

**CITY OF LINCOLN, NEBRASKA
QUITCLAIM DEED**

The Grantor, **CITY OF LINCOLN, NEBRASKA, a municipal corporation**, organized and existing under and by virtue of the laws of the State of Nebraska, in consideration of good and valuable consideration received from Grantee, does quitclaim, grant, bargain, sell, convey, and confirm without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assigns, unto **THE DAIRY HOUSE, LLC, a Nebraska limited liability company**, herein called the Grantee, all of the Grantor's right, title and interest in and to the following described real property in Lincoln, Lancaster County, Nebraska:

That portion of the "M" Street right-of-way from a point 15' west of the east right-of-way line of 7th Street to the west right-of-way line of 8th Street,

and

That portion of the "L" Street right-of-way from a point 15' west of the east right-of-way line of 7th Street to the west right-of-way line of 8th Street,

both as more particularly depicted and described on Exhibits 1A and 1B attached hereto ("Vacated ROW"), subject, however, to all existing interest and easements of record and the below exceptions and reservations.

Grantee, by its execution of the below Acceptance of Deed, covenants and agrees as follows:

(a) This Quitclaim Deed conveys any interest of Grantor on an "As Is," "Where Is" basis with no warranties express or implied and Grantor shall be released and indemnified from all responsibility and liability to Grantee regarding the condition of the property, including environmental conditions, valuation, salability or utility of the property, or its suitability for any purpose whatsoever.

(b) Grantee's interest shall be subject to use restrictions limiting Grantee's use of the Vacated ROW to: (i) underground geothermal wells as a sustainable energy source for The Dairy House Condominium Regime ("Dairy House Condo") under the Declaration of Dairy House Condominium executed on December 29, 2010 and recorded with the Register of Deeds for Lancaster County, Nebraska on December 30, 2010 as Instrument No. 2010-06157 as amended by the First Amendment to Declaration of Dairy House Condominium recorded June 19, 2013 as Instrument No. 2013-031656, City of Lincoln, Lancaster County, Nebraska; and (ii) surface parking and driveway use for the Dairy House Condo.

(c) Grantee's interest shall be subject to and Grantor does hereby except and reserve in perpetuity to itself and to any person, firm, or corporation, public or private, lawfully engaged in a utility operation, their successors and assigns, easements for and rights of access to any and all existing and future electrical power and light, telephone, sanitary sewer, water service, open or underground storm sewer or drainage, gas service, and community antenna television utilities in, through, over, upon or under the above described premises. Said exceptions and reservations apply to the entire width and length of said premises and include, but are not limited to, the right to construct, reconstruct, operate, maintain, repair, replace, and remove such utilities, including lines, conduits, cables, wires, poles, mains, meters, pipes, and all appurtenances thereto. No building, or structure well shall be constructed or used so as to interfere in any manner with any of the aforesaid exceptions and reservations, unless Grantee: (i) bears the cost of relocating such utilities to the extent that such relocation is necessitated by such construction or use; and (ii)

obtains and provides at Grantee's expense the easements and rights of access required by reason of any such relocation, whether such relocation be upon any property owned by Grantee or upon any property owned by any persons other than Grantee; provided, of course, that this shall not prohibit affected utility operations from agreeing to bear any or all of the foregoing expense. The restriction contained in this subparagraph (c) shall not preclude Grantee from installing subsurface geothermal wells, provided that Grantee complies with any separation requirement of Grantor between the Grantor's utility improvement and the geothermal well.

(d) Grantee's interest shall be further subject to and Grantor does hereby except and reserve in perpetuity to itself and on behalf of the public a conservation easement over the above-described premises to restrict the use of said premises to open space to protect and preserve the drainageway and natural floodplain values, including flood storage capacity, conveyance and functional integrity of said premises relative to the floodplain and to restrict development and future use of said premises that will significantly impair or interfere with the use of open space values of said premises. In order to accomplish the purpose of this conservation easement, the following practices and uses shall be prohibited in the easement area:

- (i) Construction or placement of fill material, cement, buildings, fences, signs, or any other structure; and
- (ii) Any other use or practice that would adversely impact the flood storage capacity.

The City shall have the right of reasonable ingress and egress to and from the easement area from public roads and streets and from adjacent properties for its employees, contractors, vehicles and equipment for the purpose of inspecting, maintaining, protecting, or enhancing the easement area as the City may deem necessary or desirable. The City will attempt to give reasonable notice to Owner prior to entering the property for the above purposes. This easement may be released by the City pursuant to the provisions of Neb. Rev. Stat. § 76-2113.

To have and to hold the above described premises together with all tenements, hereditaments, and appurtenances thereto belonging unto the Grantee and to Grantee's successors and assigns forever.

The covenants and agreements set forth in paragraphs (a) through (d) above shall be binding upon Grantee and its successors and assigns and shall be covenants running with the Vacated ROW benefitting Grantor and its successors and assigns.

In witness whereof, Grantor has hereunto caused its corporate seal to be affixed and these presents signed by its Mayor.

Dated this _____ day of _____, 2015.

ATTEST: **CITY OF LINCOLN, NEBRASKA,**
a municipal corporation

City Clerk

Chris Beutler, Mayor of Lincoln

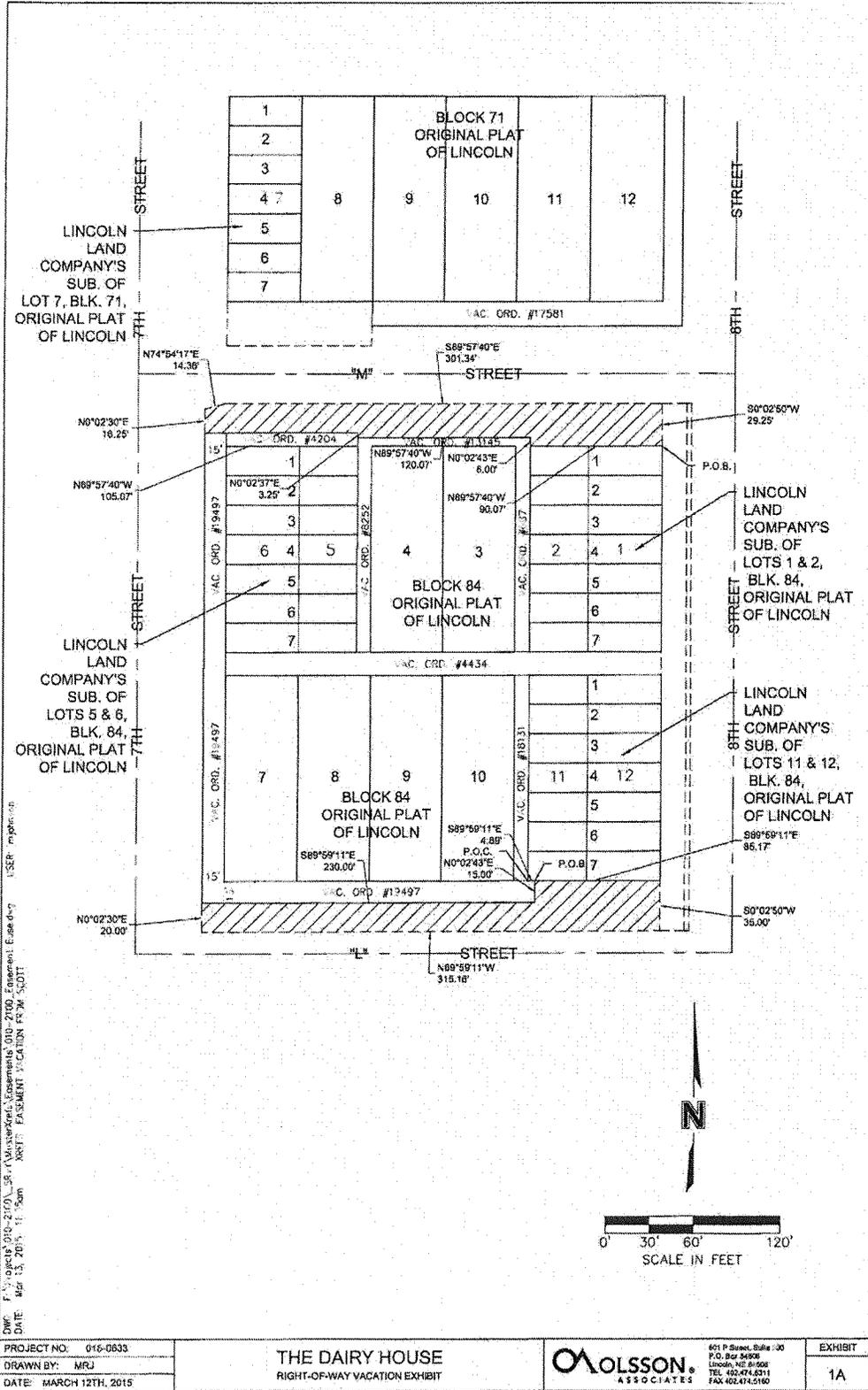
STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Chris Beutler, Mayor of the City of Lincoln, Nebraska.

Notary Public

EXHIBIT 1A

[Vacated Right of Way Map]



DWG. PROJECTS 210-2100...
 DATE: MAR 13 2015 11:50am
 USER: m...
 VACATED RIGHT OF WAY MAP FROM SCOTT

PROJECT NO. 015-0833
 DRAWN BY: MRJ
 DATE: MARCH 12TH, 2015

THE DAIRY HOUSE
 RIGHT-OF-WAY VACATION EXHIBIT

MOLSSON ASSOCIATES
 601 P Street, Suite 300
 P.O. Box 5490
 Lincoln, NE 68508
 TEL: 402.474.8211
 FAX: 402.474.5160

EXHIBIT
 1A

Exhibit 1A

EXHIBIT 1B

[Vacated Right of Way Legal Description]

1. Vacated "M" Street

That portion of the south side of the "M" Street right-of-way lying between South 7th and South 8th Streets, located in the North Half of Section 26, Township 10 North, Range 6 East of the 6th P.M., City of Lincoln, Lancaster County, Nebraska and more particularly described as follows:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, LINCOLN LAND COMPANY'S SUBDIVISION OF LOTS 1 AND 2, BLOCK 84, ORIGINAL PLAT OF LINCOLN, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF 8TH STREET, AND ON THE SOUTH RIGHT-OF-WAY LINE OF "M" STREET, SAID POINT BEING **THE TRUE POINT OF BEGINNING**; THENCE WESTERLY ON THE NORTH LINE OF SAID LOT 1, SAID LINE ALSO BEING THE SOUTH RIGHT-OF-WAY LINE OF "M" STREET, ON AN ASSUMED BEARING OF N89°57'40"W, A DISTANCE OF 90.07 FEET TO THE NORTHWEST CORNER OF SAID LOT 1, SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF VACATED "M" STREET (VACATION ORDINANCE #13145); THENCE N00°02'43"E, ON THE EAST RIGHT-OF-WAY LINE OF SAID VACATED "M" STREET (ORDINANCE #13145), A DISTANCE OF 6.00 FEET TO A POINT; THENCE N89°57'40"W, ON A LINE 6.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID VACATED "M" STREET (VACATION ORDINANCE #13145), SAID LINE ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF SAID VACATED "M" STREET (VACATION ORDINANCE #13145), A DISTANCE OF 120.07 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF VACATED "M" STREET (VACATION ORDINANCE #4204; THENCE N00°02'37"E, ON THE EAST RIGHT-OF-WAY LINE OF SAID VACATED "M" STREET (VACATION ORDINANCE #4204), A DISTANCE OF 3.25 FEET TO A POINT LOCATED 9.25 FEET NORTH OF THE SOUTH RIGHT-OF-WAY LINE OF SAID VACATED "M" STREET (VACATION ORDINANCE #4204); THENCE N89°57'40"W, ON THE NORTH RIGHT-OF-WAY LINE OF SAID VACATED "M" STREET (VACATION ORDINANCE #4204), AND ON THE NORTH RIGHT-OF-WAY LINE OF VACATED 7TH STREET (VACATION ORDINANCE #19497), SAID 7TH STREET VACATED RIGHT-OF-WAY LINE BEING 9.25 FEET NORTH OF AND PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID VACATED "M" STREET (VACATION ORDINANCE #4204), A DISTANCE OF 105.07 FEET TO A POINT OF INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF SAID VACATED 7TH STREET (VACATION ORDINANCE #19497), SAID POINT BEING 15.00 FEET WEST OF THE EAST RIGHT-OF-WAY LINE OF 7TH STREET; THENCE N00°02'30"E, ON A LINE 15.00 FEET WEST OF AND PARALLEL WITH THE EAST RIGHT-OF-WAY LINE OF SAID 7TH STREET, A DISTANCE OF 16.25 FEET TO A POINT; THENCE N74°54'17"E, A DISTANCE OF 14.36 FEET TO A POINT LOCATED 29.25 FEET NORTH OF THE SOUTH RIGHT-OF-WAY LINE OF VACATED "M" STREET (VACATION ORDINANCE #4204); THENCE S89°57'40"E, ON A LINE 29.25 FEET NORTH OF AND PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID VACATED "M" STREET (VACATION ORDINANCE #4204), EXTENDED A DISTANCE OF 301.34 FEET TO A POINT OF INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF 8TH STREET; THENCE S00°02'50"W, ON THE WEST RIGHT-OF-WAY LINE OF SAID 8TH STREET, A DISTANCE OF 29.25 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 7,501.27 SQUARE FEET OR 0.17 ACRES, MORE OR LESS.

2. Vacated "L" Street

That portion of the north side of the "L" Street right-of-way lying between South 7th and South 8th Streets, located in the North Half of Section 26, Township 10 North, Range 6 East of the 6th P.M., City of Lincoln, Lancaster County, Nebraska and more particularly described as follows:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 7, LINCOLN LAND COMPANY'S SUBDIVISION OF LOTS 11 AND 12, BLOCK 84, ORIGINAL PLAT OF LINCOLN, SAID POINT BEING ON THE NORTH RIGHT-OF-WAY LINE OF "L" STREET; THENCE EASTERLY ON THE SOUTH LINE OF SAID LOT 7, SAID LINE BEING THE NORTH RIGHT-OF-WAY LINE OF SAID "L" STREET, ON AN ASSUMED BEARING OF S89°59'11"E, A DISTANCE OF 4.89 FEET TO **THE TRUE POINT OF BEGINNING**; THENCE CONTINUING S89°59'11"E ON SAID "L" STREET RIGHT-OF-WAY LINE, A DISTANCE OF 85.17 FEET TO THE SOUTHEAST CORNER OF SAID LOT 7, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF 8TH STREET; THENCE S00°02'50"W, ON THE WEST RIGHT-OF-WAY LINE OF SAID 8TH STREET, A DISTANCE OF 35.00 FEET TO A POINT; THENCE N89°59'11"W, ON A LINE 35.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH RIGHT-OF-WAY LINE OF SAID "L" STREET EXTENDED, A DISTANCE OF 315.16 FEET TO A POINT OF INTERSECTION WITH A LINE LOCATED 15.00 FEET WEST OF THE EAST RIGHT-OF-WAY OF 7TH STREET; THENCE N00°02'30"E, ON A LINE 15.00 FEET WEST OF AND PARALLEL WITH THE EAST RIGHT-OF-WAY LINE OF SAID 7TH STREET, A DISTANCE OF 20.00 FEET TO THE SOUTHWEST CORNER OF VACATED 7TH STREET (VACATION ORDINANCE #19497), SAID POINT BEING 15.00' SOUTH OF THE NORTH RIGHT-OF-WAY LINE OF VACATED "L" STREET (VACATION ORDINANCE #19497); THENCE S89°59'11"E, ON THE SOUTH RIGHT-OF-WAY LINE OF VACATED "L" STREET (VACATION ORDINANCE #19497), SAID LINE BEING 15.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH RIGHT-OF-WAY LINE OF SAID VACATED "L" STREET (VACATION ORDINANCE #19497), A DISTANCE OF 230.00 FEET TO THE SOUTHEAST CORNER OF SAID VACATED "L" STREET (VACATION ORDINANCE #19497); THENCE N00°02'43"E, ON THE EAST RIGHT-OF-WAY LINE OF SAID VACATED "L" STREET (VACATION ORDINANCE #19497), A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 7,580.75 SQUARE FEET OR 0.17 ACRES, MORE OR LESS.

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for April 15, 2015 PLANNING COMMISSION MEETING

PROJECT #: Street and Alley Vacation No. 15004

PROPOSAL: To vacate portions of M & L Streets between S. 7th Street and S. 8th Street

LOCATION: M Street and L Street between S. 7th Street and S. 8th Street

LAND AREA: 0.34 acres, more or less

CONCLUSION: Vacation of the public rights-of-way will not negatively impact the transportation system and will further accommodate redevelopment of the adjacent property. Subject to the conditions of approval, this request is in conformance with the Comprehensive Plan.

<u>RECOMMENDATION:</u>	Conforms to the Comprehensive Plan
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GENERAL INFORMATION:

LEGAL DESCRIPTION: A portion of the south side of the M Street right-of-way and a portion of the north side of the L Street right-of-way, all lying between S. 7th and S. 8th Streets and more particularly described on the attached exhibit.

SURROUNDING LAND USE AND ZONING:

North: Steel Fabricator; I-1
South: Office/Parking; B-4
East: Office; B-4
West: Manufacturing; I-1

ASSOCIATED APPLICATIONS:

COMPREHENSIVE PLAN SPECIFICATIONS:

P. 10.15 - Local streets and alleys are not included in the functional classification.

P. 11.2 - Promote renewable energy sources and promote the conservation and efficient use of energy in all areas.

HISTORY:

June 1869 L and M Streets were platted as rights-of-way in the Original Lincoln final plat.

The adjacent property was rezoned from K, Light Industrial to I-1, Industrial with the 1979 zoning update.

November 2010 This block was rezoned from I-1 to B-4

February 2011 The Redevelopment Agreement for the Telesis/Dairy House project was approved by the City Council. Subsequent amendments to the Redevelopment Agreement were approved August 2011 and September 2012.

UTILITIES: The right-of-way includes public utilities. Utility easements will need to be retained over the vacated right-of-way.

TRAFFIC ANALYSIS: L and M Streets are local streets adjacent to this block. Sidewalks are not clearly identified but should be delineated as part of this request.

ENVIRONMENTAL CONCERNS: This right-of-way is located in the Salt Creek floodplain. Conservation easements will need to be retained over the vacated right-of-way to conserve flood storage.

AESTHETIC CONSIDERATIONS: This property is zoned B-4 and is subject to Downtown Design Standards. Vacating these rights-of-way will not require a design review. Future alterations (i.e. new parking lot) to the site may require compliance with the Downtown Design Standards.

ALTERNATIVE USES: Maintain the area as public right-of-way.

ANALYSIS:

1. The proposal is to vacate portions of the south side of M Street and the north side of L Street lying between S. 7th Street and S. 8th Street. These rights-of-way are adjacent to the Telesis/Dairy House block that is under redevelopment. The owner of the adjacent property would like to install geothermal wells underneath these portions of right-of-way as a sustainable energy source for the development.
2. The redevelopment agreement for the Telesis/Dairy House Project approved in February 2011 supported vacating portions of the adjacent streets. The intent of the vacation at that time was to remove the loading docks from the right-of-way. The vacation was also conditioned on obtaining public access easements for sidewalks and approval of a sidewalk/dock plan.
3. M and L streets were both platted with 100 feet of right-of-way, and portions of each street have been vacated over time. Today M Street on this block varies between 77 and 88 feet, and L Street is between 85 and 100 feet. This proposal will reduce the rights-of-way on M Street to 53 feet and L Street to 65 feet. The standard urban right-of-way is 60 feet, and design standards require

a minimum of 33 feet for commercial/industrial roadways measured to the back of curbs. Public access easements will need to be dedicated over the vacated right-of-way to accommodate new public sidewalks. The streets will otherwise continue to function as they are today.

4. Various public utilities are located in this right-of-way including storm sewers, sanitary sewers, a water main and overhead L.E.S. utilities. Blanket utility easements will need to be dedicated over the vacated rights-of-way in order to maintain these public utilities. An easement will also need to be dedicated for street maintenance and repair purposes.
5. This property is located within the South Haymarket study area. The draft South Haymarket Neighborhood Study supports the reuse of the former dairy on this block. The study also suggests that most rights-of-way in South Haymarket be maintained for streetscape amenities to maximize on-street parking, accommodate street trees and provide consistent and safe pedestrian routes.

The draft South Haymarket Neighborhood Study also supports reestablishing rights-of-way to increase access and allow for urban-density redevelopment. Previously vacated rights-of-way under consideration to be reestablished include M Street west of S. 7th Street and L Street west of S. 6th Street. The applicant's request to vacate these portions of M and L Streets should not negatively impact adjacent existing or future rights-of-way.

Requests to vacate right-of-way in South Haymarket should be carefully reviewed on a case-by-case basis and only supported in unique circumstances. The City should continue to maintain this policy in order to implement recommended streetscape elements.

6. Portions of this right-of-way are located within the Salt Creek floodplain. The City's policy when vacating right-of-way in the floodplain is to retain conservation easements to protect flood storage volume. A conservation easement over the vacated right-of-way will be retained at the time of deed transfer.
7. The request from Telesis/Dairy House is to vacate right-of-way to install geothermal wells. Geothermal systems are part of an energy sustainability plan for this development and are supported by the Comprehensive Plan as a sustainable energy source.
8. Lincoln Municipal Code Chapter 14.20 requires the City to establish the proper price to be paid for the right-of-way, as well as any amounts necessary to guarantee required reconstruction within the right-of-way. These values must be established and deposited with the City Clerk prior to scheduling the vacation request with the City Council.

**BEFORE THE VACATION REQUEST IS SCHEDULED ON THE CITY COUNCIL AGENDA
THE FOLLOWING MUST BE COMPLETED:**

- 1.1 The provisions of Chapter 14.20 of the Lincoln Municipal Code are met.
- 1.2 Include retention of utility easements by City with deed transfer.
- 1.3 Include retention of conservation easement by City with deed transfer.
- 1.4 Include retention of maintenance and repair easement by City with deed transfer.
- 1.5 Include retention of public access easements by City with deed transfer.

Prepared by:

Paul Barnes, Planner
402-441-6372
pbarnes@lincoln.ne.gov

DATE:

April 1, 2015

APPLICANT/OWNER: The Dairy House, LLC
Attn: Eric Shafer
729 Q Street
Lincoln, NE 68508

CONTACT: Thomas Huston
233 S. 13th Street, Suite 1900
Lincoln, NE 68508

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STREET & ALLEY VACATION NO. 15004

PUBLIC HEARING BEFORE THE PLANNING COMMISSION:

April 15, 2015

Members present: Lust, Hove, Beecham, Weber, Scheer, and Sunderman; Harris, Corr and Cornelius absent.

Note: Maya Harris has elected to exercise her right of abstention on this application to avoid any appearance of partiality due to her close relationship with the applicant.

Staff Recommendation: Conforms to the Comprehensive Plan

There were no ex parte communications disclosed on this item.

Staff presentation: **Paul Barnes of the Planning staff** stated that this special permit is a request to vacate portions of M and L Streets between 7th Street and 8th Street. Barnes noted that this is a full block located in the South Haymarket which is occupied by the former Meadow Gold Dairy complex. Barnes noted that in 2011 there was a redevelopment agreement approved for reuse of this complex of buildings of which is currently underway. Telesis has been incorporated into the building and there are plans to add a brewery to the site followed by subsequent phases of redevelopment. The vacation is being requested for the location of a geothermal system that is proposed for the development. The applicant wants to add additional geothermal wells in the right-of-way to be vacated as well as to provide for access and control of their loading areas. Barnes explained that there are a lot of docks and overhead doors along the buildings on both L and M Streets, which have existed for decades as loading areas and these areas will continue to be used with the redevelopment project. A study is being conducted in the South Haymarket area which includes a review of the existing rights-of-way. Barnes noted that M and L Streets were both originally platted with 100- foot rights-of-way but over the years, pieces have been vacated; most recently with the vacation of some right-of-way along 7th Street as part of this redevelopment project. Barnes noted that it is appropriate to look when requests for vacating rights-of-way on a case-by-case basis while maintaining enough right-fo-way to be able to function as a street and allow for vehicular and pedestrian traffic as well as street scape elements. The proposed vacation includes a recommendation to include a pedestrian way through the vacated portions of the street and include a functioning sidewalk as part of this redevelopment project. In addition, the South Haymarket Study considers the impact on the adjacent blocks. One concept that is being discussed is the potential to re-establish some of the rights-of-way, i.e. M Street west of 7th Street. They have held discussions with Public Works regarding this proposal and have come up with some designs and found that this proposal would not have a negative impact on this concept and that the city could still dedicate additional M Street right-of-way and still have two lanes of traffic on M Street with the ability for sidewalks and other streets capes.

Questions of Staff

Beecham stated that this building is land marked and indicated that this is not going before the Historic Preservation Commission since the changes are only impacting the street scape, etc. Barnes stated that this is correct – this does not impact the historical significance of the building. Barnes noted that this property is zoned B-4 so if any parking area were established along 8th Street, those areas would need to meet Downtown Design Standards. Staff have had discussions with the developers about these standards and will continue to work with them on these items as well.

Lust asked for clarification about the location of the dedicated bikeway along N Street. Barnes indicated that a protected bikeway is along N Street from the Jamaican Trail along Arena Drive extending east to 21st or 22nd Street; this is currently under construction and it is anticipated to be completed later this year.

Proponents:

- 1. Tom Huston**, 233 South 13th Street, Lincoln, NE, representing the applicant. He has been working with the team of developers over the last six months on this project. In 2011, the city of Lincoln approved the redevelopment project for the first phase of this development. This vacation request facilitates the relocation of two primary employers from their current location at 7th & Q Streets to this new development, including Data Security and Emporium Brewery Company. This will be a better fit for these operations with the ability to expand to the property at 8th and M Streets. The principle reasons for the vacation request is for the expansion of the geothermal well system consisting of 76 new wells which is designed to provide the heating and cooling deliveries for the entire complex. The complex will exceed 175,000 square feet, once fully developed. Referring to an aerial view, Huston showed the proposed locations of the wells along M and L Streets. Huston noted that one of the primary objectives of the central business district targets the reduction of carbon dioxide, which will be reduced by 754 tons as a result of this project and will more than satisfy the goal for the entire central business district. This matches up well with the sustainable energy and renewable energy objectives of the Comprehensive Plan. The second primary purpose relates to the ability of Telesis and their operations to continue to make this block a fully functioning and economically viable area by providing access and also some additional private areas on the surface use of these properties. Huston noted that the green area on the diagram is intended for the same purpose. The developers have been working with staff over the past several months recognizing that the city has different objectives for the 8th Street corridor because of the primary traffic component that it will become as part of the South Haymarket Plan. A compromise was reached and rather than seeking a vacation, they are going to try to utilize a permanent easement for this area. Huston explained that the reason they did not request an easement for the other areas is primarily because his client is investing approximately \$1.2 million for the installation of the geothermal system to provide the energy and it makes sense that they have long-term ownership to ensure that the investment is secure. Huston stated that the request for street vacation is consistent with the Comprehensive Plan, the Downtown Master Plan and the proposed South Haymarket Plan. The permanency of the ownership and the easement will add to the certainty that will be required for property owner to make the continued investment in this property and will allow the property to become economically viable while preserving the

historical significance of the property. Huston thanked the city staff from various departments, including the Mayor's Office, Public Works, Urban Development, and Planning Departments. It is exciting to see this project move forward.

Beecham stated that this is an interesting project which combines two of her favorite components – the preservation of historic buildings and sustainable energy sources. She asked if the energy sustainability from the geothermal system will be able to provide energy to other buildings as well. Huston indicated that it will be sized primarily for the 175,000 square feet of the complex.

Scheer commented about paving over the geothermal well fields and asked if there are plans to provide for some turf and street scape, i.e. plantings. Huston stated that they need to avoid conflicts with any deep root plantings, etc. Huston noted that once they are constructed, continuous maintenance on the wells is not needed. In terms of the depth of the wells, Huston stated that they will be 100s of feet.

Hove asked if the existing buildings will be changed? Huston indicated that there are 15 condominium units but the redevelopment project that has been approved only deals with a few of them. There are multiple condo units that are subject to future redevelopment, which is one of the reasons they used a condominium regime; this allows them to do a phased redevelopment effort, which will occur as additional uses are determined.

Opponents: None.

Staff Questions: None.

ACTION BY PLANNING COMMISSION:

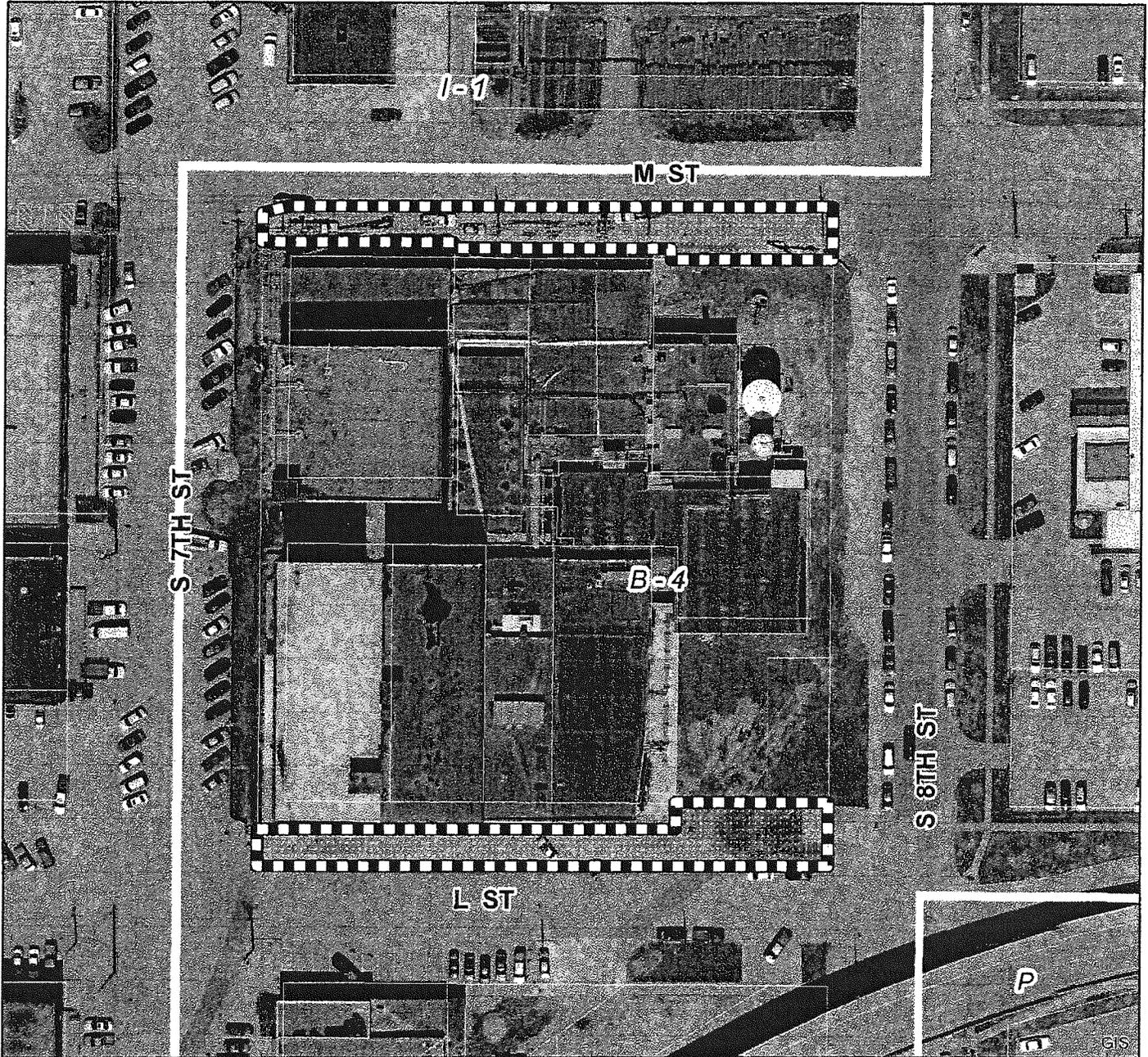
April 15, 2015

Hove moved to recommend conformance with the Comprehensive Plan; seconded by Beecham.

Beecham stated that this is an exciting project which takes an historic building and uses it in a creative way that is good for the environment. She supports that vacation request.

Lust echoed Beecham's comments stating that this a neat project and she supports the application.

The motion recommending conformance with the Comprehensive Plan for this street and alley vacation carried 6-0; Lust, Hove, Beecham, Weber, Scheer, and Sunderman; Harris abstained; Corr and Cornelius absent.



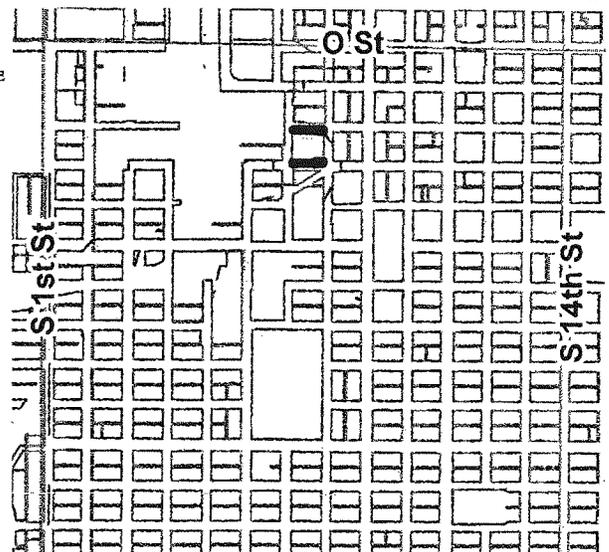
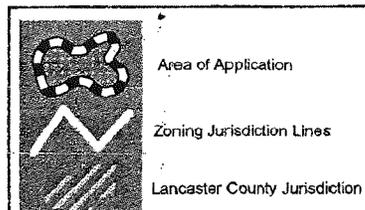
Street and Alley Vacation #: SAV15004
S 7th & M St

2013 aerial

Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District

One Square Mile:
Sec.26 T10N R06E



CLINE WILLIAMS
WRIGHT JOHNSON & OLDFATHER, L.L.P.

ATTORNEYS AT LAW
ESTABLISHED 1857

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LINCOLN, NEBRASKA 68508-2095

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March 18, 2015

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THOMAS C. HUSTON
DON R. JANSSEN
SUSAN K. SAPP
KEVIN J. SCHNEIDER
ANDREW D. STROTMAN
GARY R. BATENHORST
JILL COSSIN JENSEN
JOHN C. HEWITT
ROCHELLE A. MULLEN
TRENTEN P. BAUSCH
MICHAEL C. PALLESEN
RICHARD P. JEFFRIES
TRACY A. OLDEMAYER
PAMELA EPP OLSEN
TRENT R. SIDDER
ANDRE R. BARRY

DAVID J. ROUTH
MEGAN S. WRIGHT
THERESA D. KOLLER
STANTON N. BEEDER
AUSTIN L. MCKILLIP
MARY ANN NOVAK
KEITH T. PETERS
ANDREW R. WILLIS
TARA A. STINGLEY
SEAN D. WHITE
MICHELLE L. SITORJUS
JONATHAN J. PAPIK
ADAM W. BARNEY
GREGORY S. FRAYSER
COADY H. PRUETT
CRISTIN MCGARRY BERKHAUSEN
GRANT T. MAYNARD
KARA J. RONNAU
TRAVIS W. TETTENBORN
HEATHER A. CARVER
SHANNON E. FALLON
ROBERT KINNEY-WALKER
KATHERINE M. KELLEY
FREDRIC H. KAUFFMAN
DONALD F. BURT, RETIRED
STEPHEN E. GEHRING

VIA HAND DELIVERY

David Cary
Acting Director of Planning
Lincoln City/Lancaster County
Planning Department
555 South 10th Street, Room 213
Lincoln, NE 68508

Re: Application to Vacate a Portion of the Public Right of Ways Along "M"
Street and "L" Street Between 7th Street and 8th Street.
Our File No.: 14189.023

Dear Mr. Cary:

This firm represents The Dairy House, LLC ("Dairy House"), which seeks to vacate certain right of way and obtain easements for the commercial development of its block. As part of its energy sustainability plan, Dairy House intends to install a geothermal well field which requires a substantial investment. Dairy House also proposes to use the surface for access and parking purposes. We enclose the application and supplementary documents associated with that request.

A. PROJECT

The Dairy House proposes to install geothermal wells underneath a portion of the right of ways along "L" Street and "M" Street between 8th Street and 7th Street. These wells will be in addition to the existing geothermal wells located on the Dairy House's current property. The geothermal wells will provide cost effective, reliable, sustainable, and environment friendly energy. In connection with the construction of these wells, the Dairy House seeks to vacate the following: (1) a portion of the south side of the "M" Street right of way from a point fifteen feet (15') west of the east right of way line of 7th Street to the west right of way line of 8th Street; and (2) a portion of the north side of

David Cary
March 18, 2015
Page 2

the "L" Street right of way from a point fifteen feet (15') west of the east right of way line of 7th Street to the west right of way line of 8th Street. The Dairy House and the Dairy House Condominium Regime, of which the Dairy House is the only member, currently own all abutting parcels to said portions of the public right of ways.

B. ASSOCIATED EASEMENTS

In addition to the above-described vacations, the Dairy House also seeks permanent underground and access easements across a portion of the west side of 8th Street public right of way and a portion of the remaining "M" Street public right of way. These easements will provide the Dairy House the ability to install, operate, inspect, maintain, repair, and replace the geothermal wells contemplated by the enclosed application. As a result of a compromise worked out with the City staff, the Dairy House is willing to utilize a permanent easement in 8th Street, rather than the ownership achieved through the right of way vacation process, to facilitate the geothermal well field investment. The easements, however, do not require the same application process as the requested vacations. Accordingly, although outside the scope of the enclosed application, the Dairy House will simultaneously work with the City in pursuit of the above-described easements.

C. SUBMITTAL

The Dairy House requests the city to vacate a portion of the public ways along "M" Street and "L" Street between 7th Street and 8th Street. The Dairy House does not seek any waiver in connection with this application.

Enclosed with this delivery is the:

1. Application Request Form which seeks vacation of a portion of the "M" Street and "L" Street right of ways;
2. Site Plan as required by the City of Lincoln application, which will be uploaded to the ProjectDox registry;
3. Application Fee in the amount of \$165.00 payable to the City of Lincoln.
4. Petition to Vacate Public Way with Release and Waiver of Rights and Title, and Quitclaim Deed to City of Lincoln signed by The Dairy House, LLC, as owner of all abutting parcels. We have

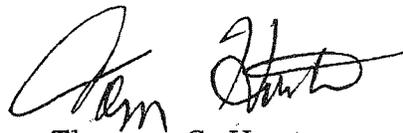
David Cary
March 18, 2015
Page 3

attached maps and legal descriptions to the Petitions. We are in the process of confirming these descriptions and will provide updated maps and descriptions once confirmed; and

5. Information Sheet detailing the requested vacation of public way.

If there are any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Huston", written in a cursive style.

Thomas C. Huston
For the Firm

Enclosure

cc: Eric Shafer (via email)
Meghan Sonenberg (via email)

**LEGAL DESCRIPTION
RIGHT-OF-WAY VACATION**

A TRACT OF LAND COMPOSED OF A PORTION OF "M" STREET RIGHT-OF-WAY, LOCATED IN THE NORTH HALF OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, LINCOLN LAND COMPANY'S SUBDIVISION OF LOTS 1 AND 2, BLOCK 84, ORIGINAL PLAT OF LINCOLN, SAID POINT BEING ON THE WEST RIGHT-OF-WAY LINE OF 8TH STREET, AND ON THE SOUTH RIGHT-OF-WAY LINE OF "M" STREET, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE WESTERLY ON THE NORTH LINE OF SAID LOT 1, SAID LINE BEING THE SOUTH RIGHT-OF-WAY LINE OF "M" STREET, ON AN ASSUMED BEARING OF N89°57'40"W, A DISTANCE OF 90.07' TO THE NORTHWEST CORNER OF SAID LOT 1, SAID POINT BEING ON THE EAST LINE OF RIGHT-OF-WAY VACATION ORDINANCE #13145; THENCE N00°02'43"E, ON THE EAST LINE OF SAID VACATED RIGHT-OF-WAY, A DISTANCE OF 6.00' TO A POINT; THENCE N89°57'40"W, ON A LINE 6.00' NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID RIGHT-OF-WAY, SAID LINE BEING THE NORTH LINE OF SAID RIGHT-OF-WAY VACATION ORDINANCE, A DISTANCE OF 120.07' TO A POINT OF INTERSECTION WITH THE EAST LINE OF RIGHT-OF-WAY VACATION ORDINANCE #4204; THENCE N00°02'37"E, ON THE EAST LINE OF SAID VACATED RIGHT-OF-WAY, A DISTANCE OF 3.25' TO A POINT LOCATED 9.25' NORTH OF THE SOUTH LINE OF SAID RIGHT-OF-WAY; THENCE N89°57'40"W, ON A NORTH LINE OF SAID VACATED RIGHT-OF-WAY, AND ON THE NORTH LINE OF VACATED RIGHT-OF-WAY ORDINANCE #19497, SAID LINE BEING 9.25' NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 105.07' TO A POINT OF INTERSECTION WITH THE WEST LINE OF SAID VACATED RIGHT-OF-WAY ORDINANCE #19497, SAID POINT BEING 15.00' WEST OF THE EAST RIGHT-OF-WAY LINE OF 7TH STREET; THENCE N00°02'30"E, ON A LINE 15.00' WEST OF AND PARALLEL WITH THE EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 16.25' TO A POINT; THENCE N74°54'17"E, A DISTANCE OF 14.36' TO A POINT LOCATED 29.25' NORTH OF THE SOUTH RIGHT-OF-WAY LINE OF "M" STREET; THENCE S89°57'40"E, ON A LINE 29.25' NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 301.34' TO A POINT OF INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF 8TH STREET; THENCE S00°02'50"W, ON THE WEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 29.25' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 7,501.27 SQUARE FEET OR 0.17 ACRES, MORE OR LESS.

TOGETHER WITH:

A TRACT OF LAND COMPOSED OF A PORTION OF "L" STREET RIGHT-OF-WAY, LOCATED IN THE NORTH HALF OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 7, LINCOLN LAND COMPANY'S SUBDIVISION OF LOTS 11 AND 12, BLOCK 84, ORIGINAL PLAT OF LINCOLN, SAID POINT BEING ON THE NORTH RIGHT-OF-WAY LINE OF "L" STREET; THENCE EASTERLY ON THE SOUTH LINE OF SAID LOT 7, SAID LINE BEING THE NORTH LINE OF SAID RIGHT-OF-WAY, ON AN ASSUMED BEARING OF S89°59'11"E, A DISTANCE OF 4.89' TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING S89°59'11"E ON SAID LINE, A DISTANCE OF 85.17' TO THE SOUTHEAST CORNER OF SAID LOT 7, SAID POINT BEING ON THE WEST RIGHT-OF-WAY LINE OF 8TH STREET; THENCE S00°02'50"W, ON THE WEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 35.00' TO A POINT; THENCE N89°59'11"W, ON A LINE 35.00' SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 315.16' TO A POINT OF INTERSECTION WITH A LINE LOCATED 15.00' WEST OF THE EAST RIGHT-OF-WAY OF 7TH STREET; THENCE N00°02'30"E, ON A LINE 15.00' WEST OF AND PARALLEL WITH THE EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 20.00' TO THE SOUTHWEST CORNER OF RIGHT-OF-WAY VACATION ORDINANCE #19497, SAID POINT BEING 15.00' SOUTH OF THE NORTH RIGHT-OF-WAY LINE OF "L" STREET; THENCE S89°59'11"E, ON THE SOUTH LINE OF RIGHT-OF-WAY VACATION ORDINANCE #19497, SAID LINE BEING 15.00' SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 230.00' TO THE SOUTHEAST CORNER OF SAID RIGHT-OF-WAY VACATION ORDINANCE #19497; THENCE N00°02'43"E, ON THE EAST LINE OF SAID VACATED RIGHT-OF-WAY, A DISTANCE OF 15.00' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 7,580.75 SQUARE FEET OR 0.17 ACRES, MORE OR LESS.

Thursday, March 12, 2015

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DWG: F:\Projects\010-2100\SRVY\MasterXrefs\Easements\010-2100_Easement_Base.dwg
DATE: Mar 13, 2015 12:04pm
USER: m3h:rcn
XREFS: EASEMENT VACATION FROM SCOTT

PROJECT NO:	015-0633
DRAWN BY:	MJR

THE DAIRY HOUSE
RIGHT-OF-WAY VACATION EXHIBIT

MOLSSON
ASSOCIATES

601 P Street, Suite 200
P.O. Box 84608
Lincoln, NE 68508
TEL 402.474.8311
FAX 402.474.5160

EXHIBIT

1B

INFORMATION SHEET

An Information Sheet must be filled out completely by the owners of each parcel abutting the requested vacation. The attached **Petition to Vacate Public Way** must also be filled out completely according to the instructions contained in the Instruction Sheet.

1. Name of Petitioner (Current Titleholder/s): The Dairy House, LLC

If more than one individual, indicate if you are:

 joint tenants with right of survivorship, OR tenants in common

2. Petitioner's Address: 729 Q Street
Lincoln, NE 68508

3. Petitioner's Telephone Number: (402) 434-5959

4. Name of street, alley, or other public way sought to be vacated: (A) A portion of the "M" Street right of way from a point 15' west of the east right of way line of 7th Street to the west right of way line of 8th Street (B) A portion of the "L" Street right of way from a point 15' west of the east right of way line of 7th Street to the west right of way line of 8th Street. Both as more particularly shown on Exhibit "1A" and described on Exhibit "1B."

5. Legal description of Petitioner's property which abuts the public way sought to be vacated: See attached.

6. Why are you seeking to have this street, alley, or other public way vacated?
The Dairy House, LLC intends to install geothermal wells as a means of cost effective, sustainable, and environment friendly energy.

7. What use or uses do you propose to make of the public way should it be vacated?
In addition to the geothermal wells beneath the surface, The Dairy House, LLC will construct additional parking along "M" Street and "L Street.

8. Do you intend to purchase that portion of the vacated public way which abuts your property as described in the **Petition to Vacate Public Way** and/or other portions of the vacated public way?
 X YES NO

9. Name and address of person to whom tax statement should be sent:
The Dairy House, LLC
729 Q Street
Lincoln, NE 68508

The property will be appraised and the purchase price of the portion abutting your property must be paid by you to the City Clerk unless you have indicated that the portion abutting your property will be sold to any other abutting owner willing to pay the purchase price. The Vacation Ordinance will not be introduced before the City Council until the full price of the entire public way proposed to be vacated has been paid.

***** IMPORTANT: BE SURE THAT THE PETITION TO VACATE PUBLIC WAY HAS BEEN PROPERLY EXECUTED BY ALL TITLEHOLDERS TO YOUR PROPERTY AND ATTACH IT TO**

INFORMATION SHEET

An Information Sheet must be filled out completely by the owners of each parcel abutting the requested vacation. The attached **Petition to Vacate Public Way** must also be filled out completely according to the instructions contained in the Instruction Sheet.

1. Name of Petitioner (Current Titleholder/s): The Dairy House Condominium Association

If more than one individual, indicate if you are:

_____ joint tenants with right of survivorship, OR _____ tenants in common

2. Petitioner's Address: 729 Q Street
Lincoln, NE 68508

3. Petitioner's Telephone Number: (402) 434-5959

4. Name of street, alley, or other public way sought to be vacated: (A) A portion of the "M" Street right of way from a point 15' west of the east right of way line of 7th Street to the west right of way line of 8th Street (B) A portion of the "L" Street right of way from a point 15' west of the east right of way line of 7th Street to the west right of way line of 8th Street. Both as more particularly shown on Exhibit "1A" and described on Exhibit "1B."

5. Legal description of Petitioner's property which abuts the public way sought to be vacated: See attached.

6. Why are you seeking to have this street, alley, or other public way vacated?
The Dairy House, LLC intends to install geothermal wells as a means of cost effective, sustainable, and environment friendly energy.

7. What use or uses do you propose to make of the public way should it be vacated?
In addition to the geothermal wells beneath the surface, The Dairy House, LLC will construct additional parking along "M" Street and "L" Street.

8. Do you intend to purchase that portion of the vacated public way which abuts your property as described in the **Petition to Vacate Public Way** and/or other portions of the vacated public way?
 YES NO

9. Name and address of person to whom tax statement should be sent:
The Dairy House, LLC
729 Q Street
Lincoln, NE 68508

The property will be appraised and the purchase price of the portion abutting your property must be paid by you to the City Clerk unless you have indicated that the portion abutting your property will be sold to any other abutting owner willing to pay the purchase price. The Vacation Ordinance will not be introduced before the City Council until the full price of the entire public way proposed to be vacated has been paid.

***** IMPORTANT: BE SURE THAT THE PETITION TO VACATE PUBLIC WAY HAS BEEN PROPERLY EXECUTED BY ALL TITLEHOLDERS TO YOUR PROPERTY AND ATTACH IT TO**

PETITION TO VACATE PUBLIC WAY
with
RELEASE AND WAIVER OF RIGHTS AND TITLE,
AND QUITCLAIM DEED TO CITY OF LINCOLN

TO THE HONORABLE CITY COUNCIL OF THE CITY OF LINCOLN, NEBRASKA:

The undersigned property owner(s) hereby petition you to vacate the following street, alley, or other public way, commonly known as: *(i.e.: Elm Street from 1st to 2nd St. or East-west alley, from the north line of 1st St. to the south line of 2nd St.)*

A) A portion of the "M" Street right of way from a point 15' west of the east right of way line of 7th Street to the west right of way line of 8th Street. B) A portion of the "L" Street right of way from a point 15' west of the east right of way line of 7th Street to the west right of way line of 8th Street. Both as more particularly shown on Exhibit "1A" and described on Exhibit "1B."

in the CITY OF LINCOLN, NEBRASKA, with the City reserving in said street, alley, or other public way such title, rights, easements, and privileges as it may deem necessary. In consideration of the vacation of the above-described street, alley, or other public way, we, and each of us, for ourselves, our heirs, personal representatives, successors, and assigns, hereby waive and release any and all claims, causes of action, rights of access, and demands of every nature, known or unknown, which may accrue to us, or which we now have, or which we may hereafter have as a result of such vacation; and hereby quitclaim unto the City of Lincoln, Nebraska, and to its successors and assigns forever, all right, title, interest, estate, and demand, both at law and in equity, in and to all of said street, alley, or other public way.

TO HAVE AND TO HOLD the above-described street, alley, or other public way together with all tenements, hereditaments, and appurtenances thereto belonging unto the City of Lincoln, Nebraska, and to its successors and assigns forever.

The undersigned hereby represent(s) that he, she, they, or it is(are) the owner(s) of the following described property in Lincoln, Lancaster County, Nebraska, abutting on said street, alley, or other public way: *(Legal description from deed or abstract NOT street address, i.e. Lot 10, Block 500 Boardwalk Addition NOT 4500 Park Place Blvd.)*

See attached.

INTEROFFICE MEMORANDUM

TO: Mayor Beutler
& City Council Members

FROM: Clinton W. Thomas

DEPARTMENT: City Council Office

DEPARTMENT: Housing Rehab & Real Estate Division

ATTENTION:

DATE: April 16, 2015

COPIES TO: Teresa J. Meier
David R. Cary
Jeff Kirkpatrick
Byron Blum, Bldg & Safety
Geri Rorabaugh, Planning
Sandy Dubas, City Clerk's Office
Jamie Phillips, Mayor's Office

SUBJECT: Street & Alley Vacation No. 15004
M & L Streets, 7th-8th

A request has been made to vacate a portion of M and L Streets between 7th and 8th Streets. If the area is vacated it will be sold to the abutting property owner who is redeveloping the adjoining property. The area was viewed and appeared as a surfaced area utilized for parking and street. Staff has indicated the existence of various utilities within the street including storm sewers, sanitary sewers, water mains and electric utilities. Evidence of the storm sewer and overhead lines were observed within the area being vacated. A blanket utility easement will be requested to be reserved over the area for the maintenance and repair of these and future utilities as well as street maintenance and repair. A portion of the area is also within the Salt Creek floodplain. Staff has asked that a conservation easement be retained over the entire area to preserve the flood storage.

Long narrow strips such as this rarely have any value to anyone except the abutting landowner. However, once they are assembled into the abutting land they tend to take on the value of that land. In this case the abutting land is estimated to have a value in the range of \$7-8/square foot. While an adjoining landowner would generally not pay 100% of the abutting land value for an additional strip such as this they would pay some percentage of it. In this case where there is a myriad of utilities in the area as well as a public use for streets and sidewalks and a conservation easement being retained the amount of 10% of the abutting land value or \$0.75/square foot is considered appropriate. The calculations are as follows:

$$14,810.40 \text{ Sq Ft} \times \$0.75 = 11,107.80 \text{ Called } \$11,100$$

Therefore, if the area is vacated it is recommended that it be sold to the abutting landowner for \$11,100.

Respectfully submitted,



Clinton W. Thomas
Certified General Appraiser #990023