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<p>DISTRICT COURT, COUNTY OF LARIMER STATE OF COLORADO 201 La Porte Ave Suite 100 Ft. Collins, CO 80521 (970) 494-3500</p>	<p>DATE FILED: March 24, 2021 12:33 PM FILING ID: 7AF7BC5550666 CASE NUMBER: 2021CV30210</p>
<p><b>RE DENVER and COLORADO FLOORING INDUSTRIES, Inc. as tenants in common, and OSF INVESTMENTS, LLC d/b/a Carpet Exchange, a Washington Limited Liability Company</b> Plaintiffs,</p>	<p>▲ COURT USE ONLY ▲</p>
<p>v.</p>	<p>Case Number:</p>
<p><b>CITY OF FORT COLLINS, a home rule city, and CITY OF FORT COLLINS PLANNING AND ZONING BOARD, STAN SCOTT, and GUARDIAN STORAGE FORT COLLINS, LLC dba GUARDIAN SELF STORAGE</b> Defendants.</p>	<p>Div.          Ctrm:</p>
<p>Attorneys for Plaintiff Jon T. Bradley, #10143 Kelci L. Sundahl, #51397 BRADLEY DEVITT HAAS &amp; WATKINS, P.C. South Mesa Professional Building 2201 Ford Street Golden, Colorado 80401 Telephone Number: (303) 384-9228 Facsimile Number: (303) 384-9231 e-mail: <a href="mailto:jon@goldenlawyers.com">jon@goldenlawyers.com</a> e-mail: <a href="mailto:kelci@goldenlawyers.com">kelci@goldenlawyers.com</a></p>	
<p><b>DISTRICT COURT CIVIL SUMMONS</b></p>	

**TO THE ABOVE NAMED DEFENDANT: CITY OF FORT COLLINS**

**YOU ARE HEREBY SUMMONED** and required to file with the Clerk of this Court an answer or other response to the attached Complaint. If service of the Summons and Complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 21 days after such service upon you. If service of the Summons and Complaint was made

upon you outside of the State of Colorado, you are required to file your answer or other response within 35 days after such service upon you. Your answer or counterclaim must be accompanied with the applicable filing fee.

If you fail to file your answer or other response to the Complaint in writing within the applicable time period, the Court may enter judgment by default against you for the relief demanded in the Complaint without further notice.

Dated: March 24, 2021

BRADLEY DEVITT HAAS & WATKINS, P.C.  
Attorneys for Plaintiff

By: /s/ Jon T. Bradley  
Jon T. Bradley, #10143

**This Summons is issued pursuant to Rule 4, C.R.C.P., as amended. A copy of the Complaint must be served with this Summons. This form should not be used where service by publication is desired.**

**WARNING:** A valid summons may be issued by a lawyer and it need not contain a court case number, the signature of a court officer, or a court seal. The plaintiff has 14 days from the date this summons was served on you to file the case with the court. You are responsible for contacting the court to find out whether the case has been filed and obtain the case number. If the plaintiff files the case within this time, then you must respond as explained in this summons. If the plaintiff files more than 14 days after the date the summons was served on you, the case may be dismissed upon motion and you may be entitled to seek attorney's fees from the plaintiff.

**TO THE CLERK:** If the summons is issued by the clerk of the court, the signature block for the clerk or deputy should be provided by stamp, or typewriter, in the space to the left of the attorney's name.

DISTRICT COURT, COUNTY OF LARIMER  
STATE OF COLORADO  
201 La Porte Ave  
Suite 100  
Ft. Collins, CO 80521  
(970) 494-3500

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**RE DENVER and COLORADO FLOORING  
INDUSTRIES, Inc. as tenants in common, and OSF  
INVESTMENTS, LLC d/b/a Carpet Exchange, a  
Washington Limited Liability Company**  
Plaintiffs,

v.

**CITY OF FORT COLLINS, a home rule city, and CITY  
OF FORT COLLINS PLANNING AND ZONING  
BOARD, STAN SCOTT, and GUARDIAN STORAGE  
FORT COLLINS, LLC dba GUARDIAN SELF  
STORAGE**  
Defendants.

Attorneys for Plaintiff  
Jon T. Bradley, #10143  
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**DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING  
OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY  
COMPLAINT**

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. Simplified Procedure under C.R.C.P. 16.1 **applies** to this case **unless** (check one box below if this party asserts that C.R.C.P. 16.1 **does not** apply):

This is a class action, forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, **or**

This party is seeking a monetary judgment against another party for more than \$100,000.00, including any penalties or punitive damages, but excluding attorney fees, interest and costs, as supported by the following certification:

By my signature below and in compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed \$100,000."

**Or**

Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.

3.  This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

**RESPECTFULLY** submitted this 24<sup>th</sup> day of March, 2021.

**BRADLEY DEVITT HAAS & WATKINS, P.C.**  
Attorneys for Plaintiffs

By: /s/ Jon Bradley  
Jon T. Bradley, #10143

**NOTICE**

This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.

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STATE OF COLORADO  
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**COMPLAINT**

COME NOW THE Plaintiffs, by and through their counsel, Bradley Devitt Haas & Watkins P.C., with their Complaint against the Defendants, and in support thereof state and allege as follows:

## **PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff OSF Investments, LLC (Carpet Exchange) is a Washington Limited Liability Company doing business under the name “Carpet Exchange” in Colorado and is a tenant in occupancy of the premises located at 5000 S. College Ave., Fort Collins, CO.
2. Plaintiffs RE Denver and Colorado Flooring Industries, Inc. are tenants in common and owners of the property located at 5000 S. College Ave., Fort Collins, CO., the parcel adjacent to the parcel which is the subject of the application by Guardian Self Storage.
3. Defendant City of Fort Collins is a home rule municipality located in Larimer County Colorado.
4. The City of Fort Collins Planning and Zoning Board is a quasi-legislative Board and conducts hearings in accordance with its bylaws and the municipal code of the City of Fort Collins.
5. Defendant Stan Scott is the owner of the property subject matter of the application for a self storage development.
6. Defendant Guardian Storage Fort Collins, LLC, dba Guardian Self Storage (Guardian Self Storage) is the applicant for a PDP request in the City of Fort Collins, case number PDP 190020, which came before the Planning and Zoning Board for hearing on March 11, 2021.
7. Venue is appropriate in Larimer County Colorado because at least one defendant resides in Larimer County Colorado and the property which is the subject matter of this litigation is located in Larimer County Colorado.

## **GENERAL ALLEGATIONS**

8. On or about March 11, 2021 the Planning and Zoning Board conducted a hearing regarding an application of defendant Guardian Self Storage for a development of the parcel owned defendant Stan Scott, located immediately to the south of the property owned by plaintiffs RE Denver and Colorado Flooring Industries, Inc., and occupied by plaintiff Carpet Exchange, for a large storage facility.
9. The application requested exceptions from the requirements of the planning and zoning code as well as the Transit Oriented Development Overlay (TDO).
10. The zoning code as well as the TDO *prohibit* ground-floor storage as a use in that district. Section 3.10 of the land use code contains Development Standards for the Transit-Oriented Development Overlay Zone. In section 3.10.2 (A) it states the following under the heading of permitted uses: “Ground floor enclosed mini-storage shall be

prohibited.”

11. Contrary to the specific and explicit requirements of the zoning code and TDO, The Planning and Zoning Board approved the application of Guardian Self Storage.

12. The Planning and Zoning Board was acting in a judicial or quasi-judicial function and has exceeded its jurisdiction, or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law.

### **FIRST CLAIM FOR RELIEF**

#### **(Judicial Review and Appeal pursuant to C.R.C.P. Rule 106 (a) (4))**

13. Plaintiff hereby incorporates paragraphs 1 through 12 as though fully set forth herein.

14. Plaintiffs seek review by this Court of the record and the actions of the City of Fort Collins and the City of Fort Collins Planning and Zoning Board which occurred on March 11, 2021.

15. The record demonstrates that the actions of the City of Fort Collins Planning and Zoning Board were arbitrary and capricious and that the Planning and Zoning Board exceeded its jurisdiction or abused its discretion.

16. Review of the actions of the City of Fort Collins Planning and Zoning Board is necessary because there is no plain, speedy, and adequate remedy otherwise provided by law.

17. The actions of the Planning and Zoning Board which took place on March 11, 2021 with regard to the application of Guardian Self Storage need to be reversed and an order restraining the Planning and Zoning Board and the City of Fort Collins from granting any permits or permitting the development to go forward.

### **SECOND CLAIM FOR RELIEF**

#### **(Declaratory Relief)**

18. Plaintiffs hereby incorporate paragraphs 1 through 17 as if fully set forth herein.

19. C.R.C.P. 57 provides that “District and superior courts within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”

20. C.R.C.P. 57 further provides that “Any person..., whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may

have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.”

21. Plaintiffs, as neighboring property owners and business owners will have their rights affected by the interpretation of the municipal zoning code for the City of Fort Collins regarding the application by Guardian Self Storage for a PDP and exceptions. The plaintiffs have standing to seek declaratory relief hereunder.

22. Guardian Self Storage applied for a PDP which application was heard before the Planning and Zoning Board on March 11, 2021. The Planning and Zoning Board approved 2 motions by margins of 4 to 3 approving an exception to the Planning and Zoning Code allowing first-floor self-storage and also approving the PDP application of Guardian Self Storage.

23. The City of Fort Collins has adopted and approved a Planning and Zoning Ordinance.

24. The City of Fort Collins has also approved a South College Corridor Plan. On page 38 of the South College Corridor Plan policy LU 1.4 states:

“Minimize Low Activity Uses. Uses that detract from the overall vitality of the Corridor, including used car lots, outdoor storage, and storage unit uses, are to be located away from the South College frontage.

25. The use applied for by Guardian Self Storage directly fronts on College Avenue and the applied for use is in clear violation of the South College Corridor Plan.

26. The property where Guardian Self Storage has applied for the self storage building is also located in the TOD Overlay, where active uses should also be prioritized.

27. First-floor self-storage is a prohibited use in the TOD overlay. The zoning code as well as the TDO *prohibit* ground-floor storage as a use in that district. Section 3.10 of the land use code contains Development Standards for the Transit-Oriented Development Overlay Zone. In section 3.10.2 (A) it states the following under the heading of permitted uses: “Ground floor enclosed mini-storage shall be *prohibited*.” (Emphasis added). The action of the Planning and Zoning Board authorizing such first floor storage is in clear violation of the Zoning Code and the TOD overlay.

Wherefore, plaintiffs respectfully request the Court as follows:

1. A certification of the record of the actions of the Planning and Zoning Board which occurred on March 11, 2021 regarding the application of Guardian Self Storage for the development of a storage facility.

2. A review by this Court of the record of the proceedings before the City of Fort Collins Planning and Zoning Board which occurred on March 11, 2021, upon the application of Guardian Self Storage for the development of a storage facility.
3. An order determining that the actions of the City of Fort Collins Planning and Zoning Board exceeded its jurisdiction and that the actions abused the discretion of the Planning and Zoning Board.
4. An order reversing the determination of the Planning and Zoning Board regarding the application of Guardian Self Storage and an order restraining the City of Fort Collins and the Planning and Zoning Board from issuing any permits or approvals for the proposed Guardian Self Storage project.
4. For a declaration and order that the Planning and Zoning Code, The South College Corridor Plan, and/or the TOD overlay prohibit the development of the Guardian Self Storage PDP and that the approval of said PDP by the Planning and Zoning Board is null and void.

RESPECTFULLY submitted this 24<sup>th</sup> day of March, 2021.

BRADLEY DEVITT HAAS & WATKINS, P.C.  
Attorneys for Plaintiffs

// original signatures on file at the above offices

By: /s/ Jon T. Bradley  
Jon. T. Bradley, #10143

Plaintiffs' Address:  
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Seattle, WA 98101

RE DENVER  
1904 3<sup>rd</sup> Avenue, Suite 325  
Seattle, WA 98101

COLORADO FLOORING INDUSTRIES, INC  
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Denver, CO 80223

OSF INVESTMENTS, LLC  
dba CARPET EXCHANGE  
5000 S. College Ave.  
Fort Collins, CO 80525