

## **DECLARATION**

THIS DECLARATION is made as of \_\_\_\_\_, 2000, by DEAD RIVER CAMPERS, INC., a Michigan corporation, whose address is 102 South Main Street, Ishpeming, Michigan 49848 ("**Association**"), based on the following factual recitals:

A. The Association owns that real estate ("**Development**") legally described on **Exhibit A** attached to this Declaration.

B. The Association has caused portions of the Development to be divided into lots as described on the assessor's plats referenced on the attached **Exhibit B** and/or metes and bounds descriptions as described on the attached **Exhibit B** (each of which is individually referenced in this Declaration as a "**Lot**," and which are collectively referenced in this Declaration as the "**Lots**").

C. The Association wishes to provide for the development and continued use of the Development as a community suitable for single family living and, at the same time wishes to maintain, insofar as possible, the natural and recreational character of this beautiful property.

D. It is essential to the value of the Lots that the Development be perpetually maintained in a manner consistent with high environmental and residential standards.

E. To accomplish this, the Association desires to impose certain building and use restrictions, covenants and conditions, as set forth in this Declaration, upon and for the benefit of the Lots and the Development as a whole.

F. The Association is willing to sell Lots, but all buyers and subsequent owners must accept the Lots subject to the use restrictions set forth in this Declaration.

### **Section 1. Definitions.**

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 “**Association**” shall mean Dead River Campers, Inc., a Michigan corporation, the association of licensees of camps at the Development who have banded together to purchase the Development from the prior owner. The Association is the anticipated proprietor of all the land within the Development which is not conveyed to Lot Owners.

1.2 “**Development**” shall mean the property located in Marquette County, Michigan, described on **Exhibit A** attached to this Declaration.

1.3 “**Easements**” shall mean the Roadway Easements and Utility Easements.

1.4 “**Improvement**” shall mean every building of any kind, fence or wall, pool, tennis court, structure, recreational facility, drainage system, driveway, landscaping, water or septic system, utility system or any part of them within the Development.

1.5 “**Lot**” shall mean any one of the Lots within the Development, the assessor’s plat and/or metes and bounds description of which is described on **Exhibit B** attached to this Declaration. “**Lots**” shall mean all such Lots.

1.6 “**Lot Owner**” shall mean any person or other entity owning or purchasing a Lot other than the Association.

1.7 “**Maintenance Charge**” shall mean any payment by a Lot Owner to the Association provided for under this Declaration.

1.8 “**Roadway Easements**” shall mean any private easements for the construction, use or maintenance of roadways benefitting the Development.

1.9 “**Stock**” shall mean the share of stock in the Association issued to each Lot Owner. As provided in the Articles of Incorporation and Bylaws of the Association, the Stock may be transferred by a Lot Owner only to the transferee of that owner’s Lot.

1.10 “**Surplus Lands**” shall mean any property other than the Lots within the Development.

1.11 “**Surplus Lot**” shall mean any Lot within the Development which is then owned by the Association. “**Surplus Lots**” shall mean all such Lots.

1.12 “**Utility Easements**” shall mean any private easements for the construction, use or maintenance of utilities benefitting the Development.

## **Section 2. Administration of Surplus Lands, Surplus Lots and Easements.**

2.1 Use of the Surplus Lands, Surplus Lots and Easements shall be subject to such rules and regulations as the Association may establish from time to time for safety purposes and for the purpose of protecting the peace and quiet of the Development or for such other purpose as the Association shall, in its sole discretion, determine. Rules and regulations may include, but are not limited to, the establishment of hours of use, the type and extent of use permitted and the prohibition or limitation of parking and vehicles.

2.2 The Association shall have no duty or obligation to maintain, improve, repair or replace the Surplus Lands, Surplus Lots or any Improvements to them. The Surplus Lands and Surplus Lots and any Improvements to them may, but need not, be maintained, improved, repaired or replaced at the discretion of the Association, but if they are at any time legally required by appropriate public authorities to be maintained, improved, repaired or replaced, they shall be maintained, improved, repaired or replaced under the direction of the Association at the expense of the Lot Owners.

2.3 The Association shall have no duty or obligation to maintain, improve, repair or replace the roadways and utility lines within the Easements; provided, however, the Association shall maintain the structures known as the Holy Oak Bridge and the Dugout Bridge. The roadways and utility lines within the Easements may, but need not, be maintained, improved, repaired or replaced at the discretion of the Association, but if they are at any time legally required by appropriate public authorities to be maintained, improved, repaired or replaced, they shall be maintained, improved, repaired or replaced under the direction of the Association at the expense of the Lot Owners.

2.4 If the Association elects or is legally required to maintain, improve, repair or replace the Surplus Lands, Surplus Lots or any Improvements to them, or the roadways and/or utility lines within the Easements, it may initially pay the costs of doing so. However, each Lot Owner shall ultimately share equally in such costs, regardless of (i) the degree of use to which any Lot Owner puts the Surplus Lands, Surplus Lots and Easements, and (ii) the location of any Lot in relation to the Surplus Lands, Surplus Lots and Easements. The Association shall bill each Lot Owner for an equal share of such costs as such costs are incurred or at such other time or in such other manner as the directors of the Association may in their discretion deem appropriate. Each Lot Owner shall promptly reimburse the Association for his share of such costs, as reflected upon the statement tendered.

2.5 The Association shall pay all ad valorem real estate taxes and special assessments levied with respect to the Surplus Lands and Surplus Lots. Pursuant to a certain Water Power Easement affecting the Development which was granted by Seller to the Upper Peninsula Power Company, Seller has assigned to the Association certain payments in lieu of taxes with respect to the Development. The Association shall have no obligation to apply such payments in lieu of taxes to pay any expenses other than the expenses of the Association, including, without limitation, any taxes and assessments payable by the Association with respect to the Surplus Lands and Surplus Lots. The

Association shall bill the Lot Owners for their proportionate share of those taxes and special assessments as such costs are incurred or paid or at such other time or in such other manner as the directors of the Association may in their discretion deem appropriate. The Lot Owners shall each promptly reimburse the Association for their share of such costs, as reflected upon the statement tendered.

2.6 (a) Provided he is current in his obligations under this Declaration, each Lot Owner shall be released from all personal liability for costs under this Declaration immediately upon the sale or other conveyance of his complete fee interest in the Lot and his complete interest in the Stock owned by him.

(b) If any Lot Owner shall fail to pay any statement tendered by the Association to him, or his successors and assigns, within thirty (30) days after receipt of it, the amount of such statement, together with interest on it at the maximum legal rate, or such lesser rate as the Association may establish, plus reasonable attorney's fees necessary to collection, shall automatically become a continuing lien upon the Lot or Lots of the obligor billed, which lien shall be superior to all claims to such Lot or Lots except purchase money first mortgages, as well as an enforceable personal obligation of the Lot Owner. The Association, or its successors and assigns, may, upon the failure of a Lot Owner to pay any statement tendered by the Association, record notice of its claim of lien against any such Lot and thereafter pursue an action to foreclose that lien in any manner now or in the future permitted by law or equity, including, but not limited to, what is commonly known as a foreclosure by advertisement. In this regard, the Lot Owner grants the Association a power of sale and authorizes the Association to sell the Lot to which delinquent charges are attributable or cause it to be sold at public auction and to deliver to the purchaser good and marketable title to the Lot, subject only to any purchase money first mortgage. The proceeds received at such a sale shall be distributed in accordance with the priorities established by applicable law. The Association may, in addition to, or instead of, foreclosure, obtain a personal judgment against the obligor, and/or exercise the rights and remedies set forth in **Section 7** below.

2.7 The Association may, from time to time, sell Surplus Lots and appurtenant Stock, but shall do so in compliance with applicable law. If it does so, then the purchaser of a Surplus Lot shall become a Lot Owner, subject to all the terms and conditions of this Declaration. If the Association determines that its financial needs require it, the Association may also elect to sell all or any interest in the Surplus Lands, and in connection with such sale, release the Surplus Lands from the restrictions set forth in this Declaration and from inclusion as part of the Development, so long as two thirds (2/3) of the Lot Owners shall by affirmative written action vote to authorize such sale and/or release of the Surplus Lands.

### **Section 3. Subdivision; Other Easements.**

3.1 No Lot may be subdivided, platted or established as a condominium.

3.2 No Lot Owner shall be permitted to grant any license, right-of-way or easement for ingress and egress across his Lot to any person or to benefit real estate except another Lot, the Surplus Lands or the Surplus Lots. Neither may any Lot Owner grant any right of access to or use of any river, lake, stream or other body of water located in or appurtenant to the Development across his Lot. These restrictions shall not prohibit the grant of utility easements.

### **Section 4. Uses Permitted and Prohibited.**

4.1 Lots shall be used solely for the construction of one single-family residence and structures and outbuildings incidental to the use of it (including, without limitation, barns, stables and garages for private, and not public or commercial, use) and shall be limited in use to single-family residential purposes and incidental recreational uses.

4.2 No offensive activity or activity which is in violation of any law, ordinance, statute or governmental regulation shall be carried on in the Development, nor shall anything be done which may be or become an annoyance or a nuisance to the other Lot Owners in the Development.

4.3 No inoperable vehicles that are visibly rusting and/or visibly damaged may be visibly parked or stored upon a Lot at any time, even temporarily. No Lot shall be used to visibly store junk, trash or refuse of any kind, except for such short periods of time as may be reasonably necessary to permit the periodic collection of trash by a contract trash hauler.

4.4 In order to combat erosion and maintain the natural beauty of the waterfront area along the Hoist Basin, no commercial harvesting of timber, clear cutting or tree removal may occur within 300 feet of the water line of the Hoist Basin. A Lot Owner may, however, remove trees as reasonably necessary to clear space for construction or eliminate hazardous conditions, remove any tree less than four inches in diameter and engage in such other timbering activities as have been authorized in advance by the Association, in its sole discretion.

### **Section 5. Rules and Regulations.**

The Association may promulgate rules and regulations specifically authorized under this Declaration and such other rules and regulations as may be reasonably necessary or helpful to achieve the quality of living in the Development desired by the Association. All Lot Owners and their guests and invitees shall abide by such rules and regulations.



## **Section 6. Violation of Provisions.**

If any Lot Owner shall use, construct or permit to be constructed an Improvement on any Lot contrary to the provisions of this Declaration, or any Lot Owner shall use or maintain any Improvement or thing on any Lot contrary to the provisions of this Declaration or the rules and regulations promulgated by the Association, not earlier than fifteen (15) days after it has delivered written notice to a Lot Owner of a violation of one or more of such provisions, the Association may enter upon and alter, repair, or change any Improvement or thing which may be upon the Lot in violation of such provisions so as to make such Improvement or thing conform to such provisions. The Association may charge the Lot Owner for the entire cost of the work done by or for it pursuant to the provisions of this Section, which shall become payable to the Association upon demand or thereafter become a lien against the Lot Owner's Lot, enforceable in accordance with the provisions of **Section 2.6** above.

## **Section 7. Enforcement.**

For a violation or a breach of any of the provisions of this Declaration, the Association shall have the right to: (a) proceed at law or in equity to compel compliance with the terms of this Declaration or to prevent the violation or breach; (b) foreclose any lien granted under this Declaration; (c) exercise such reasonable remedies as are provided in the rules and regulations promulgated by the Association, including, without limitation, the levying of fines against Lot Owners after notice and opportunity for hearing, as provided in the rules and regulations of the Association, and the imposition of late charges and/or interest charges for the nonpayment of Maintenance Charges; (d) recover the costs of proceeding to enforce the provisions of this Declaration, including, without limitation, reasonable attorneys fees; (e) enter upon the Lot of the breaching Lot Owner where reasonably necessary, and summarily remove or abate, at the expense of such Lot Owner, any Improvement, thing or condition existing or maintained contrary to the provisions of this Declaration; and (f) cease providing services to the breaching Lot Owner, and prohibit that Lot Owner from making use of any of the Surplus Lands, Surplus Lots and Easements, as well as any other real or personal property of the Association. If the Association shall fail or refuse to enforce any violation after request has been made by one or more Lot Owners, such owners shall have the joint and several right to proceed in law or equity to seek a money judgment or to compel such compliance.

The failure promptly to enforce any of the rules, reservations and restrictions shall not bar their enforcement. The invalidation of any one or more of the rules, reservations and restrictions by any court of competent jurisdiction in no wise shall affect any of the other rules, reservations and restrictions, but they shall remain in full force and effect. All rights, remedies and privileges granted to the Association or any Lot Owner pursuant to this Declaration shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

## **Section 8. Association.**

8.1 Any person acquiring legal or equitable title to a Lot shall at the same time acquire a share of Stock in the Association. The shareholders in the Association consist of all Lot Owners in the Development and no other persons. The Association is entitled to carry on such business as is authorized by its Articles of Incorporation and Bylaws, including, but not limited to, the powers granted it under this Declaration.

8.2 As a member of the Association, and in consideration of having the right to use the Development as described in this Declaration, each Lot Owner by acquiring such legal or equitable title agrees for himself, his heirs, successors and assigns, to pay to the Association any dues, assessments, charges, costs, or fines as may from time to time be levied by the Association for any lawful purpose. Such purposes may include, without limitation, not only the costs of maintaining, improving, repairing and replacing the Surplus Lands, Surplus Lots and Improvements to them, and roadways and utility lines within the Easements as described above, but also the cost of any other activities in which the Association engages.

8.3 Notice of the amount of any Maintenance Charge or other charge, dues, assessment, or fine shall be given to the each Lot Owner by first class mail addressed to his last known address as it appears on the rolls of the Association.

8.4 Any Maintenance Charge or other charge not paid on or before the due date established by the Association shall be considered as being in default and shall bear interest at the highest rate then permitted by law, or such lesser rate as the Association may establish. Such interest, and all costs incurred by the Association in connection with the collection of any such charge, including without limitation, reasonable attorney's fees, shall be collectible by the Association and shall constitute a continuing lien upon any Lot within the Development owned by the Lot Owner responsible for it. Such lien may be enforced in accordance with the procedure set forth in **Section 2.6** above. All such charges shall also be the personal obligation of the Lot Owner against whom they were assessed.

## **Section 9. Assignment of Rights.**

All rights granted to Lot Owners by this Declaration shall not be further assignable by such owners except as an appurtenance to and in conjunction with a sale of their Lot and Stock. The Association may expressly assign one or more of its rights or delegate all or any of its authority under this Declaration, pursuant to a document recorded with the Register of Deeds of Marquette County, Michigan.

## **Section 10. Amendment.**

The covenants and restrictions set forth in this Declaration shall run with the land and be binding until ten (10) years from the date of this Declaration and shall be automatically extended for successive periods of ten (10) years each, unless prior to any such expiration date, two-thirds (2/3) of the Lot Owners shall by affirmative written action vote to allow the same to expire. These restrictions may be amended by the affirmative written action of two-thirds (2/3) of the Lot Owners. So long as the Association owns an interest in the Development, this instrument may not be amended at any time without the consent of the Association. Any amendments shall become effective ten (10) days after notice of adoption of the amendment, together with a copy of the recorded amendment, is mailed to all Lot Owners.

The Association has signed this Declaration as of the date set forth above.

Witnesses:

DEAD RIVER CAMPERS, INC.

( \_\_\_\_\_ )

By \_\_\_\_\_

( \_\_\_\_\_ )

Its \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by \_\_\_\_\_, the \_\_\_\_\_ of DEAD RIVER CAMPERS, INC., a Michigan corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, \_\_\_\_\_  
My commission expires: \_\_\_\_\_

THIS INSTRUMENT PREPARED BY:  
William W. Hall, Esq.  
WARNER NORCROSS & JUDD LLP  
900 Old Kent Building  
111 Lyon Street, N.W.  
Grand Rapids, Michigan 49503-2487  
Telephone: (616) 752-2000  
351018-5