

After recording please return to:
Abigail Littrell
Assistant City Attorney
555 South 10th Street, Suite 300
Lincoln, NE 68508

EASEMENT AND HOLD HARMLESS AGREEMENT

THIS EASEMENT AND HOLD HARMLESS AGREEMENT ("**Agreement**") is entered into by and between the City of Lincoln, Nebraska, a municipal corporation ("**City**") and 947 Terminal, LLC, a Nebraska limited liability company ("**Owner**").

RECITALS

A. Owner owns a multi-story building ("**Building**") in Lincoln, Nebraska legally described as: County Clerks Subdivision (of lots 1-6, Block 54, Lincoln), & Lots A-C & G & H Lincoln, Lancaster County, Nebraska ("**Real Estate**") commonly known as 947 O Street, Lincoln, Nebraska 68508.

B. The Building was constructed and has been operated and maintained for a significant length of time with subgrade, façade, and exterior improvements. A recent survey of the Real Estate revealed that some of these improvements encroach upon public right-of-way, specifically including the 10th Street and O Street rights-of-way ("**City Property**") as depicted and described on Exhibits "A" (Basement Wall Encroachment), "B" (Grade Beam Encroachment), and

CCL1-6B54

“C” (Building Façade Encroachment), attached and incorporated by this reference (**“Easement Areas”**).

C. As part of rehabilitation and renovation of the Building, the Owner has requested the City acknowledge the encroachments and grant Owner a permanent easement in, on, and under the Easement Areas.

D. The City has agreed to grant Owner the above-described permanent easements over the Easement areas, upon the terms and conditions below.

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

1. Grant of Easements. The City agrees and does hereby grant Owner permanent easement (**“Permanent Easements”**) over the Easement Areas to use, maintain, and repair all of the improvements depicted and described on Exhibits “A”, “B” and “C”. The Permanent Easements are granted in connection with and for the benefit of Owner’s use of the Building on the Real Estate. The Permanent Easements shall expire upon the full destruction and removal of the Building and its components and improvements from the Easement Areas.

2. Covenants. In consideration of the grant of these Permanent Easements to Owner, Owner covenants and agrees with the City to be bound by the following terms and conditions:

(i) In the exercise of Owner’s rights under the Permanent Easements, Owner is subject to any and all design, construction, or safety permits and the conditions of such permits required for the Building by the City, including but not limited to applicable permits for land use, excavation, obstructions, stormwater and building construction. Prior to the commencement of work to construct, maintain, or repair the Building, Owner shall obtain all requisite government approvals and permits necessary for such work. All such

work shall be completed in accordance with the governmental approvals and permits issued to Owner and shall be made at Owner's sole cost and expense.

(ii) In the exercise of Owner's rights under the Permanent Easements, Owner will perform all construction, repair and maintenance to the Building so as to cause no unreasonable damage or disturbance located in any public right-of-way, and any such construction, repair, or maintenance shall be made at Owner's sole cost and expense.

(iii) Except during construction, maintenance, and repair of the Building's foundation, Owner shall not impair the use of public rights-of-way or impair the protection of pedestrians and vehicles traveling upon said rights-of-way.

(iv) Owner agrees to indemnify, defend, and hold the City harmless and free from any and all liability and expense, including reasonable attorney fees incurred by the City arising out of Owner's use of the Easement Areas or other parts of public rights-of-way pursuant to this Permanent Easements and Agreement.

(v) Except in the case of the City's sole negligence or willful misconduct, Owner agrees to make no claim against the City or any of its officers, employees, agents or representatives and expressly waives all rights and claims of Owner for any loss or damage caused by the City's use or maintenance of the public rights-of-way abutting the Building to the extent the loss or damage is caused by the presence of the Building in the Easement Areas. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law.

(vi) These Permanent Easements are conveyed by the City to Owner "AS IS, WHERE IS" and "WITH ALL FAULTS", and neither the City nor its agents, employees or other representatives make any guarantee, representation or warranty, express or implied

(and the City shall not have any liability to Owner whatsoever) as to the condition or fitness of the Easement Areas for the Building. Further, the City shall have no liability for any latent, hidden, or patent defect as to the Easement Areas or the City's rights-of-way adjacent thereto.

(vii) Owner shall maintain in effect throughout the term of these Easements and Agreement comprehensive general liability insurance with an A-rated insurance carrier, or better, qualified to transact business in the State of Nebraska, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Permanent Easements and Agreement in an amount not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate. The City shall be named as an additional insured on such insurance policy and evidence thereof shall be provided to the City upon the City's request.

3. Covenant Running with the Land. These Easements and Agreement and the duties imposed hereunder shall be perpetual except as set forth herein and shall run with the Real Estate including the Building and the Easement Areas and shall be binding and obligatory upon the parties, and their successors and assigns, and shall terminate only at such time as the Building is demolished.

4. 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 PAGES FOLLOW]

“CITY”

CITY OF LINCOLN, NEBRASKA, a municipal corporation

By: Leirion Gaylor Baird
Leirion Gaylor Baird, Mayor

Date of Execution: 7/12/21

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 12 day of July, 2021, by Leirion Gaylor Baird, Mayor of the City of Lincoln, a municipal corporation, on behalf of the City.



Brandi Lehl
Notary Public

“OWNER”

947 TERMINAL, LLC, a Nebraska limited liability company

By: Mike Works
Mike Works, Manager

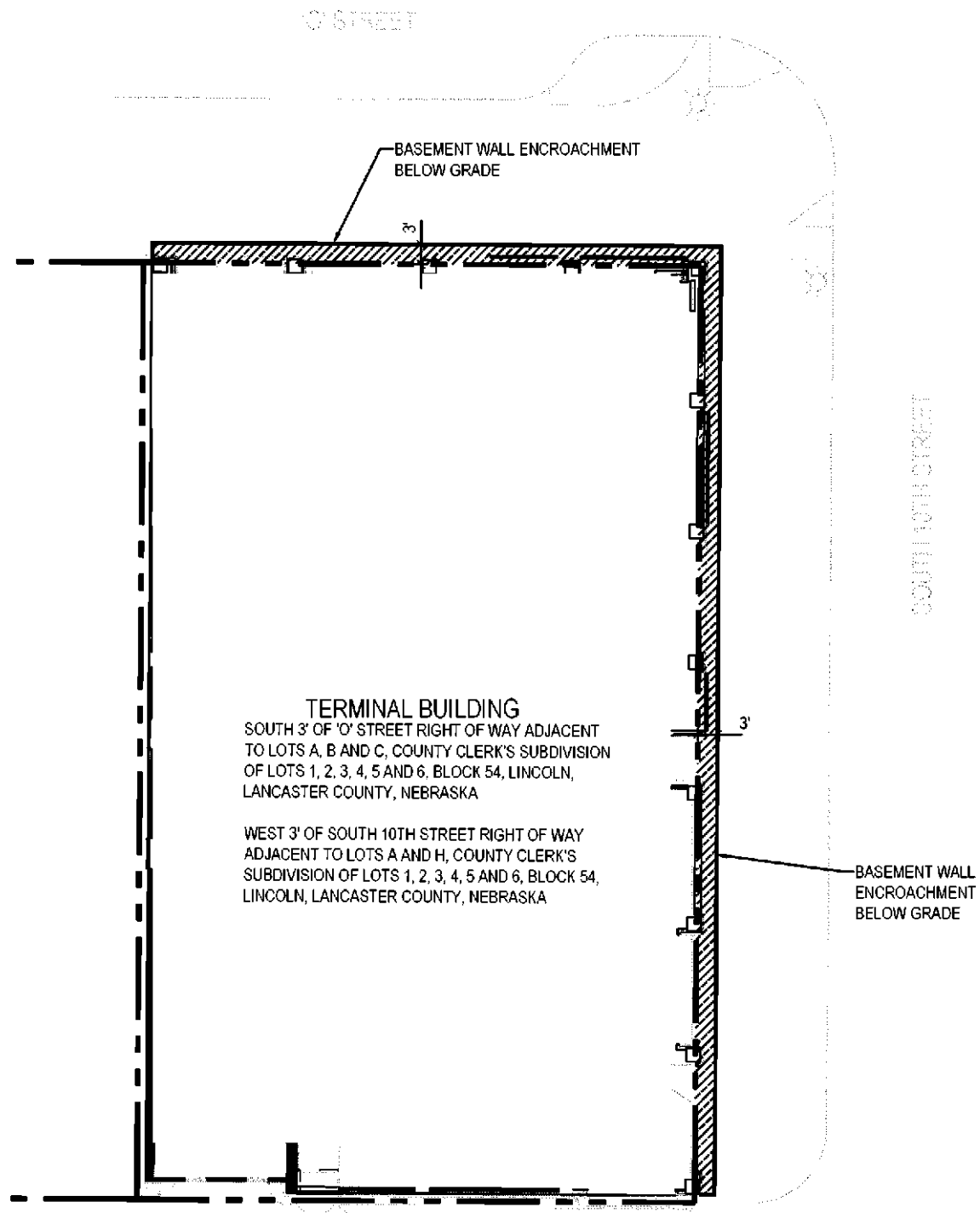
Date of Execution: 06/24/2021

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 24th day of June, 2021, by Mike Works, Manager of 947 Terminal, L.L.C., a Nebraska limited liability company, on behalf of the company.



Makinsey Manning
Notary Public



BASEMENT WALL ENCROACHMENT EXHIBIT

SCALE: 1"=20'-0"



