

<b>District Court, Eagle County, State of Colorado</b> 885 Chambers Avenue, Eagle, Colorado 81631	DATE FILED: November 8, 2016 3:25 PM FILING ID: C2850CCAFF69C CASE NUMBER: 2016CV30363
<b>Plaintiffs:</b> CORDILLERA PROPERTY OWNERS ASSOCIATION, INC.; and CORDILLERA METROPOLITAN DISTRICT	<b>▲ COURT USE ONLY ▲</b>
<b>Defendant:</b> EAGLE COUNTY, COLORADO, acting by and through its BOARD OF COUNTY COMMISSIONERS	
<b>Attorneys for Plaintiffs:</b> Lew M. Harstead, #27325 Michael S. Davidson, #42319 JOHNSON & REPUCCI LLP 2521 Broadway, Suite A Boulder, Colorado 80304 Telephone: 303-442-1900 Email: lmharstead@j-rlaw.com; msdavidson@j-rlaw.com	Case No. _____ Div. _____
<b>COMPLAINT FOR RELIEF PURSUANT TO C.R.C.P. 106</b>	

Plaintiffs, the Cordillera Property Owners Association, Inc. and the Cordillera Metropolitan District, through undersigned counsel, hereby submit their Complaint for Relief Pursuant to C.R.C.P. 106.

### PARTIES

1. The Cordillera Property Owners Association, Inc. is a Colorado non-profit corporation, consisting of owners of residential property in the Cordillera development in Eagle County (the “**Association**”).
2. The Cordillera Metropolitan District is a quasi-governmental entity that is responsible for the operation and maintenance of certain improvements in the Cordillera development in Eagle County (the “**District**”).
3. The Association and District are sometimes collectively referred to herein as the “**Association/District**.”
4. Eagle County, Colorado (the “**County**”) is a Colorado governmental entity that acts by and through its Board of County Commissioners (the “**County Commissioners**”).

## **JURISDICTION & VENUE**

5. Jurisdiction is proper in this Court pursuant to C.R.C.P. 57, C.R.C.P. 106, and because the actions which constitute the basis for the Complaint took place in Eagle County, Colorado.

6. Venue is proper in this Court pursuant to C.R.C.P. 98.

## **GENERAL ALLEGATIONS**

### ***The Cordillera PUD Governs Land Use in Cordillera***

7. This matter arises from property situated in the Cordillera Subdivision of Eagle County (“**Cordillera**”).

8. Development and land use standards for all properties in Cordillera must comply with the Cordillera Subdivision Eleventh Amended and Restated Planned Unit Development Control Document (the “**Cordillera PUD**”).

9. The Cordillera PUD was approved by the County Commissioners and the specific provisions of the Cordillera PUD supersede the Eagle County Land Use Regulations (the “**Land Use Regulations**”).

10. The purpose of the Cordillera PUD is to insure that Cordillera is developed as a comprehensively planned resort residential community.

11. The Cordillera Community is intended to be a nearly self-contained resort residential community that provides for a balanced mixture of residential, commercial, office, and undisturbed natural lands to support the focus of resort residential uses.

12. Changes to the Cordillera PUD are permitted only as they remain consistent with the overall character as defined throughout the Cordillera PUD.

### ***The Lodge and Village Center Parcels***

13. This matter arises from the proposed use of the “**Lodge Parcel**” and “**Village Center Parcel**,” as those parcels were created and defined in the Cordillera PUD.

14. The Lodge Parcel was created in order to feature The Lodge and Spa at Cordillera (“**The Lodge**”) as what has long been described as the “community centerpiece” and “crowning jewel of the community.”

15. The Village Center Parcel is adjacent to the Lodge Parcel and was created to serve as a social gathering place for Cordillera.

16. The scope of uses on the Village Center Parcel is intended to serve the needs of the residents, fractional interest owners and resort guests of Cordillera alike.

#### ***The Prior PUD***

17. Prior to December 2009, the operative version of the Cordillera PUD was the Tenth Amended and Restated version of the Cordillera PUD adopted in 2003 (the “**Prior PUD**”).

18. The Prior PUD recognized only two “**Permitted Uses**” (as the term is defined in the Cordillera PUD) on the Lodge Parcel and 21 on the Village Center.

19. The Prior PUD did not recognize an addiction treatment center or other similar facility as a Permitted Use on either the Lodge or Village Center Parcel.

20. Similarly, the Prior PUD did not recognize a residential rehabilitation facility, group home or other similar facility as a Permitted Use on either the Lodge or Village Center Parcel.

#### ***The 2009 PUD Amendment***

21. In mid-2009, the owner of the Lodge and Village Center Parcels, Behringer Harvard, Inc. (“**Behringer Harvard**”), approached the Association regarding possible amendment of the Prior PUD.

22. Behringer Harvard sought the Association’s approval to amend the Prior PUD because the Prior PUD expressly required the approval of the Association in order to modify the Prior PUD.

23. Behringer Harvard attended the regular Association meetings from July through October 2009 in an attempt to obtain the Association’s approval. There were no “negotiations” between Behringer Harvard and the Association because the Association’s approval was discretionary and the Association was not seeking anything from Behringer Harvard. Rather, the Association sought to ensure that any amendments to the Prior PUD were in the best interest of the entire Cordillera community and not just Behringer Harvard. The Association was motivated by the desire to help The Lodge remain an integral part of the greater Cordillera community.

24. In seeking the Association’s approval, Behringer Harvard represented that its primary motivation was to effectively merge the Permitted Uses on the Lodge and Village Center Parcels for the purpose of allowing fractional/timeshare units that were otherwise permitted on the Village Center Parcel to be instead developed on the Lodge Parcel. Behringer Harvard assured the Association that it did not seek to add any uses to the PUD. Behringer Harvard assured the Association that the proposed modification of the Prior PUD would help revitalize The Lodge for the better of the overall Cordillera community.

25. In September 2009, representatives of Behringer Harvard attended an Association meeting for the purpose of discussing the proposed amendment of the Prior PUD. The draft PUD proposed by Behringer Harvard at that time included “Medical Offices/Facilities” as a listed use without any limitations. The Association objected to such a broad scope of use and made clear that it was not willing to approve this listed use. Behringer Harvard’s representatives assured the Association that the purpose for including such a provision was to recognize the use of limited medical procedures that were consistent with the already-existing operation of the spa at The Lodge, but not to introduce any new uses to the Lodge Parcel. Specifically, Behringer Harvard represented that it sought to modify the Prior PUD to clarify that the Lodge could provide certain services such as botox, rhinoplasty and other similar cosmetic procedures consistent with the operation of a high class spa and the then-trending concept of “medi-spas.”

26. The Association requested revisions of the proposed amendment to the PUD consistent with Behringer Harvard’s representations regarding the limitation of medical uses to be allowed on the Lodge Parcel. The proposed PUD was thus specifically revised, consistent with the understanding of all parties, to narrow and constrain the initial language of the proposed amendment, so that the Permitted Uses would be “limited to clinic and outpatient facilities providing non-critical care, including, without limitation, for outpatient plastic surgery and other cosmetic procedures.” The purpose for this revision was to clarify that limited medical services consistent with the operation of a spa, such as cosmetic treatments, minor cosmetic surgery, botox treatments, colonics and other similar procedures could be offered at The Lodge’s spa similar to other “destination spas” around the world.

27. The proposed PUD amendment was not intended to introduce any new uses in the existing PUD or otherwise substantively change the existing PUD.

28. The proposed PUD amendment was not intended to have any effect on adjacent properties in Cordillera.

29. The proposed PUD amendment was not intended to confer a special benefit on any one person, but instead was intended to benefit the entire Cordillera PUD.

30. This intent, and the parties’ mutual understanding, was ratified when Behringer Harvard represented the following to the County and the Cordillera community in submitting the application for the proposed PUD amendment:

*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.*

*ADJACENT PROPERTIES. The Amendment will not have any effect on adjacent properties because it does not change the overall uses or densities currently contemplated in the Existing PUD.*

*BENEFIT. The Amendment will not confer a special benefit upon 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.*  
(Emphasis added.)

31. In turn, at a hearing held on December 21, 2009, the County Commissioners expressly found that the “PUD Amendment does not propose any new or additional uses within the Cordillera PUD.” The County Commissioners therefore approved the proposed PUD amendment (the “**2009 PUD Amendment**”).

32. Accordingly, the Cordillera PUD, as amended, recognized that the “Permitted Uses” allowed on both the Lodge Parcel and Village Center Parcel included, among a large number of Permitted Uses:

*Medical Offices/Facilities – limited to clinic and outpatient facilities for non-critical care, including without limitation, for outpatient plastic surgery and other cosmetic procedures.*  
(Emphasis added.)

33. Consistent with the intent of the 2009 PUD Amendment, addiction treatment centers and residential rehabilitation facilities were not listed as Permitted Uses on the Lodge and Village Center Parcels.

#### *CCG’s Proposed Purchase of the Lodge and Village Center Parcels*

34. In 2016, Concerted Care Group Management (“CCG”), a Baltimore-based company, entered into a contract to purchase the Lodge and Village Center Parcels from Behringer Harvard.

35. CCG sought to purchase the Lodge and Village Center Parcels for the purpose of operating an addiction treatment center and related residential rehabilitation facility.

36. CCG stated its intention to convert The Lodge into a “health, wellness and addiction treatment center” that provides “inpatient” care for “treatment of a variety of conditions including, but not limited to, eating disorders, alcoholism, chemical dependency, and behavioral health conditions.”

37. CCG reported that an average stay would cost \$60,000 per month per patient, which cost would include not only paying for treatment, but also paying for “anonymity” because the CCG’s patients “want complete anonymity.”

38. CCG stated it planned to “provide around the clock security guards” in order “to protect [the] patients” and to exclude the community.

39. CCG admitted that its proposed uses would distance the Cordillera community from the Lodge and Village Center Parcels.

#### *The Director’s Original Interpretation*

40. CCG engaged Dominic Mauriello (“CCG’s Agent”) as an agent to work on CCG’s behalf with the County.

41. CCG’s Agent contacted the Eagle County Managing Director of Community Development (the “Director”) on May 2, 2016, to schedule a meeting on behalf of CCG to discuss an interpretation of the Cordillera PUD, and despite the fact that CCG’s Agent was soliciting a meeting of a public official to pursue a public determination, asked the Director to “keep the matter extremely confidential” and “on the down low.”

42. CCG’s Agent and CCG’s attorney, Thomas J. Ragonetti, Esq. (“CCG’s Attorney”), met with the Director on May 26, 2016 and verbally requested that the Director issue an interpretation that the operation of an addiction treatment center and residential rehabilitation center represented a Permitted Use on Lodge and Village Center Parcels pursuant to the Cordillera PUD. Specifically, CCG’s Agent and Attorney asked the Director to provide an interpretation that CCG’s proposed uses fell within the following Permitted Use allowed on the Lodge and Village Center Parcels:

Medical Offices/Facilities – **limited to clinic and outpatient facilities for non-critical care**, including without limitation, for outpatient plastic surgery and other cosmetic procedures.  
(Emphasis added.)

43. The Director concluded at that very meeting, without any further research or consideration, that CCG’s proposed uses represented a Permitted Use pursuant to this definition.

44. On May 26, 2016, CCG’s Agent sent the Director a summary of the language that CCG desired to see in a formal interpretation letter from the Director and requested that the Director “verify this understanding in a letter.”

45. The Director subsequently sent CCG’s Agent and CCG’s Attorney a copy of the “DRAFT Cordillera Zoning Interpretation Letter” which the Director stated was being provided to the CCG representatives at CCG’s suggestion, and the Director asked that CCG’s attorney review the draft letter before the Director finalized the letter.

46. CCG’s Attorney and CCG’s Agent reviewed and approved the Director’s draft interpretation letter.

47. After receiving CCG's approval for the language and conclusions set forth in the draft interpretation, the Director finalized and executed the interpretation letter on June 1, 2016 stating that the Director believed the proposed uses represented a use-by-right pursuant to the Cordillera PUD on both the Lodge Parcel and the Village Center Parcel (the Director's **"Original Interpretation"**).

***The Association/District's Appeal of the Director's Initial Interpretation***

48. On June 2, 2016, the Director spoke with the Association/District's general manager (the **"Association/District General Manager"**) and attorney. The Association/District General Manager objected to the interpretation rendered by the Director and stated her belief that the phrase "clinic and outpatient facilities for non-critical care," should be interpreted to mean that only a clinic providing outpatient services for non-critical care is permitted, and thus inpatient clinical facilities are not permitted by the PUD. The Director indicated that he believed the subject phrase was susceptible to more than one meaning – one which would not render CCG's proposed uses as a Permitted Use under the Cordillera PUD, and one that would render the proposed uses as a Permitted Use. The Director stated he elected to use the latter interpretation – the one that interpreted the proposed uses to be a Permitted Use.

49. After members of the Cordillera community began to complain about the interpretation issued by the Director, the Director asked the County Manager to "help" the County Commissioners understand that the Original Interpretation "was not made in a vacuum" because CCG's Attorney and the County Attorney assisted the Director in reaching his interpretation.

50. The Association/District appealed of the Director's Original Interpretation to the Board of County Commissioners (the **"Original Appeal"**).

***The Director's Interpretation***

51. Likely in response to issues raised in the Original Appeal, Behringer Harvard sent a letter to the Director dated July 7, 2016 stating that CCG's request for interpretation was made on behalf of Behringer Harvard as a landowner in Eagle County.

52. Later that day, the Director issued a new interpretation letter that: (1) rescinded his Original Interpretation; (2) stated that he considered the Behringer Harvard letter to be a new request for interpretation made by Behringer Harvard; and (3) issued, effective as of that date, a new interpretation in response to the request from Behringer Harvard, which interpretation was identical to the Original Interpretation (the **"Interpretation"**).

53. The Association/District appealed the Director's Interpretation to the County Commissioners on August 9, 2016 (the **"Appeal of the Interpretation"**).

### ***The County Commissioners Hearing***

54. The County Commissioners held a public hearing on the Appeal of the Interpretation on September 20, 2016 (the “**Hearing**”). At the conclusion of the Hearing, the County Commissioners announced their intention to affirm the Director’s Interpretation with a modification that CCG’s proposed addiction treatment center be limited to outpatient services.

55. On October 11, 2016, the County Commissioners adopted County Resolution 2016-079 affirming the Director’s Interpretation with the modification that CCG’s proposed addiction treatment center be limited to outpatient services.

### **CLAIM FOR RELIEF** **Judicial Appeal Under C.R.C.P. 106(a)(4)**

56. The Association/District hereby incorporate all paragraphs set forth above.

57. The Director acted in contradiction of the Cordillera PUD and in violation of the County Land Use Regulations by determining that CCG’s proposed uses represented a Permitted Use in the Cordillera PUD.

58. The County Commissioners exercised a quasi-judicial function when they reviewed the Director’s Interpretation in order to determine whether CCG’s proposed uses represented a Permitted Use pursuant to the Cordillera PUD.

59. The County Commissioners exceeded their jurisdiction, abused their discretion and acted in an arbitrary and capricious manner when they affirmed the County Director’s Interpretation by determining that CCG’s proposed uses represented a Permitted Use in the Cordillera PUD when the facts in evidence demonstrated that:

a. The use of the Lodge and Village Center Parcels for the purposes of operating both an addiction treatment center and related residential rehabilitation facility fails to meet the express definition of any Permitted Use allowed on the Lodge and Village Center Parcels pursuant to the Cordillera PUD;

b. The use of the Lodge and Village Center Parcels for the purposes of operating both an addiction treatment center and related residential rehabilitation facility violates the express “purpose” and “intent” of the Cordillera PUD and the 2009 PUD Amendment, and the County Commissioners failed to properly consider and give effect to such purpose and intent in interpreting the Cordillera PUD;

c. Despite acknowledging an ambiguity exists in the language of the Cordillera PUD that resulted from the 2009 PUD Amendment, the County Commissioners failed to properly consider and give effect to the legislative intent when construing the statutory ambiguity; and

d. The County Commissioners affirmation of the Director's Interpretation resulted in a major modification to the Cordillera PUD by causing a significant alteration of the character of the Lodge and Village Center Parcels without the required amendment of the Cordillera PUD.

60. The County Commissioners' affirmation of the Director's Interpretation was contrary to the evidence in the record and/or otherwise devoid of evidentiary support.

61. The County Commissioners' affirmation of the Director's Interpretation was contrary to the express language of the Cordillera PUD and the Land Use Regulations.

62. The County Commissioners' affirmation of the Director's Interpretation was contrary to Colorado law.

63. There is no other plain, speedy, and adequate remedy at law.

64. Thus, the Association/District is entitled to an order overturning the County Commissioners' affirmation of the Director's Interpretation.

WHEREFORE, the Association/District prays for the following relief:

A. An order overturning or invalidating the County Commissioners' affirmation of the Director's Interpretation; and

B. An award of damages, costs, reasonable attorneys' fees, pre-judgment interest, post-judgment interest, and/or any other relief that the Court may deem just.

Plaintiff intends to file a motion requiring certification of the record after such time as the undersigned is able to confer with counsel for the County requiring the scope of the record on judicial appeal and the reasonable period needed to compile the record (including, specifically, the time needed to obtain transcripts recorded public hearings).

Respectfully submitted on November 8, 2016.

JOHNSON & REPUCCI LLP

s/ Lew M. Harstead

Lew M. Harstead

*Attorneys for Plaintiffs the Cordillera Property  
Owners Association, Inc. and the Cordillera  
Metropolitan District*

Address of Plaintiffs:

Cordillera Property Owners Association, Inc.  
Cordillera Metropolitan District  
c/o Johnson & Repucci LLP  
2521 Broadway, Suite A  
Boulder, Colorado 80304