

Edward J. Guze  
25 Apex Dr.  
Ste B  
Bozeman, MT 59718

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Page: 1 of 10 06/01/2010 11:01:54 AM Fee: \$70.00  
Charlotte Mills - Gallatin County, MT MISC

Amendment to Declaration of Covenants, Conditions & Restrictions  
for Cobblestone Subdivision

THIS AMENDMENT is made this 4 day of MAY, 2010, pursuant to the written consent of owners of not less than sixty percent (60%) of the Lots, each lot being entitled to one (1) vote, as required in Article X, Section 5, of the Declaration of Covenants, recorded January 20, 2006, as Document No. 2216151, the owners hereby amend the Covenants as follows:

1. Section 10, Regional Waste Water System Connection Reserve, is hereby deleted and in its place, the following amendment is adopted as follows:

a) **Reserve Fund.**

The Reserve Fund of \$276,000.00, created from the deposit of \$3,000.00 from the sale of each lot into an escrow account, that was required to fund any future infrastructure and necessary connections to a regional or municipal wastewater system as required by condition 29 of preliminary plat approval and Article IV, Section 10 of the Covenants is released to the Association.

b) **Waiver of Right to Protest.**

The Association, on behalf of individual members and residents of the Subdivision, waives the right to protest connection to a regional or municipal system in the future, and waives the right to protest creation of Rural Improvement Districts, and/or the

creation of Sewer and/or Water Districts to pay for such a system. This waiver shall be binding upon the heirs, assigns and purchasers of all tracts within the Subdivision.

**c) Monitoring.**

The Association shall continue monitoring pursuant to condition 30 of preliminary plat approval, that is the two upgradient and two down gradient monitoring wells installed shall be monitored semi-annually for nitrate + nitrate as N chlorides and monitoring data shall be sent to the LWQD, and the LWQD shall have access to the wells to perform additional monitoring.

**d) Schedule for use of Reserve Funds.**

The Association shall use the \$276,000.00 in the Reserve Fund to 1) pay off the remaining amount due on a Promissory Note to Big Sky Western Bank in the amount of \$120,000, exclusive of interest; 2) pay off a balance to Potter Clinton Development, Inc., in the amount of \$30,000, inclusive of interest; 3) maintain \$75,000.00 in an interest bearing septic reserve account; and 4) use the remaining \$51,000.00 to finish trails, plant trees, install greenspace and park signage, and other related work necessary to comply with conditions 5.g, 8, 24, 28 and 31 of preliminary plat approval.

**e) County Required Covenants and Conditions.**


The Covenants and conditions amended and added by the Memorandum of Understanding between the Cobblestone Homeowners Association and Gallatin County may not be amended or revoked without the mutual consent of the owners, in accordance with the amendment procedures in the Covenants, and the governing body of Gallatin County.

Except as specifically amended herein, the remaining Covenants shall remain in full force and effect.

The undersigned hereby certify that the special meeting held May 2, 2010, proposing the amendment set forth herein was properly noticed and conducted and 60% or more of the votes of the

Cobblestone Home Owners Association have voted in favor of the amendments as set forth herein.

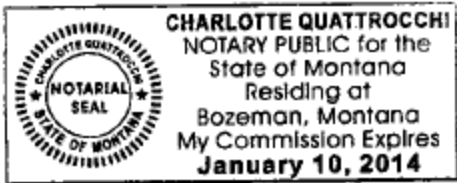
DATED THIS 4 day of MAY, 2010.

 President  
Roger Barnes, President

STATE OF MONTANA        )  
  : ss  
County of Gallatin        )

On May 4, 2010, before me Charlotte Quattrocchi Notary Public, personally appeared Roger Barnes, personally known to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument in person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand official seal.



Charlotte Quattrocchi  
Printed Name Charlotte Quattrocchi  
Notary Public for the State of Montana  
Residing at BOZEMAN  
Commission Expires Jan 10, 2014

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
COBBLESTONE HOMEOWNERS ASSOCIATION AND  
GALLATIN COUNTY, MONTANA  
REGARDING PAYMENT FROM THE COBBLESTONE WASTE WATER SYSTEM  
CONNECTION RESERVE FUND**

This Memorandum of Understanding is entered into this 4~~th~~ day of MAY by and between the Cobblestone Homeowners Association ("Association") and Gallatin County, Montana ("County").

WHEREAS, preliminary plat approval was granted by the Gallatin County Board of County Commissioners ("Commission") for the Cobblestone Subdivision, located west of Belgrade off Thorpe Road and Royal Road, and described as Tract 2 C.O.S. 2454, located in the NE ¼ of Section 4, T1S, R4E, P.M.M., Gallatin County, Montana, on June 17, 2005, subject to conditions of approval imposed to insure compliance with the Montana Subdivision and Platting Act, the Gallatin County Subdivision Regulations, and to protect public health, safety and general welfare; and,

WHEREAS, it was the intent and purpose of the subdivider, PC Development, to meet the conditions of approval for preliminary plat allowing the creation of the Cobblestone Subdivision; and,

WHEREAS, PC Development entered into four improvements agreements ("IA") to satisfy several of the conditions of approval for preliminary plat of the Cobblestone Subdivision; and,

WHEREAS, one IA was entered into to satisfy condition 29 of preliminary plat approval, imposed due to the stated concerns by the Commission over the potential effect of the Cobblestone Subdivision on groundwater, poor soils onsite, proximity to the Gallatin River, rapid growth of the area, an ongoing feasibility study of a County wide sewer system, and drought concerns, among others, and which required installation of sewer trunk lines capable of connecting to a regional or municipal system or deposit of \$3,000.00 from the sale of each lot to an escrow account to fund future connection to a regional or municipal wastewater system; and,

WHEREAS, funds totaling \$276,000.00 were deposited with the Gallatin County Treasurer on behalf of the Cobblestone Subdivision in a Cobblestone Waste Water System Connection Reserve Fund ("Reserve Fund") to satisfy condition 29 of preliminary plat approval; and,

WHEREAS, the Association now requests to use the Reserve Fund for other purposes; and,

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WHEREAS, Article IV, Section 10 of the Declaration of Covenants, Conditions & Restrictions for Cobblestone Subdivision ("Covenants"), entitled "Regional Waste Water System Connection Reserve," provides that, "[t]he Association may not use the funds in the reserve without the express written approval of the Gallatin County Commission; and,

WHEREAS, the Commission held a public hearing on February 2, 2010 and heard testimony by counsel for the Association, the Association president and other Association members and Cobblestone Subdivision lot owners regarding the need for the release of the Reserve Fund and its intended use, and

WHEREAS, the Commission discussed the previous subdivision approval, which was granted contingent upon fulfillment of the conditions imposed to address concerns over groundwater quality, among others, its continued concerns over groundwater quality, and the future necessity that the Cobblestone Subdivision would hook up to a regional or municipal sewer system; and

WHEREAS, the Commission found that with the Association's agreement to several stated conditions, including continued monitoring of groundwater and septic systems, waiver of right to protest creation of and connect to a regional or municipal system in the future, and a schedule for use of the funds, those concerns would be mitigated sufficiently to allow release of the Reserve Fund to the Association; and

WHEREAS, the Commission made a decision, based on the aforementioned and the conditions agreed upon at the February 2, 2010 public hearing and as described herein, and contingent upon amendment of the Covenants, to approve the release of the Reserve Fund to the Association; and

WHEREAS, it is the intent and purpose of the Association and the County to enter into this Memorandum of Understanding which will allow release of the Reserve Fund to the Association,

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

1. **Regional Waste Water System Connection Reserve.** The Reserve Fund of \$276,000.00, created from the deposit of \$3,000.00 from the sale of each lot into an escrow account, that was required to fund any future infrastructure and necessary connections to a regional or municipal wastewater system as required by condition 29 of preliminary plat approval and Article IV, Section 10 of the Covenants is released to the Association, and the Covenant requiring maintenance of the Reserve Fund shall be amended accordingly.
2. **Waiver of Right to Protest.** The Association, on behalf of individual members and residents of the Subdivision, waives the right to protest connection to a regional or municipal system in the future, and waives the right to protest creation of Rural Improvement Districts, and/or the creation of Sewer and/or Water Districts to pay for such a system. This waiver shall be binding upon the heirs, assigns and purchasers of all tracts within the Subdivision.

3. **Monitoring.** The Association shall continuing monitoring pursuant to condition 30 of preliminary plat approval, that is the two upgradient and two down gradient monitoring wells installed shall be monitored semi-annually for nitrate + nitrate as N chlorides and monitoring data shall be sent to the LWQD, and the LWQD shall have access to the wells to perform additional monitoring.
4. **Schedule for use of Reserve Funds.** The Association shall use the \$276,000.00 in the Reserve Fund to 1) pay off the remaining amount due on a Promissory Note to Big Sky Western Bank in the amount of \$120,000, exclusive of interest; 2) pay off a balance to Potter Clinton Development, Inc., in the amount of \$30,000, inclusive of interest; 3) maintain \$75,000.00 in an interest bearing septic reserve account; and 4) use the remaining \$51,000.00 to finish trails, plant trees, install greenspace and park signage, and other related work necessary to comply with conditions 5.g, 8, 24, 28 and 31 of preliminary plat approval.
5. **County Required Covenants and Conditions.** The Covenants and conditions amended and added by the Memorandum of Understanding between the Cobblestone Homeowners Association and Gallatin County may not be amended or revoked without the mutual consent of the owners, in accordance with the amendment procedures in the Covenants, and the governing body of Gallatin County.
7. **Amendment of Declaration of Covenants, Conditions & Restrictions for Cobblestone Subdivision.** The Covenants shall be amended to include 1-5 above.
8. **Documents Filed With Final Plat.** The amended Covenants shall be reviewed by the Gallatin County Attorney's Office prior to being filed with the Clerk and Recorder, which shall occur prior to release of the Reserve Funds to the Association.
9. **Inspection.** Representatives of the County shall have the right to enter upon the property at any reasonable time to inspect, monitor and to determine if the Subdivider is in compliance with this Agreement. The Subdivider shall permit the County and its representatives to enter upon, inspect and monitor the property at any reasonable time.
10. **Default.** If the Association defaults in or fails to fully perform any of its obligations in accordance with this Memorandum of Understanding and such default or failure shall continue for a period of thirty (30) days after written notice specifying the default is deposited in the United States mail addressed to the Association without being completely remedied, satisfied and discharged, the County shall have, and the Association hereby grants to the County, all rights afforded to the County in this Memorandum of Understanding and by law, including legal fees and administrative expenses. The County may enforce any other remedy provided by law. These remedies are cumulative in nature.
11. **Liability and Indemnity.**
  - 9.1 *No Liability for County Approval.* The Association acknowledges and agrees (1) that the County is not, and not shall not be, in any way liable for any damages or injuries that may be sustained as the result of the County's issuance of any release of the Reserve Fund or use of any portion of the Reserve Fund, and (2) that the County's release of the Reserve Fund shall not, in any way be deemed to insure the Association or any of its heirs, successors, assigns, tenants, licensees or any third party, against damage or injury of any kind at any time.
  - 9.2 *County Indemnification.* The Association agrees to, and does hereby, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and

all claims, costs and liability of every kind and nature ("Claims") that may be asserted at any time against any such parties for injury or damage received or sustained by any person or entity in connection with (1) the County's review and approval of the release of the Reserve Fund, (2) the development, construction, maintenance or other use of the Reserve Fund, and (3) the performance by the Association of its obligations under this Memorandum of Understanding; provided, however, that the Association shall have no obligation to indemnify the County for Claims arising out of the County's negligence or willful misconduct. The Association further agrees to aid and defend the County in the event that the County is named as a defendant in an action concerning the development, construction, maintenance or other use of the Reserve Fund released by this Memorandum of Agreement except where such suit is brought by the Association. The Association is not an agent or employee of the County.

9.3 *Association Indemnification.* Except for the negligence or willful misconduct of Association, the County shall indemnify and hold Association harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the County, its employees, contractors or agents in its use of the Reserve Fund.

12. **No Waiver of County Rights.** No waiver of any provision of this Memorandum of Understanding will be deemed to constitute a waiver of any other provision nor will it be deemed to constitute a continuing waiver unless expressly provided for; nor will the waiver of any default under this Memorandum of Understanding be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any obligation under this Memorandum of Understanding will not constitute the approval of any wrongful act by the Association or the acceptance of any improvement.
11. **Governing Law.** This Memorandum of Understanding shall be construed according to the laws of the State of Montana.
12. **Changes of Law.** Any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as they have been, or they may hereafter, be amended.
13. **Time of Essence.** Time is of the essence in the performance of all terms and provisions of this Memorandum of Understanding.
14. **Successors.** This Memorandum of Understanding shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, successors, assigns and lessees.
15. **Notices.** All notices in connection with this Memorandum of Understanding shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third day after being deposited in the United States mail, for delivery by being properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below.

Notices to the County shall be addressed to, and delivered at, the following address:

Gallatin County Commissioners

Gallatin County Courthouse  
Room 306  
311 West Main  
Bozeman, Montana 59715

Notices to the Association shall be addressed to, and delivered at, the following address:

Cobblestone Homeowners Association, Inc.  
Post Office Box 351  
Belgrade, Montana 59714  
ATTN: President, Cobblestone Homeowners Association, Inc.

By notice complying with the requirements of this Section, each party shall have the right to change the address or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

16. **Enforcement.** The parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation: specific performance, enforce or compel the performance of this Memorandum of Understanding; provided, however, that the Association agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the County or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Memorandum of Understanding.
17. **Amendments.** All amendments to this Memorandum of Understanding shall be in writing and shall be approved by the Association and the County.
19. **Severability.** The invalidity or unenforceability of any provision of this Memorandum of Understanding shall not affect the other provisions hereof and this Memorandum of Understanding shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
20. **Authority to Execute.** The County and the Association hereby acknowledge and agree that all required notices, meetings and hearings have been properly given and held by the County with respect to the approval of this Memorandum of Understanding and agree not to challenge this Memorandum of Understanding or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The County hereby warrants and represents to the Association that the persons executing this Memorandum of Understanding on its behalf have been properly authorized to do so by the County Commissioners. The Association hereby warrants and represents to the County (1) that it has the right, power, and authority to enter into this Memorandum of Understanding and to agree to the terms, provisions, and conditions set forth herein and to bind the Association as set forth herein, (2) that all legal action needed to authorize the execution, delivery and performance of this Memorandum of Understanding has been taken, and (3) that neither the execution of this Memorandum of Understanding nor the performance of the obligations assumed by the Association hereunder will (i) result in a breach or default under any agreement to which the Association is a party or to which it or the



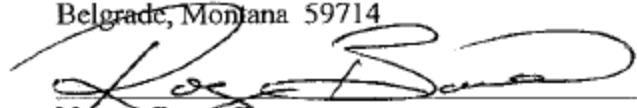
Association is bound or (ii) violate any statute, law, restriction, court order, or agreement to which the Association or the Subdivision is subject.

- 21. **Filing.** The Association shall file this Memorandum of Understanding in the office of the Gallatin County Clerk and Recorder at the same time the revised Covenants are recorded.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first above written.

**ASSOCIATION:**

Cobblestone Homeowners Association, Inc.  
Post Office Box 351  
Belgrade, Montana 59714



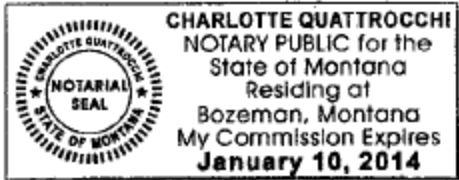
Name: Roger Barnes  
Title: President, Cobblestone Homeowners Association, Inc.

Date: 5-11-10

STATE OF MONTANA     )  
  :SS  
County of Gallatin     )

On May 11, 2010, before me Charlotte Quattrocchi Notary Public, personally appeared Roger Barnes, personally known to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument in person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand official seal.



Charlotte Quattrocchi  
Printed Name Charlotte Quattrocchi  
Notary Public for the State of Montana  
Residing at BOZEMAN  
Commission Expires Jan 10, 2014

COUNTY:

GALLATIN COUNTY BOARD OF COUNTY COMMISSIONERS, MONTANA

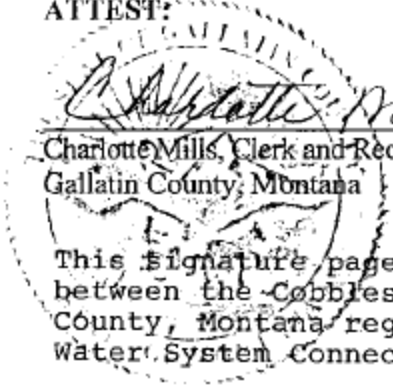
Joe P. Skinner Date: 5/25/10  
Joe P. Skinner, Chairman

William A. Murdock Date: 5/25/10  
William A. Murdock, Commissioner

R. Stephen White Date: 5/25/10  
R. Stephen White, Commissioner

ATTEST:

Charlotte Mills Date: 5/25/10  
Charlotte Mills, Clerk and Recorder  
Gallatin County, Montana



This signature page pertains to the Memorandum of Understanding between the Cobblestone Homeowners Association and Gallatin County, Montana regarding payment from the Cobblestone Waste Water System Connection Reserve Fund.

Recorded as contract # 2010-258 in the Gallatin County Clerk & Recorder's Office.