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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
10/12/2005 10:38:01.60



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**THIS PAGE INCLUDED FOR INDEXING  
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FEE 50<sup>50</sup> FB 01-60000  
BKP 27-16-13000 C70 COMP \_\_\_\_\_  
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## Easement Agreement

This Easement Agreement ("Agreement") is made and entered into this 15th day of October, 2004, by and between THE CITY OF OMAHA, a municipal corporation of the State of Nebraska ("City"), and LYMAN-RICHEY CORPORATION, a Delaware corporation ("Lyman-Richey").

### RECITALS

WHEREAS, Lyman-Richey is the owner of certain real property located on or about 16<sup>th</sup> & Read Streets, Omaha, Nebraska, and identified on Exhibit "A, B & C" (the "Property"). Lyman-Richey has agreed to sell the Property to the City subject to the reservation of certain easement rights as more specifically set forth under the terms and provisions of this Easement Agreement.

WHEREAS, City plans to develop the Property as a public walkway to tie into other existing walkways, nature trails and similar property in the City of Omaha previously developed and to be developed by the City.

WHEREAS, Lyman-Richey owns property to the south and west of the Property being conveyed to the City (the "Lyman-Richey Property") and the parties have agreed that Lyman-Richey will be granted an easement over the Property being conveyed to the City limited for the purpose of moving aggregates and other construction materials from the Lyman-Richey Property to the north and east side of the Property consistent with Lyman-Richey's existing and contemplated legitimate business practices.

WHEREAS, the parties have also agreed that in the event problems occur in the future from people accessing Lyman-Richey's Property by way of the trail to be built on the Property, the City, at its sole expense, will construct a five foot high chain-link fence between the Property and Lyman-Richey's Property.

WHEREAS, the parties have negotiated this Easement Agreement to memorialize the parties' agreements with respect to the fence and to grant Lyman-Richey an easement over the Property to move aggregates and other construction materials.

NOW, THEREFORE, for the consideration recited herein, and the following mutual promises, covenants and agreements, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. For purposes of this Agreement, the following terms shall have the meanings set forth below:

- (a) "Owner of the City Property" shall refer to City and to its successors and assigns in ownership of the City Property legally described on Exhibit "A, B & C" attached;
- (b) "Owner of the Lyman-Richey Property" shall refer to Lyman-Richey and to its successors and assigns in ownership of the Lyman-Richey Property legally described on Exhibits "D & E" attached.

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- (c) "Permittees" shall mean and refer to the Owner of the Lyman-Richey Property, the Owner of the City Property, and those persons who may be entitled from time to time to use and occupy the real property and improvements located on the Lyman-Richey Property and to use facilities that are a part of the City Property and their respective customers, employees, agents, licensees and invitees, but only to the extent authorized by the Owner of the Lyman-Richey Property and the Owner of the City Property.

2. The City hereby grants to Lyman-Richey as the Owner of the Lyman-Richey Property and its Permittees: (i) a nonexclusive easement over and upon the Property for the purpose of moving aggregates and other construction materials consistent with Lyman-Richey's existing and contemplated legitimate business practices; and (ii) a nonexclusive easement to construct, improve, repair, maintain and replace structures constructed by Lyman-Richey in order to move its construction material and/or aggregates, provided that Lyman-Richey provides for appropriate safeguards for people using the Property so that the Property can be continuously used as a hiking trail or other public purpose consistent with the City's contemplated use.

3. The Owner of the Lyman-Richey Property will submit a written notice to the Owner of the City Property as described in paragraph 4 below in respect to the construction of any improvement(s) on the Property.

4. At such time as the Owner of the Lyman-Richey Property desires to improve the Property or modify improvements in, on or about the Property, it shall deliver a written notice to the Owner of the City Property, of its intent to construct and/or modify the improvement(s) over the Property. Following such notice, the Owner of the Lyman-Richey Property may improve the Property, including, without limitation, the right to construct and install the equipment and/or structures necessary to move construction materials and/or aggregates over the Property. For so long as the Property is used by the Owner of the Lyman-Richey Property or its Permittees, the Owner of the Lyman-Richey Property shall be solely responsible for installation and maintenance of the structures necessary to move aggregates and other construction materials on the Property.

5. The Property shall, at all times, remain reasonably accessible for use by the Owner of the Lyman-Richey Property, the Owner of the City Property, and their respective Permittees.

6. If problems occur from people accessing the Lyman-Richey Property by way of the trail and the Property, the Owner of the City Property covenants and agrees that within thirty (30) days notice of a request by the Owner of the Lyman-Richey Property, that it shall construct a five foot high chain-link fence between the Property and the Lyman-Richey Property.

7. If a chain-link fence is erected as contemplated by the above-referenced paragraph, the Owner of the City Property, at its expense, shall provide such maintenance, repair and replacement as may be necessary to maintain the chain-link fence.

8. Each and all of the easements and rights granted and created in this Agreement are appurtenances to the affected property, and none of the easements and rights may be transferred, assigned or encumbered except as appurtenances to such property. For purposes of such easements and rights, the property which is benefited shall constitute the dominant estate, and the specific areas and portions of the areas of the property which are burdened by such easements and rights shall be considered the servient estate.

9. Each and all of the easements, covenants, restrictions and provisions contained in this Agreement: (i) are made for the direct, mutual and reciprocal benefit of the Permittees of the Owner of the Lyman-Richey Property and the Owner of the City Property; and (ii) shall run with the land to the benefit and burden of the successors-in-interest of the Owner of the Lyman-Richey Property and the Owner of the City Property.

10. The easements, covenants and agreements granted in this Agreement shall be perpetual.

11. Lyman-Richey hereby agrees to defend, indemnify and hold the City of Omaha harmless from and against any liabilities, causes of action, suits, claims and expenses (including, without limitation, reasonable attorney fees) resulting or arising from the use of the Property for the purposes permitted under this Agreement by Lyman-Richey and/or its respective Permittees; provided, however, that the Lyman-Richey shall have no obligation to defend, indemnify and hold the City harmless from and against any liabilities, causes of action, suits, claims or expenses (including, without limitation, reasonable attorney fees) resulting or arising from the negligence or willful misconduct of the City or its respective Permittees.

The City of Omaha hereby agrees to defend, indemnify and hold Lyman-Richey harmless from and against any liabilities, causes of action, suits, claims and expenses (including, without limitation, reasonable attorney fees) resulting or arising from the use of the Property under this Agreement by the City and/or its respective Permittees; provided, however, that the City shall have no obligation to defend, indemnify and hold Lyman-Richey harmless from and against any liabilities, causes of action, suits, claims and expenses (including, without limitation, reasonable attorney fees) resulting or arising from the negligence or willful misconduct of Lyman-Richey or its respective Permittees.

12. This Agreement shall inure to the benefit of, and be binding upon the parties and their respective successors and assigns. No waiver or breach of any of the agreements, covenants or easements contained in this Agreement shall be construed so as to constitute a waiver of any other breach, or waiver, acquiescence in or other consent to any future or succeeding breach of the same or any other covenant or agreement. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.



# EXHIBIT "A"

**PRELIMINARY  
LEGAL DESCRIPTION  
DPS 28(70), C.N. 21973  
Tract No. 7, ROW Acquisition  
Lyman-Richey Corporation**

A tract of land located in the NW1/4 of the SE1/4 of Section 27, Township 16 North, Range 13 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

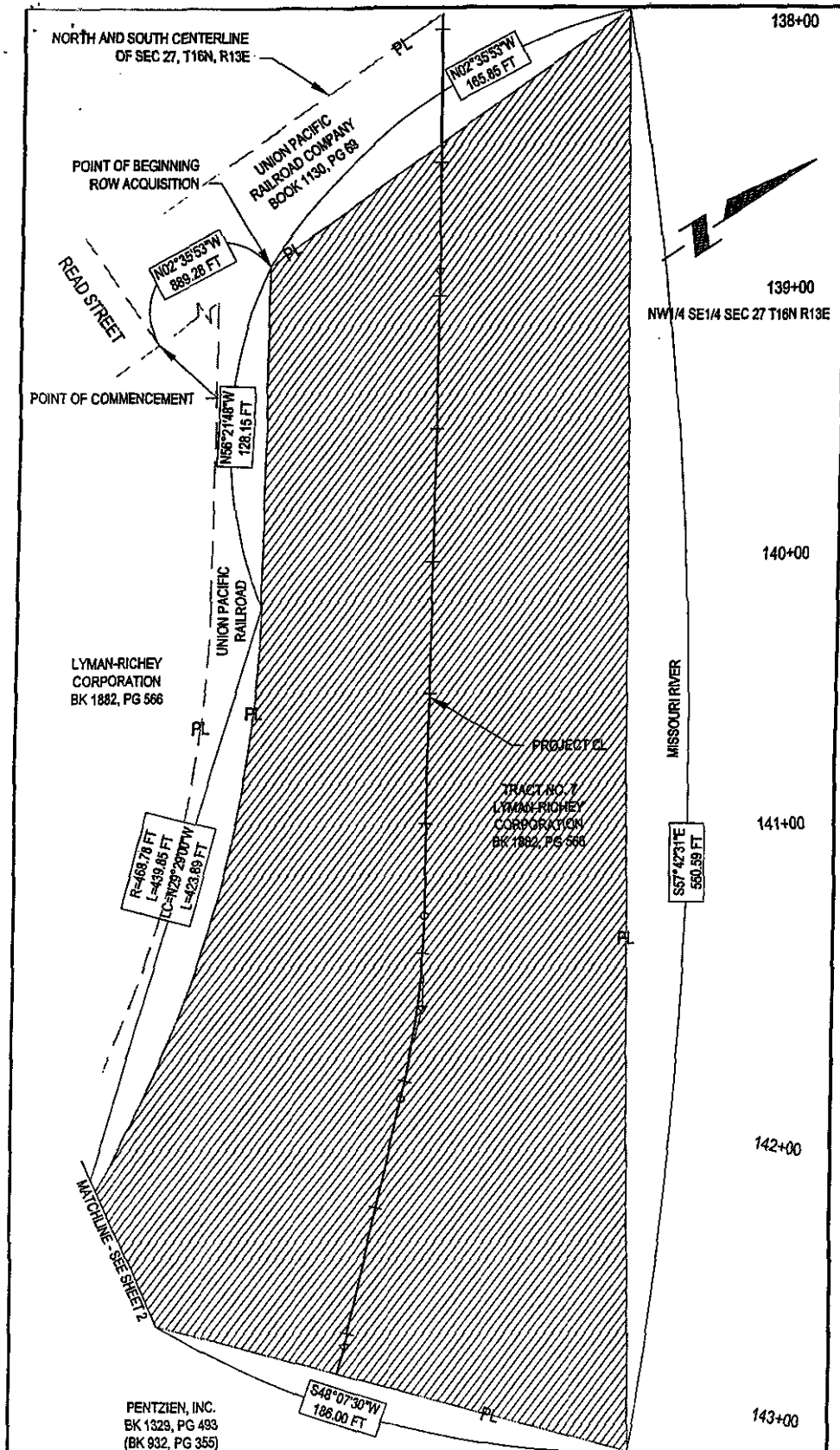
Commencing at the intersection of the North right-of-way line of Read Street and the West line of Lyman-Richey Corporation property recorded in Deed Book 1882, Page 566, said line also being the East line of Union Pacific Corporation property recorded in Deed Book 1130, Page 69; thence N02°35'53"W (assumed bearing) along said West line of Lyman-Richey Corporation property, said line also being said East line of Union Pacific Corporation property, a distance of 889.28 feet to the point of beginning; thence continuing N02°35'53"W along said West line of Lyman-Richey Corporation property, said line also being said East line of Union Pacific Corporation property, a distance of 165.85 feet to a point on the Northwest corner of said Lyman-Richey Corporation property, said point also being the Northeast corner of said Union Pacific Corporation property, said point also being on the Southwesterly water line of the Missouri River; thence S57°42'31"E, a distance of 550.59 feet along said Southwesterly water line of the Missouri River to a point on the Northeast corner of said Lyman-Richey Corporation property, said point also being the Northwest corner of Pentzien, Inc. property recorded in Deed Book 1329, Page 493; thence S48°07'30"W, a distance of 186.00 feet; along the Easterly line of said Lyman-Richey Corporation property, said line also being the Westerly line of said Pentzien, Inc., property; to a point on the Northwest corner of OPPD property; thence S02°25'00"E along said Easterly line of Lyman-Richey Corporation property, said line also being the Westerly line of said OPPD property, a distance of 186.97 feet; thence S87°20'19"W, along the Southerly line of said Lyman-Richey property, said line also being the Northeasterly line of Union Pacific Railroad Co., as recorded in Deed Book 1130, Pages 69-74, a distance of 12.00 feet; thence Northwesterly on a curve to the left with a radius of 468.78 feet, a distance of 439.85 feet, said curve having a long chord which bears N29°29'00"W, a distance of 423.89 feet, said curve being along the Southwesterly line of said Lyman-Richey Corporation property, said curve also being along said Northeasterly line of Union Pacific Railroad Co; thence N56°21'48"W, along said Southwesterly line of Lyman-Richey Corporation property, said line also being along the Northerly line of said Union Pacific Railroad Co, a distance of 128.15 feet to the point of beginning.

Said tract of land contains an area of 79,583 square feet or 1.827 acres, more or less.

2002 059.01  
May 24, 2004

E&A CONSULTING GROUP, INC.  
7130 SOUTH 29TH STREET, SUITE D  
LINCOLN, NEBRASKA 68516  
(402) 420-7217

# EXHIBIT "B"



SEE ATTACHED SHEET FOR LEGAL DESCRIPTION

SHEET 1 OF 2

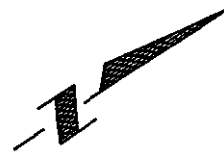
SCALE: 1"=40'

NEW R.O.W. ACQUISITION	79,583 S.F.	TRACT NO. <u>7</u>
PERMANENT EASEMENT	0 S.F.	EXHIBIT NO. _____
TEMPORARY EASEMENT	0 S.F.	PROJECT NO. <u>DPS 28(70) C.N. 21973</u>
EXISTING R.O.W.		DATE: <u>May 24, 2004</u>
EXISTING R.O.W.		

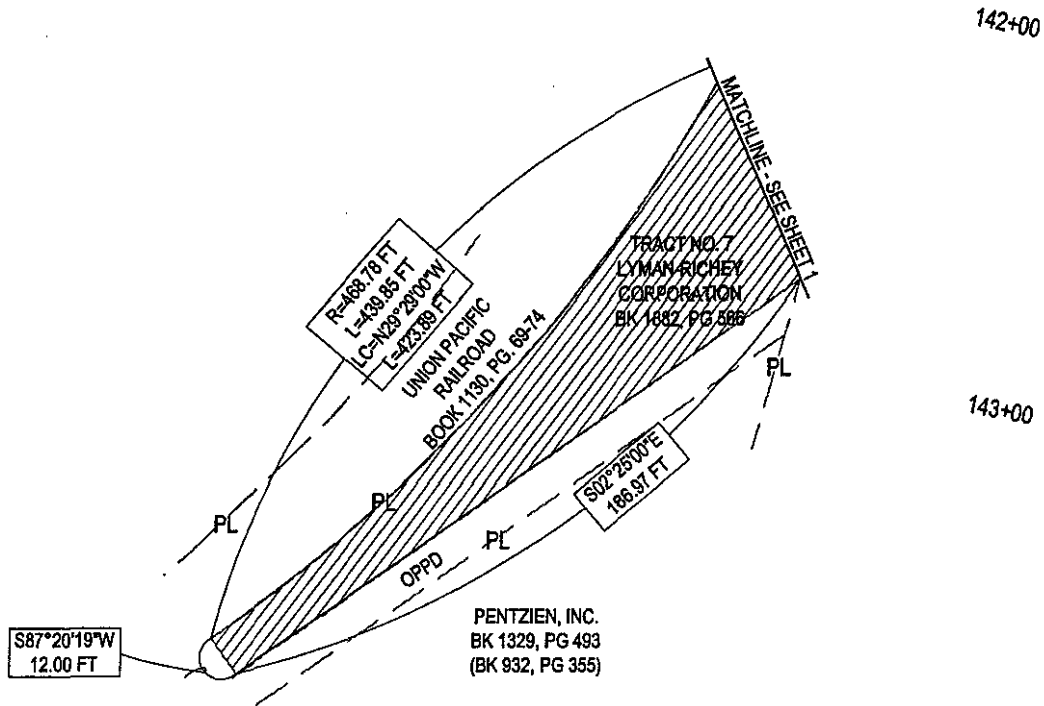
OWNER:  
Lyman-Richey Corporation  
4315 Cuming Street  
Omaha, Nebraska 68131

LEAD AGENCY:  
CITY OF OMAHA

# EXHIBIT "C"







NW1/4 SE1/4 SEC 27 T16N R13E



SEE ATTACHED SHEET FOR LEGAL DESCRIPTION

SHEET 2 OF 2

SCALE: 1"=40'

	NEW R.O.W. ACQUISITION	79,583 S.F.	TRACT NO. <u>7</u>
	PERMANENT EASEMENT	0 S.F.	EXHIBIT NO. _____
	TEMPORARY EASEMENT	0 S.F.	PROJECT NO. <u>DPS 28(70) C.N. 21973</u>
	EXISTING R.O.W.	_____	DATE: <u>May 24, 2004</u>
OWNER: Lyman-Richey Corporation 4315 Cuming Street Omaha, Nebraska 68131			LEAD AGENCY:  CITY OF OMAHA



NW 1/4 SE 1/4  
SW 1/4 SE 1/4  
SE 1/4 SW 1/4

**LEGAL DESCRIPTION**

**LYMAN RICHIE 16TH & READ ST PROPERTY  
REMAINDER AFTER SALE TO CITY OF PARCEL NORTH OF UPRR**

A tract of land located in part of Government Lot 5 located in the SE1/4 of Section 27, Township 16 North, Range 13 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the point of intersection of the West line of said Government Lot 5, said line also being the West line of said SE1/4 of Section 27 and the Westerly extension of the North right-of-way line of Read Street; thence N87°34'56"E (assumed bearing) along said Westerly extension of the North right-of-way line of Read Street, a distance of 40.00 feet to the point of intersection of the East right of way line of 16th Street and said North right-of-way line of Read Street, said point also being the point of beginning; thence N02°35'47"W along said East right-of-way line of 16th Street, a distance of 785.61 feet to the point of intersection of said East right-of-way line of 16th Street and the Southerly right-of-way line of Union Pacific Railroad; thence Southeasterly along said Southerly right-of-way line of Union Pacific Railroad on a curve to the right with a radius of 372.93 feet, a distance of 429.68 feet, said curve having a long chord which bears S43°35'07"E, a distance of 406.30 feet; thence S11°23'54"E along the Westerly right-of-way line of Union Pacific Railroad, a distance of 33.30 feet; thence Southerly along said Westerly right-of-way line of Union Pacific Railroad on a curve to the right with a radius of 452.21 feet, a distance of 64.25 feet, said curve having a long chord which bears S06°50'03"E, a distance of 64.20 feet; thence N87°28'10"E along said Westerly right-of-way line of Union Pacific Railroad, a distance of 1.00 foot; thence S02°31'50"E along said Westerly right-of-way line of Union Pacific Railroad, a distance of 156.90 feet; thence S87°28'10"W along said Westerly right-of-way line of Union Pacific Railroad, a distance of 15.00 feet; thence S07°31'19"E along said Westerly right-of-way line of Union Pacific Railroad, a distance of 172.40 feet; thence S02°31'50"E along said Westerly right-of-way line of Union Pacific Railroad, a distance of 54.20 feet to the point of intersection of said Westerly right-of-way line of Union Pacific Railroad and said North right-of-way line of Read Street; thence S87°34'56"W along said North right-of-way line of Read Street, a distance of 276.90 feet to the point of beginning.

Said tract of land contains an area of 188,583 square feet or 4.329 acres, more or less.

And also together with:

A tract of land located in part of Government Lot 5 located in the SE1/4 of Section 27, Township 16 North, Range 13 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the point of intersection of the West line of said Government Lot 5, said line also being the West line of said SE1/4 of Section 27 and the Westerly extension of the North right-of-way line of Read Street; thence N87°34'56"E (assumed bearing) along said Westerly extension of the North right-of-way line of Read Street, a distance of 40.00 feet to the point of intersection of the East right of way line of 16th Street and said North right-of-way line of Read Street; thence N02°35'47"W along said East right-of-way line of 16th Street, a distance of 814.57 feet to the point of intersection of said East right-of-way line of 16th Street and the Northerly right-of-way line of Union Pacific Railroad; thence N02°35'47"W along said East right-of-way line of 16th Street, a distance of 52.14 feet to the point of intersection of said East right-of-way line of 16th Street and the Southerly right-of-way line of Union Pacific Railroad; thence S56°24'29"E along said Southerly right-of-way line of Union Pacific Railroad, a distance of 116.28 feet; thence Southeasterly along said Southerly right-of-way line of Union Pacific Railroad on a curve to the right with a radius of 449.78 feet, a distance of 215.53 feet, said curve having a long chord which bears S42°40'50"E, a distance of 213.47 feet to the point of intersection of said Southerly right-of-way line of Union Pacific Railroad and said Northerly right-of-way line of Union Pacific Railroad; thence Northwesterly along said Northerly right-of-way line of Union Pacific Railroad on a curve to the left with a radius of 391.72 feet, a distance of 153.05 feet, said curve having a long chord which bears N45°59'24"W, a distance of 152.08 feet; thence Northwesterly along said Northerly right-of-way line of Union Pacific Railroad on a curve to the left with a radius of 651.96 feet, a distance of 95.30 feet, said curve having a long chord which bears N61°22'14"W, a distance of 95.22 feet; thence N65°33'29"W along said Northerly right-of-way line of Union Pacific Railroad, a distance of 9.10 feet; thence Northwesterly along said Northerly right-of-way line of Union Pacific Railroad on a curve to the left with a radius of 288.25 feet, a distance of 40.55 feet, said curve having a long chord which bears N69°35'19"W, a distance of 40.52 feet to the point of beginning.

Said tract of land contains an area of 6,216 square feet or 0.143 acres, more or less.

Said two tracts of land contain a combined area of 194,799 square feet or 4.472 acres, more or less.



**E&A CONSULTING GROUP, INC.**  
ENGINEERS • PLANNERS • SURVEYORS  
12001 Q STREET, OMAHA, NE 68137 PHONE: (402) 895-4700

Drawn by: JAF	Chkd by: _____	Date: _____	Chkd by: _____	Date: _____
Job No.: 2002059.01	Date: 08/23/04	Book No.: 1868		

**EXHIBIT D**  
**LYMAN RICHIE PROPERTY**  
**16TH & READ ST.**

