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Index to: AMENDED COVENANTS & RESTRICTIONS

NOTICE OF SECOND AMENDMENT TO  
SUPPLEMENTAL DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
SAGEWILLOW HOMEOWNERS ASSOCIATION

THIS NOTICE OF SECOND AMENDMENT TO SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SAGEWILLOW HOMEOWNERS ASSOCIATION ("Second Amended Declaration") is made this 28 day of DECEMBER, 2000, by Sagewillow Homeowners Association, Inc.. ("Association")

WHEREAS, a Notice of Addition of Territory and Supplemental Declaration of Covenants, Conditions and Restrictions For Sagewillow Homeowners Association was recorded on February 14, 1995 in the records of Blaine County, Idaho, as Instrument No. 375704 ("Declaration"), and a Notice of First Amendment to Supplemental Declaration of Covenants, Conditions and Restrictions for Sagewillow Homeowners Association was recorded on October 31, 2000, records of Blaine County, Idaho, as Instrument No. 444645 ("First Amended Declaration"), affecting real property described as follows:

Lots 6A - 20A and 22A, and Parcels E, F, GG, HH, II, J, K, and MM of SAGEWILLOW SUBDIVISION AMENDED, Blaine County, Idaho, as shown on the official plat thereof, recorded October 31, 2000, as Instrument No. 444644, records of Blaine County, Idaho.

WHEREAS, the Sagewillow Homeowners Association, Inc. ("Association") is a nonprofit Idaho corporation formed pursuant to the Declaration.

WHEREAS, the Association has the power to modify the Declaration pursuant to the terms and conditions set forth in the Declaration and First Amended Declaration.

WHEREAS, the Association desires to implement by this Second Amended Declaration certain restrictions and guidelines by which the views and sunlight of Owners of Lots within the Sagewillow Subdivision ("Sagewillow") may be protected from trees and vegetation which may unreasonably interfere with an Owner's views.

NOW, THEREFORE, the Association hereby declares that, with respect to the Real Property as defined in this Second Amended Declaration, the Declaration and First Amended Declaration are hereby amended only as follows and all other provisions of said Declaration and First Amended Declaration not inconsistent with the following provisions shall remain in full force and effect:

I. DEFINITIONS.

The following definitions shall apply for purposes of this covenant. Other definitions from the Declaration and First Amended Declaration shall also apply for purposes of this covenant.

**Complainant** means an Owner who alleges that Trees located on property owned by an Owner, the Association or the District are causing an unreasonable obstruction of Significant Views.

**District** means the Sun Valley Water and Sewer District.

**Tree** means a woody perennial plant which usually, but not necessarily, has a single trunk and a height of fifteen (15) feet or more, or has a diameter of five (5) inches or more measured one (1) foot above the root crown; references herein to Tree shall include the plural. The term Tree shall include any plant material or shrubbery planted or growing in a dense continuous line twenty (20) feet in length or longer (measured from outside foliage) so as to form a thicket or naturally grown fence with an average height in excess of eight (8) feet.

**Tree Owner** means the Owner of a Lot, the Association with regard to the Association Property or the District with regard to Parcels J and K and on which a Tree is located.

**View** means an actual or potential vista.

**Significant View** means an actual or potential vista observable from a Primary Living Area of a residence (whether from a standing or seated position) which has a significant horizontal expanse and which includes a vista of the valley floor to the south, Bald Mountain, Dollar Mountain or the mountains to the north, south or east.

**Primary Living Area** means (1) those areas within a residence where an Owner, Owner's family or guests customarily spend a significant portion of time (such as a kitchen, family room, living room, dining room, bedroom or solarium) or (2) those unenclosed areas within fifteen (15) feet of the exterior walls of a residence where outdoor living areas exist (such as improved decks or porches) and from which a Significant View is observable or would be observable but for an unreasonable obstruction by a Tree. An Owner may have more than one Primary Living Area.

**Restorative Action** means any action taken or relief granted in accordance with Article V.

## II. PURPOSE OF VIEW PRESERVATION COVENANT.

A. The Owners of Lots hereby declare that it is in their collective and individual best interests to manage and control the planting and growth of trees and vegetation located on Sagewillow Lots as well as all Sagewillow Common Areas and Open Space Areas so as to preserve the views and vistas native to the area.

B. To foster, enhance and preserve the collective enjoyment of Sagewillow's natural beauty, views and serene setting, the Owners and the Association have agreed to adhere to certain guidelines and restrictions set forth in the Association's Declaration. The Declaration contains, among other things, guidelines and restrictions governing the location, mass, facades and landscaping of residences and structures constructed within Sagewillow. Such restrictions are in part designed to strike a balance between the private property development rights of Owners and the rights of neighboring Owners to the preservation of views and vistas, and to have residences screened and beautified through application of appropriate landscaping techniques. While manmade structures can be readily measured, permanently located and strictly controlled, trees and other vegetation, once planted, can eventually grow and propagate to proportions, mass or bulk so as to unfairly obstruct and impinge upon the views and vistas of neighboring Owners. Without controls on tree and vegetation growth, views and vistas once enjoyed can be slowly and inexorably destroyed, resulting in diminished enjoyment by affected Owners. At the same time, it is also in the best interest of Owners to encourage, and where necessary require, the reasonable and appropriate screening and general beautification that can be achieved through thoughtfully designed, intelligently selected, cleverly located, and properly maintained landscaping.

C. This Second Amended Declaration is enacted in recognition of the importance of Significant Views to properties within Sagewillow and to provide a fair and structured mechanism for assessing and evaluating Significant View obstruction claims and for resolving such claims that will provide a reasonable balance between the value of tree ownership and the value of Significant Views. The Association recognizes the importance of views as well as the importance of preserving, enhancing and intelligently fostering tree and other vegetation growth.

D. Trees and views, and the benefits derived from each, may come into conflict from time to time. Tree location and species selection may produce both intended beneficial effects on the property where planted, and unintended or unfairly deleterious effects on neighboring properties. Trees may block light and interfere with the enjoyment of views. While trees can be readily trimmed, pruned, moved or removed as needed, views on the other hand are irreplaceable, and once obstructed, may well be lost indefinitely. Unlike some naturally-occurring, heavily-wooded communities, many trees have been planted in Sagewillow, either by the original developer or by Owners.

E. With appropriate guidelines and safeguards requiring consideration of all factors set forth herein, Owners requesting restoration or improvement of Significant Views can be given substantial relief without unduly infringing upon the rights of Tree Owners.

F. It is recognized that, no matter how thoughtfully drafted, no set of covenants and restrictions can address and resolve all possible circumstances that may arise when it comes to "views versus trees." Thus, in the interest of peaceful enjoyment and community harmony, property owners are expected to conduct themselves in a spirit of cooperation and mutual understanding, to treat each other with respect and to maintain open lines of communication to resolve issues as they arise.

G. It is the intent of the Association that the provisions of this Second Amended Declaration be thoughtfully and reasonably applied. Any attempt to use these covenants and restrictions to harass or intimidate fellow Owners will not be abided or tolerated.

### III. UNREASONABLE OBSTRUCTION PROHIBITED.

No Owner, the Association nor the District shall plant or maintain any Tree that unreasonably obstructs the Significant View of a Primary Living Area of any other Lot within Sagewillow.

### IV. MINIMUM REQUIREMENTS FOR RESTORATIVE ACTION.

A. Minimum Requirements. No Complainant shall be entitled to Restorative Action unless the Complainant meets the following minimum criteria with regard to an alleged unreasonable obstruction of a Significant View:

that the Complainant has a Significant View; that the Tree allegedly interfering with a Significant View is located within Sagewillow; and that more than twenty-five percent (25%) of the horizontal expanse of that portion of the Significant View which is seen over the property of the Tree Owner is obscured by the Tree located on the Tree Owner's property.

B. Additional Elements for Consideration. No Complainant shall be entitled to Restorative Action unless the Complainant's Significant View is unreasonably obstructed. In determining whether a Significant View is unreasonably obstructed, the following criteria, if relevant, and any other criteria determined to be relevant, shall be considered:

1. The extent of the alleged Significant View obstruction, expressed as a percentage of the total View (with emphasis on what is considered the Complainant's Significant

View and most important areas within the Primary Living Area), and calculated by survey, photographs, or other means;

2. The extent to which one or more of the Complainant's unique Significant View features are obstructed;
3. The extent to which the Tree causes shade, reducing Complainant's access to sunlight;
4. The extent to which the Tree provides benefits to the Tree Owner.
5. No Owner shall be entitled to a completely unobstructed view, or to preserve or restore Significant Views from ALL angles and locations within a Primary Living Area.

#### V. RESTORATIVE ACTION.

A. Restorative Action that may be granted includes but is not limited to pruning, thinning, windowing, topping, relocation or removal of a Tree or a combination of such methods. Relief shall be granted so as to reasonably provide restoration of Significant Views for at least three (3) years from the date relief is granted. It is the intention of this Second Amended Declaration to discourage frequent filing of claims, dictating that relief granted should be guided by the principle of "thinking ahead", thus reducing the early recurrence of an actionable Significant View obstruction.

B. Any Restorative Action shall be limited by the following standards:

1. No Restorative Action shall be granted unless the relief will substantially improve a Significant View.
2. Only the least invasive method, or combination of methods, which would grant reasonable relief shall be required. Removal of Trees will not be required unless pruning or topping would not provide adequate relief.
3. If removal or topping are required to grant reasonable relief, at the request of the Tree Owner, the Tree shall be replaced, with the cost of replacement being born thirty-five percent (35%) by the Complainant, and sixty-five percent (65%) by the Tree Owner. The replacement Tree shall be chosen by the Tree Owner from a list of trees established by the Sagewillow Design Committee that will not cause a recurrence of the unreasonable obstruction. Nothing in this provision is intended to dictate that reasonable relief requires a "tree for tree" replacement regimen.

4. If more than one method, or logical combination of methods, would provide reasonable relief to the Complainant, the reasonable desires of the Tree Owner shall govern in the final selection of methods employed.

5. All pruning shall be evenly distributed throughout a Tree's canopy or structure.

VI. RESOLUTION PROCEDURE. The following shall be employed, in order of preference, in the resolution of Significant View obstruction disputes:

A. Informal Resolution. A Complainant who believes that a Tree growing on the property of an Owner or the Association or the District has caused unreasonable obstruction of a Significant View from a Primary Living Area shall notify the Tree Owner and the Sagewillow Design Committee in writing of such concerns. Notification should, if possible, be accompanied by a personal discussion between the Complainant and the Tree Owner to attempt to reach a mutually agreeable solution.

B. Mediation.

1. If informal discussions do not resolve the claim, then the dispute shall first be submitted to mediation. Any party shall have the right to begin the process by giving the other party a written notice requesting mediation, describing the issues involved. A mutually agreeable mediator and a time frame for the mediation meetings shall be agreed upon. The parties and the mediator may adopt any procedural format that seems appropriate for the particular dispute. If the parties can agree upon a mutually acceptable agreement, it shall be reduced to writing, signed by all parties, and the dispute shall be at an end. The costs of mediation shall be shared equally by the parties.

2. If, after continuing the mediation process for at least thirty (30) days, the parties recognize that the dispute cannot be successfully mediated, or if any party refuses to mediate or to name a mutually acceptable mediator and a timeframe for mediation within a period of time that is reasonable, then the parties shall proceed as set forth in paragraph C below.

C. Arbitration. In the event any dispute between the parties cannot be resolved as set forth in paragraphs A or B above, any party may demand that their dispute be resolved by arbitration. Written notice of the demand for arbitration shall be given to any other parties involved in the dispute. The parties shall select a mutually acceptable, disinterested party to act as an arbitrator of their dispute, within thirty (30) days of notice given by the party requesting arbitration to the other parties. The arbitration shall occur in Blaine County, Idaho and within ninety (90) days of the selection of the arbitrator, unless the parties agree to extend the time therefor. The parties shall be bound by the decision of the arbitrator. The parties agree that discovery as provided in the Idaho Rules of Civil Procedure (including Rules 26 through 37) may be engaged in as each party may deem necessary or appropriate prior to the arbitration hearing.

The arbitrator may award attorneys fees as part of the arbitrator's decision, as provided in this Second Amended Declaration. Except as expressly provided herein, the provisions of the Uniform Arbitration Act at Idaho Code Sections 7 - 901 *et seq* shall apply.

VII. MISCELLANEOUS.

A. Sagewillow Design Review Approval and Release. It shall not be a defense to any proceeding hereunder that the Sagewillow Design Committee (and its agents) approved any Tree Owner's landscaping plan. Each Owner hereby releases and agrees to hold the Association, the Sagewillow Design Committee and their agents harmless from any claim relating to or arising out of any Complainant's request for relief hereunder. The definition of "claim" shall mean and include any and all liabilities, damages, injuries, losses, causes of action, judgments, rights or demands of every kind, known or unknown, asserted or which may be asserted.

B. Elkhorn and City of Sun Valley Design Review Approval. It shall not be a defense to any proceeding hereunder that the Sun Valley Elkhorn Association or the City of Sun Valley design review proceedings approved any Tree Owner's landscape plan.

C. No Similar Proceeding for Three Years. No Owner shall be entitled to seek any new relief hereunder if, within three (3) years, a prior agreement was entered into or a decision was made which affected the same Lots or the same Lot and Association Property and/or District Parcels and which related to substantially the same or similar allegations of obstruction by the Complainant.

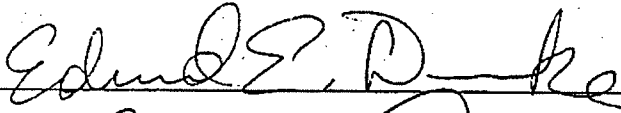
D. No Waiver for Nonaction. Given the nature of the rights being protected hereunder, no Complainant shall be deemed to have waived his right to seek relief hereunder on the grounds that the Complainant should have earlier sought relief.

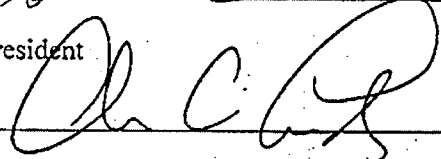
E. No Association Liability for Costs or Fees. Neither the Association nor the Sagewillow Design Committee (and their agents) shall be liable for any costs or fees incurred by Owners which are related to any proceedings hereunder between Owners of Lots, which fees and costs may include without limitation, architect fees, expert or consultant fees, attorneys fees, mediator and arbitrator fees and any costs of Restorative Action. The Association or the District shall bear its appropriate share of costs and fees related to proceedings hereunder between any Owner and the Association or the District.

All other provisions of the Declaration and First Amended Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the Association has executed this Second Amended Declaration the day and year first above written.

SAGEWILLOW HOMEOWNERS ASSOCIATION, INC.

  
By: \_\_\_\_\_  
Its: President

  
By: \_\_\_\_\_  
Its: Secretary



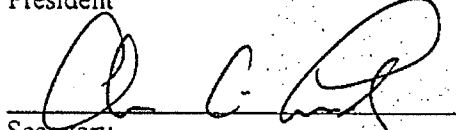
CERTIFICATION BY OFFICERS

The President and Secretary of the Association whose signatures appear on this Amendment hereby certify that the approval of this Second Amended Declaration was in accordance with Article XII, Section B.2. of the Covenants, Conditions and Restrictions for Sagewillow Homeowners Association, dated February 7, 1995, and recorded February 14, 1995, as Instrument No. 375704, records of Blaine County, Idaho.

DATED this 28 day of DECEMBER, 2000.

SAGEWILLOW HOMEOWNERS ASSOCIATION, INC.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary

