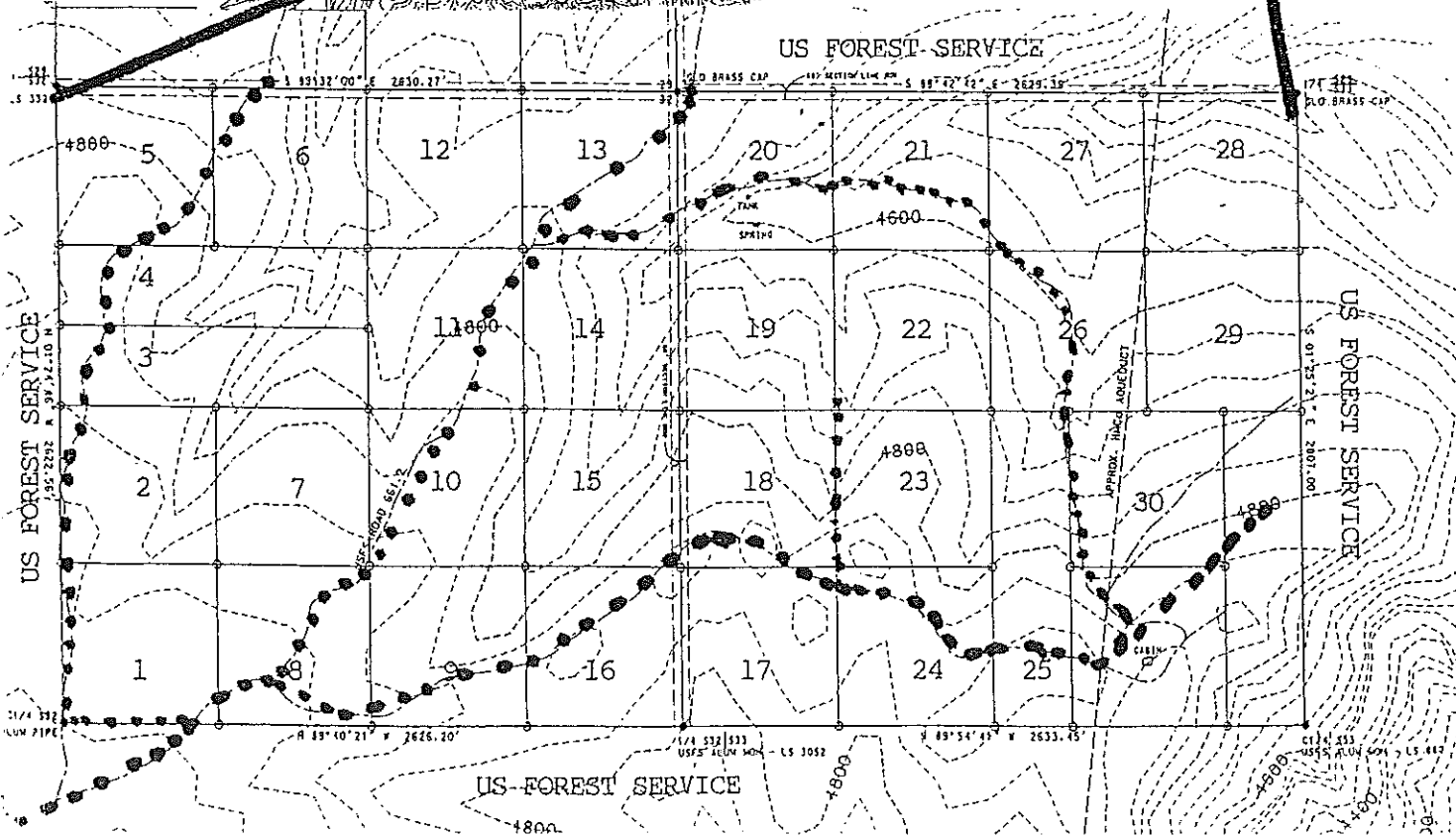


.....SPEARFISH

.....TINTON ROAD
FS ROAD #134

AREA OF INSET

S ROAD #661



US FOREST SERVICE

US FOREST SERVICE

US FOREST SERVICE

US FOREST SERVICE

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