

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO 7325 S. Potomac Street Centennial, CO 80112 (303) 649-6355		
Plaintiff: RHR INVESTMENT, LLC, a Colorado limited liability corporation vs. Defendant: TRIPLE J ARMORY, INC., a Colorado corporation		▲ COURT USE ONLY ▲ Case No.: Div.:
<i>Attorney for Plaintiff RHR Investment, LLC:</i> ORTEN CAVANAGH & HOLMES, LLC Jonah G. Hunt, No. 34379 Marcus T. Dumville, No. 49471 Address: 1445 Market Street, Suite 350 Denver, CO 80202 Phone Number: (720) 221-9780 Fax Number: (720) 221-9781 Email: jhunt@ochhoalaw.com		
COMPLAINT AND JURY DEMAND		

Plaintiff RHR Investment, LLC (“RHR”), by and through its attorneys Orten Cavanagh & Holmes, LLC, files its Complaint and Jury Demand against the Defendant Triple J Armory, Inc. (“Triple J”) as follows:

PARTIES

1. RHR is a limited liability company with its principal street address located at P.O. Box 3955, Eagle, CO 81631 and is the record title owner of 8122 SouthPark Lane, Littleton, CO 80120 (“RHR Property”).

2. Triple J is a Colorado corporation with its principal street address located at 311 E. County Line Road, Suite A-6, Littleton, CO 80122 and is a tenant currently occupying the building located at 8152 SouthPark Lane, Littleton, CO 80120 (“Gun Property”). The Gun Property is directly adjacent to the RHR Property.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court pursuant to C.R.S. § 13-1-124(1), and venue is proper pursuant to C.R.C.P. 98(a) and 105, as this is an action concerning real estate located in Arapahoe County, Colorado.

GENERAL ALLEGATIONS

4. Both the RHR Property and the Gun Property are located within the SouthPark Owners Association, Inc. (“SPOA”).

5. SPOA was incorporated on February 1, 1983, and is a nonprofit Corporation and mixed-use community with its principal street address located at c/o Custom Management Group, Inc., 2950 S. Jamaica Court, Suite 101, Aurora, CO 80014.

6. SPOA is charged with the affirmative duties of management, maintenance and care of certain real property and with performing the obligations as set forth in that certain Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of SouthPark dated June 26, 1992 and recorded July 13, 1992 at Reception No. 9200073858 in the records of the Arapahoe County Clerk and Recorder, Arapahoe County, Colorado (“SPOA Declaration”). See *Exhibit 1* attached hereto.

7. Both the RHR Property and the Gun Property are also subject to that certain sub-Association Declaration entitled Grant of Reciprocal Easements and Declaration of Covenants Parklane Business Park recorded January 3, 2003 at Reception No. B3001613 in the Arapahoe County Clerk and Recorder, Arapahoe County, Colorado (“Parklane Declaration”). See *Exhibit 2* attached hereto.

8. Section 2, Subsection 2.1 of the Parklane Declaration provides, in pertinent part, that “[t]he Property is made subject to the conditions, covenants, restrictions and easements set forth herein, all of which shall be deemed to run with the Property and each and every Parcel thereof...(d) to protect and enhance the quality, value, desirability and attractiveness of the Property.”

9. The “Property,” as provided for in Section 2, Subsection 2.1 of the Parklane Declaration, is defined as Parcel 1 (the RHR Property) and Parcel 2 (the Gun Property). A copy of the plat map which identifies the respective Parcels is attached hereby as *Exhibit 3*.¹

10. Recital C to the Parklane Declaration provides that use and development of the RHR Property and Gun Property is subject to certain provisions of the SPOA Declaration, including, but not limited to, “Section 2.2 that outlines the Permitted Uses applicable to the

¹ A full size copy of the plat map will be physically deposited with the Court for ease of viewing and reference.

Property; and Article 3, Regulation of Improvements, including such matters as... off-street parking...”

11. As the owner of the RHR Property, RHR has the right to enforce the covenants under both the SPOA Declaration and the Parklane Declaration. *See* Recital C and Sections 2.8, 3.3, and 8.1 of the Parklane Declaration.

I. Use, Permitting, and Occupation of the Gun Property.

12. In October 2017, Triple J applied to SPOA to change the use of the Gun Property from light industrial warehouse and office, to retail and office.

13. On May 10, 2018, Triple J submitted an application for a building permit for retail firearms and a two-phase indoor firearms/shooting range to the City of Littleton (“City”).

14. On June 13, 2018, the City had to issue a “Stop Work Order” to Triple J as work was being conducted at the Gun Property prior to issuance of a building permit.

15. Triple J described its intentional noncompliance with the City’s permitting process as a “calculated risk.”²

16. Thereafter, Triple J separated the project into two distinct phases, requiring two permits - one for the retail shop and the second for the indoor shooting range.

17. Even though the City was also “concerned with this type of use,” and had received multiple letters of protest from concerned citizens, it issued the first building permit for the retail portion of the project on July 19, 2018. *See Exhibit 4* attached hereto.

18. Final building inspections for the retail portion were completed on September 27, 2018 and Triple J was permitted to open its retail operation on that date.

19. On December 10, 2018, Triple J paid the fee and picked up the second building permit for the shooting range phase of the project.

20. Triple J currently occupies and is an “occupant” of the Gun Property as defined under Section 1.7 of the Parklane Declaration.

21. As the current tenant and occupant of the Gun Property, Triple J is similarly bound by the SPOA Declaration (Section 1.5) and the Parklane Declarations (Section 1.7).

22. Section 2.1 of the SPOA Declaration and Section 3.5 of the Parklane Declaration also both prohibit the use of the Gun Property for any “offensive, noisy, or dangerous” trade, activity, or occupation.

² <http://littletonindependent.net/stories/pressures-grow-against-gun-store-shooting-range,268147>

23. Triple J experienced three violent robberies within a one-year period (e.g. June 2016, November 2016, and May 2017)³ before leasing the Gun Property. Two of the robberies (of guns and cash) involved parties driving a vehicle into the storefront of Triple J's operations.

24. This concern was not alleviated by the move to the Gun Property. In connection with the permitting process, an architect was engaged to opine on whether the Gun Property had a "location that has the potential for a vehicle to penetrate the exterior surface of the building." See *Exhibit 5* attached hereto.

25. Moreover, as will be addressed below, Triple J's employees and customers which utilize the non-exclusive parking spaces will, as a matter of necessity, need to cross over the RHR Property to access the Gun Property.

26. To accommodate its tenant, the RHR Property has a no-firearms policy and signage reflecting same.

27. Triple J's patrons will likely be carrying firearms, infringing upon RHR's private property rights, raising legitimate safety concerns and tortuously interfering with RHR's lease with its tenant.⁴

II. Triple J's Inability to Comply with Existing Parking Requirements.

28. Section 3.4 of the SPOA Declaration states in part that "[a]dequate off-street parking shall be provided by each Owner and tenant for his employees, customers and visitors... [and] [s]pecific parking requirements shall be set forth in the Guidelines..."

29. As stated in Section G of the SouthPark Development Guidelines ("SPOA Guidelines"), 1 parking space per 200 square feet of gross floor area⁵ is required for retail, and 1 parking space per 300 square feet of gross floor area is required for office. The SPOA Guidelines are attached hereto as *Exhibit 6*.

30. The RHR and Gun Properties share 15 non-exclusive parking spaces. See Exhibit 3.

³ <https://www.denverpost.com/2017/05/24/littleton-gun-shop-smash-grab/>

⁴ RHR reserves all rights and remedies as against Triple J for tortious interference with contract with respect to its tenant, and occupancy of the RHR Property.

⁵ The gross area (or square footage) of a building is the total floor area of a building measured from the outside walls. This can be contrasted with the net usable area, which is the total interior area of the building that can be occupied by the tenant, measured inner wall to inner wall. *University of Chicago – June 2009 - Standards for Building Measurement*.

31. Triple J's buildout plans call for exclusive parking consisting of 34 general parking spaces and 2 handicap spaces, for a total of 36 spaces being available. See **Exhibit 7** attached hereto.

32. Section 1.9 of the Parklane Declaration, titled "Parking Area," states in pertinent part as follows:

"Except as to the non-exclusive Parking Area, as identified on Exhibit F, Parking Areas on each Parcel shall be for the exclusive use of the Owner, Occupants or Users of such Parcel... All Parking Areas are considered Common Areas for the purpose of maintenance, repair and replacement; provided, however, only certain Parking Areas are intended for the nonexclusive use of Owners, Occupants and Users in the area identified on Exhibit F."⁶

33. Section 6.1 of the Parklane Declaration, provides as follows under "Parking Area":

"Non-Exclusive Use. All parking in the Common Area is shown on Exhibit C hereto and shall be for the exclusive use of all Owners, Occupants and Users of the Parcel on which it is located; provided, however, the Fifteen (15) parking spaces identified on Exhibit F shall be for the non-exclusive use of all Owners, Occupants and Users. **In any instance where the amount of parking allocated to the separate Parcels is relevant, such as in meeting City of Littleton parking requirements, Exhibit C hereto, shall be controlling.**" [Emphasis added].

34. Pursuant to Section 6.1 of the Parklane Declaration, Triple J is expressly precluded from usurping the 15 non-exclusive parking spaces for purposes of meeting its own parking requirements.

35. Accordingly, Triple J will not have enough exclusive parking spaces to support a retail gun shop and an indoor shooting range, at least at their current square footage, as Triple J's parking requirements will exceed what is permitted under the Declarations and the Guidelines.

36. Triple J's misappropriation of RHR's exclusive parking will constitute a nuisance under SPOA Declaration Section 2.1 and 6.2 and Parklane Declaration Sections 3.5(i) and (iii).

i. Triple J's Erroneous Calculations

37. Pursuant to Triple J's own "Parking Calculations" (as submitted to the City and SPOA), its operations will include a total of 11,766 square feet of office space, and 7,979 square feet of retail space, for a total of 19,745 square feet. Triple J's own parking calculations indicate that they will require 48.4 (i.e. 49) parking spaces. See Exhibit 7.

⁶ The parking spaces referenced in Exhibit F are depicted on the full size plat map physically deposited with the Court as provided above.

38. Triple J's parking calculations are materially and intrinsically erroneous in four regards.

39. First, the actual *gross* square footage of the Gun Property is 21,004 pursuant to the Arapahoe County Assessor, and Triple J's own sublease brochure, rather than the 19,745 square feet as Triple J claims, resulting in a net difference of 1,259 square feet. The sublease brochure is attached hereto as ***Exhibit 8***.

40. Under Section G.1 of the Guidelines, parking is calculated pursuant to gross square footage, rather than net usable area or some other metric.

41. The sublease brochure advertises the Gun Property to the general public as having 21,004 square feet and 51 parking spaces.

42. Second, Section 6.1 of the Parklane Declaration provides that the 15 non-exclusive (shared) parking spaces (referenced in Exhibit F to the Parklane Declaration) may not be used for determining the parking requirement applicable to Triple J.

43. However, Triple J attempted to do just that in its parking calculations (i.e. "Parking Provided (Existing) – 34+2 HC +14 via Contract = 50"). *See* Exhibit 7.

44. Third, Triple J improperly attempted to exclude 6,093 square feet of the shooting range lanes from its parking calculations, as being "not occupied" and thus not subject to the parking requirement.

45. Assuming bullets are flying over and through the air space contained within the four walls of the Gun Property, as would be anticipated at a shooting range, that square footage would be considered as being used and occupied by Triple J for parking calculation purposes.

46. Thus, Triple J improperly attempted to exclude or reduce over 6,093 square feet in the Gun Property with respect to its parking calculations.

47. Fourth, 20-30% of the 5,066 square feet designated as "First Floor B – Business (Existing)" on Triple J's Parking Calculations is likely currently being used for retail, rather than office, which utilizes a parking factor of 1/200 rather than 1/300.

48. RHR will be requesting a certified floorplan of the Gun Property from Triple J, and will be filing a motion for entry upon land pursuant to C.R.C.P. 34 to inspect the Gun Property and verify the floorplan prior to the date of the preliminary injunction hearing.

ii. Walker Consultants' Calculations Articulate Triple J's Actual Parking Requirements

49. Attached as *Exhibit 9* hereto is a Gun Range Parking Analysis and report from Walker Consultants dated January 11, 2019.

50. The Walker report analyzes parking requirements for shooting ranges and opines with respect to the minimum off-street parking code requirements for the Gun Property, found in Section 10-4-9 of the Littleton Municipal Code ("Code").

51. The report finds that when taking into account the Code, the proposed uses of the Gun Property, and Triple J's square footage calculation of 19,745 (which likely utilized net usable area, rather than gross square footage as required under Section G.1 of the SPOA Guidelines), that 77 exclusive parking spaces are required.

52. Thus, the Walker report concludes that Triple J does not have and cannot meet the parking space requirements as set forth under the SPOA Guidelines and the respective Declarations.

53. This conclusion remains the same regardless of whether the Gun Property is subleased either in part or in whole.

54. With the planned exclusive parking availability of just 34 general spaces and 2 handicap spaces, for a total of 36, Triple J is left with an overall projected deficit of 41 spaces.

iii. Gross Square Footage Results in at Least 7 Additional Required Spaces

55. Significantly, when the actual gross square footage of 21,004 is utilized (as required under Section G.1 of SPOA's Guidelines), an additional 6.295 (or 7) parking spaces are required – meaning 84 exclusive parking spaces are required.

56. The above calculation applies the 1/200 parking requirement for retail space to the 1,259 additional gross square feet (from 19,745 to 21,004), and leaves an overall deficit of 48 spaces.

57. Moreover, it is estimated that 20-30% of the 5,066 square feet designated as "First Floor B – Business (Existing)" on Triple J's parking calculations is currently being used for retail, rather than office, meaning additional parking spaces will be required.

iv. Injunctive Relief Necessary to Protect RHR's Rights

58. Triple J is not entitled to usurp the non-exclusive parking spaces for its own benefit, at the exclusion of and detriment to RHR, its tenants and their guests. *See* Section 6.1 of the Parklane Declaration.

59. If Triple J is allowed to continue the proposed buildout and operation of a shooting range (utilizing the current amount of square footage), in plain violation of the parking restrictions in the SPOA Guidelines and respective Declarations, it will cause immediate and irreparable injury to RHR which can only be prevented by injunctive relief.

60. Under C.R.C.P. 65, Section 6.1 of the SPOA Declaration, and Section 9.2 of the Parklane Declaration, RHR is entitled to seek injunctive relief against any party violating or attempting to violate the covenants.

First Claim for Relief (Injunctive Relief)

61. RHR hereby incorporates each of the preceding allegations as if fully set forth herein.

62. Pursuant to C.R.C.P. 65, RHR requests an injunction to enjoin Triple J from continuing construction and the buildout of a shooting range at the Gun Property, or alternatively, to require Triple J to modify and/or downsize its operations in order to conform to the existing parking restrictions in the SPOA Guidelines and respective Declarations which only allocate to it 36 exclusive parking spaces.

63. RHR has a reasonable probability of success on the merits as Triple J is in clear violation of respective Declarations.

64. There is a danger of real, immediate and irreparable injury which may be prevented by injunctive relief, and there is no plain, speedy, or adequate remedy at law.

65. The granting of an injunction will not disserve the public interest and the balance of equities favors the injunction, which will preserve the status quo pending a trial on the merits.

66. Triple J is in violation of the respective Declarations, and RHR is therefore entitled to injunctive relief.

Second Claim for Relief (Breach of Covenant)

67. RHR hereby incorporates each of the preceding allegations as if fully set forth herein.

68. By virtue of occupying the Gun Property, Triple J agreed to abide by the terms of the Guidelines and the SPOA and Parklane Declarations.

69. Triple J has no right to use or possess parking spaces to which it is not legally entitled, and such unauthorized use will inure to the express detriment of RHR and its tenant.

70. The use of parking spaces above and beyond what is permitted under the respective Declarations constitutes a breach of those covenants.

71. Triple J's conduct is a breach of its obligations under the respective Declarations.

72. RHR has been damaged by Triple J's breach, in an amount to be determined at trial.

73. Pursuant to Section 6.3 of the SPOA Declaration and Section 9.3 of the Parklane Declaration, if RHR is determined to be the prevailing party, it shall be entitled to its attorney fees and costs.

WHEREFORE, Plaintiff RHR Investment, LLC respectfully requests this Court to enter an Order as follows:

- a. Entering a preliminary and permanent injunction against Triple J, enjoining it from continuing construction and the buildout of a shooting range at the Gun Property, or alternatively, to require Triple J to modify and/or downsize its operations in order to conform to the existing parking restrictions as stated in the SPOA Guidelines, and the SPOA and Parklane Declarations;
- b. Finding that Triple J's conduct and actions constitute a breach of the covenants contained in the respective Declarations;
- c. For attorney fees and costs pursuant to the respective Declarations;
- d. For any such further relief as this Court deems proper; and
- e. For leave to amend its Complaint as needs and circumstances may justify.

RHR INVESTMENT, LLC DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted this 29th day of January, 2019.

ORTEN CAVANAGH & HOLMES, LLC

By: /s/ Jonah G Hunt
Jonah G. Hunt, No. 34379

Attorneys for RHR Investment, LLC