

<p>DISTRICT COURT, EAGLE COUNTY, COLORADO</p> <p>Eagle County Justice Center 885 Chambers Avenue Eagle CO 81631</p> <hr/> <p><b>Plaintiff:</b> MICHELE C. LARSON</p> <p>v.</p> <p><b>Defendant:</b> EAGLE COUNTY, COLORADO, acting by and through the BOARD OF COUNTY COMMISSIONERS OF EAGLE COUNTY</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff Michele C. Larson:</p> <p>Terence P. Boyle, #14515 Boyle/Apelman PC 1775 Sherman Street, Suite 1425 Denver, CO 80203 303-863-8900 303-863-0063 (fax) <a href="mailto:tboyle@ba-lawyers.com">tboyle@ba-lawyers.com</a></p> <p>Matthew R. Larson, #36241 1025 South Josephine Street Denver, CO 80209 303-808-6997 206-984-2448 (fax) <a href="mailto:Matt@MRLinvestments.com">Matt@MRLinvestments.com</a></p>	<p>Case Number: 16CV30213</p> <p>Div: 1</p>
<p style="text-align: center;"><b>FIRST AMENDED COMPLAINT</b></p>	

Plaintiff Michele C. Larson, through her counsel Boyle/Apelman PC and Matthew R. Larson, for her First Amended Complaint against Defendant Eagle County, Colorado, acting by and through the Board of County Commissioners of Eagle County, alleges and states as follows:

## PARTIES

1. Plaintiff Michele C. Larson (“Larson”) is an individual with a primary residence at 150 Casteel Ridge, Edwards, CO 81632.

2. Larson owns real property in Eagle County, Colorado, legally described as (the following, the “Larson Property”):

LOT 39, CORDILLERA SUBDIVISION FILING NO.2, ACCORDING  
TO THE FIRST AMENDED FINAL PLAT OF CORDILLERA  
SUBDIVISION FILING NO.1 & NO.2 RECORDED AUGUST 29, 1988  
IN BOOK 490 AT PAGE 195, COUNTY OF EAGLE, STATE OF  
COLORADO.

3. Defendant, Eagle County, Colorado (the “County”), is a home-rule county in, and political subdivision of, the State of Colorado.

4. The Board of County Commissioners of Eagle County (the “BOCC”) is a duly authorized and elected body of Eagle County, Colorado.

## JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to C.R.C.P. 57 and the Colorado Uniform Declaratory Judgment Act, C.R.S. § 13-51-101, et seq.

6. Venue is proper under C.R.C.P. 98 because the Larson Property is located in the Cordillera PUD (as defined below) of Eagle County, which is a subject of this action.

## BACKGROUND

7. This First Amended Complaint challenges the validity of an interpretation letter issued on June 1, 2016 (see Exhibit 1, attached) and re-issued in an undated letter on July 11, 2016 (see Exhibit 2, attached), by the Managing Director of Community Development of Eagle County (the “Director”) regarding uses purportedly allowed on the Lodge Parcel and Village Center Parcel in the Cordillera Subdivision in Eagle County, Colorado pursuant to the Cordillera Subdivision Eleventh Amended and Restated Planned Unit Development Control Document (the “Cordillera\_PUD”). See Exhibit 3, attached.

*The Cordillera PUD Governs All Land Uses in Cordillera and Mandates that All Such Uses Support the Resort Residential Uses of the Community*

8. The Cordillera PUD has been approved by the BOCC. The Cordillera PUD sets forth the land uses and development standards for all properties of Cordillera. The Cordillera PUD is intended to replace the standard zoning provisions contained in the Eagle County Land

Use Regulations ("ECLUR"). The specific provisions of the Cordillera PUD shall supersede those of the ECLUR. Where the Cordillera PUD is silent the provisions of the ECLUR shall govern.

9. Section 1.02 of the Cordillera PUD explicitly states that the purpose of the PUD is *"to insure that Cordillera is developed as a comprehensively planned resort residential community."* Section 1.03 provides that: *"The 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 throughout this [Cordillera PUD]."* Section 1.04 states that all provisions of the Cordillera PUD are to *"run in favor of the residents, occupants and owners of land within Cordillera."*

#### *The Lodge – the "Centerpiece" of the Community*

10. The Cordillera community was constructed around the Lodge and Spa at Cordillera (the "Lodge"), which is contained within the "Lodge Parcel," as that parcel is defined in the Cordillera PUD. See Cordillera PUD at Section 2.01. The Lodge has long been described as the "community centerpiece" and "crowning jewel of the community." It contains a high-end hotel, a restaurant, indoor and outdoor swimming pools, indoor and outdoor whirlpools, men's and ladies' steam baths and saunas, a gymnasium and a spa offering a variety of beauty and health services. It is the only resort facility in the community and has always been open to Cordillera residents and a central amenity to home ownership in Cordillera.

#### *The Village Center – the "Social Gathering Place" of the Community*

11. The "Village Center Parcel," as that parcel is defined in the Cordillera PUD, is adjacent to the Lodge. According to the Cordillera PUD: *"The intent of the Village Center is to provide a focal point to the community both within a physical design context and as a social gathering place.... The scope of the uses is intended to serve the needs of the residents, fractional interest owners and resort guests of Cordillera. Except for fractional interest owners and Lodge guests, the Village Center is not intended to service residents outside of Cordillera."* Cordillera PUD at section 3.01.

#### *The 2009 Amendment to the PUD did NOT introduce new or additional uses to Cordillera or substantively change the Existing PUD*

12. In 2009, Behringer Harvard Cordillera, LLC, ("BH"), the owner of the Lodge and Village Center Parcels, sought to amend the PUD in order to *"recognize the Lodge Parcel and the Village Center Parcel as a single planning parcel."* See Cordillera PUD at Resolution No. 2010-001 (second Whereas clause). In submitting the proposed amendment to the county, BH's attorneys explained: *"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." See Exhibit 4, attached.*

13. As part of the 2009 amendment process, BH proposed the inclusion of “Medical Offices/Facilities” as a permitted use in the Lodge and Village Center parcels. The purpose was to clarify that the Lodge was permitted to offer certain cosmetic services then in vogue to guests and residents. Although the described limited purpose was acceptable, the Cordillera community and Eagle County officials objected to the broad language proposed by BH because it was clear that not all medical offices/facilities were consistent with the purpose and intent of the Cordillera PUD. Accordingly, the proposal was changed to permit only “*Medical Offices/Facilities, limited to clinic and outpatient facilities for non-critical care, including without limitation, for outpatient plastic surgery and other cosmetic procedures.*”

14. Eagle County officials confirmed that this addition simply clarified the uses already allowed on the Lodge Parcel at that time and did not introduce a new use. In approving the amendment, the County Commissioners expressly found, as BH's attorneys had explained, that the “*PUD Amendment does not propose any new or additional uses within the Cordillera PUD.*” See Cordillera PUD at Resolution No. 2010-001 (at Section 2.(2)).

*BH Enters Into a Contract to Sell the Lodge and Village Center Parcels*

15. Sometime in the Spring of 2016, BH entered into a contract to sell the Lodge and Village Center Parcels to Concerted Care Group Management (“CCG”), a company based in Baltimore, Maryland. Although CCG has described its plans generally to the Vail Daily newspaper, so far as Plaintiff is aware, it has not filed a development application or plans with the County or in any other public forum describing the full extent of its planned usage of the properties.

16. CCG engaged Dominic Mauriello of the Mauriello Planning Group, LLC (“CCG’s Agent”) as an agent to work on the CCG’s behalf in working with the County. CCG also engaged Thomas J. Ragonetti, Esq. (“CCG’s Attorney”) to assist CCG in its dealing with the County. Mr. Ragonetti had represented BH in its 2009 application to amend the Cordillera PUD and had confirmed to Eagle County officials and to the Cordillera community that the amendment did “*not introduce new or additional density or uses to the Existing PUD, or otherwise substantively change the Existing PUD.*” See Exhibit 4, attached.

17. CCG’s Agent, Mr. Mauriello, is married to Diane H. Mauriello, who at the time was an Assistant County Attorney in Eagle County.

*CCG’s Request for Interpretation*

18. On May 2, 2016, CCG’s Agent contacted the Director to schedule a meeting on behalf of CCG to discuss an interpretation of the Cordillera PUD. Despite the fact that CCG’s Agent was soliciting a meeting of a public official to pursue a public determination, CCG’s Agent asked to “*keep the matter extremely confidential*” and “*on the down low.*” See Exhibit 5, attached.

19. CCG's Agent and CCG's Attorney met with the Director on or around May 24, 2016. At that meeting, CCG's Agent and CCG's Attorney apparently requested orally that the Director issue an interpretation whether CCG's proposed use represented a use-by-right on the Lodge and Village Center Parcels under the language added in the 2009 amendment to the Cordillera PUD permitting: "*Medical Offices/Facilities, limited to clinic and outpatient facilities for non-critical care, including without limitation, for outpatient plastic surgery and other cosmetic procedures.*" CCG apparently did not submit any written request to the Director or any written description of its proposed use of the property. No such request or description has been made publicly available.

*The Director Collaborated with CCG to Make the Director's Interpretation*

20. On May 26, 2016, CCG's Agent sent the Director an email setting forth the understandings apparently reached in the meeting with the CCG representatives and the Director regarding the treatment of the Proposed Use under the Cordillera PUD. CCG's Agent requested that the Director "*verify this understanding in a letter.*" See Exhibit 6, attached.

21. The following day, CCG's Agent emailed the Director asking when the letter requested by CCG would be completed. At that time the Director recognized that the Cordillera community members were concerned regarding the subject of the request and that an appeal of an interpretation was possible. Nevertheless, the Director neither contacted the Cordillera community nor sought to solicit its views.

22. In response to the email from CCG's Agent, the Director sent CCG's Agent and CCG's Attorney a copy of the Director's "DRAFT Cordillera Zoning Interpretation Letter" which the Director stated was being provided to the CCG representatives at the CCG Agent's suggestion. The Director requested that CCG's Attorney provide "*a once-over edit*" of the draft interpretation letter before the Director finalized his interpretation. See Exhibit 7, attached.

23. CCG's Attorney and CCG's Agent reviewed the Director's draft interpretation letter. In response, CCG's Attorney reviewed and approved the Director's draft interpretation letter, stating, "*This looks fine to me. Nice job, Bob.*" Similarly, CCG's Agent sent the Director an email stating, "*We are fine with the letter on our end.*" See Exhibit 8, attached.

24. After receiving CCG's approval for the language and conclusions set forth in the draft interpretation, the Director finalized, executed and issued the interpretation letter on June 1, 2016. Consistent with the collaboration between the Director and CCG's agents, the Director's Initial Interpretation letter stated that the Director believed that CCG's use represented a use-by-right on both the Lodge Parcel and the Village Center Parcel pursuant to the language added in the 2009 amendment to the Cordillera PUD permitting: "*Medical Offices/Facilities.*" See Exhibit 1, attached.

25. The Director subsequently asked the County Manager to "*help*" the County Commissioners "*understand that this interpretation was not made in a vacuum*" because CCG's

Attorney and the County Attorney assisted in the determinations made by the Director. See Exhibit 9, attached.

*This Lawsuit*

26. Plaintiff filed her initial complaint (the “Initial Complaint”) on July 10, 2016, challenging the validity of the Director's June 1, 2016 Initial Interpretation. One of Plaintiff’s allegations was that the Initial Interpretation was issued despite the applicant’s lack of standing in violation of ECLUR Chapter 2, Article 5-220(C)(1). Specifically:

- a. CCG is not a landowner of unincorporated Eagle County;
- b. CCG is not a citizen of unincorporated Eagle County (nor a registered entity of Colorado); and
- c. CCG has not submitted a development application to the County pursuant to the procedures and standards of the ECLUR.

27. On July 7, 2016, BH submitted a letter to the Director stating that it *"has standing as a property owner in unincorporated Eagle county to have CCG and its representatives and consultants act as our agents."* See Exhibit 10, attached.

28. On July 11, the day after Plaintiff filed her Initial Complaint, the Director rescinded his June 1 Initial Interpretation, stating in an undated letter *"...after consultation with our legal counsel, I feel it is best to clean up and moot any argument of procedural irregularity.... Accordingly, I shall rescind my interpretation of June 1, 2016. I will consider the Letter of July 7, 2016, to be a new request for interpretation from Behringer Harvard Cordillera, LLC. My interpretation will be identical to that interpretation given on June 1, 2016. I am attaching that prior interpretation that shall serve as my interpretation being given today in response to a request from Behringer Harvard Cordillera, LLC."* In other words, the Director rescinded his Initial Interpretation and, on the same day, simply re-issued exactly the same interpretation (the “Reissued Interpretation”). See Exhibit 2, attached.

29. Plaintiff’s Counsel met in person with Defendant’s Counsel on July 12, 2016. In the meeting, Plaintiff’s Counsel acknowledged that the standing allegation had apparently been cured, but expressed disappointment that the Director had simply immediately reissued the same interpretation without taking the time afforded by the ECLUR to receive comments, consider the issues and correct the other deficiencies in the interpretation that had been arrived at secretly through consultations with CCG's Agent and Attorney. (The June 1 Initial Interpretation and the July 11 Reissued Interpretation, which are the same, shall be referred to collectively as the “Zoning Interpretation.”)

30. Plaintiff files this First Amended Complaint because of the continued deficiencies in the Zoning Interpretation that make it invalid.

## GENERAL ALLEGATIONS

### *Failure to Consider and Identify Purpose*

31. ECLUR Chapter 2, Article 5-220(B)(1) specifically requires that:

*Before any interpretation is made, the purposes for which the regulation was initially adopted by the County Commissioners shall be identified.*

32. That is an important requirement. It ensures that any interpretation is consistent with the purpose of the provision being interpreted, and it enables interested parties to understand the interpretation and to assess whether it is reasonable and in accord with the intent of the governing land-use standards.

33. The Zoning Interpretation fails to comply with ECLUR Chapter 2, Article 5-220(B)(1). It identifies neither the overall purpose of the Cordillera PUD nor the purpose for which the particular provision being interpreted, which was added by the 2009 amendment, was originally adopted.

34. On information and belief, in requesting an interpretation of that provision in May 2016, CCG's Attorney made no mention of his earlier representation to Eagle County officials that "*the [2009] Amendment does not introduce new or additional ... uses to the Existing PUD, or otherwise substantively change the Existing PUD.*"

### *Insufficient Detail of CCG's Intended Uses*

35. ECLUR Chapter 2, Article 5-220(C)(2) provides:

*Before an interpretation shall be provided by the Planning Director, a Request for Interpretation shall be submitted to the Planning Director.*

36. Whatever request was made is known only by those few who were invited to attend the series of private meetings and conferrals between CCG's representatives and select County officials. No one from the Cordillera community or the public was invited.

37. Neither CCG in applying for, nor the Director in issuing, the Zoning Interpretation provided a detailed description of CCG's proposed use of the property. The Director could not properly approve CCG's request without such a full description of the proposed use.

38. In the absence of such a detailed description, the Director could not determine whether the proposed use is clearly permitted as a matter of right under the unambiguous language of the Cordillera PUD, and could therefore be properly approved through an administrative interpretation, or whether the proposed use could properly be approved only pursuant to an amendment to the PUD with opportunity for public comment and discussion.

39. In other words, it is critical to know exactly what CCG plans to do with the property in order to determine whether its plans are permitted and what procedures should be followed by the County to determine whether they should be permitted. It is essential to know therefore whether CCG plans to open a small clinic offering outpatient services only, as was contemplated by the 2009 PUD amendment, or a use offering some in-patient and some outpatient services, or whether it intends to take over entirely the Lodge and Village Center Parcels turning them essentially into an exclusive hospital for the very wealthy walling them off from and amputating them from the Cordillera community.

40. The Cordillera PUD mandates that any “major modifications” of the Cordillera PUD require formal amendment of the Cordillera PUD. See Cordillera PUD at Section 1.05.1. Moreover, the Eagle County Commissioners have recognized in the past that the proper procedure for considering changes in use under a PUD, particularly if there are any ambiguities in the language of the PUD, is not through an administrative interpretation, but through the process of an amendment to the PUD that allows open public comment, discussion and referral to local, county and state agencies, such as local emergency service providers, local hospitals, state licensing agencies, etc.

41. Any proposed use that would amputate the Lodge and Village Center Parcels from the Cordillera community and preclude access to them by Cordillera residents would affect a major change in the Cordillera community and a major modification to the Cordillera PUD and could be approved only through an amendment to the PUD after opportunity for public comment and discussion.

42. Any proposed use that would exceed the limited “Medical Offices/Facilities” uses by offering critical care, and/or by offering inpatient care, would affect a major change in the Cordillera community and a major modification to the Cordillera PUD and could be approved only through an amendment to the PUD after opportunity for public comment and discussion.

43. There is no unambiguous provision in the existing Cordillera PUD, even as amended in 2009, that would permit the uses described in paragraph 41 and/or 42 above. BH's lawyer, who is also CCG's current lawyer, confirmed that: *"The [2009] Amendment does not introduce new or additional ... uses to the Existing PUD, or otherwise substantively change the Existing PUD. Rather, the proposed changes ...[clarify] the treatment of the Lodge Parcel and the Village Center Parcel as a single planning parcel."* See Exhibit 4, attached.

44. The Zoning Interpretation was issued by the Director without a sufficiently detailed description of CCG's intended use that would have allowed an assessment of whether the County exceeded its statutory authority to regulate planned unit developments pursuant to C.R.S. 24-67-104 et seq.

45. C.R.S. 24-67-106(3) provides, in part:

*...no substantial modification, removal, or release of the provisions of the plan by the county or municipality shall be permitted except upon a finding by the county or municipality, following a public hearing called*



*and held in accordance with the provisions of section 24-67-104(1)(e) that the modification, removal, or release is consistent with the efficient development and preservation of the entire planned unit development, does not affect in a substantially adverse manner either the enjoyment of land abutting upon or across a street from the planned unit development or the public interest, and is not granted solely to confer a special benefit upon any person.*

46. The Director's failure to include a sufficiently detailed description of CCG's intended uses precludes the Director, the Plaintiff, the BOCC and other interested parties from making an assessment of whether CCG's proposed uses would constitute a "*substantial modification, removal, or release*" of the provisions of the Cordillera PUD.

*The Zoning Interpretation Was Arrived At Improperly*

47. Rather than following the open and transparent process contemplated by the ECLUR, CCG obtained the Zoning Interpretation through a series of secret meetings and conversations with County officials that were carefully concealed from the Cordillera community and the public generally. See Exhibit 5, attached.

*The Zoning Interpretation Failed to Include or Recite CCG's Request for Interpretation*

48. ECLUR Chapter 2, Article 5-220(C)(2) provides:

*Before an interpretation shall be provided by the Planning Director, a Request for Interpretation shall be submitted to the Planning Director.*

49. The capitalized term "Request for Interpretation" is not defined anywhere in the ECLUR.

50. A written Request for Interpretation was not included with the Zoning Interpretation. An oral Request for Interpretation was not recited in the Zoning Interpretation.

*The Reissued Interpretation Is Undated*

51. ECLUR Chapter 2, Article 5-2400(A)(1) provides:

*Initiation. The appeal shall be filed with the County Administrator within thirty (30) calendar days of the date of the written notice of the decision/interpretation of the Planning Director or County Engineer.*

52. The Reissued Zoning Interpretation is undated. See Exhibit 2, attached.

**FIRST CLAIM FOR RELIEF**  
**DECLARATORY JUDGMENT**

53. Plaintiff incorporates the allegations in paragraphs 1 through 52 of this First Amended Complaint.

54. Under C.R.C.P. 57(a) and the Colorado Uniform Declaratory Judgment Act, C.R.S. § 13-51-101, *et seq.*, this court has the power to declare the rights, status and other legal relations of the parties as pertains to the herein-described dispute.

55. Larson is an interested party entitled to a declaration of rights within the meaning of C.R.C.P. 57(b).

56. A judgment or decree in this case will terminate an actual and existing legal controversy or remove uncertainty and insecurity concerning the legal rights and relations between Larson and Eagle County, Colorado, acting by and through the Board of County Commissioners of Eagle County.

57. The court should declare that the County's issuance of the Zoning Interpretation is in violation of the ECLUR and state law and is therefore invalid.

WHEREFORE, Plaintiff requests that the Court:

- a. Declare that the County's Zoning Interpretation is null and void and of no effect;
- b. Grant injunctive relief preventing any action to be taken on the County's Zoning Interpretation, including, the grant of any approvals on the basis of the Zoning Interpretation;
- c. Or in the alternative, grant injunctive relief until the Zoning Interpretation is rescinded and modified to:
  - i. Identify the purposes for which the Cordillera PUD, and the specific sections of the Cordillera PUD referenced in the Zoning Interpretation, were initially adopted by the County Commissioners so as to comply with ECLUR Chapter 2, Article 5-220(B)(1);
  - ii. Provide sufficient detail of CCG's intended uses so as to permit an assessment of whether the intended uses constitute a "major modification" under the Cordillera PUD and/or exceed the County's statutory authority to regulate planned unit developments pursuant to C.R.S. 24-67-104 *et seq.*;
  - iii. Include a written Request for Interpretation by CCG to comply with ECLUR Chapter 2, Article 5-220(C)(2);

- iv. Recite the Director's explanation of his conclusion for why "*clinic*" includes "*inpatient clinical facilities*;" and
  - v. After a Request for Interpretation has been received by the County that satisfies paragraphs ii. (sufficient detail) and iii. (written Request for Interpretation) above, the Director shall take the full 21 calendar days afforded to the Director pursuant to ECLUR Chapter 2, Article 5-220(C)(3) before reissuing any subsequent interpretation to allow members of the Cordillera community to offer input to balance CCG's prior exclusive influence.
- d. Award Plaintiff its cost and reasonable attorney's fees incurred in this action; and
  - e. Award Plaintiff further relief as this Court deems appropriate.

DATED this 8th day of August 2016.

Respectfully submitted,

BOYLE/APELMAN PC

*Pursuant to CRCP Rule 121, Section 1-26(9),  
a duly signed original of this document is on file  
at the offices of Boyle/Apelman PC*

/s/ Terence P. Boyle

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