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Lincoln, NE 68508

**MAINTENANCE AND REPAIR AND PUBLIC ACCESS EASEMENT AGREEMENT**

This Maintenance and Repair and Public Access Easement Agreement ("Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2015, by and between The Dairy House, LLC, a Nebraska limited liability company ("Grantor") and the City of Lincoln, Nebraska, a municipal corporation of the State of Nebraska ("Grantee").

**RECITALS**

- A. Grantor owns the real property covering the city block located between "M" Street and "L" Street and between 7th Street and 8th Street in Lincoln, Lancaster County, Nebraska. Grantor also owns the real property located at the northeast corner of the intersection at 7th Street and "M" Street in Lincoln, Nebraska, legally described as:

Units A, B, C, D, E, F, G, H, I, J, K, L, O, P, Q, and R, Dairy House Condominium established by that Declaration dated December 29, 2010 and recorded with the Lancaster County Register of Deeds on December 30, 2010 as Instrument No. 2010061570 as amended by the First Amendment to Declaration of Dairy House condominium dated June 4, 2013 and recorded June 19, 2013 with the Lancaster County Register of Deeds as Instrument No. 2013031656 ("Grantor's Property");

- B. In order to install a geothermal well field underneath and adjacent to the Grantor's Property and to continue the commercial development of the Grantor's Property, Grantor submitted the proper petitions to Grantee to vacate the following property, hereinafter collectively referred to as the "Vacated Right of Way":

1. **“M” Street Vacated Right of Way.** A portion of the “M” Street right of way from a point fifteen (15) feet west of the east right of way line of 7th Street to the west right of way line of 8th Street, as more particularly shown in Exhibit 1A and described in Exhibit 1B (the “Vacated ‘M’ Street Right of Way”);
  2. **“L” Street Vacated Right of Way.** A portion of the “L” Street right of way from a point fifteen (15) feet west of the east right of way line of 7th Street to the west right of way line of 8th Street, as more particularly shown in Exhibit 1A and described in Exhibit 1B (the “Vacated ‘L’ Street Right of Way”);
- C. As a condition to the Grantee’s approval of such street vacation and conveyance of the Vacated Right-of-Way to Grantor, Grantee has required Grantor to grant Grantee a maintenance and repair easement and a public access easement within a portion of the Vacated Right of Way, as more particularly described below.
- D. Grantor is agreeable to granting Grantee these permanent easements in and across a portion of the Vacated Right of Way upon the terms and conditions below.
- E. The City Council of the City of Lincoln, Nebraska, has approved and accepted this Agreement and has authorized the Mayor to execute this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of the above recitals and the covenants contained herein, the parties agree as follows:

1. Grant of Maintenance and Repair Easement. Grantor agrees to and does hereby grant to Grantee a permanent non-exclusive maintenance and repair easement (“Maintenance and Repair Easement”) to use the Maintenance and Repair Easement Area defined and described below to access, maintain, repair, repave, and replace the adjacent non-vacated M Street and L Street right of ways:

a. **“M” Street Maintenance and Repair Easement Area.** The north two (2) feet of the Vacated “M” Street Right of Way, as more particularly shown in Exhibit 2 (the “M” Street Maintenance and Repair Easement Area”);

b. **“L” Street Maintenance and Repair Easement Area.** The south two (2) feet of the Vacated “L” Street Right of Way, as more particularly shown in Exhibit 2 (the “L” Street Maintenance and Repair Easement Area”);

The “M” Street Maintenance and Repair Easement Area and the “L” Street Maintenance and Repair Easement Area shall be collectively referred to as the “Maintenance and Repair Easement Area.”

2. Grant of Permanent Public Pedestrian Access Easement.

a. Grantor agrees to and does hereby grant to Grantee a permanent non-exclusive public pedestrian access easement in and across that portion of the Vacated Right-of-Way or Grantor's Property occupied by the sidewalks now existing or any new sidewalk(s) to be constructed by Grantor on the Vacated Right-of-Way or Grantor's Property, also depicted in Exhibit 2 (the "Public Access Easement Area"). The Public Access Easement Area shall at all times be of sufficient width to provide a sidewalk with a minimum five (5) foot clear walking space. Grantor further agrees that where angle or 90 degree parking abuts a sidewalk a minimum of 2.5 feet of parked car overhang obstructing the sidewalk shall be taken into account when providing this five foot clear walking space, thus necessitating a minimum of a 7.5 wide sidewalk. The construction or location of any gate, fence, or other barrier restricting pedestrian access over the Public Access Easement Area shall be prohibited, except when necessary to control pedestrian traffic during construction, reconstruction maintenance, or repair of any sidewalk within the Public Pedestrian Access Easement Area.

b. Grantee and the public have the right of pedestrian ingress and egress, to enter, exit, and re-enter on foot the Public Access Easement Area at all times, subject to Grantor's concurrent use of the easement area for access to the Grantor's Property and subject to reasonable closures for repair, maintenance or replacement of the sidewalks on Grantor's Property.

3. Covenant. In consideration of the grant of the Easements to Grantee, Grantee covenants and agrees with the Grantor that the Easements are conveyed by Grantor to Grantee "AS IS, WHERE AS" and "WITH ALL FAULTS;" and neither the Grantor nor its agents, employees or other representatives make any guarantee, representation or warranty, express or implied as to the condition or fitness of the Easement Area for the purposes intended by this Agreement. Further, Grantor shall have no liability for any latent, hidden, or patent defect as to the Easement Area.

4. Condition of Easement Area. Grantor agrees that it shall maintain the Easement Area in a safe and usable condition, including but not limited to keeping the sidewalks now existing or to be constructed by Grantor on the Vacated Right-of-Way or Grantor's Property maintained in good repair and kept free from snow and ice. Should any of the sidewalk material become loose, broken off, or in any way spread into the traveled portion of the abutting right-of-way Grantee shall either repair or remove and replace the same. Any portion of the existing sidewalk removed and replaced and any new sidewalk constructed shall consist of Type IFP cement as defined in Section 3.01.A. of the 2011 City of Lincoln, Nebraska Standard Specifications unless otherwise approved in writing by Grantee.

5. Covenant Running with the Land. The Easements, this Agreement, and the duties imposed hereunder shall be binding and obligatory upon the parties, and their successors and assigns.

6. Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute the same instrument, and any of the undersigned may execute this Agreement by signing any counterpart.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below.

**THE DAIRY HOUSE, LLC,  
a Nebraska limited liability company**

By: \_\_\_\_\_  
Brian Boles, Managing Member

Date: \_\_\_\_\_

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by Brian Boles, Managing Member of The Dairy House, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

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

By: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

Date: \_\_\_\_\_

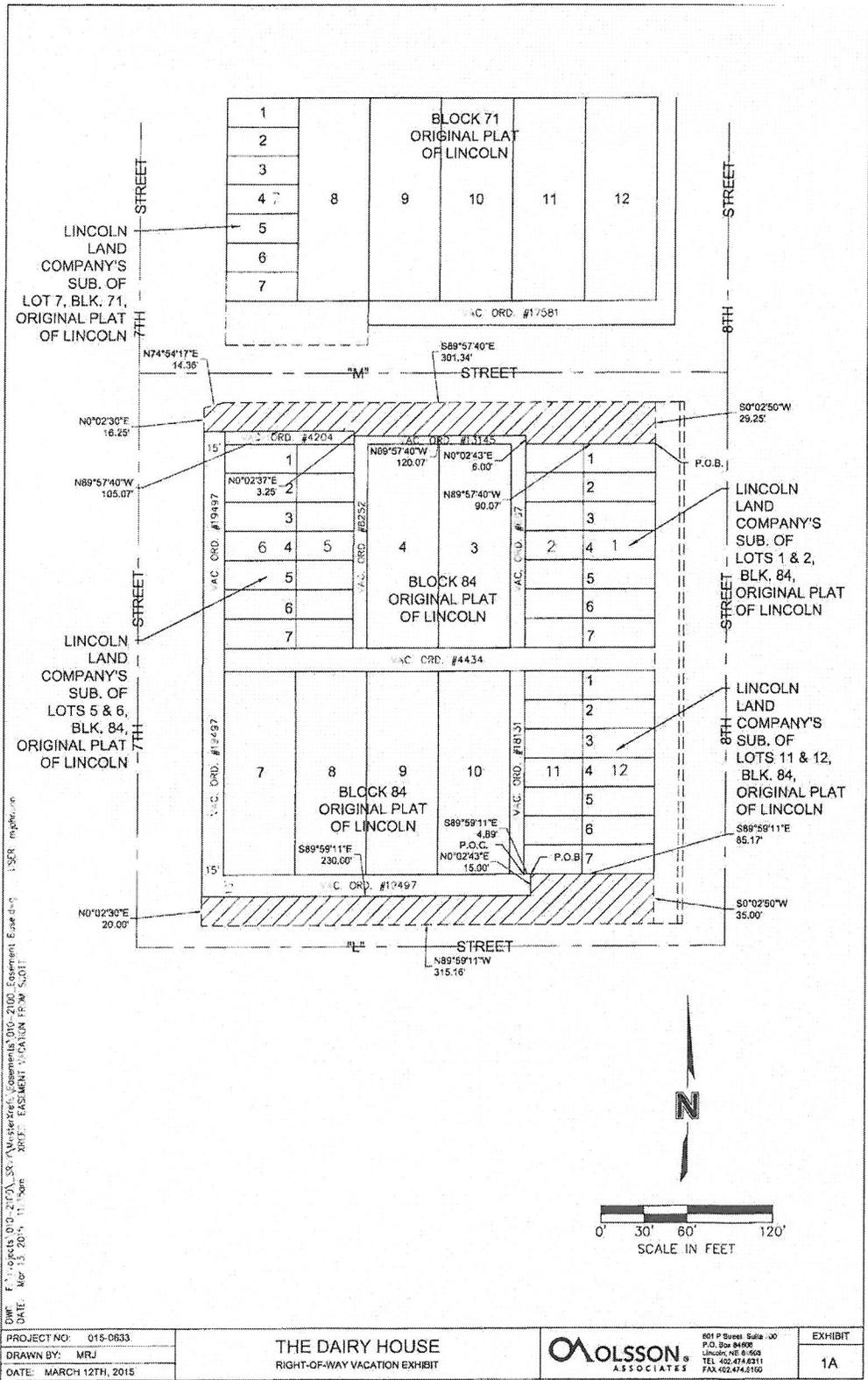
STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

\_\_\_\_\_  
Notary Public

# EXHIBIT 1A

## [Vacated Right of Way Map]



PROJECT NO: 015-0633 DRAWN BY: MRJ DATE: MARCH 12TH, 2015	<b>THE DAIRY HOUSE</b> RIGHT-OF-WAY VACATION EXHIBIT	 <small>901 P Street Suite 100          P.O. Box 84608          Lincoln, NE 68508          TEL: 402.474.6211          FAX: 402.474.6100</small>	EXHIBIT <b>1A</b>
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## 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 7<sup>th</sup> and South 8<sup>th</sup> 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:

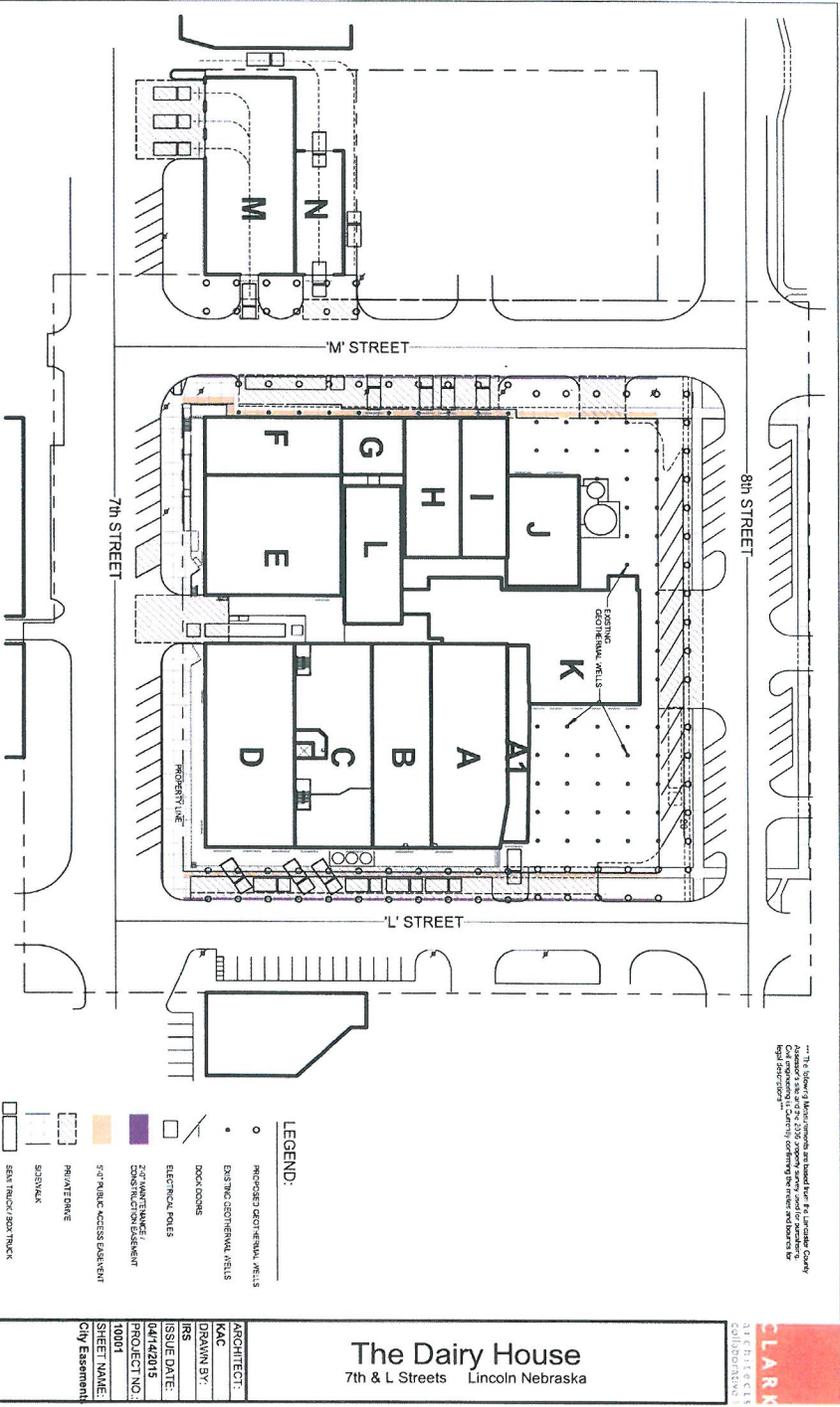
COMMENCING AT THE NORTHEAST CORNER OF LOT 1, LINCOLN LAND COMPANY'S SUBDIVISION OF LOTS 1 AND 2, BLOCK 84, ORIGINAL PLAT OF LINCOLN, SAID POINT ALSO BEING ON THE WEST RIGHT-OF-WAY LINE OF 8<sup>TH</sup> STREET, AND ON THE SOUTH RIGHT-OF-WAY LINE OF "M" STREET, SAID POINT BEING **THE TRUE POINT OF BEGINNING**; 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 7<sup>TH</sup> STREET (VACATION ORDINANCE #19497), SAID 7<sup>TH</sup> 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 7<sup>TH</sup> STREET (VACATION ORDINANCE #19497), SAID POINT BEING 15.00 FEET WEST OF THE EAST RIGHT-OF-WAY LINE OF 7<sup>TH</sup> 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 7<sup>TH</sup> 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 8<sup>TH</sup> STREET; THENCE S00°02'50"W, ON THE WEST RIGHT-OF-WAY LINE OF SAID 8<sup>TH</sup> 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 7<sup>th</sup> and South 8<sup>th</sup> 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 8<sup>TH</sup> STREET; THENCE S00°02'50"W, ON THE WEST RIGHT-OF-WAY LINE OF SAID 8<sup>TH</sup> 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 7<sup>TH</sup> 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 7<sup>TH</sup> STREET, A DISTANCE OF 20.00 FEET TO THE SOUTHWEST CORNER OF VACATED 7<sup>TH</sup> 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.

**EXHIBIT 2**  
 [M Street and L Street Maintenance and Repair Easement Map  
 and Public Access Easement Area]



100% The Dairy House, located at 7th & L Streets, Lincoln, Nebraska, is a historic building. The City of Lincoln is providing a 2'-0" wide maintenance and repair easement and a 3'-0" wide public access easement. The easement areas are shown in orange and purple. The easement areas are shown in orange and purple.

**CLARK ARCHITECTS**  
 Collaborative

**The Dairy House**  
 7th & L Streets Lincoln Nebraska

**ARCHITECT:** KAC  
**DESIGNER:** DRAMIN SY  
**ISSUE DATE:** 04/14/2015  
**PROJECT NO.:** 10001  
**SHEET NAME:** City Easement

**1 City Easements**

SCALE: 1" = 40'-0"

**S2.7**