MEMORANDUM

TO: Finance, Expenditure and Legal Subcommittee

FROM: Martin P. Cleveland

SUBJECT: Western Sarpy Drainage Ditch ROW (Fairview Road to Capehart Road)
        Lyman-Richey Corporation Request for a Quit Claim Deed
        At Former Schram Property

DATE: January 4, 2007

Lyman-Richey Corporation through SEC Accommodator LXV, LLC has purchased property between Fairview Road and Capehart Road and 240th Street and 252nd Street, southwest of Gretna, Nebraska for sand/gravel mining purposes. SEC Accommodator LXV, LLC is a single member limited liability corporation (LLC) for tax free real estate transactions and is an independent third party. In 6 months or less, the membership in this LLC will transfer to Lyman Richey and the property will be in Lyman Richey’s name. Enclosed is a map of Lyman-Richey Corporation Property. The District acquired through its merger with Western Sarpy Drainage District, easements for the operation and maintenance of drainage ditches in this area.

It appears that the District has a deed for a portion of Lyman-Richey property (16.5 ft. wide strip) that is at the same location as a District drainage easement. See enclosed drawing. Lyman-Richey (via SEC Accommodator LXV, LLC) has requested that the District Quit Claim Deed the 16.5 ft. strip of land, which covers approximately 1 acre. This transaction would clean up ownership of this parcel and still provide for drainage ditch operation and maintenance via an existing easement.

It is management’s recommendation that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to negotiate and execute a Quit Claim Deed for SEC Accommodator LXV, LLC for a 16.5 ft. wide strip of property in SE1/4 of Section 9, T13N, R10E, Sarpy County, Nebraska, subject to form as approved by District legal counsel.
UTILITY NOTES

1. This drawing includes observed existence of services and utilities evident at the time of survey only. No responsibility or liability is assumed by thesurveyor to show any buried service and/or utility lines even though they may exist. Contact Time Corp. (344-3965) prior to any excavation of this site.

2. Utility lines illustrated herein are well known to represent field locations as per point marks or other visible evidence. Utility lines illustrated as dashed or broken lines represent record utility line locations as per the utility company involved.

LAND SURVEYOR'S CERTIFICATION

I hereby certify that this boundary survey was made by me and under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

[Signature]

Lamb, Yarborough & Associates, Inc.

9.13.24, R10E

Existing top of bank of ditch

LEGEND

- COMER NE 5/5" REBAR
- YELLOW PLASTIC CAP
- STAMPED (8-88)

C SECTION CORNER
S COMPUTERED SECTION CORNER
D COMPUTERED DIMENSIONS
M MEASURED DIMENSIONS

WITNESS TO NE CORNER SE 1/4 SEC 9, T13N, R10E
Set 5/8" reb w/yellow cap
-11.51' N to NE Corner SE 1/4 SEC 9, T13N, R10E
24.37' SW to 5/8" mer rebar
-25.50' W to 5/8" mer reb
-25.00' NE to 5/8" reb

70 drainage easements per plat No. 90-0163667

WITNESS TO NE CORNER NE 1/4 SEC 9, T13N, R10E
Point 5/8" reb
-25.00' W to NE Corner NE 1/4 SEC 9, T13N, R10E
-13.53' N to SE Corner of bridge
24.14' W to SE Corner of bridge
-52.18' N to power pole

WITNESS TO NE CORNER SE 1/4 SEC 9, T13N, R10E
Set 5/8" reb w/yellow cap
-7.11' E to NE Corner SE 1/4 SEC 9, T13N, R10E
24.37' SW to 5/8" mer reb
-25.50' W to 5/8" mer reb
-25.00' NE to 5/8" reb

UNITED STATES
DAM CONTROL

WITNESS TO NE CORNER SE 1/4 SEC 9, T13N, R10E
Point 5/8" reb
-11.51' N to NE Corner SE 1/4 SEC 9, T13N, R10E
24.37' SW to 5/8" reb
-25.50' W to 5/8" reb
-25.00' NE to 5/8" reb

UNITED STATES
DAM CONTROL

BOUNDARY
SURVEY

Job number: 5053
Book: Page 06-2, 37-38

Lamp, Yarborough & Associates, Inc.

9.13.24, R10E

Existing top of bank of ditch

Washington County, Nebraska

NOTICE TOIdx

Prepared by

Surveyed by

Reviewed by
QUIT CLAIM DEED

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a Nebraska political subdivision, successor-in-interest to Western Sarpy County Drainage District, Grantor, whether one or more, in consideration of One Dollar ($1.00) and other valuable consideration, receipt of which is hereby acknowledged, remises, conveys, releases and quit claims to SEC ACCOMMODATOR LXV, LLC, a Nebraska limited liability company, successor-in-interest to George Schram, Mary Schram, Robert Schram and Elizabeth Schram, Grantee, any and all interest it may have in the following described real estate (as defined in Neb. Rev. Stat. Sec. 76 201) in Sarpy County, Nebraska, pursuant to a deed dated February 15, 1913, recorded in Book 46 at Page 67, Deed Records, Sarpy County, Nebraska:

That part of the Southeast Quarter of Section 9, Township 13 North, Range 10 East of the 6th P.M., Sarpy County, Nebraska, specifically described as a strip of land 16.5 feet wide on the west side of the right of way of Forest City Drain Ditch (predecessor in interest to the Papio-Missouri River Natural Resources District), being and extending 16.5 feet west from the west line of said right of way. Said strip beginning at the north line of the southeast quarter of Section 9, T. 13, Range 10 E. in Sarpy County, Nebraska, and running south along the eastern edge of that quarter section to the south line of the southeast quarter of said Section 9, containing approximately 1 acre.

Executed this ______ day of January, 2007.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By: 

JOHN WINKLER, GENERAL MANAGER
STATE OF NEBRASKA

COUNTY OF ____________________________

) ss.

The foregoing instrument was acknowledged before me this ______ day of January, 2007, by John Winkler, General Manager of Papio-Missouri River Natural Resources District, a Nebraska political subdivision, on behalf of the District.

__________________________
Notary Public

My commission expires: ____________________________.
June 16, 2006

Mr. Martin Cleveland
Papio Natural Resources District
8901 South 154th Street
Omaha, NE 68138

Re: Survey of Schram Property

Dear Mr. Cleveland:

As a follow-up to our telephone conversation on June 16th, I am forwarding a copy of a portion of the survey done by Lamp, Rynearson & Associates, Inc. on May 12, 2006.

As we discussed, the portion of the property that was previously deeded to the Western Sarpy Drainage District, the NRD’s predecessor-in-interest is on the western edge of the easement area (more specifically the west 16.5 feet of the 75 feet drainage easement).

It is my view that as long as the portion of the property that previously deeded is within the easement area, the NRD clearly does not need both fee simple title and an easement for that portion of the property.

If your review and analysis comports with my comments to you in our telephone conversation and this correspondence, please notify me so that we may prepare a draft of a Quitclaim Deed for review by Joe Byam on behalf of the Schram Trust and by Paul Peters on behalf of the NRD.

I look forward to hearing from you within the next several working days.

Sincerely yours,

Robert J. Murray
FOR THE FIRM
May 25, 2006

Joseph C. Byam, Esquire
Byam & Hoarty
8990 West Dodge Road, Suite 317
Omaha, NE 68114-3398

Re: Title Commitment

Dear Joe:

We have now had an opportunity to review the title commitment provided by Security Land Title & Escrow Company last week. There are two matters appearing on the commitment that need to be cleaned up prior to closing. We believe that both are readily solvable.

Our first objection is to the deeding of approximately 16.5 feet to Western Sarpy Drainage District. In 1913 the previous record titleholders deeded a small portion of the property to the District. In 1996, a permanent drainage ditch easement was then granted to the District and it is not clear if the permanent easement encompasses the deeded portion. A quitclaim deed from the Papio-Missouri River Natural Resources District (successor to the District) to the Catherine Schram Trust quitclaiming its interest in the 16.5 feet will clear up this matter.

Secondly, there is an Oil and Gas Lease that was executed in 1984 and appears to have terminated. The title company informs us that if the enclosed Affidavit is executed prior to Closing, that exception will be removed from the final title policy.

After you have had an opportunity to review these two matters, please let us know if you share our perspective that both items should be readily solvable prior to closing.

Sincerely yours,

Robert J. Murray
For the Firm
RJM/tk
Enclosure
cc: Pat Gorup
    Carol White
10. Terms and provisions of Drainage Ditch Easement granted to Western Sarpy County Drainage District filed February 28, 1996 as Instrument No. 96-03693, Records, Sarpy County, Nebraska.
DRAINAGE DITCH EASEMENT
WESTERN SARPY COUNTY DRAINAGE DISTRICT

For and in consideration of the payment of One Dollar ($1.00) and other good and valuable consideration, the receipt of which is acknowledged,

GEORGE M. SCHRAM and CATHERINE F. SCHRAM, Trustees of the SCHRAM FAMILY REVOCABLE TRUST,
hereinafter called "the GRANTORS," whether singular or plural, do hereby grant to the WESTERN SARPY COUNTY DRAINAGE DISTRICT (hereinafter referred to as "the GRANTEE"), and to its successors and assigns (including the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (hereinafter referred to as "the NRD") if the GRANTEE merges with the NRD), the permanent easements described below, in, over and upon the real property in Sarpy County, Nebraska, described in the Tract Map and accompanying written legal description prepared by Hill-Farrell Associates, Inc., attached hereto collectively as Exhibit "A" and incorporated herein by reference (such real property hereinafter being referred to as "the EASEMENT AREA"), such easements consisting of the GRANTEE's permanent right to enter the EASEMENT AREA and therein construct, modify, operate, patrol, maintain, repair, and replace one or more drainage ditches within the EASEMENT AREA, together with berms, drainage structures and other appurtenances thereto, and including roads along both sides of drainage ditches in the EASEMENT AREA for GRANTEE's use during drainage ditch construction, operation, and maintenance, the easements described in this document to be subject to the following provisions:

1. The GRANTORS shall not construct structures nor excavate inside the EASEMENT AREA.

2. The easements granted herein include the right to clear trees and other vegetation from the EASEMENT AREA, the right to borrow, stockpile, or spoil earth from or in the EASEMENT AREA, and the right to have the air space above the EASEMENT AREA unobstructed to such height as will allow the passage and operation of construction and maintenance machinery.

3. Except during construction or reconstruction of improvements and appurtenances thereto in the EASEMENT AREA, the GRANTORS may cultivate all portions of the EASEMENT AREA not occupied by GRANTEE's drainage ditches and appurtenances, and stockpiles.

4. The consideration recited herein shall constitute payment in full for any and all damages sustained by the GRANTORS by reason of the exercise by the GRANTEE, or their successors and assigns, of any of the rights or privileges herein described or granted. The GRANTORS waive compliance by the GRANTEE with the notice and other provisions of the Uniform Procedure for Acquiring Private Property for Public Use (Sec. 25-2501, R.R.S. 1943, et seq.)

5. If the GRANTEE merges with the NRD, the easement rights herein granted shall be deemed to be held solely by the NRD.
6. This Easement shall not pass, nor be construed to pass, to the GRANTEE, or its successors or assigns, any fee simple interest or title.

7. The GRANTORS shall not have any responsibility for operating or maintaining the GRANTEE’s improvements or any appurtenances thereto.

8. The easements provided herein shall be deemed to run with the land and shall be binding upon the GRANTORS and upon the GRANTORS’ heirs, successors, and assigns.

9. The GRANTORS, for themselves and for their heirs, successors and assigns, warrant to the GRANTEE, and its successors and assigns, that the GRANTORS are the owners of the EASEMENT AREA and that they have good right to grant the aforesaid easements over the same; that the EASEMENT AREA is free and clear of all leases, liens and other encumbrances, except those which may be subordinated at the time hereof; and, that the GRANTORS will warrant and defend the title of the GRANTEE and its successors and assigns to the aforesaid easements over the EASEMENT AREA against all lawful claims and demands of all persons whomsoever.

10. The GRANTORS warrant that no verbal or written representations or inducements have been made or given by the GRANTEE, by the NRD, or by any of their officers, agents or employees, other than as may be recited in this document.

11. In case of any conflict between the diagram of the EASEMENT AREA, attached hereto as Page No’s 1 through 4 of Exhibit “A,” and the written legal description attached hereto as Page No’s 5 of Exhibit “A,” such written legal description shall be controlling.

IN WITNESS WHEREOF, this Easement is executed by the GRANTORS on this ____________ day of ____________, 20__

[Signature]
GEORGE M. SCHRAM, Trustee

[Signature]
CATHARINE F. SCHRAM, Trustee

STATE OF NEBRASKA
COUNTY OF SHELBY

The foregoing instrument was acknowledged before me on this ____________ day of ____________, 20__, by GEORGE M. SCHRAM and CATHARINE F. SCHRAM, as Trustees of the SCHRAM FAMILY REVOCABLE TRUST

[Signature]
Notary Public
TRACT MAP

TITLE SEARCH NO. NATS3957
OWNER: G.M. SCHRAM, J.M. SCHRAM,
M.E. PFEIFFER, R.A. RAMM

CENTER LINE SIDE DITCH
DRAINAGE CHANNEL

PROPERTY LINE
(TYPICAL)

S.E. 1/4 SEC. 8-13-10

S.W. 1/4 SEC. 9-13-10

1 inch = 300 ft.

PERMANENT EASEMENT

= FENCE

Hill-Farrell Associates, Inc.
Land Surveyors, Land Planners, Construction Surveys
1004 Lincoln Road, Bellevue, NE 68005  402-291-6100
LEGAL DESCRIPTION

PROPOSED PERMANENT EASEMENT

THE NORTH 25.00 FEET AND THE WEST 25.00 FEET OF THE SOUTHWEST ONE-QUARTER,
TOGETHER WITH THE NORTH 25.00 FEET AND THE EAST 73.00 FEET OF THE SOUTHEAST
ONE-QUARTER, ALL IN SECTION 9, T 13 N, R 10 E OF THE SIXTH P.M., SARPY COUNTY,
NEBRASKA. DESCRIBED TRACT CONTAINS 11.98 ACRES, MORE OR LESS.
DEED RECORD NO. 46, SARPY COUNTY.

GEORGE SCHRAM et al

vs.
WESTERN SARPY DRAINAGE DISTRICT

Filed April 6, 1923, at 9 A.M.

GEORGE SCHRAM and MARY SCHRAM, his wife, Robert Schram and Elizabeth Schram, his wife, in consideration of Sixty-one and 2/100 Dollars in hand paid, do hereby grant, convey and convey for drainage district purposes unto the Western Sarpy Drainage District, of Sarpy County, its successors and assigns, all that certain tract or piece of land, situated in the County of Sarpy and State of Nebraska, to wit: A strip or pieces of land 16.9 feet wide on the west side of the present right of way of the Forest City Ditch, being and extending 16.9 feet west from the west line of said right of way. Said strip beginning at the north line of the 2. E. quarter of Section 9, T. 25, R. 20 E., in Sarpy County, Nebraska, and running south along the eastern edge of said above quarter, to the south line of said 2. E. quarter of said Section 9 and containing 1 acre, all being for the present purpose of widening the present right of way of the said Forest City Ditch, together with any and all future access thereto by the said Drainage District, its agents or employees. Said land to be used and maintained according to the present and future plans of said Drainage District, its successors and assigns for drainage purposes, and the said District to hereby covenant with the said Western Sarpy Drainage District, its successors and assigns that we are lawfully seized of said premises, and that they are free from incumbrances and that they will warranty and defend the same unto the said Western Sarpy Drainage District, its successors and assigns against the lawful claims and demands of all persons whatsoever.

In Witness whereof we have hereunto set our hands this 15th day of February, 1923.

In presence of

George Schram
Mary Schram
Robert Schram
Elizabeth Schram

State of Nebraska
Sarpy County

on this 15th day of February, 1923, before me, personally appeared George Schram, and Mary Schram, his wife, Robert Schram, and Elizabeth, his wife, known to me to be the identical persons who executed the foregoing deed and acknowledged the execution of the same to be their voluntary act and deed.

Witness my hand and official seal the date last aforesaid.

S. H. Pickering, Notary Public.
Commission Expires Feb. 1, 1925.

CLARA WOLF

vs.

ORIN J. PUTHOFF

Contractor, $25.00 Pd.

Filed April 12, 1923, at 9 A.M.

CLARA WOLF

or the undersigned, hereby agrees to purchase the property hereinafter described to wit: Part of Section Two (2), T. 25, R. 20 E., and part of Sections Nine (9), Ten (10), and Eleven (11), T. 19, R. 20 E., Sarpy Co. It being same legal description as is memorandum of Jan. 11, 1923, signed "R. A. Wolf", in possession of Orin J. Puthoff and endorsed by me.

Subject hereto and in condition that herein before has a good and valid title as per above said and agrees to furnish abstract of title down to transfer and convey said premises by Warranty Deed.