

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS**

BE IT KNOWN, on this 25<sup>th</sup> day of September, 1995, that PACK RIVER LTD. CO., a Limited Liability Company, Declarant, record owner of that certain real property described on Exhibit "A" attached hereto and incorporated herein, does hereby declare, make, establish, confirm, and impress upon all of said real property described on said Exhibit "A" the following Covenants, Conditions and Restrictions, to run with said land, binding upon all future grantees, assignees, and any successors in interest to said real property. The Covenants, Conditions and Restrictions are as follows:

**I. DEFINITIONS**

A. ASSOCIATION shall mean the Slack Point Ranch Homeowners Association, Inc., its successors and assigns.

B. COMMON AREA shall mean all property, including common open space, parklands, common facilities, and roadways, excluding those within lot boundaries, in which the Association owns an interest for the common use and enjoyment of all of the members. Said interest or interests may include, without limitation, estates in fee, estates for a term of years or easements. The Association shall own an interest in all road right of ways excluding those within lot boundaries and the roadway easement providing access from the properties to Hawk Road, Lake County, Montana.

C. LOT shall mean any Lot shown on a recorded subdivision plat of a portion of the Properties, except Common Area.

D. MEMBER shall mean any person or entity holding membership in the Association pursuant to its Articles of Incorporation and its By-Laws.

E. OWNER shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract purchasers, but excluding those having such interest merely as security for the performance obligation.

F. IMMEDIATE FAMILY shall mean husband, wife, son, daughter, father, and mother.

G. CAPITAL IMPROVEMENTS shall mean any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area on the property including fixtures and personal property related thereto.

II. DECLARANT shall mean and refer to Pack River Ltd. Co., a Limited Liability Company, its successors and assigns.

I. ARTICLES shall mean the Articles of Incorporation of the Association as said Articles are amended from time to time.

J. BOARD shall mean the Board of Directors of the Association.

K. IMPROVEMENTS shall mean buildings, garages, car-ports, roads, driveways, walkways, parking areas, fences, walls, covered patios, porches, elevated porches, sun decks, balconies, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every kind, nature and description.

L. PROPERTIES shall be described on Exhibit "A" attached hereto and any subsequent property encumbered by these covenants as amended from time to time and brought within the Association.

**II. PROPERTY RIGHTS**

A. OWNERS EASEMENT OF ENJOYMENT: Every Owner shall have a right and easement of enjoyment in and to the Common Area and shall have use of all common facilities, which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

1. The right of the Association to establish rules and regulations for use of any and all common facilities and open spaces which shall include but not be limited to the following:

(a) Camping on the Common Area shall be prohibited.

(b) Except for maintenance and management of the Common Area, open fires on or in and around the Common Area shall be prohibited; provided, however, that propane stoves and barbecue grills may be permitted if they shall be closely monitored at all times when in use.

(c) Use of the Common Area for large gatherings shall require prior approval of the Board of Directors of the Association.

(d) Use of snowmobiles, trail bikes, chainsaws, motorcycles, and other noisy vehicles and equipment.

2. The right of the Association to suspend services provided by the Association or use of facilities of the Association by an Owner for any period during which any assessment against his Lot remains unpaid; any for a period not to exceed 60 days for an infraction of its published rules and regulations;

3. The right of the Association to suspend the voting rights and right to the use of the common facilities by an Owner for any period during which any assessment against his Lot remains unpaid; for any period during which an Owner is in violation of this Declaration as determined in the sole discretion of the Board of Directors of the Association; and for a period not to exceed (60) days for any infraction of its published rules and regulations.

4. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; no such dedication or transfer shall be effective unless an instrument signed by ninety percent (90) of all Owners agreeing to such dedication or transfer has been recorded.

B. DELEGATION OF USE: Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Area and common facilities to the members of his Immediate Family, or contract purchasers who reside on his Lot, or bona fide house guests, or any of the above.

C. RIGHT-OF-WAY AND EASEMENTS: Each Lot and the Common Area shall be subject to such rights-of-way and easements as the Declarant may grant for installation and maintenance of water lines, power poles, telephone lines and roadways. The Declarant specifically reserves the right and power to grant such easements. Installations for water and sewer lines and utility lines, including electric power and telephone lines from the main lines to homes, shall be underground and at the expense of the Owner of the Lot desiring the same.

### III. LAND USE

No lot shall be used except for private residential purposes. No building shall be erected on any lot except one single family residence and a private garage. The term private residence as used herein excludes every form of business or commercial use of real property.

### IV. DRAINAGE SWALE EASEMENTS

Certain of the said Lots are subject to drainage swale easements. Said easements are depicted on the Plat of said properties as recorded in the offices of the Lake County, Montana Clerk and Recorder. No lot shall be developed or landscaped in such a manner as to interfere with purpose for which said drainage swell easements were created.

### V. HIGHWAY 35 TURN LANE SID/RSID

With the exception of Lots 20, 37, 38 and 39 which are exempt from this provision, all future grantees, assignees and successors in interest to the subject real property or any portion thereof, and all owners, are bound by the covenant that if a SID (Special Improvement District)/RSID (Rural Special Improvement District) including the properties above described is proposed to construct a turn lane on Highway 35 at the Hawk Road intersection that said parties in interest shall not object to creation of the SID/RSID and shall participate in the SID/RSID on the same financial basis as all other owners within the district.

**VI. SET-BACK REQUIREMENTS**

All buildings and construction shall be in conformity with the set-back requirements as are established in this paragraph unless a formal variance is obtained from the Architectural Control Committee. The orientation and location of houses on lots must be approved by the Architectural Control Committee. No dwelling or structure including but not limited to, pools, decks, steps and eves, or any part thereof, shall be erected on any lot or lots nearer than 30 feet from any lot front boundary line; rear lot boundary setbacks shall be as prescribed on the Subdivision Plat of Fairway Properties II, records of Lake County, Montana, or, if no rear lot boundary setback is prescribed therein, 30 feet from rear boundary lines; and 10 feet from side lot boundary lines.

**VII. DESIGN AND ARCHITECTURAL CONTROL**

An Architectural Control Committee is hereby established. All building locations, building plans, color and type of exterior siding and roofing, must be approved by said committee prior to construction. All buildings and improvements constructed on the property shall comply with the following architectural and design controls, which said controls shall be administered by the Architectural Committee and no construction shall commence without obtaining a written Notice to Proceed from the Architectural Control Committee after acceptance of site plans and specifications by said Architectural Control Committee.

A. The orientation, location, color and type of exterior siding and roofing of residential buildings shall be approved by the Architectural Control Committee. Each building shall be located so as to keep all buildings as aesthetically compatible as possible with their natural surroundings and each other.

B. No residential buildings shall contain less than 1600 square feet of floor space for living purposes (exclusive of roofed and unroofed porches, terraces, decks, garages, carports and other outbuildings), nor shall the combined floor space for living purposes of a residential building of more than (1) story be less than 2000 square feet.

One Story -- single family	1600 sq. ft. minimum
Two Story -- single family	2000 sq. ft. minimum

C. No reflective finishes (other than glass) shall be used on exterior surfaces (other than the surfaces of hardware fixtures).

D. The architectural design and exterior of all buildings and improvements, including roofing, window treatments, screens, and protective golf screens, siding and visible portions of foundations, shall be designed and built to be compatible with:

1. Harmony of external design and finish with landscape and topography and existing structures.

2. Design and building of the structure must take into account the effect which the proposed structure or improvement will have upon other building sites and views, it being the intent of the Declarant to give maximum protection to such views as may be reasonable under the circumstances.

3. Color and type of exterior siding and roofing shall be in harmony with the surrounding improvements and landscape and must be approved by the Architectural Control Committee prior to commencement of any construction.

E. No building shall be moved onto the property and all buildings shall be constructed thereon. All improvements, residences, and/or landscaping must be completed within 18 months of obtaining a building permit for such structures or improvement.

F. All garages shall be a minimum of a two car garage no larger than three car enclosed garage per private living unit.

G. No residential lot shall be further subdivided in any manner.

H. The maximum height of any structure upon a lot shall not exceed 28 feet in elevation above the natural ground elevation at the intersecting point of the lot's West and South boundary set back lines.

I. Snowmobiles, trail bikes, chain saws and other noisy vehicles and equipment may not be used within the property.

J. The Architectural Control Committee shall have the power to grant variances and modifications from the provisions of these Covenants, Conditions and Restrictions where, in its judgment, extraordinary circumstances exist. The granting of a variance or modification shall not be deemed to waive any of the terms and provisions of these Covenants, Conditions and Restrictions for any purpose except as to the particular property and the particular provision considered.

K. Neither Declarant, nor the Architectural Control Committee, nor the members thereof, shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonsensical rising out of any, or in connection with, the approval or disapproval or failure to approve or disapprove any such plans or specifications. Any person who submits plans or specifications to the Architectural Control Committee for approval agrees that he/she will not bring any action or suit against Declarant, the Architectural Control Committee or any of the members thereof to recover said damages.

#### VIII. ARCHITECTURAL COMMITTEE MEMBERSHIP

The committee membership shall consist of three members, two of which shall be partners, employees or agents of Declarant until such time as 75% of the lots identified on Exhibit "A" have been sold and upon which residences have been completed, at which time the lot owners shall elect a three member Architectural Control Committee by a majority vote.

#### IX. FENCES

Fences shall not exceed four (4) feet in height, and shall be permitted only to the rear of each residence, and in no event nearer than 30 feet from any recorded street, roadway or alley right of way. All fences shall meet aesthetic and design standards set by the Architectural Control Committee.

#### X. ANTENNAS

No transmitting or receiving antennas shall be erected or maintained within or upon any lot except those devised which may be erected and maintained entirely within the enclosed portion of the dwelling thereon. Satellite dishes are not approved for this subdivision unless approved by the Architectural Control Committee.

#### XI. GARAGE DOORS

Exterior garage doors must be kept closed except when access to the garage is currently being exercised by the owner or the immediate family or guests or invitees of the same.

#### XII. ANIMALS

No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except dogs, cats and other household pets may be kept provided that they are not kept, bred or raised thereon for commercial purposes or in unreasonable quantities. As used in this declaration "unreasonable quantities" shall be deemed to limit the number of dogs, cats and other household pets to two (2) each.

#### XIII. NOXIOUS USE OF PROPERTY

No noxious or offensive activity shall be conducted upon any lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other residence, including, but not limited to, lighting which would produce excessive glare into surrounding yards on a regular basis.

#### XIV. SIGNS

No signs of any kind shall be displayed to the public view on any lot except for one (1) professional sign of not more than three (3) square feet advertising the property for sale, signs used by a builder to advertise the property during the construction or sale period, and one identification sign, non-animated and non-flashing, not to exceed 72 square inches, containing only the names of occupants and/or the address of the property.

**XV. TEMPORARY STRUCTURE**

No trailer, basement, tent, shack, garage, barn, or other outbuilding erected in the tract shall be used at any time as a residence temporarily or permanently.

**XVI. GARBAGE**

All garbage, rubbish, and/or trash, shall be kept in covered containers. In no event shall such containers be maintained so as to be visible from the street or neighboring lots in Fairway Property II Lakeshore Association properties.

**XVII. GROUND MAINTENANCE**

Within six months of occupancy or completion of a residence constructed upon a lot, the Owner must landscape the lot utilizing trees, shrubs and lawn so as to keep all lots as aesthetically compatible as possible with the natural surroundings and each other. Said lawn must be maintained at all times to meet the standards of compatibility set forth herein and watered as necessary.

Grass, weeds, and vegetation on each lot conveyed by Declarant shall be kept mowed at regular intervals so as to maintain the same in a neat and attractive manner. Grass clippings, dead shrubs, and other refuse shall be put in receptacles and shall not be put in the street, gutter, in the natural drainage or in any other location which may detract from the appearance of any lot.

**Driveway Maintenance** -- Each owner shall be responsible for the maintenance and repair of the approaches, drainage way, and culverts associated with the driveway(s) on the owner's lot.

**XVIII. COMMERCIAL EQUIPMENT**

No trade, commercial, or manufacturing enterprise, or business activity of any kind shall be conducted or carried on upon any lot, or within any building located in the subdivision; nor shall any goods, equipment, vehicle or material used in connection with any trade, service or business be kept or stored outside of any building nor in any manner objectionable to other residents of this subdivision.

**XIX. FIREARMS**

There shall be no hunting or discharge of firearms within the property.

**XX. FIRES**

There shall be no exterior fires unless contained in a structure such as a barbecue pit.

**XXI. PARKED VEHICLES**

A. No on-street or right of way parking shall be allowed within the properties. All vehicle parking shall be within lot boundaries and each owner shall provide two parking spaces on the front side of the lot in addition to any garage and driveway surfaces.

B. No boats, boat trailers, house trailers, recreational vehicles, or any vehicle under repair, wrecked or abandoned, shall be parked on any street, upon any driveway, or upon any lot unless they are to the rear of the front set-back lines behind a suitable fence, or in an enclosed garage or carport. Offending vehicles may be towed away at owner's expense.

**XXII. MAINTENANCE ASSESSMENTS**

**A. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS:** Each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association:

1. Annual Assessments or Charges; and
2. Special Assessment for Capital Improvements.

Such assessments shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, cost and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

**B. PURPOSE OF ANNUAL ASSESSMENTS:** The annual assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents on the Property and for the improvement and maintenance of the Common Area including roadways.

**C. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS:** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any Capital Improvement, provided that any such assessment shall have the assent of two-third (2/3) of the votes by the Members entitled to cast votes, who are voting in person or by proxy at a meeting duly called for such purpose. Special assessments must be fixed at a uniform rate and assessed equally against all Lots.

**D. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION:** Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring action at law against the Owner personally obligated to pay the same or foreclosure the lien against the Lot and improvements thereon. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

#### **XXIII. ROADWAY EASEMENT TO HAWK ROAD, LAKE COUNTY, MONTANA;**

Declarant, its heirs, successors and assigns, and all owners, understand and agree that Declarant is granting an easement to the Association for access from the properties to Hawk Road, Lake County, Montana, which easement shall be identified on the subdivision plat of Fairway Properties II, records of Lake County, Montana. This roadway shall be a portion of the Common Area as described above and maintained by the Association. All parties agree that Declarant hereby reserves the right to change the location of said easement to Hawk Road to accommodate future development of lands adjoining the properties; any roadway construction costs associated with such change in location shall be at Declarant's expense. Owners and Members hereby agree not to contest such change in location as long as the new location meets with the approval of the Polson Municipal governing body or Lake County governing body, whichever political body has jurisdiction over the matter. Upon completion such new roadway shall be Common Area as defined above and maintained by the Association.

#### **XXIV. EXCLUSION OF LOTS 20, 37, 38 AND 39 OF FAIRWAY PROPERTIES II FROM ROADWAY MAINTENANCE ASSESSMENTS**

All parties agree that Lots 20, 37, 38 and 39 of Fairway Properties II are accessed from Bayview Drive, Lake County, Montana, as indicated on the subdivision plat thereof, of record in the offices of the Clerk and Recorder of Lake County, Montana. As a result said lots are exempt from maintenance assessments associated with roadways within the properties and the roadway providing access to Hawk Road as described in Paragraph XXII, above.

#### **XXV. UNDERGROUND UTILITIES**

All utility, electrical connections, phone lines, waterlines and sewage lines shall be constructed on a private right-of-way and no private lot owner shall install any overhead power or phone line without the permission of the Architectural Control Committee.

#### **XXVI. COMPLIANCE WITH ORDINANCES**

All buildings and improvements in the subdivision lots shall be in accordance with, and in compliance with the ordinances and zoning restrictions and subdivision regulations enacted or approved by the governing body of the above property other than previously imposed by these covenants.

## XXVII. GENERAL PROVISIONS

A. SEVERABILITY: If any Covenant, Condition or Restriction herein specified or any part thereof, is invalidated or for any reason becomes unenforceable, no other restrictions, covenants and conditions, or any part thereof, shall be thereby affected or impaired.

B. MORTGAGE: Nothing contained in this Declaration shall impair or defeat the lien of any mortgage or deed of trust made in good faith and for value, but title to any property subject to this Declaration obtained through sale in satisfaction of any such mortgage or deed of trust shall thereafter be held subject to all of the restrictions and provisions hereof.

C. LIMITATION OF RESTRICTIONS OF DECLARANT: Declarant may undertake the work of constructing residential dwellings and incidental improvements upon the lots included within the subject property. The completion of the work and the sale, rental and other disposal of said residential units is essential to the establishment and welfare of said property as a residential community. In order that said work may be completed and said property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

1. Completion of Work: Prevent Declarant, its contractors, or subcontractors from doing on the properties or any lot thereof, whatever is reasonably necessary or advisable in connection with the completion of said work; or

2. Structures of Declarant: Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the properties, such structures as may be reasonably necessary for the conduct of their business of completing said work and establishing said property as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

3. Selling Activities: Prevent Declarant from conducting on any part of the properties its business of completing said work and of establishing said properties as a residential community and of disposing of said properties in parcels of lots by sale, lease or otherwise; or

4. Signs of Declarant: Prevent Declarant from maintaining such signs, flags, billboards and other advertising devices on any of the properties as may be necessary for the sale, lease or disposition thereof.

D. NON WAIVER: The various restrictions, measures and provisions of this Declaration are declared to constitute mutual equitable covenants and servitudes for the protection and benefit of each lot in said subdivision and failure by the Declarant or any other person or persons entitled so to do to enforce any measure or provisions upon violation thereof shall not stop or prevent enforcement hereafter or be deemed a waiver of the right to do so.

E. DURATION: The Covenants, Conditions and Restrictions herein contained are to run with the land and shall continue in full force and effect for a period of thirty-five (35) years from the date hereof, at the end of which time the same shall be automatically extended for successive periods of ten (10) years. At any time after the date hereof, the then owners of two-thirds (2/3) or more of the lots described herein as shown on the recorded Map thereof may elect to amend said Covenants, Conditions and Restrictions.

F. ENFORCEMENT: Monetary damages for any breach of the terms, restrictions and provisions of this Declaration are hereby declared inadequate compensation, any breach and/or the proceedings by the Declarant, Architectural Control Committee, or by any owner or owners of any lot or lots in said subdivision.

The governing body of above property is also a party to these restrictive covenants and may enforce the provisions hereof.

All parties agree that monetary payments do not provide adequate consideration and compensation for damages resulting from a violation of these covenants; therefore, these covenants may be enforced by injunctive relief and any party violating the terms of these covenants shall pay any party taking action to enforce the same reasonable attorney fees and costs of suit.

G. ACCEPTANCE: Each grantee of a conveyance or purchaser under a contract or agreement of sale by accepting a deed or contract of sale or agreement of purchase, accepts the same subject to all of the Covenants, Conditions and Restrictions, easements and agreements set forth in this Declaration and agrees to be bound by the same.

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Protective Covenants  
this 27 day of Sept, 1995.

## DECLARANT:

PACK RIVER LTD. CO., A Limited Liability Company

By:

Barbara Huguenin

Managing Member

STATE OF IDAHO )  
: ss.  
County of Bonner )

On this 26<sup>th</sup> day of Sept, 1995, before me, the undersigned, a Notary Public for the State of Idaho, personally appeared Barbara Huguenin known to me to be the managing member of the company that executed the within instrument and acknowledged to me that she executed the same for and on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

Robert A. Backeck  
Notary Public for the State of Idaho  
Residing at Yankee  
My commission expires 10-22-2006

STATE OF MONTANA, COUNTY OF LAKE  
Recorded At 4:32 o'clock p.m. OCT 17 '95  
In serial 369441 in the INDEXES Rec. by  
Bob S. 5400 By 7116 R. B. D.

Return:

Pack River Ltd  
218 Cedar St  
Sandpoint Id 83864

369441

E X H I B I T    "A"

Lots 1 through 39 inclusive of Fairway Properties II, a subdivision of Lake County, Montana, as shown on the map or plat thereof on file and of record in the office of the Clerk and Recorder of Lake County, Montana.

SUBJECT TO AND TOGETHER WITH all easements, reservations, rights of way, restrictions, covenants and agreements apparent or of record and reservations contained in the U. S. Government Patent.