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MARQUETTE COUNTY
MICHIGAN
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Patricia L. Maloney
REGISTER OF DEEDS

WATER POWER EASEMENT AGREEMENT

This Water Power Easement Agreement ("Agreement") is made this 7th day of October, 1999, by and between Longyear Realty Corporation, a Michigan corporation ("Longyear") and Dead River, Inc., a Michigan corporation ("DRI"), (collectively, Longyear and DRI shall be referred to as "Grantors") the address of which is 210 N. Front St., 1st Floor, Marquette, MI 49855, and Upper Peninsula Power Company, a Michigan corporation ("UPPCO" and/or "Grantee"), the address of which is 600 Lakeshore Drive, Houghton, Michigan 49931-0130.

Whereas, on July 2, 1917, John M. Longyear and Mary B. Longyear, his wife, and Frederick Ayer and Ellen B. Ayer, his wife, as Lessors, made, executed and delivered to The Cleveland-Cliffs Iron Company ("Cleveland Cliffs"), as Lessee, a certain water power lease (the "Water Power Lease"), granting to Lessee for a period of ninety-nine years from the date thereof the right and privilege, upon the terms and conditions set forth therein, to construct dams and to flood and use certain lands situated upon or along the Dead River and its tributary streams (the "Dead River") in Marquette County, Michigan, for the purpose of and in connection with the development of water power; and,

Whereas, the Water Power Lease was amended and supplemented on various occasions; and,

Whereas, Cleveland Cliffs constructed hydroelectric projects known as the McClure Hydroelectric Project ("McClure Project") and the Hoist Hydroelectric Project, which includes the Silver Lake Storage Dam and reservoir ("Hoist Project") on lands subject to the Water Power Lease; and,

Whereas, Longyear succeeded to the interests of John M. Longyear and Mary B. Longyear, and DRI succeeded to the interests of Frederick Ayer and Ellen B. Ayer, as Lessors under the Water Power Lease; and,

Whereas, UPPCO acquired the Hoist and McClure Projects and succeeded to the interests of Cleveland Cliffs as Lessee under the Water Power Lease; and,

Whereas, the Federal Energy Regulatory Commission ("FERC")(the term, "FERC" as used hereinafter includes any successor federal agencies), pursuant to the Federal Power Act (16 USCS §§791a et seq.) (the "Act") has ordered that the McClure and Hoist Projects be licensed as a single project now known by FERC as Dead River Project No. 10855-002 (the "Project"); and,

Whereas, UPPCO submitted to FERC an Application for License for Major Project - Existing Dam, dated April 22, 1994, and filed May 2, 1994 ("Application"), requesting a license for the Project (the term "License" as used hereinafter refers to the license to be issued pursuant to the Application and any subsequent license for the Project issued by FERC); and,

Whereas, a licensee under the Act is required by FERC to acquire and retain title in fee to, or the right to use in perpetuity, project property sufficient to accomplish all project purposes; and,

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Whereas, certain project boundaries have been identified in the Application and will be defined by the License ("Project Boundaries" as used hereafter, refers to the project boundaries identified in the Application until such time as the License is issued by FERC, and thereafter to the project boundaries as defined in the License); and

Whereas, the term of the Water Power Lease was to expire in 2016; and,

Whereas, the parties wish to terminate the Water Power Lease, in part, and enter into an agreement that will provide to UPPCO the real property interest in the Project (this easement) necessary for licensing and that will clarify the rights of the Grantors with respect to the use and enjoyment of the real property on which the Project is located; and

Whereas, Grantors have entered into agreements with The McClure Basin Association, Inc. and the Dead River Campers, Inc. for the sale of certain properties that have been subject to the Water Power Lease and will take title to such properties subject to this Agreement.

Now, therefore, in consideration of the foregoing premises, the mutual covenants herein contained and other good and valuable consideration, Grantors do hereby grant to Grantee, its successors and assigns, an easement ("Easement") over the real property described on Exhibit A hereto (the "Easement Premises") on the following terms and conditions:

1. Purposes.

A. Within the Project Boundaries. Within the Project Boundaries, the Easement shall be for the purposes of (i) enabling the Grantee to access, operate, maintain, repair and replace the existing hydroelectric project works including the reservoirs, dams, power houses, penstocks, piping, transmission lines and appurtenant facilities (collectively, the foregoing shall hereinafter be referred to as the "Project Works") and (ii) enabling Grantee to comply with all lawful orders and regulations of FERC respecting the Project, and (iii) allowing Grantee the right to flood the land within the Project Boundaries and to utilize the water power of the Dead River.

B. Beyond the Project Boundaries. Beyond the Project Boundaries, the Easement shall be for the purposes of providing Grantee with reasonable access to the Project Works and Project Boundaries and the right to maintain, repair and replace transmission lines existing as of the date hereof.

2. Term. The term of the Easement shall be for so long as the Project is utilized to generate hydroelectric power, and if a FERC License is issued, thereafter for so long as a FERC License remains in effect for the Project or the United States of America operates the Project under its statutory rights upon expiration of the FERC License.

3. Water Power Lease Partial Termination and Assignment of Flowage Rights. Simultaneous with execution of this Agreement, the parties shall, by separate recordable instruments, (a) terminate the Water Power Lease, as amended with respect to those lands covered by this Agreement and (b) Grantors shall assign to Grantees its flowage rights over the lands owned by third parties but subject to the Water Power Lease.

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4. **Compliance with Laws.** Grantee shall comply with all applicable laws, rules, regulations, ordinances and orders of any and all governmental units and agencies thereof which have jurisdiction over the Project and/or the Easement Premises, including without limitation, the provisions of the License and the Act. Grantors shall have no cause of action for a violation of this Section unless the same materially, negatively and physically impacts Grantors' use and enjoyment of the Easement Premises.

5. **Fee Owners' Use and Enjoyment.** The owners of fee title of the Easement Premises shall have the right to possess, use and enjoy the Easement Premises so long as exercise of those rights does not unreasonably interfere with the rights of Grantee as set forth in this Agreement. Grantors may not, however, engage in any activities within the project boundaries originally applied for in the Application dated April 22, 1994, that are prohibited by the License. Grantee agrees to exercise its best efforts to maintain the water level on the Hoist Project at no greater than 1,346 feet above sea level and on the McClure Project at no greater than 1197 feet above sea level unless otherwise ordered by FERC. In consideration of such efforts, all owners and occupants of the Easement Premises shall be deemed to have irrevocably waived any claim that they may have against Grantee for any damages resulting from the water level exceeding the levels agreed upon above, unless resulting from the intentional or negligent acts or omissions of Grantee, its employees, agents, contractors, successors and/or assigns.

6. **Commercial Logging Prohibited.** Neither Grantee nor Grantors shall conduct commercial logging activities on lands within the Easement Premises that are within 200 feet of the edge of waters within the Project Boundaries.

7. **Grantee's Condemnation Rights.** Grantee, if the License is issued and accepted, will have certain rights of condemnation pursuant to 16 USCS 814. Nothing in this Agreement will curtail or abridge such rights to condemn.

8. **Payments to Longyear/DRI.** Grantee shall pay the following amounts, fifty percent (50%) to Longyear and fifty percent (50%) to DRI:

A. A base flowage payment ("BFP") calculated annually and payable annually for the preceding year commencing on February 15, 2000 (with credit applied for any payments made under the Water Power Lease attributable to 1999) and annually thereafter, equal to the total net megawatt hours ("Mwh") generated in the preceding year at the Project ("Total Mwh") multiplied by Fifty-six Cents (\$.56).

B. Commencing on February 15, 2011 for the year 2010 and annually thereafter, a variable flowage payment ("VFP") payable annually and calculated annually by subtracting the preceding year's cost of generation per Mwh (comprised of actual costs including interest on debt attributable to the Project and a maximum 12% profit margin on equity attributable to the Project, subject to adjustment as hereinafter provided) generated by the Project ("Project Cost per Mwh") from Grantee's cost to purchase power (including without limitation demand charges, energy charges and associated transmission access charges from supplier to Grantee's system) pursuant to Grantee's most recent (relative to the given year in which the calculation is being made) long-term firm power purchase contract ("Firm Purchase Price per Mwh") with the resulting difference hereinafter referred to as the "Mwh Cost Differential." The sum of the following incremental calculations equals the VFP,

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- (i) Up to and including the first \$7.50 increment of the Mwh Cost Differential X Total Mwh X .05
- (ii) Up to and including the next \$10.00 increment of the Mwh Cost Differential X Total Mwh X .10
- (iii) Up to and including the next \$10.00 increment of the Mwh Cost Differential X Total Mwh X .15
- (iv) The amount of the balance of the Mwh Cost Differential X Total Mwh X .20

C. If the Project Cost per Mwh is higher than Grantee's Firm Purchase Price per Mwh in any year, a blended rate will be calculated by reducing the BFP by the difference between the BFP and the VFP. If the resulting number is \$20,000 or more, the resulting number shall be paid as the BFP. If, however, the resulting number is less than \$20,000, \$20,000 shall be paid and the difference between the resulting number and \$20,000, together with annual interest thereon at the prime rate announced from time to time by major lending banks as reported in the Wall Street Journal or other like publications (the "Prime Rate"), shall be a credit against future years' VFP's and/or BFP's to the extent the total amount due by Grantee in any given year exceeds \$20,000.

Exhibit B attached hereto sets forth a pro forma calculation of a BFP and a VFP based on hypothetical assumptions and is included for demonstration purposes only.

Grantee shall provide to Longyear and DRI, commencing on February 15, 2005 for the year 2004, and annually thereafter, an accounting of the calculation, and data on which the calculation is based, for the annual Project Cost per Mwh based on generally accepted accounting principles. The Project Cost per Mwh shall be based on data reported to FERC or if FERC data is insufficient or unavailable, on data reported to other governmental regulatory agencies. If government regulation prohibits Grantee from recovering the VFP in Grantee's rates charged to its customers, and if Grantee provides Longyear and DRI with reasonable documentation of such prohibition, commencement of the obligation to pay VFP's shall be delayed until such time as Grantee is allowed to recover the VFP in its rate structure. The information and data provided by Grantee regarding Project Cost per Mwh, to the extent not found in public records, shall be kept confidential by Longyear and DRI pursuant to a confidentiality agreement between the parties attached hereto as Exhibit C.

In recognition of the fact that changes are currently taking place within the hydroelectric power industry which may affect future profitability of the Project, the parties agree that any one of them may, by written proposal ("VFP Re-negotiation Proposal") to the others received within 30 days of January 2, 2010 ("Initial Re-negotiation Date"), request adjustment of the method of calculation of the VFP (including, without limitation, the profit percent limitation). If a written proposal is not timely made, the method of calculation of the VFP shall remain as set forth herein until the next Re-negotiation Date which shall be 20 years after the Initial Re-negotiation Date and every 20 years thereafter. If a written proposal is timely made, the parties agree to negotiate in good faith to reach an agreement on the issues presented in the proposal or proposals. If, within 90 days of the date of receipt of the proposals, no agreement has been reached, the parties shall arbitrate as hereinafter provided. A written VFP Re-negotiation Proposal may also be made (a) once at any time within two years preceding expiration of a License, (b) at any time that the board of directors or governing body of Grantee has approved a resolution authorizing necessary expenditures for the Project exceeding \$1,000,000 (in 1998 dollars to be adjusted annually commencing in 1999 by the percentage change in the U.S. Consumer Price Index--All Urban Consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics [or an equivalent Index if the U.S. Consumer

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Price Index is not published] using December, 1998 as a base), and (c) upon significant regulatory change that materially changes the economics and/or operation of the Project.

The right to receive the payments set forth in this Section 8 are personal to Longyear and DRI (but assignable as hereinafter provided) and shall remain obligations to Longyear and DRI even upon sale and conveyance by them of the fee simple interest in the real property which comprises the Easement Premises. Longyear and DRI may each freely assign their respective rights (each as to the entire 50%, but not a part thereof) to receive the payments due to them pursuant to this Section 8, but no such assignment shall be effective until notice thereof has been provided to Grantee and such assignment has been recorded with the Marquette County Register of Deeds.

Any payment due hereunder which is not paid within ten (10) days of the due date thereof, shall bear interest from the due date to the date of payment at the Prime Rate.

9. **Additional Annual Payments.** In addition to the other payments made by Grantee under this Agreement, Grantee shall make an annual payment to Grantors commencing on December 1, 1999 and annually thereafter on December 1, in the total initial amount of \$50,979.66 (the "Annual Payment") to be adjusted annually commencing in 2000 by the percentage change in the U.S. Consumer Price Index--All Urban Consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics (or an equivalent Index if the U.S. Consumer Price Index is not published, using December 1998 as a base), but the annual adjustment shall not exceed five percent (5%).

Grantors shall have the right and obligation to assign partial interests in the Annual Payments as follows:

- A. 72 percent of the Annual Payment to Dead River Campers, Inc. upon sale of the real property commonly known as the Hoist Basin to the Dead River Campers, Inc. or their assigns.
- B. 14.5 percent of the Annual Payment to McClure Basin Association, Inc. upon sale of the real property commonly known as the McClure Basin to McClure Basin Association, Inc. or their assigns.

If Grantee defaults in its obligation to make any Annual Payment to either Dead River Campers, Inc., or McClure Basin Association, Inc., the entity which has not been paid may exercise the rights and remedies of Grantors under this Agreement in order to collect the same together with interest thereon as provided below. Grantors shall cooperate with such entity in asserting those rights and remedies, but shall not be required to bear any out of pocket expense in doing so. Each of such entity and Grantors shall pay the fees of any attorney it hires to represent its respective interest in such a proceeding.

Grantors reserve the right (but shall not be obligated) to assign the balance of the Annual Payment to future purchasers of the real property commonly known as the Silver Lake Basin and the Forestville Basin. Grantors may not, however, divide the balance into more than two shares so that Grantee shall not be obligated to make Annual Payments to more than four (4) parties on any given payment date.

Except as set forth herein, the Annual Payments to be made by Grantee may not be further assigned or divided without the express written consent of Grantee. No assignment made pursuant to this section shall be effective until written notice thereof is provided to Grantee.

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Any payment due hereunder which is not paid within ten (10) days of the due date thereof, shall bear interest from the due date to the date of payment at the Prime Rate.

10. **Termination of Obligations to Make Payments.** Grantee's obligations to make the payments provided in Paragraphs 8 and 9 above, shall terminate when the Project permanently ceases to produce electric energy, or Grantee no longer holds a License, with such payments to be prorated as of the date that the obligations to make payments are terminated.

11. **Abandonment of Project.** Nothing contained in this Agreement shall be construed to limit or restrict Grantee's right, subject to regulatory approvals and compliance with all governmental requirements, to abandon the Project.

12. **Arbitration.** In the event that a dispute arises as to any term, condition, covenant or agreement contained in this Agreement or the performance or satisfaction thereof, or either Grantors or Grantee assert that the other has committed a breach of this Agreement, the complaining party may give written notice of such dispute or asserted breach to the other and if Grantors and Grantee are unable to agree upon or settle the matters in dispute within 90 days of delivery of such notice, either party may refer the matter to arbitration by giving 10 day's written notice to the other party of its desire to submit the matter to arbitration and the identification of the arbitrator appointed by the party serving notice. Within 10 days after receiving such a notice, the receiving party shall in like manner give written notice of the appointment of a second arbitrator or if such other party shall fail to so appoint an arbitrator, then the first party may apply to the American Arbitration Association to appoint a second arbitrator in accordance with the rules of the Association for the arbitration of commercial disputes. Within 10 days after the appointment of two arbitrators, the two arbitrators so appointed shall select a third arbitrator. If the two arbitrators cannot agree upon the appointment of a third arbitrator within such time, then either party may apply to the American Arbitration Association to appoint a third arbitrator, which third arbitrator shall be appointed within 10 days after the expiration of the initial 10 day period referred to in the preceding sentence. The arbitrators shall render their decision(s) within 30 days of the appointment of the third arbitrator. The arbitration proceedings shall be conducted in the City of Marquette, Michigan, under the rules of the American Arbitration Association and the decision of a majority of the arbitrators shall be final and binding on Grantors and Grantee and may be enforced in any court of competent jurisdiction. The costs and expenses of the arbitration shall be assessed against either or both parties in such manner as may be determined by a majority of the arbitrators. The arbitrators are hereby authorized to award reasonable interest on any payments they order to be made pursuant to this Agreement.

In addition, Grantors and Grantee may seek injunctive relief if necessary (i) to maintain the status quo pending arbitration, (ii) to protect the respective property rights of the parties and/or (iii) to enforce compliance with any applicable laws, rules, regulations, ordinances or orders.

13. **Indemnification.** By acceptance of this easement, Grantee agrees to indemnify and hold Grantors, their officers, agents, assigns and employees, and the successors and assigns of fee simple interests in the Easement Premises, harmless from and against any and all claims, demands, actions, causes of action, liabilities or judgments, including without limitation all costs, expenses and reasonable attorney fees that may arise as a result of Grantee's operation of the Project and use of the Easement Premises.

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Grantors agree to indemnify and hold Grantee, its officers, agents, assigns and employees, harmless from and against any and all claims, demands, actions, causes of action, liabilities or judgments, including without limitation, all costs, expenses and reasonable attorney fees and expenditures that may arise as a result of failure of the Grantors to perform their obligations hereunder.

14. **No Warranties.** Grantors make no representation or warranty with respect to the physical condition of the Easement Premises, the McClure Project, the Hoist Project, or the Project Works and Grantee accepts the Easement Premises, the McClure Project, the Hoist Project and the Project Works, "AS IS."

15. **Insurance.** Grantee shall, during the term of this Agreement, carry general liability insurance with policy limits of not less than \$1,000,000 per occurrence.

16. **Exhibits.** All exhibits attached to this Agreement are incorporated into and made a part of this Agreement by reference.

17. **Captions.** The captions and headings in this Agreement are for convenience only and do not in any way define, limit, or modify the terms and provisions of this Agreement.

18. **Number and Gender of Words.** Whenever the singular number is used in this Agreement, the same shall include the plural where appropriate, and words of any gender shall include the other gender where appropriate.

19. **Notices.** All notices, demands, requests and other communications ("Notices") required or permitted by this Agreement shall be in writing and shall be deemed to be received (a) when actually received by any person at the intended address, if personally served or sent by courier or telex or (b) whether actually received or not, forty-eight (48) hours after the date of deposit of the Notice in a regularly maintained receptacle for the United States mail, certified, return receipt requested, postage fully prepaid, addressed as follows:

Grantee: Upper Peninsula Power Company
600 Lake Shore Drive
Houghton, MI 49931-0130
Attention: Clarence Fisher

Grantors: Longyear Realty Corporation
210 N. Front St.
Marquette, Michigan 49855
Attention: Stephen Hicks

and

Dead River, Inc.
400 Essex Street
P.O. Box 5600
Beverly Farms, Massachusetts 01915-0512
Attention: Caleb Loring, III

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Any party may, in substitution of the foregoing, designate a different name or street address within the continental United States for purposes of this Paragraph, by written notice delivered to the other parties in the manner prescribed above at least ten (10) days in advance of the date upon which such change of address is to be effective.

20. **Entire Agreement.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements, negotiations, warranties, representations and understandings, if any, relating to the Easement Premises, and may be amended or supplemented only by an instrument in writing executed by the parties hereto. The parties do, however, acknowledge that Grantee holds certain other easements as are set forth on Exhibit D hereto, which remain unaffected by this Agreement.

21. **Parties Bound.** Unless otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of Grantee, Grantors and their respective successors, and assigns.

22. **Assignment.** Grantee may transfer and assign its rights under this Agreement, including the Easement, to any successor to its interests in the Project; provided, however that the terms and provisions of this Agreement and all obligations of the Grantee hereunder shall be binding upon the Grantee's successors and assigns. In the event that Grantee transfers and assigns its rights under this Agreement to another person or entity, such transfer and assignment shall contain an explicit written assumption of all obligations under this Agreement, shall make reference to the Liber and Page assigned to this Agreement at the time of recording and shall become effective upon recordation with the Marquette County Register of Deeds.

23. **Authorization and Capacity.** Grantee and Grantors each represent to the other that it has the full right, power and authority to enter into this Agreement and to fully perform its obligations. Each person executing this Agreement warrants and represents that each has the authority to execute this agreement in the capacity stated and to bind Grantee and Grantors, respectively and that no other signature is necessary to create valid and binding obligations.

24. **Governing Law.** This Agreement shall be governed by Michigan law.

25. **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if the signature on each such counterpart were on the same instrument.

Exempt from transfer tax pursuant to MCL § 207.505(f); and § 207.526(f)

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Any party may, in substitution of the foregoing, designate a different name or street address within the continental United States for purposes of this Paragraph by written notice delivered to the other parties in the manner prescribed above at least ten (10) days in advance of the date upon which such change of address is to be effective.

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Age Sinishtaj / Age Sinishtaj
Age Sinishtaj

LONGYEAR REALTY CORPORATION

Charlotte Lyeth Burton
Charlotte Lyeth Burton

Its: Chairman and President

Kristen Cichowicz
Kristen Cichowicz

Dated: 9/13/99

STATE OF CONNECTICUT)
)ss.
COUNTY OF FAIRFIELD)

The foregoing was acknowledged before me this 13th day of September, 1999, by Charlotte Lyeth Burton, as Chairman and President of Longyear Realty Corporation, a Michigan corporation, on behalf of the corporation.

Age Sinishtaj
Notary Public, CT. County Fairfield
My commission expires: 12/2003

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Kim D. Smolich
Kim D. Smolich

Katy A. Kemp
Katy A. Kemp

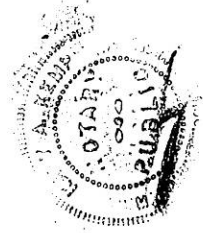
By: Stephen J. Hicks
Its: Vice President

Dated: September 7, 1999

STATE OF MICHIGAN)
)ss.
COUNTY OF MARQUETTE)

The foregoing was acknowledged before me this 1st day of September, 1999, by Stephen J. Hicks, Vice President of Longyear Realty Corporation, a Michigan corporation, on behalf of the corporation.

Katy A. Kemp
Katy A. Kemp
Notary Public, Marquette County, Michigan
My commission expires: 9-8-01



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DEAD RIVER, INC.

CHERYL A. WYMAN

Judith A. Malko
JUDITH A. MALKO

By: Caleb Loring, III
Its: President

Dated: 9/8/1999

STATE OF MASSACHUSETTS)
)ss.
COUNTY OF ESSEX)

The foregoing was acknowledged before me this 5th day of SEPTEMBER, 1999, by Caleb Loring, III, President of Dead River, Inc., a Michigan corporation, on behalf of the corporation.

Mark J. Gobeille
 MARK J. GOBEILLE
 Notary Public, Essex County, Mass
 My commission expires: 10-9-23

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UPPER PENINSULA POWER COMPANY,
a Michigan corporation

Lynwood B. Hart
Lynwood B. Hart

Paul A. Kittl
Paul A. Kittl

By: *Clarence R. Fisher*
Clarence R. Fisher
Its: President and CEO

STATE OF Michigan)
)ss.
COUNTY OF Houghton)

The foregoing was acknowledged before me this 7th day of October, 1999,
by Clarence R. Fisher, as President & CEO of Upper Peninsula Power Company, a
Michigan corporation, on behalf of the corporation.

Deborah M. Hannula
Deborah M. Hannula
Notary Public, Houghton County, MI
My commission expires: 02-10-2002

Drafted By and return to:
Suzanne S. Reynolds
Williams, Williams, Ruby & Plunkett
380 Old North Woodward, Suite 300
Birmingham, Michigan 48009
00099897

