

Memorandum

TO: Eagle County Board of County Commissioners

FROM: Tom Ragonetti
Brian Connolly

CC: Bryan R. Treu, County Attorney
Robert Narracci, AICP, Managing Director of Community Development

DATE: September 12, 2016

RE: Cordillera Subdivision P.U.D. Interpretation Appeal—Appellee’s Response

Our Firm represents Concerted Care Group Management (“Operator”) with respect to land use and real estate matters in Colorado. The Operator is presently under contract to purchase certain parcels of real property in unincorporated Eagle County, Colorado (the “County”), commonly known as the Cordillera Lodge Parcel (the “Lodge”) and the Village Center Parcel (the “Village Center”) (the Lodge and Village Center are collectively referred to herein as the “Property”), for the purpose of using and operating the Property as a residential treatment facility for non-critical conditions such as eating disorders, alcoholism, chemical dependency, and various behavioral health conditions (the “Clinic”). The current owner of the Property is Behringer Harvard Cordillera LLC (“Owner”).

In May 2016, the Operator and its representatives met with the County’s Managing Director of Community Development (the “Director”), and requested the Director’s formal interpretation of the Cordillera Subdivision Eleventh Amended and Restated Planned Unit Development Control Document and its accompanying Development Guide (collectively, the “PUD”), in order to determine whether the Clinic was a permitted use on the Property pursuant to the PUD. In a letter dated June 1, 2016 (the “Original Interpretation Letter”), the Director determined that the PUD permits the use of the Property for the Clinic.

Following the Director’s issuance of the Interpretation Letter, on June 29, 2016, the attorney representing Cordillera Metropolitan District (the “District”) and Cordillera Property Owner’s Association, Inc. (the “Association”) filed a letter appealing the Interpretation Letter (the “Original Appeal”). The Original Appeal in part challenged the County’s authority to issue the Original Interpretation Letter to the Operator. We submitted a Memorandum in response to the Original Appeal on July 8, 2016. In response, the Owner resubmitted its request for an interpretation on July 7, 2016, and on July 11, 2016, the Director rescinded the Original Interpretation Letter and issued a new letter which was identical in substance to the Original Interpretation Letter (the “Interpretation Letter”). On August 9, 2016, the District and the Association filed a revised appeal, which is identical in substance to the Original Appeal (the “Appeal”).

We have prepared this Memorandum in response to the Appeal.

As discussed herein, it is our position that the Interpretation Letter is correct based on the Eagle County Land Use Regulations (the “LUR”), the language of the PUD, and the potential land use impacts of the Clinic. In addition, because the Operator and the prospective residents of the Clinic are protected under the provisions of the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 *et seq.*) (the “FHA”) and the Americans With Disabilities Act (42 U.S.C. § 12101 *et seq.*) (the “ADA”), it is our position that the County has the obligation to permit the use of the Property for the Clinic.

On behalf of the Operator, we respectfully request that the Eagle County Board of County Commissioners (the “Board”) affirm the Interpretation Letter.

I. The PUD and the Interpretation Letter

Section 2.01.1 of the PUD lists thirty-four (34) permitted uses of the Lodge and Section 3.01.1 lists the same thirty-four permitted uses for the Village Center. Both sections permit the use of the Property for the following uses, among others:

- “Clubhouse and Lodge building or buildings with related facilities”;
- “Lodge and conference facility including hotel uses, lodge suites, food service facilities, laundry and cleaning facilities, reception desk and lobby along with related facilities”;
- “Retail Commercial” and “Service Commercial, including eating establishments”;
- “Medical Offices/Facilities, limited to clinic and outpatient facilities for non-critical care, including, without limitation, for outpatient plastic surgery and other cosmetic procedures”;
- “Professional Offices”;
- “Lodging and Accommodations”;
- “Residential – Single-family,” “Residential – Townhome,” “Residential – Multi-family,” “Residential – Condominium and/or fractional interest ownership,” and “Employee Housing”;
- “Educational Facilities”;
- “Parking Structures” and “Utility Facilities.”

The Planning Director is authorized to interpret the LUR and the County’s Official Zone District Map. (LUR § 5-140(B)(1)). This authority includes interpretation of the PUD. In making interpretations, the Planning Director must consider “the purposes for which the regulation was initially adopted” and that the LUR was designed “to both balance the rights of competing groups and achieve maximum protection with flexibility and a range of use options.” (LUR § 5-220(B)(1-2).

The Interpretation Letter was issued pursuant to LUR § 5-140(B)(1). The Interpretation Letter concluded that, for the Property, “a clinic including inpatient, non-critical care, for treatment of a variety of conditions including, but not limited to, eating disorders, alcoholism, chemical dependency, and behavioral health

conditions,” is “clearly an allowable use for non-critical care; which may provide inpatient clinical facilities. Outpatient facilities for non-critical care are likewise allowed as a use-by-right.”

II. The Interpretation Letter Correctly Interpreted the PUD

The Interpretation Letter’s conclusions are correct for several reasons as follows:

- A. The Interpretation Letter’s determination that inpatient clinics are permitted in the PUD is correct as a matter of interpretation. It is a basic tenet of legal construction that every word used in a statute, law, ordinance, or other legal document should be given effect. *TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is ‘a cardinal principle of statutory construction’ that ‘a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.’”) (internal citations omitted).

The PUD permits medical offices and facilities, “limited to clinic and outpatient facilities for non-critical care.” (PUD Section 2.01.1). Thus, pursuant to principles of legal interpretation, “clinic” necessarily means something different from “outpatient facilities,” or the term “clinic” would be without effect and/or meaning. If the authors of the PUD wished to prohibit inpatient facilities from the PUD, the PUD language would have modified both the terms “clinic” and “facilities” with the term “outpatient.” But that was not the case. Thus, the Interpretation Letter’s conclusion that the term clinic includes inpatient clinical facilities is correct under the applicable canons of statutory construction.

- B. The Interpretation Letter correctly determined that the Clinic will provide non-critical care. While undefined in the PUD, the term “critical care” is generally understood to include hospital treatments of acute conditions and monitoring as required to avoid imminent bodily injury or death. A widely recognized synonym of “critical care” is “intensive care.” See *American College of Emergency Physicians*, “Critical Care FAQ” (<https://www.acep.org/Physician-Resources/Practice-Resources/Administration/Financial-Issues/-Reimbursement/Critical-Care-FAQ/>). The Clinic will be a residential facility for the treatment of eating disorders, alcoholism, chemical dependency, and various behavioral health conditions. Treatments proposed to be administered at the Clinic include therapeutic group and individual activities, health and wellness classes, recreational activities, and some minor medical attention, including routine administration of prescriptions and follow-up visits with medical personnel. None of the treatments proposed to be administered at the Clinic fall within the generally-accepted definition of “critical care.”

- C. The Interpretation Letter’s determination is consistent with other permitted uses in the PUD. The PUD allows the Lodge and Village Center parcels to be used for, among other things, residential multi-family housing, lodging accommodation uses, retail and service commercial uses, and food service facilities, in addition to clinic and outpatient medical facilities. (PUD Section 2.01.1). The Clinic will have similar or less land use impact as compared with these other permitted uses. The Clinic will require significantly less parking and will generate less daily traffic than most other Permitted Uses such as hotel uses, retail, employee housing, or professional offices. The average stay length for residents of the Clinic will be far longer than that of a hotel guest or even an employee living in employee housing. The Clinic will produce less noise than many of the other permitted uses, including restaurants, amphitheaters, or day care facilities. Ultimately, the Clinic will be more compatible with the existing, surrounding land uses than most of the other uses permitted on the Property. Indeed, the *only* discernible distinction between the Clinic and multi-family residential or accommodation uses is the fact that residents of the Clinic are persons recovering from addiction or other disorders, which underlines the Clinic’s consistency with the permitted uses on the Property.

III. Responses to Matters Raised in the Appeal

The District's and Association's opposition to the Clinic is facially premised upon concerns raised by the Cordillera community that the Operator's purchase and use of the Property would effectively eliminate the Lodge and the Village Center as community amenities, and that the Clinic use would exclude community residents from the Property. This argument set forth by counsel for the District and Association is disingenuous. Numerous emails and letters submitted to the County by community residents express clearly discriminatory opposition to the Clinic and its prospective residents. Even assuming, however, that the District and Association have not filed this appeal for discriminatory purposes, the District's and Association's argument that the Lodge and Village Center should remain open as public amenities is disproven on three bases:

- Under the PUD, several of the uses permitted on the Property are clearly private and exclusive in nature, including single-family residences, multi-family residences, and condominiums.
- The County is without legal authority to require a private landowner to maintain his or her property as a public amenity, as such a requirement would constitute a *per se* physical occupation of private property and would therefore be an unconstitutional taking of such property.
- The Declaration of Protective Covenants, Conditions, and Restrictions for Cordillera, recorded May 12, 1993 in the real property records of the County at Reception No. 504866 (the "Declaration"), which encumbers all of the residential properties in Cordillera, defines "Private Amenities" as "[c]ertain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the [property subject to the Declaration], which are privately owned and operated" by persons or entities other than the Association, expressly including the Lodge. Section 2.3 of the Declaration proceeds to state that "[a]ccess to and use of the Private Amenities is strictly subject to the rules and procedures of the respective [o]wners of the Private Amenities, and no [p]erson gains any right to enter or use those facilities by virtue of membership in the Association or ownership or occupancy of a [u]nit" in Cordillera. Section 2.3 also states that the owner of the Private Amenities may "terminate use rights altogether" with respect to the residents of Cordillera. Moreover, Section 3.10 of the proposed Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Cordillera dated July 29, 2015 confirms the foregoing. See the attached **Exhibit C** for the relevant provisions of the Declaration and proposed amendments thereto.

It is important to note that for the proposed Clinic to function properly as a residential treatment facility, the Lodge itself must remain as a private and controlled environment for the people being treated there, without access by the greater community. In addition, both the Health Insurance Portability and Accountability Act ("HIPAA") and regulations under the Public Health Service Act require a substance abuse treatment facility to protect the privacy of its patients and the confidentiality of their health information. In particular, HIPAA requires health care providers to "implement policies and procedures to limit physical access to their "facility or facilities" containing protected health information. 45 C.F.R. §164.310(a)(1). A provider must "implement procedures to control and validate a person's access to facilities based on their role or function, including visitor control..." 45 C.F.R. §164.310(a)(2)(iii). These regulations are stringently interpreted by federal regulators. For example, federal guidance tached) encourages health care providers to implement facility security plans that include "locked doors, signs warning of restricted areas, surveillance cameras, alarms" as well as "personnel controls such as identification badges..." A substance abuse treatment facility must reduce the risk of intentional or unintentional disclosure of the identity of its patients, including the risk presented through access to the facility by members of the general public. The Lodge is, and has always been, privately owned and operated, and the Lodge owner therefore has the right to convert its use to one not available to the larger Cordillera community or to cease operating it entirely.

Despite the fact that the Lodge is anticipated to be a private clinic facility, and without any obligation to do so, the Operator has offered to maintain portions of the Property open for public access by members of the Cordillera community, including but not limited to the Grouse on the Green restaurant and the tennis courts on mutually-agreeable terms and conditions.

We provide the following specific responses to matters raised in the Appeal:

- A. The Interpretation Letter correctly applied principles of legal construction. As discussed above, interpretation of a law or ordinance necessitates giving effect to each word used in a particular provision. *See TRW*, 534 U.S. at 31. Section III of the Appeal wrongly suggests that the term “outpatient” as used in “clinic and outpatient facilities” should modify or otherwise apply to the term “clinic,” which defies both the plain meaning of the PUD and the law of statutory interpretation.

The Appeal further suggests, by reference to the type of treatment proposed to be made available at the Clinic, the cost of such treatment, and the anticipated number of employees at the Clinic, that the proposed use is “far more than a ‘clinic,’” yet the Appeal cites to no definition or other classification that would support that argument. The Appeal references C.R.S. § 27-65-102(1), suggesting that the Clinic is an “Acute Treatment Unit” under state law. While the Clinic will obtain state licenses in connection with its operations—a complete list of which is included in the letter attached hereto as **Exhibit A**—it is not an Acute Treatment Unit and the Appeal’s reference to that provision is inapposite. The Operator has no plans to apply to be, or to actually be, an Acute Treatment Unit. Furthermore, as discussed above, several nationally-recognized clinics such as the Cleveland Clinic or Mayo Clinic employ thousands, charge large sums for their services, and provide levels of treatment far exceeding even what is proposed at the Property. The Appeal’s attempt to suggest that the Clinic is not a “clinic” within the meaning of the PUD is thus entirely without merit.

- B. The use of the Property for the Clinic is consistent with legislative intent of the Board and the purposes of the PUD. The Appeal’s assertions otherwise are incorrect for three reasons. First, legislative bodies such as the Board know how to prepare regulatory language that accomplishes their purpose and intent, and it is therefore axiomatic as a matter of statutory construction that an unambiguous statute should be interpreted according to the words of the statute. *See Conn. Nat’l Bank v. Germain*, 503 U.S. 249 (1992) (“[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.”). In this case, the Interpretation Letter correctly determined that the words “clinic” and “outpatient facilities” should each be given effect. The Board’s purpose in adopting the subject provision of the PUD—i.e. to permit medical facilities, including inpatient clinics—is clear based solely on the language used in the permitted uses, and there is little reason to look elsewhere to determine the meaning of the permitted uses.

Second, the Clinic is squarely consistent with the purposes set forth in the PUD. The Appeal notes two provisions of the PUD—Sections 1.02 and 1.03—that support the intended purpose of the Cordillera community as a “resort residential community.” As a matter of federal law, the Clinic is a residential use (see Section IV.B below). Indeed, just as the current residents of Cordillera retreat to the community for its resort environment, the Operator’s intent in locating the Clinic in Cordillera is to provide a relaxing resort environment for people recovering from addiction.

Third, the Appeal’s argument that the Property should be used only for “resort residential” purposes utterly ignores the fact that the PUD contains a list of 34 permitted uses for the Property, only four of which are residential in nature. (PUD Sections 2.01.1 and 3.01.2). While the Board may have desired that some portion of the approximately 7,000-acre community consist of resort residential uses, the lists of permitted uses for the Lodge and the Village Center belie any notion that the PUD should consist

solely of resort residential uses. Even the sections of the PUD to which the Appeal points for support discuss “a balanced mixture of residential, commercial, [and] office” uses, and also discuss the PUD’s flexibility “to allow for changes and innovations in community design as the project progresses through its multi-year development schedule.” (PUD Section 1.03).

Moreover, prior to 2009, Section 2.01.1 of the PUD allowed a “Clubhouse and Lodge building or buildings with related facilities” and listed certain allowed uses related to the same. In 2009, the Board’s amended the PUD to allow 34 standalone uses, many of which were unrelated to the clubhouse or lodge use, and specifically struck the language indicating that the ancillary uses should be related to the clubhouse or lodge. The Board’s adoption of this revised language, and the Cordillera community’s approval of this amendment, is conclusive evidence of legislative intent to allow private, non-resort residential uses.

Additionally, the Appeal—along with several of the public comments received by the County—references the Lodge as a “focal point” and “social gathering place” of the Cordillera community. Yet the PUD only references the Village Center—not the Lodge—as the community’s focal point (PUD Section 3.01), and the Operator has no plans to use the Village Center parcel for the Clinic use. Even if the “focal point” and “social gathering place” goals applied to the entire Property, the notion that these goals are unassailable is again belied by the fact that the PUD permits the Property to be used for such uses as single-family residences, multi-family residences, condominiums, and other highly private uses. (PUD Sections 2.01.1 and 3.01.2). Moreover, serious declines in membership levels at the Cordillera Lodge and Spa suggest that even the Cordillera community does not view the Lodge as a focal point or social gathering place for the community (see **Exhibit B** attached for trends in membership levels). In fact, the social gathering place of the community has been effectively established along Carterville Road, where the café, fire station, post office, administrative offices, and community-serving commercial uses exist, and are identified with community signage as “Cordillera Town Center.”

- C. The District and Association approved the adoption of the subject permitted use. The District’s and Association’s involvement in the adoption of the 2009 amendment to the PUD, which added the limiting language “clinic and outpatient facilities” as permitted uses on the Property, undermines the Appeal’s position that the Clinic is inconsistent with the “resort residential” purpose of the PUD. In a memorandum dated October 19, 2009 (attached as Exhibit 4 to the Appeal), District and Association staff and attorneys concurred with the addition of “clinic and outpatient facilities” to the PUD. If the District and Association desired that the Property be used solely for resort residential purposes, the District’s and Association’s staff and attorneys could have elected to oppose the addition of medical facilities as a permitted use in the PUD. Moreover, if the District and Association were concerned with the prospective use of the Property for inpatient clinic uses, the District’s and Association’s staff and attorneys could have used the opportunity in 2009 to suggest modifications to the permitted uses to clearly prohibit inpatient uses. As noted in their memorandum, however, District and Association staff and attorneys felt that the now-adopted permitted use language was “acceptable.” As the District and Association never challenged the County’s adoption of the language permitting medical uses within the applicable statute of limitations, the District and Association are now barred from raising opposition to the establishment of a medical facility in the community.
- D. The Interpretation Letter is not a major modification to the PUD. The Operator requested an interpretation of the PUD, and the Director’s issuance of the Interpretation Letter was consistent with the LUR. The Appeal’s attempt to transform the issuance of the Interpretation Letter into a wrongful major modification of the PUD is thus lacking in factual or legal support.

- E. The domicile of the applicant for an Interpretation Letter is irrelevant to the Appeal. The Operator is a Maryland-based company that seeks to use the Property in a productive manner for the operation of the Clinic. The Appeal makes multiple references to the Operator as an out-of-state company, which has absolutely no relevance to this Appeal.
- F. The involvement of the Operator and its representatives in the request for the Interpretation Letter was proper. As a contract purchaser of the Property, in the course of conducting due diligence, the Operator, along with the Owner, sought the Director's interpretation of the PUD to ensure that its proposed use was permitted. The Operator and its representatives, including this Firm, met with the Director to request the Interpretation Letter, and corresponded with the Director following the preparation of the Interpretation Letter to confirm that the content of the Interpretation Letter was sufficient for due diligence purposes, as is customary in any real estate transaction involving a confirmation or inquiry with a local government. The Interpretation Letter constitutes an independent interpretation of the PUD by the Director, and no undue influence was cast upon the Director by the Operator or its representatives. The Appeal's attempt to frame the request for the Interpretation Letter as improper and to call into question the integrity of the Director, the Operator, or its representatives is disingenuous, without factual basis, and is demonstrative of the meritless nature of the Appeal.

IV. The County's Obligations Under the FHA and ADA

As discussed above, the Interpretation Letter correctly interpreted the PUD to allow the use of the Property for the Clinic. However, in addition to the Interpretation Letter being correct, the Board should additionally uphold the Director's interpretation because it is required to do so under the FHA and the ADA. As discussed below, the Operator and prospective residents of the Clinic are protected classes under the FHA and ADA, and these laws demand that the Board treat the Operator and prospective residents on par with any other parties that wish to operate multi-family residential or medical clinics on the Property.

- A. The Operator is a member of a protected class under the FHA and the ADA. The FHA provides protection to, among other groups, persons with disabilities or "handicaps." 42 U.S.C. § 3604(f). "Handicap" is defined in the FHA as "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment." 42 U.S.C. § 3602(h). Specifically, the FHA prohibits discrimination "in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of (A) that buyer or renter, (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that buyer or renter." 42 U.S.C. § 3604(f)(1). Federal courts have universally found that zoning or other land use controls that make unavailable or deny housing to persons with disabilities constitute violations of the FHA. *See, e.g., City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995).

Similarly, the ADA requires that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. In turn, the ADA defines "qualified individual with a disability" as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2). As with the FHA, services, programs, or activities of a public entity have been universally interpreted by courts to include zoning and other land use controls. *Innovative Health Systems v. City of White Plains*, 117 F.3d 37, 44-45 (2d Cir. 1997).

Past drug or alcohol addiction has been conclusively determined to constitute a handicap or disability—both in federal regulations, 24 C.F.R. § 100.201, and by courts, including the U.S. District Court for the District of Colorado, *see St. Paul Sober Living, LLC v. Bd. of Cnty. Comm’rs of Garfield Cnty.*, 896 F. Supp. 2d 982 (D. Colo. 2012)—under the FHAA and the ADA. While current, illegal use of a controlled substance is specifically excluded from protection under the ADA and FHA, courts have not interpreted this exclusion to limit protection for treatment facilities that have an “inevitable, small percentage of failures,” but where the program “indisputably does not tolerate” drug use. *Innovative Health*, 117 F.3d at 48. Further, eating disorders and related mental health conditions are a disability whenever they “substantially limit” a major life activity. *See, e.g., Frank v. United Airlines*, 216 F.3d 845, 857 (9th Cir. 2001); *Amir v. St. Louis Univ.*, 184 F.3d 1017, 1027 (8th Cir. 1999).

As a developer and prospective operator of a residential facility for persons recovering from past drug or alcohol addiction and other behavioral conditions, the Operator is protected under the FHA and ADA, as are the future residents of the Clinic. Although the Operator itself may not have a disability, the Operator is a “person associated with” one or more persons with disabilities as established under the FHAA. 42 U.S.C. § 3604(f)(1)(C).

- B. The Clinic is a “dwelling” within the meaning of the FHA. The Clinic constitutes a “dwelling” under the FHA. 42 U.S.C. § 3602(b); *see also Lakeside Resort Enters. v. Bd. of Supervisors of Palmyra Twp.*, 455 F.3d 154 (3d Cir. 2006). The prospective residents of the Clinic will reside in the Clinic for the period of their treatment, which is sufficient to consider the Clinic a dwelling.
- C. The Board’s reversal of the Interpretation Letter would constitute disparate treatment under the FHA and would be a discriminatory action under the ADA. A governmental body violates the ADA and the FHA when it engages in disparate treatment, including facial discrimination or intentional discrimination, against a protected group. *See Raytheon Co. v. Hernandez*, 540 U.S. 44, 53 (2003); *Texas Dep’t of Housing & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2533 (2015). Proof of disparate treatment can be demonstrated by showing that the governmental body acted because of the disability, *see Cinnamon Hills Youth Crisis Ctr. v. St. George City*, 685 F.3d 917, 920 (10th Cir. 2012), or by “simply produc[ing] direct or circumstantial evidence demonstrating that a discriminatory reason more likely than not motivated the defendant,” *see Pacific Shores Props v. City of Newport Beach*, 730 F.3d 1142, 1158 (9th Cir. 2013). The discriminatory purpose need only be one motivating factor behind the challenged action for the local government to be held liable under the FHA or ADA. *Arce v. Douglas*, 793 F.3d 968, 977 (9th Cir. 2015). The use of discriminatory “code words” by members of the community precipitating an action of a local government adverse to people with disabilities is supportive of the conclusions that the local government is engaging in disparate treatment. *Avenue 6E Investments, LLC v. City of Yuma*, 818 F.3d 493, 505-06 (9th Cir. 2016) (“[T]he relevant cases clearly hold that a city’s denial of a zoning change following discriminatory statements by members of the public supports a claim of discriminatory intent.”)

In this Appeal, there is a significant volume of correspondence from members of the Association—and even from the District manager—containing express and/or implied discriminatory statements regarding the Operator and the proposed residents of the Clinic. These discriminatory communications indicate that the District’s and Association’s filing of this Appeal is intended to preclude the location of a residential treatment facility within the PUD. This correspondence is clear evidence of ongoing actionable violations of the FHA and ADA by both the District and the Association, and to the extent such correspondence or other similar statements by members of the Association precipitate the Board’s decision to reverse the Interpretation Letter, the Board would also be liable for engaging in disparate treatment. *See, e.g., Avenue 6E Investments*, 818 F.3d at 505-06.

As noted above, the *only* discernible distinction between the Clinic and multi-family residential or accommodation uses is the fact that residents of the Clinic are persons recovering from addiction or other disorders. The FHA and ADA demand that people with disabilities be treated equally in their access to housing and medical care. The PUD permits multi-family residential as a use by right on the Property. The Clinic will be a multi-family residential use for people with disabilities. The County has a duty to treat the Clinic and its prospective residents on an equal basis with multi-family residential uses, which are permitted uses on the Property, for people without disabilities. Moreover, the PUD permits medical facilities on the Property, and the ADA requires that medical facilities and facilities treating drug and alcohol addiction be treated equally with one another. Again, it is the County's duty to ensure that medical facilities treating drug and alcohol addiction or other similar conditions are treated on an equal basis as all other medical facilities.

V. Conclusion

Based on the foregoing reasons, we respectfully request that the Board affirm the Interpretation Letter and reject the Appeal. We will be pleased to provide additional information, and to answer any questions that the Board may have, on behalf of the Operator at the hearing on the Appeal.

EXHIBIT A
LETTER CONTAINING LIST OF LICENSES THAT THE CLINIC WILL OBTAIN



CONCERTED CARE GROUP
MANAGEMENT

Mr. Narracci,

RE: Zoning Verification Letter Cordillera Lodge & Spa

Please enter on the record as a part of the record CSMN Development, LLC & CCG Management, LLC intended lines of service for the property located at 2205 Cordillera Way Edwards, CO 81632.

Please see attached:

- Zoning Confirmation-State of CO
- CO-Substance Use Disorder License Application

CO-Substance Use Disorder License Application (attached)

The Services Levels on our draft application are for the following:

- Level I- III DUI Education & Therapy
- Level I- Outpatient-
- Level II- Intensive Outpatient
- Level III.1 Clinically Managed Low Intensity Residential Services
- Level III.3 Clinically Managed Medium Intensity Residential Services

The Levels of Care from the State of Colorado are in Accordance with American Society of Addictions Medicine (ASAM) Criteria. The proposed facility is in no way going to be an Acute Treatment Unit (ATU) as the Cordillera Property Owners Association (CPOA) and Cordillera Metro District (CMD) has deceptively placed their appeal. In fact we did not know what an Acute Treatment Unit (ATU) was until we read it in the appeal and looked it up on the states website. ATU's or (27-65) designated facilities are facilities with lockdown units that place involuntary holds on patients. ATUs are not comparable to what we are developing. The facility we will operate will be a luxury inpatient/ residential treatment & sober living facility that will focus on addiction treatment and other behavioral health disorders including depression, exhaustion as well as eating disorders, it is 100% voluntary for people to attend. The clinic will include many additional activities including fitness, yoga, spa services and all the luxuries of a 5 star hotel; it is very far from an ATU (27-65). The appeals effort to classify this as such is an attempt to qualify this as hospital, which it is certainly not. Properties with the same or similar licensing designations that we will be pursuing around the state of Colorado are not hospitals or ATUs in fact they are almost all exclusively residential properties, which the lodge and lodge parcel are as a matter of right.



CONCERTED CARE GROUP
MANAGEMENT

Zoning Confirmation-State of CO (attached)

This letter is a requirement of getting a license from the State of Colorado to provide residential treatment/ inpatient services. This was the purpose of our prior request. This excerpt is directly from page 5 of the attached Substance Use Disorder License Application. *"The Current documentation of compliance with local zoning ordinances from local planning/zoning office. Zoning documentation is to prove "use confirmation" which means that you are able to provide your services at your physical location. There is a zoning confirmation form online for your convenience and is optional. "*

In lieu of the Colorado optional form we requested from you the "zoning verification letter" which you issued in support of our use and would likely have satisfied the State of Colorado's requirement. We respectfully request that you issue the attached Colorado form for this project to avoid any further confusion in respect to this request. I thank you for your time and diligence in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Noah Nordheimer'.

Noah Nordheimer
President & CEO



SUD – Substance Use Disorder State Licensure Program

ZONING DEPARTMENT - Zoning Use Confirmation - Sign off for Local Authorities

SECTION A: TO BE COMPLETED BY THE APPLICANT

PURPOSE OF THE APPLICATION:

- ☒ Initial Application
☐ Renewal Application
☐ Modification – Change in location

Type of Substance Use Disorder
services being provided:

- ☒ Residential / Transitional ☒ Outpatient ☐ Day Treatment

SECTION B: TO BE COMPLETED BY THE APPLICANT – PHYSICAL SITE LOCATION

Current Name of Agency: BEHRINGER HARVARD CORDILLERA, LLC & CSMN Development, LLC

Address: 2205 Cordillera Way

City: Edwards Zip: 81632 County: Eagle

Name of Contact Person for any questions: Noah Nordheimer

Phone: 301-908-9086 Fax: _____

SECTION C: TO BE COMPLETED BY THE CITY/COUNTY ZONING DEPARTMENT

(this section must be filled out by the proper authority to be considered a valid document)

Zoning Department having jurisdiction: _____

The above named facility meets the requirements of the local authority having jurisdiction for the occupancy based on work outlined above. (If "no", please explain on a separate attachment) ☐ YES ☐ NO

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Address: _____ City: _____ Zip: _____



COLORADO
Office of Behavioral Health
Department of Human Services

OBH USE ONLY Check# _____ Amount _____	OFFICE OF BEHAVIORAL HEALTH (OBH) SUBSTANCE USE DISORDER LICENSE APPLICATION Application Must Be Typed or Legibly Written in Ink	OBH USE ONLY QA Staff Assigned _____
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Use One Application for Each Physical Location

LICENSING INFORMATION

Application Date _____ Medicaid Clinic Number (if Medicaid provider) _____

License Application Type: ☒ Initial License ☐ License Renewal ☐ Issued up to 2 years ☐ License Modification

Current License Status: ☒ No License ☐ Two-Year License ☐ Provisional License ☐ Limited License ☐ Probationary License

License # _____ Date Effective _____ Expiration Date _____

PHYSICAL SITE INFORMATION

Agency (Licensed Name) CSMN Development, LLC Street 2205 Cordillera Way City Edwards
Zip 81632 County Eagle Phone _____ Fax _____
TDD/TTY _____ E-mail _____ Director _____
Program Name (if different) _____ Director (if different) _____

OWNERSHIP INFORMATION

Owners Name and Mailing Address:

Name: _____

Address: _____

City, State, Zip Code: _____

MAILING INFORMATION

Preferred mailing address (if different from primary site)

Name: _____

Address: _____

City, State, Zip Code: _____

AGENCY GOVERNANCE INFORMATION

☐ Profit Corporation ☐ Non-profit Corporation ☐ Partnership² ☐ Sole Proprietor² ☐ Unit of Government

² As of January 1, 2007, pursuant to H.B. 06S-1009, C.R.S. 24-34-107, only persons lawfully present in the United States will be issued a license. Therefore, all Sole Proprietor or Partnership applicants for original licensure or licensees renewing a current Colorado license after January 1, 2007 are required to complete and sign an Affidavit of Eligibility, and may also be required to provide valid identification when requested.

Officers, Partners, Sole Proprietor, Unit of Government

Current Address

_____	_____
_____	_____
_____	_____
_____	_____

Affidavit Of Eligibility

Pursuant to H.B. 06S-1009, C.R.S. 24-34-107, all Sole Proprietorship and Partnership applicants for original licensure or licensees renewing a current Colorado license after January 1, 2007 are required to complete and sign this Affidavit of Eligibility.

Section A: LAWFUL PRESENCE in the United States.

I, (please print your full name) _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check 1, 2 or 3 below):

1. ☐ I am a US citizen.
2. ☐ I am not a US citizen but am lawfully present in the US as evidenced by one of the following:
 - a. ☐ I am a qualified alien as defined in 8 U.S.C. sec 1641.
 - b. ☐ I am a nonimmigrant under the "Immigration and Nationality Act", Federal Public Law 82-414 as amended.
 - c. ☐ I am an alien who is paroled into the US under 8 U.S.C. sec. 1182 (d) (5).
3. ☐ I am not physically present in the US under 8 U.S.C. sec 1621 (c) (2) (c) or employed in the US pursuant to 8 U.S.C. 1621 (c) (2) (a) (check either a or b below)
 - a. ☐ I am a US citizen, not physically present or employed in the United States.
 - b. ☐ I am a Foreign National, not physically present or employed in the United States.

If you selected either 3.a. or 3.b., you do not need to complete Section B. Skip to Section C.

Section B: Secure and Verifiable Document. This section must be completed if you checked number 1 or 2 in Section A.

1. Please check one of the following acceptable secure and verifiable documents. Complete documentation must be provided upon request only.
 - ☐ Any Colorado Driver License, Colorado Driver Permit or Colorado Identification Card, expired less than one year. (Temporary paper license with invalid Colorado Driver License, Colorado Driver Permit, or Colorado Identification Card, expired less than one year is considered acceptable.
 - ☐ Out-of-state issued photo Driver License or photo Identification Card, photo Driver Permit expired less than one year.
 - ☐ Valid foreign passport bearing an unexpired "Processed for I-551" stamp or with an attached unexpired "Temporary I-551" visa.
 - ☐ Valid I-551 Resident Alien or Permanent Resident card.
 - ☐ Valid foreign passport accompanied by an "I-94" indicating a specific future "until" date.
 - ☐ Valid I-94 issued by Canadian government with L1 or R1 status and a valid Canadian Driver License or valid Canadian Identification Card.
 - ☐ Valid Temporary Resident Card.
 - ☐ Valid I-94 with refugee/asylum stamp.
 - ☐ Valid 1688B and 1766 Employment Authorization Card.
 - ☐ Valid US Military ID (active duty, dependent, retired, reserve and National Guard).
 - ☐ Tribal Identification Card with intact photo (US or Canadian).
 - ☐ Certificate of Naturalization with intact photo.
 - ☐ Certificate of (US) Citizenship with intact photo.
 - ☐ Passport issued by the U.S. Government with one of the following documents: Social Security Card; marriage, divorce or separation certificate or decree; or a Colorado or Federal tax return.
 - ☐ Colorado Department of Corrections Inmate Identification Card with a Social Security Card issued by the United States Government.

SITE MODIFICATION INFORMATION

☒ New site? If so, what was the previous address? _____

☐ Additional service/level of care? If so, what is it? _____

☐ Is this site ☐ closing and/or ☐ selling? If so, effective date: _____

☐ Is this an ☐ agency name change ☐ or governance change? _____

ASAM LEVEL DEFINITIONS

Level I: Outpatient

Level II.5: Partial Hospitalization

Level III.2 D: Clinically Managed Residential Detox

Level III.5: Clinically Managed High-Intensity Residential Services

Level III.7 D: Medically Monitored Inpatient Detox

Level II.1: Intensive Outpatient

Level III.1: Clinically Managed Low-Intensity Residential Services

Level III.3: Clinically Managed Medium-Intensity Residential Services

Level III.7: Medically Monitored Intensive Residential Services

	ASAM Level I	ASAM Level II.1	ASAM Level II.5	ASAM Level III.1	ASAM Level III.2-D	ASAM Level III.3	ASAM Level III.5	ASAM Level III.7	ASAM Level III.7D
Education & Treatment Services for Persons <i>Involved in the Criminal Justice System</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Education & Treatment Services for Persons <i>Involved in the Criminal Justice System Enhanced Outpatient</i>	<input type="checkbox"/>								
Level I DUI Education	<input checked="" type="checkbox"/>								
Level II DUI Education	<input checked="" type="checkbox"/>								
Level II DUI Therapy	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Level II DUI <i>Enhanced Outpatient Therapy</i>	<input checked="" type="checkbox"/>								
Opioid Medication Assisted Treatment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Medically Monitored In-Patient Detox									<input type="checkbox"/>
Youth Treatment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
MIP	<input type="checkbox"/>								
Youth DUI Treatment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Youth DUI Education	<input type="checkbox"/>								
Alcohol & Drug Involuntary Commitment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clinically Managed Residential Detox					<input checked="" type="checkbox"/>				
Gender Responsive Treatment for Women	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
General Treatment	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTESTATION

I attest by my signature that this license application, documentation included with this application, and documentation located at the administrative offices and treatment sites of the applicant is truthful and accurate. I understand that deliberate falsification of the application, documentation included with the application and documentation located at the administrative offices and treatment sites will result in denial of this application and may also result in prosecution for perjury in the second degree as defined by Colorado Revised Statutes Title 18, Article 8, Part 5. I also understand that failing to submit accurate data to OBH in a timely fashion, including Drug/Alcohol Coordinated Data System (DACODS) reports and Discharge Referral Summary (DRS) reports, may result in denial of this application.

I/we have read 2 CCR 502-1 Volume 21 Rules and Regulations issued by the Colorado Department of Human Services and will comply with them should a license be issued. I/we certify that to the best of my/our knowledge all information and statements on the application are true and correct and I/we hereby apply for a license.

Noah Nordeimer

Signature:

Print Name:

Date:

Affidavit Of Eligibility, continued

2. Enter the state or the federal agency name where this secure and verifiable document was issued. _____
(If issued by a state agency, include both the state and agency name.)
3. What is the secure and verifiable document number? _____
4. What is the expiration date of your secure and verifiable document (month/day/year)? _____
(If you hold a document without an expiration date, such as a military ID or naturalization certificate, write N/A.)

Section C: Attestation.

- I understand that this sworn statement is required by law because I have applied for or hold a professional or commercial license regulated by 8 U.S.C. sec 1621. I understand that State law requires me to provide proof that I am lawfully present in the United States when asked as well as submission of a secure and verifiable document. I may also be required to provide proof of lawful presence.
- I understand that in accordance with sections 18-8-503 and 18-8-501(2)(a)(I), C.R.S., false statements made herein are punishable by law. I state under penalty of perjury in the second degree, as defined in 18-8-503, C.R.S. that the above statements are true and correct.
- I am the person identified above and the information contained herein is true and correct to the best of my knowledge. I understand that under Colorado law, providing false information is grounds for denial, suspension or revocation of a license, certificate, registration or permit.
- I understand that the above information must be disclosed to the Colorado Department of Human Services (CDHS) upon request and is subject to verification.

Signature

Date

Printed Name

Please print your name as shown on your secure and verifiable document.

OBH License Number (if already licensed): _____

Please return this application to:

Office of Behavioral Health, Attn: Licensing Desk, 3824 West Princeton Circle, Denver CO 80236-3111

DOCUMENTATION FOR LICENSING

Initial License Documentation \$200.00 License Processing Fee (non-refundable)

- ☐ Description of applicant agency including: treatment philosophy; client populations served; geographic area(s) of operation; evidenced-based or best practice treatment services provided; and methods used to engage and retain clients in treatment.
- ☐ Applicant's knowledge of and experience in the treatment of substance use disorders and agency administration. Documentation may include resumes, certificates, licenses, transcripts, etc.
- ☐ Up-to-date agency organization charts showing lines of authority, including names of clinical personnel and their credentials, positions and job responsibilities.
- ☐ Documentation that counselors are specifically trained or otherwise qualified by education and experience to treat the clients the agency serves. Documentation may include academic transcripts, CAC certificates, professional licenses, resumes, job applications, job descriptions, etc.
- ☐ Written agency operating policies and procedures that are in compliance with OBH Substance Use Disorder Treatment Rules.
- ☐ Documentation of agency governance, including: copy of articles of incorporation and corporate by-laws for profit and non-profit corporations; documentation of 501(c) 3 status for non-profit corporations; formal partnership agreements for partnerships; trade name affidavits for sole proprietors; documentation of governmental status for units of government.
- ☐ A complete and signed *Affidavit of Eligibility* is required for Sole Proprietorship and Partnership agencies, pursuant to H.B. 06S-1009, C.R.S. 24-34-107 (pages 3 and 4 of this application).
- ☐ Copy of declaration pages from property liability insurance, **current and in force**. For agencies renting business sites, copy of property liability insurance held by property owner or manager will suffice.
- ☐ Copy of declaration pages from agency or individual professional liability insurance, current and in force.
- ☐ Copy of **current** fire inspection reports. For agencies renting business sites, copy of most recent fire inspection reports from property owner or manager will suffice.
- ☐ Copy of **current** health inspection reports for residential sites and/or sites where food is prepared.
- ☐ Copy of zoning compliance. **Current** documentation of compliance with local zoning ordinances from local planning/zoning office. Zoning documentation is to prove **"use confirmation"** which means that **you are able to provide your services at your physical location.** There is a zoning confirmation form online for your convenience and is optional.

License Renewal Documentation \$200.00 License Processing Fee (non-refundable)

- ☐ Up-to-date agency organization charts showing lines of authority, including names of clinical personnel and their credentials, positions and job responsibilities.
- ☐ Operating policies and procedures are to be submitted at renewal time even if there were no changes. Submit a **COMPLETE** set of Policy & Procedures, not just revisions.
- ☐ Copy of declaration pages from property liability insurance; **current and in force**.
- ☐ Copy of declaration pages from agency or individual professional liability insurance; **current and in force**.
- ☐ Copy of **current** fire inspection reports. For agencies renting business sites, copy of **current** fire inspection reports from property owner or manager will suffice.
- ☐ **Current** health inspection reports for residential sites and/or sites where food is prepared.
- ☐ **Current** documentation of compliance with local zoning ordinances from local planning/zoning office. Zoning documentation is to prove **"use confirmation"** which means that **you are able to provide your services at your physical location.** There is a zoning confirmation form online for your convenience and is optional.
- ☐ A complete and signed *Affidavit of Eligibility* is required for **Sole Proprietorship** and **Partnership** agencies, pursuant to H.B. 06S-1009, C.R.S. 24-34-107 (pages 3 and 4 of this application).

License Modification Documentation

- ☐ **When Adding or Moving Treatment Sites:** Copy of site-specific property liability insurance declaration pages; copy of site-specific fire inspection reports; copy of health inspection reports for residential sites and/or sites where food is prepared; and documentation of compliance with local zoning ordinances. **Current** documentation of compliance with local zoning ordinances from local planning/zoning office. Zoning documentation is to prove **"use confirmation"** which means that **you are able to provide your services at your physical location.** There is a zoning confirmation form online for your convenience and is optional.
- ☐ **When Adding Services or Levels of Care:** Copies of policies and procedures specific to each added service and/or level of care; documentation that counselors are specifically trained or otherwise qualified by education and experience to provide each additional service in each additional levels of care.
- ☐ **When Selling or Closing Agencies or Treatment Sites or Discontinuing Services/ASAM Levels:** Written plan for carrying out applicable OBH rules and policies, including notification of referral sources and clients. 2CCR502-1

EXHIBIT B
CORDILLERA LODGE AND SPA MEMBERSHIP STATISTICS

The Lodge & Spa at Cordillera

Memberships

	Lodge	Beaver Creek
2012-2013	200	20
2013-2014	185	21
2014-2015	125	17
2015-2016	99	21
2016-2017 to date	45	5

** current yr has different options; the 44 are as follows

annual	18
6 month	13
3 month	14

Hotel Statistics

	Rooms Sold	Occupancy
2012	10,376	45.90%
2013	11,033	53.98%
2014	11,350	55.53%
2015	11,155	54.57%
2016 YTD (through May)	5,306	62.34%

Note: memberships are from June 1 - May 31

**EXHIBIT C
DECLARATION**

1.23. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.24. "Preliminary Plan": The land use plan for the development of the Cordillera community approved by Eagle County, Colorado, in Resolution 92-11, as it may be amended from time to time, which plan allows for the development of a maximum of 910 Units, as defined herein, and includes the property described on Exhibit "A" and all or a portion of the property described on Exhibit "B" which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Preliminary Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Preliminary Plan bar its later annexation in accordance with Article IX hereof.

1.25. "Private Amenities": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational, commercial, and related purposes, on a membership basis or otherwise, and shall include, without limitation, the lodge and the golf course, if any, which is so located.

1.26. "Properties": The real property described in Exhibit "A" attached hereto, together with such additional property as is subjected to this Declaration in accordance with Article IX.

1.27. "Special Assessment": Assessments levied in accordance with Section 10.5.

1.28. "Special District": A service and utility district which may be created as a special purpose unit of local government in accordance with Colorado law to provide certain community services to some or all of the Properties.

1.29. "Specific Assessment": Assessments levied in accordance with Section 10.6.

1.30. "Supplemental Declaration": An amendment or supplement to this Declaration filed pursuant to Article IX which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described.

1.31. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements. The term shall include within its meaning, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, common property of any Neighborhood Association, or property dedicated to the

The Association may, upon approval of a majority of the members of the Neighborhood Committee or board of directors of the Neighborhood Association for the Neighborhood(s) to which certain Exclusive Common Areas are assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Areas.

2.3. Private Amenities. Access to and use of the Private Amenities is strictly subject to the rules and procedures of the respective Owners of the Private Amenities, and no Person gains any right to enter or to use those facilities by virtue of membership in the Association or ownership or occupancy of a Unit.

All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by the Declarant or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of the Private Amenities. No purported representation or warranty, written or oral, in regard to the Private Amenities shall ever be effective without an amendment hereto executed or joined into by the Declarant.

The ownership or operational duties of and as to the Private Amenities may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent entity, (b) conversion of the membership structure to an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the Private Amenity, or (c) the conveyance of a Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association, any Neighborhood Association, or any Owner shall be required to effectuate such a transfer or conversion.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

Article III MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner shall be a member of the Association. No Owner, whether one or more Persons, shall have more than one membership per Unit owned. If a Unit is owned by more than one Person, all co-Owners shall be entitled to the privileges of membership, subject to the restrictions on voting set forth in Section 3.2 and in the By-Laws, and all co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's

- (n) **Governing Documents** mean this Declaration and all exhibits hereto, the Association's Articles of Incorporation, Bylaws, Map, Rules and Regulations, and Policies and Procedures, all as may be supplemented or amended from time to time.
- (o) **Metropolitan District** means and refers to the Cordillera Metropolitan District.
- (p) **Mortgage** means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation including, but not limited to, a transfer or conveyance of fee title for such purpose.
- (q) **Mortgage Holder** means the holder of any Mortgage.
- (r) **Neighborhood** means each separately developed residential area within the Property, whether or not governed by a Neighborhood Association (as defined below), in which the Unit Owners may have common interests other than those common to all members of the Association. For example, and by way of illustration and not limitation, each condominium, townhome development, cluster home development, and single-family detached housing development may constitute a separate Neighborhood, or a Neighborhood may be composed of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood subject to division into more than one Neighborhood upon development. Where the context permits or requires, the term Neighborhood also refers the Units (established in accordance with the Bylaws) or Neighborhood Association as defined in Section 4.3 of this Declaration.
- (s) **Neighborhood Assessments** means assessment levied against Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as provided in Sections 6.2 and 6.6 of this Declaration.
- (t) **Neighborhood Association** means any condominium association or other owners association having concurrent jurisdiction over any part of the Property.
- (u) **Neighborhood Expenses** means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Unit Owners within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Association may specifically authorize from time to time and as may be authorized in this Declaration applicable to the Neighborhoods.
- (v) **Owner** or **Unit Owner** means the record titleholder of a Unit within the Community, but shall not include a Mortgage Holder.
- (w) **Person** means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.
- (x) **Plat** means and refers to the plats of the Property and improvements that are subject to this Declaration and which are designated in the Plat recorded in the records of the Office of the Clerk and Recorder of Eagle County. The term Plat shall collectively mean and refer to all plats and supplements thereto for the Property
- (y) **Policies and Procedures** mean any instrument, however denominated, as a part of any of the Governing Documents, and/or separately adopted by the Association, as required under the Act as responsible governance policies, and other policies as may be adopted by the Association. The definition of Policies and Procedures may include Rules and Regulations.
- (z) **Private Amenities** means certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Property, which are privately owned and operated by Persons other than the Association for recreational, commercial, and related purposes,

on a membership basis or otherwise, and includes, without limitation, the lodge and the golf courses not owned by the Association.

(aa) **Property** means the property described in Exhibit "A" that is subject to the Declaration together with all easements, rights and appurtenances thereto and that is subject to the Act, to the extent that the Act applies to communities established prior to July 1, 1992.

(bb) **Rules and Regulations** means any instrument, however denominated, adopted by the Association, as allowed for under this Declaration and the Act, for the regulation and management of the Community and/or Units, including any amendments or revisions.

(cc) **Special Assessment** means assessments levied in accordance with Article 6, Section 6.7.

(dd) **Specific Assessment** means assessments levied in accordance with Article 6, Section 6.8.

(ee) **Unit** means and refers to a portion of the Property, whether improved or unimproved, that may be independently owned and conveyed and that is intended for development, use, and occupancy as an attached or detached dwelling or a single family. The term refers to the land, if any, that is part of the Unit as well as any improvements. The term includes, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots as well as vacant land intended for development, but does not include Common Areas, common property of any Neighborhood Association or property dedicated to the public. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling is deemed to be a separate Unit.

[NOTE: This article is similar to Article I of the current Declaration. Definitions that are no longer applicable have been deleted.]

ARTICLE 3. EASEMENTS AND PROPERTY RIGHTS

Section 3.1 Easements for Use and Enjoyment of the Common Areas. Each Unit Owner and resident shall have a right and non-exclusive easement of ingress and egress, use and enjoyment in and to the Common Areas, which are appurtenant to and passes with the title to his or her Unit, subject to the following provisions:

(a) the Association's right to have access to the Units to discharge its rights and obligations under the Governing Documents, including without limitation, the maintenance responsibility of the Association;

(b) restrictions or limitations contained in any deed conveying such property to the Association;

(c) the Association's right to suspend the voting rights of an Owner for any period during which any assessment or charge against his or her Unit remains unpaid and for a reasonable period of time (not to exceed 60 days or for the duration of the violation) for an infraction of the Declaration, Bylaws, Rules and Regulations, or Policies and Procedures;

(d) the Association's right to grant easements, leases and licenses across the Common Area;

(e) the Association's right to adopt Rules and Regulations regarding use of the Common Area;

[NOTE: This section is substantially the same as Article XIII, Section 13.6 of the current Declaration. Since the Metropolitan District owns the roads, an easement from the Owners in Cordillera is not required.]

Section 3.9 **Exclusive Common Area.** Certain portions of the Common Area may be designated as Exclusive Common Area by the Association, as provided below, for the exclusive use or primary benefit of Owners and occupants of Units within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Neighborhood Assessment against the Owners of Units in those Neighborhoods to which the Exclusive Common Areas are assigned.

A portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon the vote of a majority of the Owners present and voting in person or by proxy at a duly called meeting or by mail ballot, plus a majority of the Owners' votes within the Neighborhood(s) to which the Exclusive Common Areas are assigned or reassigned.

[NOTE: This section is similar to Article II, Section 2.2 of the current Declaration.]

Section 3.10 **Private Amenities.** Access to and use of the Private Amenities is strictly subject to the rules and procedures of the respective Owners of the Private Amenities, and no Person gains any right to enter or to use those facilities by virtue of membership in the Association or ownership or occupancy of a Unit. The ownership or operational duties of and as to the Private Amenities may change at any time and from time to time and no consent of the Association, any Neighborhood Association or any owner is required to effectuate such a transfer.

[NOTE: This section incorporates relevant portions of Article II, Section 2.3 of the current Declaration.]

Section 3.11 **No Partition.** Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person is permitted to seek any judicial partition unless the Property or such portion thereof has been removed from the provisions of this Declaration. This article does not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

[NOTE: This section is the similar to Article VII of the current Declaration.]

Section 3.12 **Public in General.** Unless otherwise provided, easements and rights created in this Article do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Eagle County, Colorado records.

[NOTE: This section has been added.]

ARTICLE 4. ASSOCIATION MEMBERSHIP, ALLOCATION OF INTERESTS, AND NEIGHBORHOODS

Section 4.1 **Membership.** Every Person who is a record Owner of a fee interest in any Unit subject to this Declaration is a member of the Association. Membership is appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit is the sole qualification for membership. No Owner, whether one or more Persons, will have more than one membership per Unit owned. Membership is not intended to include Persons who hold an interest merely as security for the performance of an obligation, but the giving of a security interest will not terminate the Owner's