

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JANE WILNER, TRUDO LETSCHERT,
ROBERT RUDNICK and RUSSELL SCHMEISER,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BEHRINGER HARVARD CORDILLERA, LLC,
BEHRINGER HARVARD HOLDINGS, LLC,
ROBERT M. BEHRINGER, MICHAEL D. COHEN,
and CCG MANAGEMENT, LLC,

Defendants.

CLASS ACTION COMPLAINT

Plaintiffs Jane Wilner, Trudo Letschert, Robert Rudnick, and Russell Schmeiser, individually and on behalf of all others similarly situated, allege on personal information as to their own acts and on information and belief as to all other matters, as follows:

INTRODUCTION

This action arises from fraudulent misrepresentation, breaches of promise and an implied restrictive covenant, and related tortious conduct by defendant Behringer Harvard Cordillera, LLC (“BH”), aided and abetted by defendant Behringer Harvard Holdings, LLC (“BH Holdings”), defendant Robert M. Behringer, and defendant Michael D. Cohen. Plaintiffs and similarly situated property owners in the Cordillera, Colorado resort residential community have

suffered and continue to suffer serious financial harm, estimated at more than \$100 million, as a result of defendants' misconduct.

In 2007, BH, a subsidiary of BH Holdings, purchased the Lodge and Spa at Cordillera (the "Lodge"), which was constructed as a central amenity to home ownership in Cordillera. BH Holdings has described the Lodge as "a 56-room chateau-style resort." BH acquired the Lodge with full knowledge and understanding that, as a "resort," the Lodge helps define Cordillera as a "resort residential community," that access to the Lodge was critical to the decisions of many residents to purchase homes in Cordillera, and that the Lodge is an integral attribute of home ownership in Cordillera.

In 2009, BH proposed a modification to the Cordillera Subdivision Tenth Amended and Restated Planned Unit Development Guide (the "10th Cordillera PUD") which governed development and land use for all Cordillera properties. The primary purpose of BH's proposed modification was to allow the Parcel on which the Lodge is located and an adjacent parcel on which the Cordillera Village Center (the "Village Center") is located to be treated for development purposes as a single planning parcel.

Under the 10th Cordillera PUD, BH's proposed modification was a "major modification" because it "could alter the character or land use of a portion of the project." As a result, BH was required by the 10th Cordillera PUD to obtain the approval not only of Eagle County but also of the Cordillera Property Owners' Association ("CPOA") for its proposed modification. Plaintiffs Jane Wilner and Trudo Letschert were members of the CPOA at that time.

To win the approval of the CPOA, BH represented and promised that its modification would only "clean-up" some language in the 10th Cordillera PUD and allow the parcels for the

Lodge and Village Center to be treated as one parcel. BH explicitly promised that the modification “does not introduce new or additional density or uses or otherwise substantively change the Existing PUD.” BH made the same representation and promise to the Board of County Commissioners, Eagle County, Colorado (“Eagle County”), to which BH submitted its modification proposal.

Based on BH’s representation and promise, the CPOA approved BH’s proposed modification. Subsequently, Eagle County approved the proposed modification and incorporated it into the current Cordillera Subdivision Eleventh Amended and Restated Planned Unit Development Control Document (the “11th Cordillera PUD”). Eagle County noted in its approval that, “all material representation[s] made by [BH] on this application and in public meetings must be adhered to and considered conditions of approval.”

Contrary to the representations BH made in 2009, BH now publicly asserts that its modification *did* “substantively change” the 10th Cordillera PUD, allowing it to eliminate the Lodge from the Cordillera community and replace it with any of 33 other “standalone” uses, including uses totally unrelated to the Cordillera community. In particular, BH claims that, as a result of the modification, it may implement a sales contract entered into with defendant Concerted Care Group Management, LLC (“CCG”) to eliminate the Lodge and replace it with a treatment facility to which plaintiffs and other Cordillera residents will have no access. This plan is being orchestrated by BH Holdings; its founder, chairman emeritus, and controlling owner, defendant Robert M. Behringer; and its president and chief executive officer, defendant Michael D. Cohen. These defendants have aided, abetted, and directed the fraudulent activities of BH and make significant decisions regarding the operations and assets of BH.

As a result, plaintiffs now have discovered that, in 2009, BH fraudulently misrepresented to plaintiffs Wilner and Letschert and other members of the CPOA the nature and scope of BH's 2009 proposed modification to the 10th Cordillera PUD. BH fraudulently concealed from them that, at least in BH's view, the proposed modification would allow BH and any purchaser from BH to eliminate the Lodge and replace it with any of 33 other "standalone" uses, including facilities to which plaintiffs and those similarly situated would have no access. Furthermore, BH has broken its promise that no such substantive change or new use would be allowed under the proposed modification. BH made this misrepresentation and broke its promise intentionally and to induce the CPOA to approve the 2009 proposed modification. Finally, BH's plan to eliminate the Lodge from the Cordillera community breaches an implied covenant between BH and plaintiffs and those similarly situated to preserve the Lodge.

Accordingly, defendants are liable to plaintiffs and those similarly situated under the doctrines of fraudulent misrepresentation, fraudulent concealment, aiding and abetting fraudulent conduct, promissory estoppel, and breach of implied restrictive covenant. Plaintiffs and those similarly situated are entitled to appropriate compensatory damages exceeding \$100 million and to injunctive and declaratory relief.

PARTIES

1. Plaintiff Jane Wilner is a citizen of Florida residing at 5550 N. Ocean Drive, Singer Island, Florida. Wilner purchased property in the Cordillera community in 1999. Wilner is a member of the CPOA.

2. Plaintiff Trudo Letschert is a citizen of Florida residing at 1650 Chapline Lane, Sarasota, Florida. Letschert purchased property in the Cordillera community in 1999. Letschert is a member of the CPOA.

3. Plaintiff Robert Rudnick is a citizen of the District of Columbia residing at 2750 Q Street, N.W., Washington, D.C. Mr. Rudnick purchased property in the Cordillera community in 2010. Rudnick is a member of the CPOA.

4. Plaintiff Russell Schmeiser is a citizen of Colorado residing at 170 Casteel Ridge, Cordillera, Edwards, Colorado. Schmeiser purchased property in the Cordillera community in 2014. Schmeiser is a member of the CPOA.

5. Defendant BH was incorporated in Delaware in 2007 and is registered in Colorado as a foreign limited liability corporation with principal offices in Addison, Texas. BH owns the Lodge and the parcels on which the Lodge and Village Center are located.

6. Defendant BH Holdings is incorporated in Delaware with principal offices in Addison, Texas. BH Holdings is a real estate investment firm that has created and manages a multitude of investment trusts, limited liability companies, operating companies, and corporations as vehicles for holding property, including BH. BH Holdings is authorized to make decisions and to act on behalf of BH in the ordinary course of business.

7. Defendant Robert M. Behringer is founder, chairman emeritus, and controlling owner of BH Holdings. He is a citizen of Texas.

8. Defendant Michael D. Cohen is the president and chief executive officer of BH Holdings. He is a citizen of Texas.

9. Defendant CCG Management, LLC (“CCG”) is a citizen of Maryland. CCG manages all Concerted Care Group facilities, programs, and business activities, including drug rehabilitation facilities and addiction treatment centers.

JURISDICTION AND VENUE

10. This court has subject matter jurisdiction under the Class Action Fairness Act of 2005 as amended, 28 U.S.C. § 1332:

- a. At least one member of the class plaintiffs seek to represent is a citizen of a state different from any defendant. *See* 28 U.S.C. § 1332(d)(2)(A).
- b. There are approximately 800 property owners in the Cordillera community and more than 100 individuals who belong to the class plaintiffs seek to represents. *See* 28 U.S.C. § 1332(d)(5)(B).
- c. The aggregate market value of the Cordillera resort community is approximately \$1 billion, and defendants’ unlawful conduct has inflicted damages on plaintiffs and those similarly situated exceeding \$100 million, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2), (6).

11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this claim occurred, and the property that is the subject of this action is situated, in the District of Colorado.

FACTUAL ALLEGATIONS

The Cordillera Community

12. The Cordillera community was created as a comprehensive planned resort residential community and was built above Edwards, Colorado, beginning in the late 1980s.

13. The Cordillera community was constructed around the Lodge, which is contained within a parcel of land known as the Lodge Parcel.

14. The Lodge contains a high-end hotel, a restaurant with indoor and outdoor food service, indoor and outdoor swimming pools, indoor and outdoor whirlpools, steam baths and saunas, a gymnasium, and a spa offering a variety of beauty and health services. BH Holdings has described the Lodge as “a 56-room chateau-style resort.”

15. The Lodge has been a major inducement to the purchase of property in Cordillera and a central amenity to home ownership there. As a “resort,” the Lodge is an important amenity at Cordillera, and its existence helps define Cordillera as a “resort residential community.”

16. The Lodge always has been accessible to plaintiffs and other Cordillera property owners upon their compliance with the terms and conditions of its use set by its owner.

17. As of 2002, the Lodge was included in land plats and designated as a lodge. The plat was one of the factors that induced plaintiffs to purchase property at Cordillera.

18. Sales brochures that plaintiffs received for particular neighborhoods within Cordillera emphasized proximity to the Lodge, touted the awards received by the Lodge and its spa and restaurant, and noted that resident privileges extended to the Lodge.

19. Marketing media described the Lodge as the “centerpiece” and “crowning jewel” of the Cordillera community, touted the awards that the Lodge received, and cited the “world-class” amenities and services as motivating purchasers.

20. Community reports to existing owners also emphasized updates to the Lodge and development of the “finest selection of services and amenities.”

21. Plaintiffs and others similarly situated relied on the existence of the Lodge and its resort amenities, and the portrayal of the Lodge as a central Cordillera amenity, in forming their reasonable belief that the Lodge would remain available for their use.

22. The Village Center is a landscaped area intended to “provide a focal point to the community both within a physical design context and as a social gathering place.” The Village Center is contained within a parcel of land known as the Village Center Parcel, which is adjacent to the Lodge Parcel.

23. BH acquired the Lodge and the Village Center in 2007, knowing that the Lodge was the “centerpiece” and the “crowning jewel” of the Cordillera community and that its existence and accessibility to home owners was an important factor in motivating people to purchase homes there.

24. Today, BH owns the Lodge and the Lodge and Village Center Parcels.

2009 Amendments to the PUD

25. Development and land use standards, restrictions, and regulations for all properties in Cordillera, including the Lodge and Village Center Parcels, must comply with a Planned Unit Development (the “Cordillera PUD”) document approved by Eagle County. The first Cordillera PUD was approved by Eagle County in 1987, and it has been amended 11 times. The Cordillera PUD supersedes zoning provisions in the Eagle County Land Use Regulations. The Cordillera PUD also memorializes the purpose and intent of the Cordillera community.

26. Section 1.02 of the 10th Cordillera PUD, in effect from 2003 to 2009, stated that its purpose was to “insure that Cordillera is developed as a comprehensively planned resort residential community” and to “insure the orderly and compatible development of the property.”

27. Section 1.03 further stated that, “[t]he Cordillera Community is intended to be a nearly self-contained resort residential community. Cordillera will provide for a balanced mixture of residential, commercial, office, and undisturbed natural lands to support the focus of resort residential uses. ... [C]hanges and innovations will be permitted only as they remain consistent with the overall character as defined” in the PUD.

28. Section 1.05 stated that, “[i]t is anticipated that modifications to this Guide and Preliminary Plan will be necessary from time to time as the project progresses through its development life.”

29. Section 1.05 provided for four types of modification: “Major, Minor, Building Envelope Adjustments and Density Transfers.”

30. Section 1.05 defined “[m]ajor modifications” as “those changes, which could alter the character or land use of a portion of the project.”

31. Under section 1.05.1, “[m]ajor modifications shall require amendments to this Guide” and “shall be under the authority of the Eagle County Board of Commissioners.”

32. Under section 1.05.1, “any owner of lands within Cordillera may make application to the Board of Commissioners for major modification” only “[a]fter first receiving the approval of the Cordillera Homeowners Association.”

33. Section 1.05.1 provided that, in addition to requiring approval of the Cordillera Homeowners Association, “[a]pplications for major modifications shall be heard in public hearing before the Board of Commissioners after hearing recommendation from the Planning Commissioners,” and the Board of Commissioners “may approve a major modification if it is found to be consistent with the purpose and intent of the Guide or if the character of the

surrounding area has changed such that the purpose and intent are no longer appropriate and that the modification does not adversely affect substantial rights of owners within Cordillera.”

34. Section 1.05.4 provided for density variations within Cordillera.

35. Under the 10th Cordillera PUD, the only uses permitted on the Lodge Parcel were the Lodge itself and uses related to the Lodge that would support it in providing services to resort guests and Cordillera residents.

36. In mid-2009, BH, as the owner of the Lodge, submitted an application to Eagle County for an amendment to the 10th Cordillera PUD which stated that its express purpose was to “treat() two parcels, The Lodge and Spa Parcel and the Village Center Parcel, as a single planning parcel.” In a cover letter to the application, BH represented that “the Amendment clarifies that density is transferable between the Lodge Parcel and the Village Center Parcel, and that the permitted uses are the same for the Lodge Parcel and the Village Center Parcel, effectively treating those adjacent areas as a single planning parcel.” As stated in BH’s application papers, “[t]his treatment reflects existing development and the contemplated completion of the Lodge at Cordillera.”

37. In support of its proposed modification, BH drafted new language to be inserted in section 1.05.4, stating that it would allow “unrestricted transfer between the Lodge Parcel and the Village Center Parcel.”

38. In public filings with the Securities and Exchange Commission, BH Holdings has stated that it “is authorized to make decisions and to act on behalf of BH Cordillera in the ordinary course of business.”

39. BH Holdings, Behringer and Cohen directed the decision by BH to apply for an amendment to the 10th Cordillera PUD and drove the representations that were made regarding BH's proposed modification of the 10th Cordillera PUD.

40. Under section 1.05.1 of the 10th Cordillera PUD, BH's proposed modification, seeking to combine the Lodge Parcel and the Village Center Parcels into a single planning parcel, constituted a "major modification" of the 10th Cordillera PUD.

41. As required by section 1.05.1 of the 10th Cordillera PUD, BH sought to obtain the approval of the CPOA for its proposed modification to the 10th Cordillera PUD.

42. Representatives and attorneys for BH attended the board meetings of the CPOA from July through October 2009 in an attempt to obtain the approval of the CPOA for BH's proposed modification.

43. CPOA board packets for those meetings, which contained BH's proposed modification and representations, as well as related reports, were made available to members of the CPOA, including plaintiffs Wilner and Letschert and those similarly situated.

44. BH's proposed modification listed 34 identical uses on the Lodge Parcel and the Village Center Parcel, including athletic and recreation facilities; restaurant and bar; meeting rooms; lounge and sitting rooms; offices for administration of the subdivision; lodge and club; employee dwellings; storage; retail; amphitheater for concerts and performances; playground; parking areas and structures; day care facilities; educational facilities; utility facilities; and certain medical offices/facilities. Of these 34 uses, 31 had been listed as allowed uses for either the Lodge Parcel or the Village Center Parcel in the 10th Cordillera PUD.

45. BH's proposed modification did not state, and BH never represented or intimated to plaintiffs Wilner and Letschert or to other members of the CPOA, that the proposed modification was intended to allow, or would have the consequence of allowing, the Lodge to be eliminated and replaced by any of the 33 non-Lodge related uses. Furthermore, BH's proposed modification did not state, and BH never represented or intimated to plaintiffs Wilner and Letschert or to other members of the CPOA, that any additional use for the Lodge Parcel would be to the exclusion of any or all CPOA members, current or future, from the Lodge facilities, contrary to section 1.05.1 of the 10th Cordillera PUD. BH also never referred to the listed uses as "standalone" uses.

46. To the contrary, in seeking the CPOA's approval for its proposed modification, BH represented and promised in the cover letter to its application that: "The Amendment does not introduce new or additional density or uses to the Existing PUD, or otherwise substantively change the Existing PUD. Rather, the proposed changes, include corrections to typographical errors, replacement of inaccurate Guide Maps, updates to reflect the current status of development approvals for the Lodge Parcel and the Village Center Parcel, and clarification of the treatment of the Lodge Parcel and the Village Center Parcel as a single planning parcel."

47. Moreover, in the cover letter to its application BH represented that: "The Amendment will not confer a special benefit on any particular person. To the contrary, it will benefit the entire Cordillera PUD and surrounding areas, as it will make the development contemplated by the Existing PUD more efficient."

48. BH intentionally made these representations and promises to plaintiffs Wilner and Letschert other members of the CPOA to induce the CPOA to approve BH's proposed modification to the 10th Cordillera PUD.

49. In reliance on BH's representations and promises, including BH's representation and promise that, except for combining the Lodge Parcel and Village Center Parcel for planning purposes, BH's proposed modification made no substantive change to the 10th Cordillera PUD, the CPOA approved BH's proposed modification on October 19, 2009.

50. The CPOA resolution approving BH's proposed modification stated the CPOA's understanding that the proposed modification was "consistent with the spirit and intent of the PUD for lands made part of Cordillera."

51. The elimination of the Lodge and its replacement by another use would not have been permitted under the 10th Cordillera PUD.

52. If BH had proposed to modify the 10th Cordillera PUD to authorize the Lodge to be eliminated and replaced by any of the 33 other uses listed in BH's proposed modification, such a proposal would have been classified as a "major modification" under section 1.05.1 of the 10th Cordillera PUD because it would have "alter[ed] the character or land use of a portion of the project." It would have required the approval of the CPOA.

53. BH never requested, and the CPOA never approved, a proposed modification to the 10th Cordillera PUD that would have allowed the Lodge to be eliminated and replaced by any of the 33 other uses listed in BH's proposed modification.

54. Such a major modification would not have been “consistent with the purpose and intent of the Guide,” as required by section 1.05.1 of the 10th Cordillera PUD, and plaintiffs Wilner and Letschert, as well as other members of the CPOA, would not have approved it.

55. BH made the same representations and promises to Eagle County about its proposed modification to the 10th Cordillera PUD as it made to the CPOA.

56. Eagle County officials involved in reviewing BH’s proposed modification to the 10th Cordillera PUD stated their understanding that the proposed modification did not introduce any new uses or effect any substantive change to the 10th Cordillera PUD.

57. A staff report of the Eagle County Planning Commission prepared in early December 2009 stated that the proposed 2009 amendment did not add any new land uses but merely clarified existing permitted uses of the Lodge Parcel and the Village Center Parcel.

58. In a memorandum dated December 4, 2009, the Eagle County Engineering Department stated: “The intent of [BH’s amendment] application is to provide clarity to the existing PUD Guide. This proposal does not introduce new or additional density or uses or otherwise substantively change the existing guide.”

59. The head of the Eagle County Housing and Development Department, in a letter dated December 9, 2009, said that, after reviewing BH’s proposed modification and discussing it with County staff, it was his understanding that “the purpose of the Cordillera 11th PUD Guide merely is to clarify existing rights of the Applicant. More specifically, in pertinent part, the Applicant seeks to clarify that it may transfer densities between the Lodge Parcel and the Village Center Parcel, and that any of the 50 Lodge Units later converted to a condominium unit or residential unit sold in fractional shares shall be counted, for dwelling purposes, as a single

Dwelling Unit, and not as a Lodge Unit or as Commercial/Office, as defined in the [10th PUD Guide]. . . . [T]his change merely reflects clarification of existing rights under the [10th PUD Guide]” (emphasis in the original).

60. Eagle County approved BH’s proposed modification and incorporated it into the 11th Cordillera PUD on January 5, 2010, retroactive to December 21, 2009.

61. The Eagle County resolution adopting BH’s proposed modification and creating the 11th Cordillera PUD states: “This amendment better defines the concept containing in the existing PUD that density shifts are permissible among the various planning parcels, so long as the actual maximum densities for the project are not exceeded. Specifically, that previously approved density is transferable between the Lodge Parcel and the Village Center Parcel and that the permitted uses are the same for the Lodge Parcel and the Village Center Parcel, effectively treating these adjacent areas as a single planning parcel. This treatment reflects existing development and the contemplated completion of the Lodge at Cordillera. . . . The uses that may be developed [following this amendment] **ARE** uses that are allowed pursuant to the current governing [PUD]. This PUD Amendment does not propose any new or additional uses within the Cordillera PUD” (emphasis in the original).

62. The Eagle County resolution adopting BH’s proposed modification and approving the 11th Cordillera PUD also states: “Except as otherwise modified by this development permit, all material representation[s] by the applicant in this application and in public meetings shall be adhered to and considered conditions of approval.”

Proposed Sale of Lodge and Village Center Parcels

63. In May 2016, BH and CCG signed a contract pursuant to which BH agreed to sell and CCG agreed to buy the Lodge and the Lodge and Village Center Parcels.

64. BH Holdings, Behringer, and Cohen made the decision to sell the Lodge and Village Center Parcels and directed the plans to sell to CCG.

65. CCG says it plans to replace the Lodge with a “health, wellness and addiction treatment center” that provides clinical and “inpatient” care for “treatment of a variety of conditions including, but not limited to, eating disorders, alcoholism, chemical dependency, and behavioral health conditions.” CCG says it plans to charge its patients from \$60,000 to \$75,000 per person per month for staying at this facility.

66. In return for the high fees CCG plans to charge the patients at this facility, CCG claims it must ensure their anonymity and, therefore, will bar access to the Lodge Parcel by any Cordillera property owner, including plaintiffs and those similarly situated.

67. CCG emphasized in a meeting with members of the CPOA that, after the Lodge is replaced by the treatment facility, the Lodge will be totally closed to the Cordillera community, including plaintiffs and those similarly situated, and no Cordillera resident will be allowed onto the Lodge Parcel.

68. BH’s proposed sale of the Lodge to CCG to eliminate the Lodge and to exclude plaintiffs and other similarly situated Cordillera property owners from the Lodge has delayed purchases and sales of property in the Cordillera community and depressed property values in Cordillera by a cumulative amount exceeding \$100 million.

69. Eagle County adopted a resolution dated October 11, 2016, stating that CCG's planned construction of a treatment facility at Cordillera is a permitted use under the 11th Cordillera PUD.

70. On November 8, 2016, Barbara and Jack Benson, Cordillera property owners, and the CPOA and Cordillera Metropolitan District, filed separate lawsuits in the District Court of Eagle County challenging the validity of the resolution adopted by Eagle County.

CLASS ACTION ALLEGATIONS

71. Plaintiffs incorporate by reference and restate paragraphs 1-70 above.

72. With respect to the promissory estoppel and breach of implied covenant claims, plaintiffs bring this action on behalf of themselves and on behalf of all others similarly situated and belonging to a class consisting of all persons who own property in the Cordillera development as of the date of this Complaint.

73. With respect to the fraudulent misrepresentation, fraudulent concealment and aiding and abetting claims, plaintiffs Wilner and Letschert bring this action on behalf of themselves and on behalf of a sub-class of plaintiffs who owned property in the Cordillera development as of October 19, 2009 and still own property there today.

74. Plaintiffs reserve the right to amend the class definition if further investigation or discovery indicates that it should be modified.

75. The class excludes governmental entities, defendants, any entity in which any defendant has a controlling interest, defendants' officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns. The class also excludes any

judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

76. The proposed class is so numerous – consisting of more than 100 members – that joinder of all members is impracticable.

77. There are questions of fact and law common to the class, including, without limitation:

a. whether the doctrine of promissory estoppel precludes BH and CCG from implementing their contract and their plan to eliminate the Lodge and replace it with a treatment facility;

b. whether BH and CCG are barred from implementing their contract and their plan to eliminate the Lodge and replace it with a treatment facility unless and until that plan is presented to the members of the CPOA, including plaintiffs and members of the class plaintiffs seek to represent;

c. whether defendants' actions breach an implied restrictive covenant existing with respect to the Lodge and Village Center Parcels;

d. whether and to what extent defendants' conduct injured plaintiffs and members of the class plaintiffs seek to represent; and

e. whether plaintiffs and members of the class plaintiffs seek to represent are entitled to compensatory damages and declaratory and injunctive relief.

78. There are also questions of fact and law common to the sub-class, including, without limitation, whether BH, BH Holdings, Behringer, and Cohen fraudulently

misrepresented and fraudulently concealed the nature and scope of BH's 2009 proposed modification to the 10th Cordillera PUD.

79. These common questions predominate over any questions affecting only individual members.

80. This predominance makes a class action superior to other available methods for fairly and efficiently adjudicating the controversy, because individual actions would create unnecessary expense, delay, and duplication of discovery and pleadings.

81. Certification of a class is proper because defendants have acted on grounds that apply generally to the class, such that a single injunction and a single declaration would provide relief to the class as a whole.

82. The claims of plaintiffs as class representatives are typical of the claims of the class, given that defendants' actions have affected all proposed class members in similar ways.

83. Plaintiffs are representative parties who will fairly and adequately protect the interests of the class and who have retained competent counsel.

84. The relief sought here will benefit plaintiffs and the entire proposed class of Cordillera property owners.

FIRST CLAIM

Fraudulent Misrepresentation

*Plaintiffs Wilner and Letschert and the Sub-Class of Those Similarly Situated
Against Defendant BH*

85. Plaintiffs incorporate by reference and restate paragraphs 1-84 above.

86. In seeking to obtain the approval of the CPOA for BH's proposed modification to the 10th Cordillera PUD, BH represented material facts about the nature and scope of BH's

proposed modification, namely, that the proposed modification would not introduce new uses or make any substantive change to the 10th Cordillera PUD beyond allowing the Lodge Parcel and Village Center Parcels to be treated as a single planning parcel.

87. At that time, BH knew that this representation was false, or recklessly disregarded the truth or falsity of that representation, or concealed from the CPOA and its members, including plaintiffs Wilner and Letschert and those similarly situated, that, in its view, BH's proposed modification of the 10th Cordillera PUD would allow BH to contract to eliminate the Lodge and replace it with any one of the 33 other uses listed in the 11th Cordillera PUD, including a treatment facility to which plaintiffs and other Cordillera property owners would be denied access.

88. At that time, the members of the CPOA, including plaintiffs Wilner and Letschert and those similarly situated, did not and could not know about the misrepresentation by BH.

89. BH intended that the CPOA and the members of the CPOA, including plaintiffs Wilner and Letschert and those similarly situated, would rely on BH's misrepresentation so that the CPOA would approve BH's proposed modification to the 10th Cordillera PUD.

90. The CPOA and its members, including plaintiffs Wilner and Letschert and those similarly situated, relied on BH's misrepresentation when CPOA approved BH's proposed modification to the 10th Cordillera PUD.

91. Plaintiffs and those similarly situated have suffered and are suffering serious financial harm caused by BH's fraudulent misrepresentation and should be awarded compensatory damages and declaratory and injunctive relief.

SECOND CLAIM

Fraudulent Concealment

*Plaintiffs Wilner and Letschert and the Sub-Class of Those Similarly Situated
Against Defendant BH*

92. Plaintiffs incorporate by reference and restate paragraphs 1-91 above.

93. In seeking to obtain the approval of the CPOA for BH's proposed modification to the 10th Cordillera PUD, BH concealed material facts about the nature and scope of BH's proposed modification, namely, that BH's proposed modification of the 10th Cordillera PUD would allow BH to contract to eliminate the Lodge and replace it with any one of the 33 other uses listed in the 11th Cordillera PUD, including a treatment facility to which plaintiffs and those similarly situated would be denied access.

94. This material fact should have been disclosed, in equity and good conscience.

95. At that time, BH knew that this fact was being concealed from the CPOA and its members, including plaintiffs Wilner and Letschert and those similarly situated.

96. At that time, the members of the CPOA, including plaintiffs Wilner and Letschert and those similarly situated, did not and could not know about the concealment by BH.

97. BH intended that the CPOA and the members of the CPOA, including plaintiffs Wilner and Letschert and those similarly situated, would act upon the concealment so that the CPOA would approve BH's proposed modification to the 10th Cordillera PUD.

98. The CPOA and its members, including plaintiffs Wilner and Letschert and those similarly situated, did act upon on BH's concealment when CPOA approved BH's proposed modification to the 10th Cordillera PUD.

99. Plaintiffs and those similarly situated have suffered and are suffering serious

financial harm caused by BH's fraudulent concealment and should be awarded compensatory damages and declaratory and injunctive relief.

THIRD CLAIM

Aiding and Abetting Fraudulent Conduct

*Plaintiffs Wilner and Letschert and the Sub-Class of Those Similarly Situated
Against Defendants BH Holdings, Behringer, and Cohen*

100. Plaintiffs incorporate by reference and restate paragraphs 1-99 above.

101. Defendants BH Holdings, Behringer, and Cohen, by virtue of their positions, made all significant decisions for and acted on behalf of BH with respect to BH's conduct described in paragraphs 1-84 above.

102. BH Holdings, Behringer, and Cohen, acting together and with BH and having the common objective of obtaining the approval of the CPOA to BH's proposed modification of the 10th Cordillera PUD, orchestrated and directed BH's fraudulent conduct described in paragraphs 1-84 above.

103. BH Holdings, Behringer, and Cohen aided and abetted BH in the fraudulent conduct described in paragraphs 1-84 above.

104. Plaintiffs and those similarly situated have suffered and are suffering serious financial harm caused by the actions of BH Holdings, Behringer, and Cohen and should be awarded compensatory damages and declaratory and injunctive relief.

FOURTH CLAIM

Promissory Estoppel

*All Plaintiffs and Those Similarly Situated
Against BH*

105. Plaintiffs incorporate by reference and restate paragraphs 1-104 above.

106. BH promised that its proposed modification would not allow for new uses or make any substantive change to the 10th Cordillera PUD beyond allowing the Lodge Parcel and the Village Center Parcels to be treated as a single planning parcel.

107. BH intended, or reasonably should have expected, that the members of the CPOA, including plaintiffs Wilner and Letschert and those similarly situated, would rely on BH's promises when the CPOA was deciding whether to approve BH's proposed modification to the 10th Cordillera PUD.

108. Plaintiffs Wilner and Letschert and similarly situated members of the CPOA relied on BH's promises when the CPOA approved BH's proposed modification to the 10th Cordillera PUD.

109. If, as interpreted by BH, the 11th Cordillera PUD allows BH to contract to eliminate the Lodge and replace it with any of the 34 uses listed for the Lodge, including a treatment facility to which plaintiffs and others similarly situated have no access, the 11th Cordillera PUD constitutes a major substantive change to the 10th Cordillera PUD.

110. BH breached its promises that its proposed modification to the 10th Cordillera PUD did not make any substantive changes by contracting with CCG to eliminate the Lodge and replace it with one of the 33 other uses listed, namely, a treatment facility to which plaintiffs and those similarly situated would have no access.

111. Likewise, BH promised plaintiffs directly, or knew that its predecessor had promised plaintiffs – through the plat, marketing materials, representations in the media, tours of the property, the Cordillera PUD and other representations made prior to purchases – that the

Lodge would exist as Cordillera's centerpiece offering resort amenities to plaintiffs and other Cordillera property owners.

112. BH should have reasonably expected its promises regarding the Lodge to induce action by plaintiffs.

113. When purchasing property in the Cordillera community, plaintiffs Rudnick and Schmeiser and others similarly situated reviewed the plat, marketing materials, representations in the media, tours of the property, and the 11th Cordillera PUD, and the promises made in those documents, that the Lodge would be used as a Lodge with resort amenities.

114. Plaintiffs Rudnick and Schmeiser, who reviewed the 11th Cordillera PUD before purchasing their Cordillera properties, were also unaware of any interpretation by BH of the 11th Cordillera PUD that would allow BH to break its promise that the 11th Cordillera PUD made no substantive change to the 10th Cordillera PUD and that, under the 11th Cordillera PUD, BH could contract to eliminate the Lodge and replace it with any one of the 33 other uses listed, including a treatment facility to which plaintiffs Rudnick and Schmeiser would be denied access.

115. Equity and justice require that BH be estopped from breaching its promises and enjoined from implementing BH's contract with CCG to eliminate the Lodge and replace it with a treatment facility.

FIFTH CLAIM

Breach of Implied Covenant

*All Plaintiffs and Those Similarly Situated
Against BH and CCG*

116. Plaintiffs incorporate by reference and restate paragraphs 1-115 above.

117. An implied restrictive covenant exists with respect to the Lodge that requires it to remain available to plaintiffs and other Cordillera property owners as a Lodge.

118. A general scheme or plan existed with respect to Cordillera's development and improvement that included its functioning as a residential resort community, with the Lodge as its centerpiece offering resort amenities to plaintiffs and other Cordillera property owners.

119. Cordillera's developer adopted this general development plan, and BH purchased the Lodge with knowledge of, and then extended and continued to publicize, the plan.

120. This plan regarding the Lodge was publicized through, among other things, the 2002 plat, marketing materials, representations in the media, tours of the property and the 10th Cordillera PUD.

121. These documents touted the Lodge and its world-class amenities and awards; emphasized properties' proximity to the Lodge; and described the Lodge as the focal point of the community and its crowning jewel.

122. The plan as evidenced by the 10th Cordillera PUD, plat, and other representations contemplated restrictions regarding the use of the Lodge, namely, that it would be used and preserved to the Cordillera property owners as a Lodge.

123. These covenants were entered into for the benefit of plaintiffs and their property, given that the presence of Lodge would make the Cordillera community more desirable and the property more valuable.

124. Plaintiffs and other Cordillera property owners were aware of the development plan and resulting covenants based on their examinations of the 10th Cordillera PUD and the 11th Cordillera PUD, plat, and sales brochures, and their tours of the Lodge prior to buying property

in Cordillera. Plaintiffs had actual, or at least constructive, knowledge of the covenants restricting use of the Lodge.

125. The presence of the Lodge at Cordillera, and the accessibility of its services and amenities, motivated the purchases of property in Cordillera by plaintiffs and others.

126. Plaintiffs and others similarly situated relied on representations in the Cordillera PUD, plat, and elsewhere stating and implying that the Lodge was a central part of Cordillera, and they reasonably believed that it would remain so.

127. BH, BH Holdings, Behringer, and Cohen had and have actual or at least constructive knowledge of the implied restrictive covenant when BH acquired the Lodge and the Lodge and Village Center Parcels in 2007 and when BH contracted to sell them to CCG in 2016 and, therefore, are bound by it. CCG had and has actual or at least constructive knowledge of the implied restrictive covenant when it contracted to buy the Lodge and the Lodge and Village Center Parcels from BCH in 2016 and, therefore, is bound by it.

128. The original plan with respect to the Lodge has not been abandoned and its purpose has not been defeated by changed circumstances.

129. The implied restrictive covenant that limits the uses of the Lodge to those compatible with the existing Lodge requires that the Lodge remain accessible as a Lodge to plaintiffs and other similarly situated Cordillera property owners.

130. Plaintiffs and others similarly situated, who purchased property in Cordillera in reliance on this implied restrictive covenant, have an enforceable right to have the Lodge continue to exist as a Lodge, accessible to them as an essential part of the Cordillera community.

131. Defendants' plans to eliminate the Lodge and replace it with a treatment center to which plaintiffs will have no access constitutes a breach of this implied restrictive covenant, as a result of which plaintiffs and those similarly situated are entitled to compensatory damages and declaratory and injunctive relief.

PRAYER FOR RELIEF

Wherefore, plaintiffs respectfully request the following relief:

- (a) An order certifying this class action and naming plaintiffs as class representatives and designating plaintiffs' undersigned lawyers as counsel for the classes;
- (b) An award of compensatory damages to plaintiffs in an amount to be determined at trial, but exceeding \$100,000,000;
- (c) A judicial declaration stating that an enforceable implied restrictive covenant exists with respect to the Lodge and requiring the continued existence of the Lodge as a Lodge, accessible to plaintiffs and those similarly situated;
- (d) A judicial declaration that, to the extent BH's 2009 proposed modification to the 10th Cordillera PUD was intended to allow the Lodge to be eliminated and replaced by one or more of the uses listed in BH's proposed modification, the proposed modification and the 11th Cordillera PUD incorporating it are null, void, and invalid;
- (e) A judicial declaration that any proposed modification to the current Cordillera PUD that would allow the Lodge to be eliminated and replaced by one or more of the uses listed in BH's 2009 proposed modification to the 10th Cordillera PUD must first be presented for approval to the members of the CPOA, including plaintiffs and those similarly situated;

(f) An appropriate injunction preventing the implementation of the contract between BH and CCG that would allow the Lodge to be eliminated and replaced by a treatment facility; and

(g) Such other and further relief as the Court deems just and appropriate, including but not limited to an award of plaintiffs' attorneys' fees and costs.

JURY TRIAL DEMAND

Plaintiffs demand trial by jury on all issues so triable.

Dated: December 7, 2016

Respectfully submitted,

Bryan Cave LLP

By: /s/ Paul J. Lopach
Paul J. Lopach
Desmonne A. Bennett
Bryan Cave LLP
1700 Lincoln Street, Suite 4100
Denver, CO 80203
Telephone: (303) 861-7000
Facsimile: (303) 861-0200