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Upstream Brewing Co.  
Brian Magee  
2716 Country Club Ave  
Omaha NE 68104

RECEIVED  
Nov 16 3 37 PM '95  
GEORGE L. TITUS, JR.  
REGISTERED CLERK  
DOUGLAS COUNTY, NE



**PARTY WALL AGREEMENT**

**THIS PARTY WALL AGREEMENT ("Agreement")** made as of the 14 day of Nov., 1995, by and between **Spaghetti Works Restaurants, Inc.**, a Nebraska corporation, and **James D. Moser and Kathleen A. Moser**, husband and wife.

**WHEREAS, Spaghetti Works Restaurants, Inc.**, is the owner in fee simple title to the real estate described as:

Lot 8, Block 165, Original City of Omaha, Douglas County, Nebraska; and

and **James D. Moser and Kathleen A. Moser** are the owners in fee simple to title to the real estate described as:

Lot 7, Block 165, Original City of Omaha, Douglas County, Nebraska; and

**WHEREAS**, there has been erected a building located upon each of the said lots with a common wall between the buildings on each lot over the Northerly 22 feet of each property ("**Party Wall**"); and

**WHEREAS**, the Party Wall constitutes a party wall, subject to the right of each of the parties to use it as such; and

**WHEREAS**, the parties desire to provide for the proper repair and maintenance of the wall.

**NOW, THEREFORE**, for the reasons set forth above, and in consideration of the mutual covenants and promises contained in this Agreement, the parties agree as follows:

1. The owner of each property shall have the right and the responsibility at all times to cause to be made any repairs or replacements necessary to maintain the Party Wall in a safe, sound and usable condition.

2. The expense of all necessary repairs, replacements and maintenance of the Party Wall shall be borne by the owners of the properties described herein in equal shares.

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3. In the event that the Party Wall shall be destroyed by fire or other casualty neither party shall be obligated to rebuild the Party Wall, provided, however, either party shall have the right, on written notification to the other party within sixty (60) days of the destruction of the Party Wall to erect a replacement party wall on the same location as the Party Wall, in which event the other party shall be obligated to contribute one-half (1/2) of the cost of construction of such replacement wall.

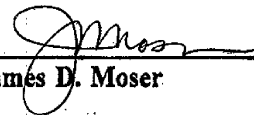
4. This Agreement shall at all times be construed as a covenant running with the land, but that no part of the fee simple title of the soil upon which said wall shall stand shall pass or be vested in either of the parties hereto by virtue of these presents.


5. This Agreement shall extend to and be binding upon the heirs, executors, administrators, successors, assigns and grantees of all of the parties hereto.

DATED this 14 day of November, 1995.

**SPAGHETTI WORKS RESTAURANTS, INC.**

By:   
its 

  
**James D. Moser**

  
**Kathleen A. Moser**

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Douglas )

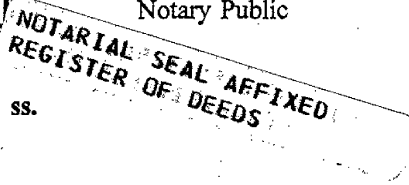
Before me, a Notary Public qualified for said county, personally appeared ~~November 14, 1995~~ <sup>Brent Lamb</sup> on behalf of Spaghetti Works Restaurants, Inc., a Nebraska corporation, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed.

Witness my hand and notarial seal this 14th day of November, 1995.



Deborah L. Benak  
Notary Public

<sup>IOWA</sup>  
STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Pottawattamie )



Before me, a Notary Public qualified for said county, personally appeared **James D. Moser and Kathleen A. Moser**, husband and wife, known to me to be the identical persons who signed the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed.

Witness my hand and notarial seal this 14<sup>th</sup> day of NOVEMBER, 1995.



Mark J. Gordon  
Notary Public

