

**Lee County Board Of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20060523

**1. ACTION REQUESTED/PURPOSE:** Approve and execute the Assignment of Mortgage Lien and Guarantee of Completion of Reclamation Agreement pertaining to the Bonita Grande Mine property which has been annexed into the City of Bonita Springs.

**2. WHAT ACTION ACCOMPLISHES:** If approved, the assignment will provide the City of Bonita Springs with all rights held by Lee County with respect to the reclamation for the Bonita Grande Mine operation. Execution of the assignment complies with the City's request.

**3. MANAGEMENT RECOMMENDATION:**

<b>4. Departmental Category:</b> <span style="font-size: 1.5em; font-weight: bold;">C12B</span>		<b>5. Meeting Date:</b> <span style="font-size: 1.2em; font-weight: bold;">05-09-2006</span>
<b>6. Agenda:</b> <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	<b>7. Requirement/Purpose: (specify)</b>	
	<input type="checkbox"/> Statute	<input type="checkbox"/>
	<input type="checkbox"/> Ordinance	<input type="checkbox"/>
	<input type="checkbox"/> Admin. Code	<input type="checkbox"/>
<input checked="" type="checkbox"/> Other	<input type="checkbox"/> City Request	<b>8. Request Initiated:</b> Commissioner _____ Department <u>County Attorney</u> Division _____ By: <i>[Signature]</i> <b>Dawn E. Perry-Lehnert</b> Assistant County Attorney

**9. Background:** In 1995 Lee County obtained a Mortgage Lien and a Guarantee of Completion of Reclamation Agreement from Samuel and Connie Hubschman, as Trustees, to ensure the required reclamation for the Bonita Grande Mine under Lee County Development Orders 93-04-020.10E and 93-04-021.10E. The property encompassed by the Bonita Grande Mine has been annexed into the City of Bonita Springs. Consequently, the City has asked Lee County to assign its rights under the Mortgage Lien and the Reclamation Agreement to the City. (See attached letter from Joseph Faerber)

Accordingly, the draft instrument attached to the blue sheet will serve to assign the rights held by Lee County in the documents recorded at OR Book 2624, Page 332 and OR Book 2624, Page 335 to the City of Bonita Springs.

Staff recommends approval and execution of the assignment documents.

Attachment: Joseph Faerber April 7, 2006 Letter  
 cc: Mary Gibbs, Director, DCD  
 Pete Eckenrode, Director, Development Services  
 Russell Schropp, Esquire, Henderson Franklin  
 Joseph Faerber, Assistant City Attorney, City of Bonita Springs

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
				<i>[Signature]</i>	<i>RK 4/27</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

*County Admin  
4/27/06 3:15pm*

RECEIVED BY	<i>[Signature]</i>
COUNTY ADMIN:	<i>[Signature]</i>
4-26-06	
8-14	
COUNTY ADMIN	<i>[Signature]</i>
FORWARDED TO:	<i>[Signature]</i>
4/27/06	
3:20	

This Instrument Prepared by:

Dawn E. Perry-Lehnert  
Lee County Attorney's Office  
Post Office Box 398  
Fort Myers, FL 33902-0398

STRAP No.

THIS SPACE FOR RECORDING

**ASSIGNMENT OF MORTGAGE LIEN AND  
GUARANTY OF COMPLETION OF RECLAMATION AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS, that Lee County, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902, does hereby assign, grant and transfer to the City of Bonita Springs, a municipality of the State of Florida, whose address is 9101 Bonita Beach Road, Bonita Springs, Florida 34135, that certain Mortgage Lien dated June 21, 1995 recorded in the Lee County Public Records at OR Book 2624, Page 332, and, the Guarantee of Completion of Reclamation Agreement dated June 21, 1995 recorded at OR Book 2624, Page 335, along with all rights provided under these documents. Both instruments were originally executed by Samuel and Connie Hubschman, as Trustees, and intended to ensure reclamation in conjunction with a mining operation, commonly known as the Bonita Grande Mine, approved by Lee County under Development Orders 93-04-020.10E and 93-04-021.10E.

ATTEST:  
CHARLIE GREEN, CLERK

LEE COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairwoman

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Office of County Attorney



April 7, 2006

2006 APR 13 AM 8:40  
RECEIVED BY  
LEE CO. ATTORNEY

Ms. Donna-Marie Collins  
Office of the Lee County Attorney  
Post Office Box 398  
Fort Myers, Florida 33902-0398

*City of  
Bonita Springs*

9101 BONITA BEACH ROAD  
BONITA SPRINGS, FL 34135  
TEL: (239) 949-6262  
FAX: (239) 949-6239  
www.cityofbonitasprings.org

**Jay Arend**  
Mayor

**Richard Ferreira**  
Councilman  
District One

**Alex Grantt**  
Councilman  
District Two

**Patrick McCourt**  
Councilman  
District Three

**John Joyce**  
Councilman  
District Four

**Martha Simons**  
Councilwoman  
District Five

**Ben L. Nelson, Jr.**  
Councilman  
District Six

**Gary A. Price**  
City Manager  
Tel. (239) 949-6238

**Audrey E. Vance**  
City Attorney  
Tel. (239) 949-6254

**City Clerk/Treasurer**  
Tel: (239) 949-6250

**Public Works**  
Tel: (239) 949-6246

**Code Enforcement**  
Tel: (239) 949-6257

**Parks & Recreation**  
Tel: (239) 992-2556

Re: Mortgage – Samuel and Connie Hubschman, as Trustees to Lee County  
STRAP Nos.: 17-47-26-B1-00001.0000 and 20-47-26-B1-00001-0000

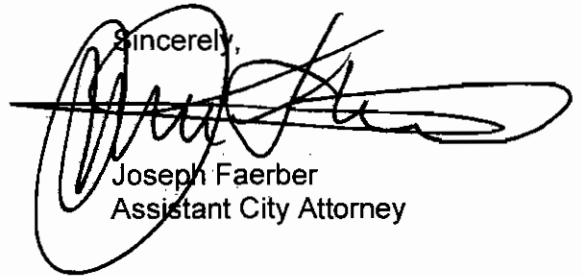
Dear Ms. Collins:

As discussed by us during our telephone conversation of today, a Mortgage, dated June 21, 1995, was given by Samuel and Connie Hubschman to Lee County for the purposes of assuring compliance with the Reclamation Agreement of the parties pertaining to the above referenced parcels. A copy of such mortgage, which was recorded in O.R. Book 2624 at pages 332-337, is enclosed. This property is commonly known as the "Bonita Grande Mine".

As you are aware, subsequent to the date of the mortgage, this property was voluntarily annexed to the City of Bonita Springs, a Florida municipal corporation ("City"). As such, and since the property now falls within the City's territorial limits, any compliance enforcement relating to the Reclamation Agreement is now the responsibility of the City. Therefore, it is hereby requested that Lee County assign such mortgage to the City.

Kindly arrange for the preparation and execution of an Assignment of Mortgage by Lee County to the City of Bonita Springs, a Florida municipal corporation, with an address as set forth above, at your earliest convenience.

Please feel free to call me if you require any additional information, or if I can assist you in any way.

Sincerely,  
  
Joseph Faerber  
Assistant City Attorney

JF/Enclosure  
cc: Audrey E. Vance, City Attorney  
Gary A. Price, City Manager  
Dianne J. Lynn, City Clerk  
(Above with enclosure)

28502

This instrument prepared by:  
Russell P. Schropp  
Post Office Box 280  
Fort Myers FL 33902-0280

3817305

MORTGAGE DEED LIEN

Executed the 21 day of JUNE, 1995, by SAMUEL AND CONNIE HUBSCHMAN, AS TRUSTEES hereinafter called the Mortgagor, to LEE COUNTY, a political subdivision of the State of Florida, hereinafter called the Mortgagee,

DR2624 PG0332

WITNESSETH, that for divers good and valuable considerations, and also in consideration of the aggregate sum named in the promissory note of even date herewith, hereinafter described, the said Mortgagor, does grant, bargain, sell, alien, remise, release, convey and confirm unto the said Mortgagee, in fee simple, all that certain tract of land, of which the said Mortgagor is now seized and possessed, and in actual possession, situats in Lee County, State of Florida, described as follows:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD the same, together with the tenements, hereditaments and appurtenances, unto the said Mortgagee in fee simple.

AND said Mortgagor does covenant with said Mortgagee that said Mortgagor is indefeasibly seized of said land in fee simple; that the said Mortgagor has full power and lawful right to convey said land in fee simple as aforesaid; that said land is free from all encumbrances; that said Mortgagor will make such further assurances to perfect the fee simple title to said land in said Mortgagee as may reasonably be required; and that said Mortgagor does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever.

RECORD VERIFIED - CHARLIE GREEN, CLERK  
BY: C. KELLER, D.C.

PROVIDED ALWAYS, that if said Mortgagor shall comply with and abide by the terms of that certain Guaranty of Completion of Reclamation Agreement of even date herewith attached hereto as Exhibit "B," including each and every stipulation, agreement, condition and covenant of said Agreement and of this deed, then this deed and the estate hereby created shall cease and be null and void.

AND said Mortgagor hereby covenants and agrees:

1. To pay all and singular the taxes, assessments, levies, liabilities, obligations and encumbrances of every nature on said described property each and every, and if the same be not promptly paid the said Mortgagee may at any time pay the same without waiving or affecting the option to foreclose or any right hereunder, and every payment so made shall bear interest from the date thereof at the rata of twelve percent (12%) per annum.

2. To pay all and singular the costs, charges and expenses, including lawyer's fees, reasonably incurred or paid at any time by said Mortgagee because of the failure on the part of the said Mortgagor to perform, comply with and abide by each and every stipulation, agreement, condition and covenant of said Agreement and this deed, or either, and every such payment shall bear interest from date at the rate of twelve percent (12%) per annum.

3. To permit, commit or suffer no waste, impairment or deterioration of said property or any part thereof.

DSD 7/24/95

4. To perform, comply with and abide by each and every stipulation, agreement, condition and covenant in said Agreement and in this deed set forth.

5. If each and every stipulation, agreement, condition and covenant of said Agreement and this deed or either, are not duly performed, complied with and abided by, the Mortgagee herein may utilize any remedy it may have in law or in equity, including foreclosure of the security interest created herein, to insure compliance with the aforesaid Guaranty of Completion of Reclamation Agreement.

6. The Mortgagee may, at any time while a suit is pending to foreclose or to reform this mortgage or to enforce any claims arising hereunder, apply to the court having jurisdiction thereof for the appointment of a receiver, and such court shall forthwith appoint a receiver of the premises and all other property covered hereby, including all and singular the income, profits, rents, issues and revenues from whatever source derived, and such receiver shall have all the broad and effective functions and powers in anywise entrusted by a court to a receiver and such appointment shall be made by such court as an admitted equity and a matter of absolute right to said Mortgagee, and without reference to the adequacy or inadequacy of the value of the property mortgaged or to the solvency or insolvency of said Mortgagor or the defendants, and such income, profits, rents, issues and revenues shall be applied by such receiver according to the lien of this mortgage and the practice of such court.

IN WITNESS WHEREOF, said Mortgagor hereunto sets their hands and seals the day and year first above written.

Signed, Sealed and Delivered  
in the Presence of:

*Mary P. Cook*  
Witness signature  
Mary P. Cook  
Printed name of Witness  
*Pauline Puccia*  
Witness signature  
Pauline Puccia  
Printed name of Witness

*[Signature]*  
SAMUEL HUBSCHMAN, TRUSTEE

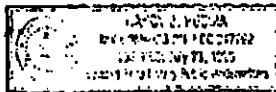
*[Signature]*  
CONNIE HUBSCHMAN, TRUSTEE

Address:  
7200 Davis Boulevard  
Naples FL 33962

STATE OF FLORIDA )  
COUNTY OF COLLIER )

The foregoing Mortgage Deed was acknowledged before me this 21 day of JUNE, 1995, by SAMUEL HUBSCHMAN, AS TRUSTEE and CONNIE HUBSCHMAN, AS TRUSTEE. They are personally known to me or produced \_\_\_\_\_ as identification.

*[Signature]*  
Notary Public Signature  
NANCY J. HUBBIE  
Type/Print Name of Notary  
Commission No:  
My Commission Expires:



DR2624 P60333

DESCRIPTION:

A PARCEL OF LAND LOCATED IN THE NORTH 1/2 OF SECTION 17, TOWNSHIP 47 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning at the Northeast corner of Section 17, Township 47 South, Range 26 East, Lee County, Florida:

thence South 05° 01' 49" East 2487.88 feet along the East line of said Section 17;

thence North 61° 56' 39" West 491.55 feet;

thence North 10° 00' 00" East 230.00 feet;

thence North 21° 02' 38" West 100.00 feet;

thence North 86° 09' 00" West 129.50 feet;

thence North 05° 01' 49" West 990.00 feet;

thence South 87° 28' 24" West 1120.00 feet;

thence North 45° 00' 00" West 276.96 feet;

thence South 87° 28' 24" West 3376.92 feet to a point on the West line of said Section 17;

thence North 04° 41' 01" East 647.00 feet along said West Section line to the North line of said Section 17;

thence North 87° 28' 24" East 5151.42 feet along said North line of Section 17 to the Point of Beginning.

Said Parcel containing 100.02 acres more or less.

OR 2624 PG 0334



This instrument prepared by:  
Russell P. Schropp, Esquire  
Post Office Box 280  
Fort Myers FL 33902-0280

**GUARANTY OF COMPLETION  
OF RECLAMATION AGREEMENT**

THIS GUARANTY OF COMPLETION OF RECLAMATION AGREEMENT (hereinafter "Reclamation Agreement") entered into and effective as of this 21 day of JUNE, 1995, by and between SAMUEL AND CONNIE HUBSCHMAN, AS TRUSTEES, 7200 Davis Boulevard, Naples, Florida 33962 (hereinafter referred to as "Hubschman"), and LEE COUNTY, a political subdivision of the State of Florida, whose address for purposes of this agreement is Post Office Box 398, Fort Myers, Florida 33902-0398.

WHEREAS, Hubschman operates a mining operation in Lee County on property legally described as Sections 17 and 20, Township 47 South, Range 26 East, Lee County, Florida; and

WHEREAS, in order to operate said mine, Hubschman is required to obtain an excavation/mining operation permit from Lee County pursuant to the provisions of Sections 34-1651 through 34-1682, Lee County Land Development Code; and

WHEREAS, under the requirements of Section 34-1677, Lee County Land Development Code, Hubschman is required to post a performance bond, cash in escrow, letter of credit, or other agreement acceptable to the Lee County Attorney to assure compliance with the rehabilitation and reclamation plan for the mining operation; and

WHEREAS, Hubschman desires to enter into this Reclamation Agreement as a means of fulfilling the requirements of Section 34-1677, Lee County Land Development Code, and Lee County is willing to accept this Reclamation Agreement in fulfillment of said requirement;

NOW, THEREFORE, in recognition of the foregoing, the parties hereto do hereby agree as follows:

1. As documented by the correspondence attached hereto as Exhibit "A," the estimated cost for reclamation of the Hubschman mining operation is \$55,848.00. Lee County development regulations require a minimum surety in the amount of 110 percent of this amount, or \$61,472.40. Hubschman hereby covenants and agrees that Hubschman shall initiate and complete its reclamation plan approved by Lee County pursuant to Development Order Nos. 93-04-020.10E and 93-04-021.10E. In order to provide security for the estimated costs of reclamation, Hubschman shall provide to Lee County a first mortgage encumbering the property described in Exhibit "B" attached hereto and incorporated herein by reference. Said mortgage shall be in the form attached hereto as Exhibit "C," and shall be executed and delivered by Hubschman to Lee County within twenty (20) days of the execution of this agreement. Said mortgage shall remain in full force and effect until the occurrence of one of the following events:

A. Completion of the restoration and reclamation plan in accordance with the plans and specifications approved by Lee County pursuant to Development Order Nos. 93-04-020.10E and 93-04-021.10E; or

B. The posting by Hubschman of a performance bond, cash in escrow, or letter of credit in an amount to be determined by Lee County but not greater than 110 percent of the amount then necessary to complete the reclamation plan approved pursuant to Development Order Nos. 93-04-020.10E and 93-04-021.10E.

DR2624 PG0335



Upon occurrence of either of the above two stated events, Lee County shall execute and deliver to Hubschman, in recordable form, a Satisfaction of Mortgage acknowledging release of the mortgage encumbering the property described in Exhibit "B" attached hereto.

2. Lee County may demand a performance bond, escrow agreement, or letter of credit acceptable to Lee County in the event Hubschman is unable to demonstrate in its renewal permit applications required under the Lee County Land Development Code that Hubschman is proceeding with its reclamation plan in a timely manner or in a manner which is in full compliance with the terms of its reclamation plan or any conditions addressing reclamation in its applicable rezoning resolutions. Such bond, escrow or letter of credit shall be in an amount equal to 110 percent of the cost of the reclamation of the particular phase or phases for which an excavation/mining operation permit has been issued and shall be furnished to Lee County within sixty (60) days of the date of the request by Lee County.

3. In the event Hubschman fails to comply with the requirements of Paragraphs 1 and/or 2 above in a timely manner, Lee County may institute foreclosure proceedings of the mortgage given by Hubschman pursuant to Paragraph 1 above or, alternatively, may suspend any such excavations/mining operation permit which is currently in effect for the property described above. In the event a permit is suspended for noncompliance with this agreement, Hubschman shall immediately cease operations allowed by such permit until it has complied with the requirements of this agreement, and such compliance is acknowledged by Lee County.

4. In the event Hubschman fails to comply with the requirements of its reclamation plan or any conditions addressing reclamation in its applicable rezoning resolutions, Lee County may refuse to renew any such excavation/mining operation permit in effect for the property described above. In the event a permit is not renewed, Hubschman shall immediately cease operations allowed by such permit until it has fully complied with the requirements of its reclamation plans and rezoning resolutions and has applied for and received approval of a new excavation/mining operation permit in accordance with then existing regulations.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year written below.

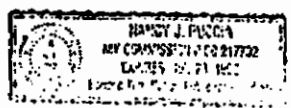
Mary Cook  
Witness Signature  
Mary Cook  
Printed name of Witness  
Pauline Puccio  
Witness Signature  
Pauline Puccio  
Printed name of Witness

[Signature]  
SAMUEL HUBSCHMAN, TRUSTEE  
Date: 6-21-95

STATE OF FLORIDA )  
COUNTY OF COLLIER )

The foregoing instrument was acknowledged before me this 21 day of JULY, 1995, by SAMUEL HUBSCHMAN, AS TRUSTEE. He is personally known to me, or produced as identification.

[Signature]  
Notary Public Signature  
NANCY J. PUCCIA  
Type/Print Name of Notary  
Commission No:  
My Commission Expires:



OR2624 PG0336



[Signature]  
Witness signature  
Pauline Puccio  
Printed name of Witness  
Pauline Puccio  
Witness signature  
Pauline Puccio  
Printed name of Witness

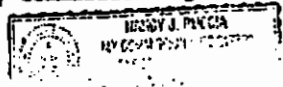
[Signature]  
CONNIE HUBSCHMAN, TRUSTEE  
Date: 6-21-95

DR2624 PG0337

STATE OF FLORIDA )  
COUNTY OF COLLIER )

The foregoing instrument was acknowledged before me this 21  
day of June, 1995, by CONNIE HUBSCHMAN, AS TRUSTEE. She  
is personally known to me or produced \_\_\_\_\_  
as identification.

[Signature]  
Notary Public Signature  
NAACUN PULLIA  
Type/Print Name of Notary  
Commission No:  
My Commission Expires:



County Manager on behalf of  
the Board of County Commissioners,  
Lee County, Florida

LEE COUNTY DEPARTMENT OF  
COMMUNITY DEVELOPMENT

[Signature]  
County Manager

[Signature]  
MARY GIBBS, DIRECTOR

CHARLIE GREEN LEE CITY FL  
95 AUG -4 PM 4:44

ATTEST:  
Charlie Green, Clerk of Courts

[Signature]  
By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:

By: [Signature]  
Lee County Attorney's Office