

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 19

DATE: August 19, 2003

FROM: Katie Moore

SUBJECT:

First Reading of Ordinance No. 111, 2003, Authorizing the City to Enter into a Revocable Lease with the Cortina Homeowners' Association for Portions of Public Right-of-Way for Underground Storage.

RECOMMENDATION:

Staff recommends adoption of the Ordinance on First Reading.

EXECUTIVE SUMMARY:

If adopted, this Ordinance would authorize the Mayor to enter into an agreement with the Cortina Homeowners' Association for a revocable lease of portions of public right-of-way to be used as underground storage for a proposed building on the southwest corner of the intersection of Canyon Avenue and Howes Street. The Canyon Avenue lease area is 478 square feet of surface area with a depth of 9 feet (approximately 77 feet in length and 6 feet in width). The other area is within the Howes Street right-of-way and measures 520 square feet of area and is also 9 feet in depth (approximately 84 feet in length and 6 feet in width). The lease area will be leased to and maintained by the Homeowners' Association of the "Cortina" project. This lease area only applies to the underground portions of the right of-way immediately adjacent to the proposed building, (more fully described on Exhibit "A" of the Lease and Attachment 1 of the Agenda Item Summary) and is to be used for the purpose of construction and maintaining underground storage for the building's tenants. The term of the lease is 99 years with the lease payment to be made in one lump sum upon commencement of the lease, at a rate of \$10 per square foot of the overlying surface area for a total of \$9,984.

ORDINANCE NO. 111, 2003
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY TO ENTER INTO A REVOCABLE LEASE
WITH THE CORTINA HOMEOWNERS' ASSOCIATION FOR
PORTIONS OF PUBLIC RIGHT-OF-WAY FOR UNDERGROUND STORAGE

WHEREAS, Sections 23-111 and 23-114 of the City Code authorize the leasing of City property for a term exceeding two years if the City Council finds by ordinance that such lease is in the best interest of the City; and

WHEREAS, the developer of a residential/commercial project to be constructed at the southwest corner of Howes Street and Canyon Avenue (the Cortina Project) desire to locate portions of a subterranean storage structure in and under portions of the right-of-way for Howes Street and Canyon Avenue; and

WHEREAS, the City Council is willing to enter into a 99-year lease for the above-stated purpose upon the terms and condition as are set out in the Lease Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Lease Agreement attached hereto and incorporated herein as Exhibit "A" is in the best interest of the City and the Mayor is hereby authorized to execute the Lease Agreement including such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary or appropriate to protect the interests of the City.

Introduced and considered favorably on first reading and ordered published this 19th day of August, A.D. 2003, and to be presented for final passage on the 2nd day of September, A.D. 2003.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 2nd day of September, A.D. 2003.

Mayor

ATTEST:

City Clerk

EXHIBIT "A"

LEASE AGREEMENT

This Lease Agreement is made and entered into this ____ day of _____, 2003, by and among THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (the "City") and CORTINA HOMEOWNERS' ASSOCIATION, a Colorado nonprofit corporation (the "Lessee").

WHEREAS, Section 23-111 and 23-114 of the City Code authorize the leasing of City property for a term exceeding two (2) years if the City Council finds by ordinance that such lease is in the best interest of the City; and

WHEREAS, the Lessee desires to locate portions of a subterranean storage structure (the "Structure") in and under certain property of the City; and

WHEREAS, the City and the Lessee desire by this Lease Agreement to establish the terms and conditions of the Lease for the premises where the Structure shall be constructed; and

WHEREAS, by Ordinance No. 111, 2003, the City Council authorized the Mayor to execute this Lease.

NOW, THEREFORE, in consideration of the promises of the parties hereto and the payment of the Lessee to the City as hereafter provided and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

1. **Covenant of Lease.** The City hereby leases to the Lessee for the purposes of constructing the Structure at the Leased Premises, which leased premises are described more particularly on Exhibit "A" attached hereto and incorporated herein by this reference. The Lessee shall not use the Leased Premises for any purpose other than for constructing and operating the Structure for storage purposes.

2. **Term of Lease.** The term of this Lease shall commence on the ____ day of _____, _____ and shall terminate precisely ninety-nine (99) years thereafter, unless earlier terminated in accordance with the provisions of paragraph 12 hereof. If, at the conclusion of this Lease, the parties mutually agree to enter into a new lease, they may negotiate such new lease upon terms similar to those contained in this Lease or otherwise, and present such lease to the City Council, requesting its approval under the laws governing the City then in effect.

3. **Lease Consideration.** The Lessee shall pay the sum of Nine Thousand Nine Hundred and Eighty Four Dollars and Forty Cents (\$9,984.40) as full consideration for the entire term of this Lease, such payment to be made upon execution of this Lease Agreement.

4. **Notice and Place of Payment.** All notices to the City should be sent to the following address:

City Engineer
P.O. Box 580
Ft. Collins, CO 80522

5. **Access and Preservation of Surface.** The Leased Premises shall be established in such manner that vehicular and pedestrian access on the surface above the Leased Premises is not impeded, and that the surface above the Leased Premises is not visibly affected in any way.

6. **Construction and Maintenance.** The Lessee shall construct the Structure in accordance with the plans and specifications approved by the City Engineer and dated _____ and shall maintain the Structure and the Leased Premises in a safe and healthy condition and in a manner which will provide adequate support for the City's usage of the overlying surface of the Leased Premises for street and sidewalk purposes. The Structure shall also be constructed and maintained to insure the City's free and readily accessible usage of the right-of-way for utility purposes as shown on the approved plans and specifications. The Lessee shall make available to the City such utility sleeves and conduits, without any charge to the City, as are shown on the approved plans and specifications.

7. **Governmental Regulations/Compliance with Covenants.** The Lessee shall comply with all laws, rules and regulations of any governmental agency having jurisdiction that are applicable to the Leased Premises, and the provision of Section 23-114 of the Code of the City. The failure of the Lessee to comply with the terms of this Lease Agreement or to vacate the Leased Premises upon revocation of the Lease, whether for cause or without cause, shall be deemed to constitute a violation of the Code of the City and shall be punishable in accordance with Section 1-15 of the Code.

8. **Insurance.** During the term of this Lease Agreement, the Lessee shall purchase and maintain general liability coverage in connection with the Leased Premises, including all improvements thereon, in the amount of One Million Dollars (\$1,000,000.00). The City shall be named as an additional insured on all such policies. All insurance required hereunder shall be issued by an insurance company authorized to do business in Colorado which meets all of the requirements of the Division of Insurance for that purpose. Upon each yearly renewal, the Lessee shall provide to the City proof of insurance coverage required herein.

9. **Disturbance to Leased Premises/Indemnification.** The Lessee shall exercise its privileges hereunder at its own risk. The City shall not be liable to the Lessee if, for any reason whatsoever, the Lessee's occupancy or use of the Leased Premises is hindered or disturbed, unless such hindrance or disturbance is directly and unlawfully caused by the City. The Lessee shall indemnify and hold the City harmless from and against any damage and against all liability for loss or expense (including attorneys' fees) resulting from, arising out of or in any way connected with the occupancy or use of the Leased Premises by the Lessee, tenants, guests, licensees or invitees of the Lessee.

10. **Nuisance.** The Lessee shall not use the Leased Premises for any purposes other than parking and storage and shall not perform, nor permit any of its tenants, guests, licensees or invitees to perform any disorderly conduct or commit any nuisance on the Leased Premises or use the Leased Premises in any way which interferes with the City's use of the overlying or underlying public property.

11. **Taxes.** The Lessee agrees to pay any taxes associated with the use and non-freehold ownership of the Leased Premises.

12. **Termination.** This Lease may be terminated for any of the following reasons:

(a) **Upon Vacation.** This Lease shall automatically terminate upon the effective date of any ordinance of the City Council vacating the right-of-way in and under which the Leased Premises is located.

(b) **At Will.** The City may terminate this Lease at its pleasure at any time during the term hereof by giving the Lessee no less than ninety (90) days advance written notice of such termination.

(c) **For Cause.** The City may terminate this Lease Agreement at any time during the term hereof in the event of a default or breach of any condition or warranty of this Lease Agreement by giving the Lessee written notice of such default. If the Lessee has failed to cure such default within ten (10) days after notice hereof, or such longer period as may reasonably be required given the nature of the default (but in no event longer than thirty [30] days), then this Lease Agreement, at the option of the City, may be terminated, and the Lessee shall thereafter have no further rights hereunder. The City may (but shall have no obligation to) permit the Lessee to cure a default within such time in excess of the aforesaid time limits as the City may establish in writing delivered to the Lessee.

(d) **Restoration on Termination/No Proration.** Upon termination of this Lease Agreement, the Lessee shall promptly remove all improvements or fixtures within the Leased Premises and restore the Leased Premises to its original condition, all at the Lessee's sole expense. In the event of termination, the City shall have no obligation to remit to the Lessee any unused rent.

13. **Assignment.** The Lessee's privileges hereunder shall not be assignable by the Lessee, in whole or in part, without obtaining the City's prior written approval.

14. **Attorneys' Fees and Costs.** In the event of a breach of this Lease Agreement by any of the parties, the non-breaching parties shall be entitled to recover their reasonable attorneys' fees and costs incurred in connection with the enforcement of this Lease Agreement.

15. **Applicable Law.** This Lease Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado, and the District Court of Larimer County, Colorado shall have sole jurisdiction in deciding disputes under the terms of this Lease Agreement.

16. **Binding Agreement.** All of the covenants and conditions of this Lease Agreement shall be binding on the parties hereto, their successors and assigns (if assignment is permitted by the City).

IN WITNESS WHEREOF, the parties have executed this Lease Agreement the day and year first above written.

THE CITY OF FORT COLLINS, COLORADO,
a municipal corporation

By: _____
Ray Martinez, Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

CORTINA HOMEOWNERS' ASSOCIATION, a
Colorado nonprofit corporation, Lessee

By: _____
William Coulson, President

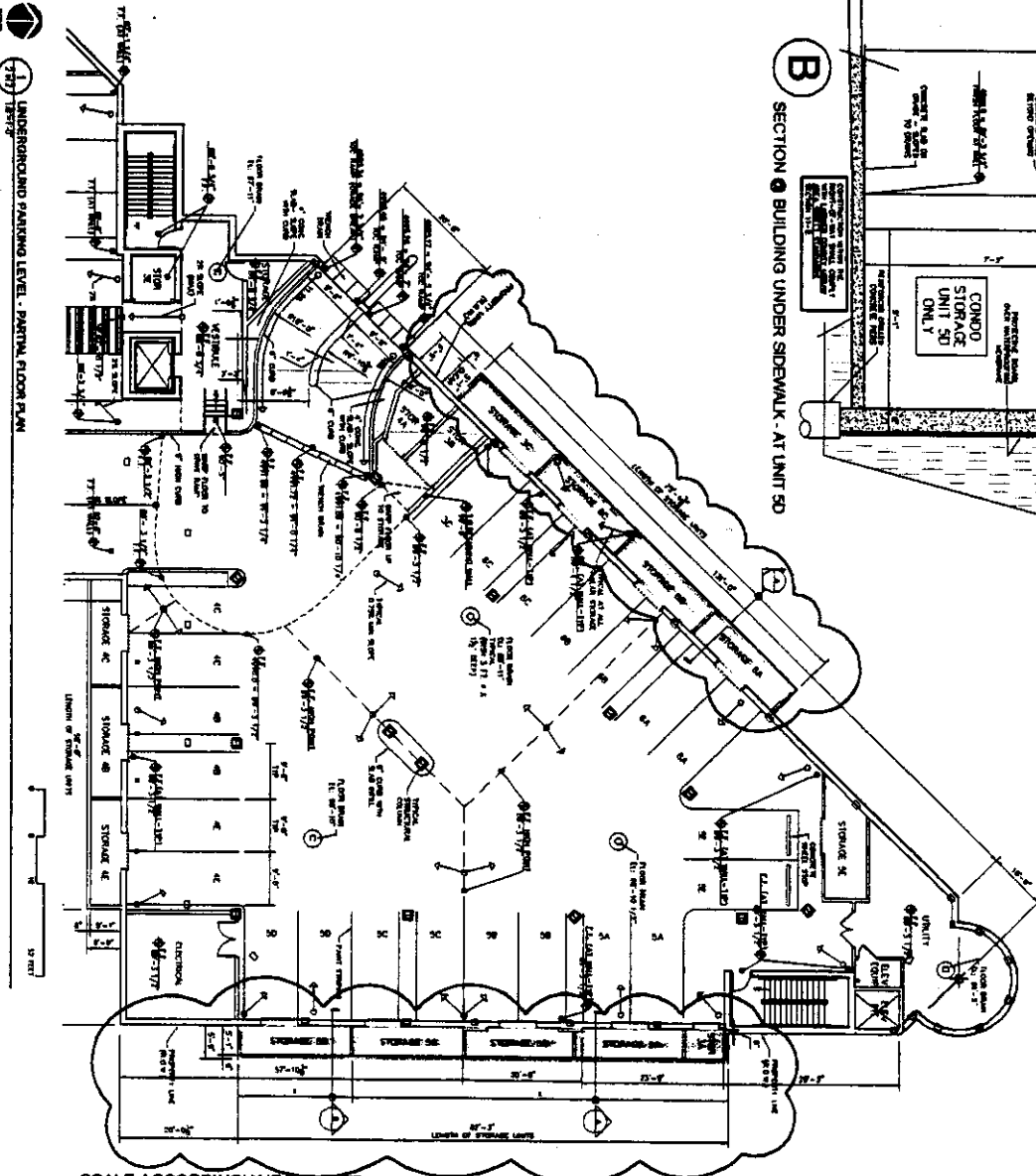
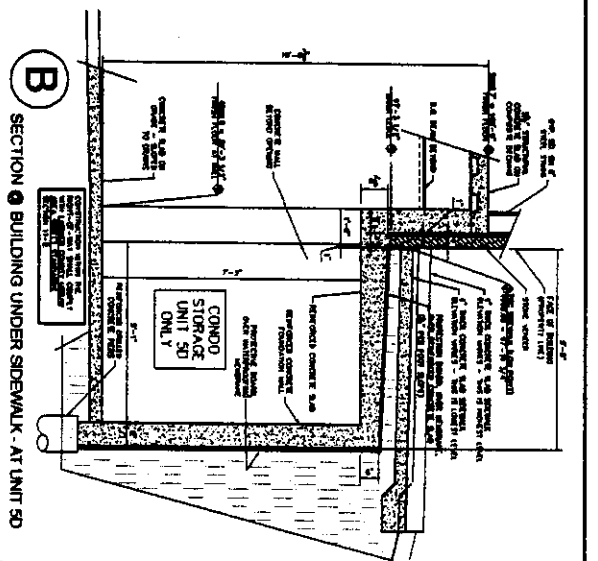
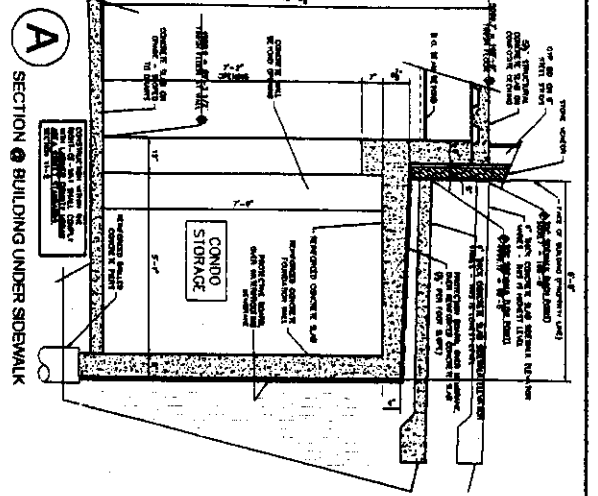
Attest:

Susan Cannon, Secretary

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

Subscribed, sworn to and acknowledged before me this _____ day of _____,
_____ by William Coulson as President and Susan Cannon as Secretary of the Lessee.

Notary Public
My Commission expires: _____



SCALE ACCORDINGLY IF REDUCED

2 of 2

DATE: 08/11/2020
 TIME: 10:00 AM
 PROJECT: CORTINA
 SHEET: 2 OF 2
 DRAWN BY: [REDACTED]
 CHECKED BY: [REDACTED]
 APPROVED BY: [REDACTED]

CORTINA
 MULTI-USE BUILDING AT CANYON AND HONOR
 FORT COLLINS
 COLORADO



COULSON
 ENGINEERS & ARCHITECTS, INC.



RJL SURVEYS

113 Cameron Drive, Suite B
Fort Collins, Colorado 80525
TEL: (970)226-3007
FAX: (970)226-3027




PROPERTY DESCRIPTION:

An underground easement located in the Southeast Quarter of Section 11, Township 7 North, Range 69 West of the 6th P.M., in the City of Fort Collins, County of Larimer, State of Colorado, lying beneath a portion of the existing right-of-way of Howes Street, being 9 feet in height with the elevation of its lowest point being 4989.50 feet (City of Fort Collins Vertical Datum), and being horizontally described by the following boundary lines:

Commencing at the most Northerly corner of Lot 5, Block 92, City of Fort Collins; thence along the Westerly right-of-way line of Howes Street S 00°00'00" W 62.80 feet to the TRUE POINT OF BEGINNING; thence continuing along said right-of-way line S 00°00'00" W 83.25 feet; thence N 90°00'00" E 6.25 feet; thence N 00°00'00" E 83.25 feet; thence S 90°00'00" W 6.25 feet to the POINT OF BEGINNING, containing 520 square feet of area, and 4683 cubic feet of volume.

SURVEYOR'S STATEMENT:

I, Ricky J. Lewis, being a duly registered Professional Land Surveyor in the State of Colorado, do hereby state that this description was prepared by me based on an actual field survey performed under my direct supervision, and also based on construction drawings prepared by others.



Ricky J. Lewis Colorado P.L.S. No. 25372





RJL SURVEYS

113 Cameron Drive, Suite B
Fort Collins, Colorado 80525
TEL: (970)226-3007
FAX: (970)226-3027



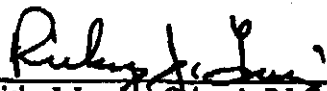
PROPERTY DESCRIPTION:

An underground easement located in the Southeast Quarter of Section 11, Township 7 North, Range 69 West of the 6th P.M., in the City of Fort Collins, County of Larimer, State of Colorado, lying beneath a portion of the existing right-of-way of Canyon Avenue, being 9 feet in height with the elevation of its lowest point being 4989.50 feet (City of Fort Collins Vertical Datum), and being horizontally described by the following boundary lines:

Commencing at the most Northerly corner of Lot 5, Block 92, City of Fort Collins; thence along the Easterly right-of-way line of Canyon Avenue S 44°58'40" W 77.40 feet to the TRUE POINT OF BEGINNING; thence continuing along said right-of-way line S 44°58'40" W 76.50 feet; thence N 45°01'20" W 6.25 feet; thence N 44°58'40" E 76.50 feet; thence S 45°01'20" E 6.25 feet to the POINT OF BEGINNING, containing 478 square feet of area, and 4303 cubic feet of volume.

SURVEYOR'S STATEMENT:

I, Ricky J. Lewis, being a duly registered Professional Land Surveyor in the State of Colorado, do hereby state that this description was prepared by me based on an actual field survey performed under my direct supervision, and also based on construction drawings prepared by others.



Ricky J. Lewis Colorado P.L.S. No. 25372

