

MISCELLANEOUS RECORD No. 26.

& Richard Arthur Edwards have been appointed executors in and by the said last will and testament to execute the same and that Richard Arthur Edwards is a non Resident and to the end that said - property may be preserved for those who shall appear to have a legal right or interest therein, and that the said will may be executed according to the request of the said testator: we do hereby - - authorize her ^{the said} Betsey J. Edwards as such Executrix to collect and secure all and singular the goods and chattels, rights and credits which were of the said Richard Edwards at the time of his decease, in whosoever hands or possession the same may be found in this State, and well and truly to - - perform and fulfill all such duties as may ^{be} enjoined upon her, by the said will so far as there - shall be property, and the law charge her and in general to do and perform all other acts which now are, or hereafter may be required of her by law.

Witness, C. C. Hassler, Clerk of the County Court of the said County of McLean and the seal of the said Court this 10th day of April A. D. 1908

O. C. Hassler, Clerk.

By P. A. Guthrie, Deputy.

Seal

State of Illinois,) SS. I, C. C. Hassler Clerk of the County Court of said County, do hereby -
McLean County.) certify that the foregoing is a true and correct copy of Letters Testamentary -
issued by order of Court to Betsey J. Edwards Executrix of the Estate of Richard Edwards -
deceased, as the same appears upon the files and records in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court this 20th day of Oct A. D. 1908.

C. C. Hassler, Clerk.

The State of Nebraska,)
Douglas County,)

Entered on General Index and filed for Record)
in the Register of Deeds Office of said County, the
22nd day of October 1908 at 2:57, O'clock, P. M.

Frank W. Bandle,

Compared by T. & C. Register of Deeds.



6. A G R E E M E N T .
INTERNATIONAL HARVESTER COMPANY,
OF AMERICA,
A N D
ALHAMBRA REAL ESTATE COMPANY.

THIS AGREEMENT, made and entered into this 28th day of September, A. D. 1908, by and between INTERNATIONAL HARVESTER COMPANY OF AMERICA, a Wisconsin corporation, having offices in the City of Chicago, County of Cook, State of Illinois, first party, and ALHAMBRA REAL ESTATE COMPANY,

a Nebraska corporation, having offices in the City of Omaha, County of Douglas, and State of Nebraska, second party,

W I T N E S S E T H :

That WHEREAS, the first party is the owner of lots One (1) and Two (2), Block "D" in the City of Omaha, according to the recorded plat thereof now on file in the office of the Register of Deeds, in the County of Douglas and State of Nebraska, and

WHEREAS, the first party's said Lot two (2) adjoins the second party's said Lot three (3), the west line of said lot two (2) being the east line of said Lot three (3), and

WHEREAS, the first party's said Lots one (1) and two (2) adjoin the second party's lots Seven (7) and Eight (8), the south line of said lots one (1) and two (2) being the north line of said lots Seven (7) and Eight (8), and

WHEREAS, the first party proposes to erect a brick building, five (5)

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stories or more in height, and one hundred and twenty feet and ten inches (120'10") in length, upon the west sixteen (16) feet of lot one (1) and the whole of lot two (2), of which building the party wall hereinafter described shall form a part.

WHEREAS, both parties hereto are desirous that the south and west wall of said building for the full height and length thereof shall be a party wall for the use of the first and second parties hereto, their successors and assigns, and

NOW THEREFORE, the parties hereto each in CONSIDERATION OF THE PREMISES and of the COVENANTS and AGREEMENTS of the other, hereinafter expressed, DO HEREBY COVENANT and AGREE with each other as follows:

Paragraph One: That the first party shall within one year from date hereof, and at their own expense, build a party wall, at least ninety-five (95) feet in height from the top of the foundation to the top of the coping of said wall, and at least seventy-five feet (75') in height above the established grade of Capitol Avenue at the intersection of said lots two (2) and three (3), and at least one hundred and twenty feet and ten inches (120'10") upon and over the lines, dividing said lots two (2) and three (3) so that the middle line of said wall shall be the division line aforesaid, and so that one-half the width of said party wall and its footings and foundations (and no more than one-half thereof) shall be upon the land of the party of the first part, and the other half shall be on the land of the party of the second part; and that the said first party shall also as above described, construct a party wall, at least eighty-two feet (82') long, upon the west sixteen (16) feet of said lot one (1) and upon and over the line dividing the west sixteen (16) feet of said lot eight (8), and upon over the line dividing said lot two (2) and said lot Seven (7), so that the middle line of said wall shall be the division line aforesaid, and so that one-half of the width of said party wall and its footings and foundation (and no more than one-half thereof) shall be upon the land of the party of the first part, and the other half shall be on the land of the party of the second part.

Said wall shall be built under the supervision of the first party's architect and superintendents. Said party wall shall be of first class material and workmanship, and built in a solid and substantial manner and in accordance with the plans and specifications (both as to kind and quality of material, dimensions, ^{workmanship} and finish) prepared therefor.

That said party wall shall be fire-proof in every part thereof, including its footings and foundation, and shall be of more than sufficient strength and capacity to sustain and support without settling, its own weight and a live or movable load of two hundred fifty (250) pounds per square foot of floor space per story, and each of the corresponding parts of two (2) five story and basement brick buildings, one on each side of said wall, of character of construction customary in buildings five stories high and used for warehouse purposes, anything in said plans and specifications contained to the contrary notwithstanding. It is stipulated and agreed that there shall be no openings, doors or windows through said party wall.

Paragraph Two: The footings, foundations and wall above provided for, and all extensions thereof and additions thereto and all repairs and replacements thereof, shall at all times after being constructed constitute and be a party wall, subject to and governed by the provisions of this contract, and shall be for the benefit of the lands above described and of the owners thereof, and for the support of all buildings hereafter erected on said lands, and the words "party wall" wherever used in this contract, unless the context otherwise requires, shall be held to include and embrace said foundations, walls, extensions, additions, repairs and replacements. And the word "building" as in this contract shall be understood and held to mean any structure whatsoever on said lots, one (1), two (2), three (3), seven (7) and eight (8), one of the walls of which shall be the party wall in question.

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Paragraph Three: Subject to the provisions of this contract, neither the strength and sustaining capacity, nor the thickness of said party wall shall at any time after being first constructed be diminished by either of the parties hereto, their legal representatives, successors or assigns.

Paragraph Four: That either party hereto may join any building erected by that party upon his land aforesaid to said party wall or any part thereof, and may otherwise use said party wall in the construction of, or in connection with, such building. Each of the parties hereto HEREBY COVENANTS and AGREES that nothing shall be done upon its said land that will

(a) Jeopardize the stability of said party wall or any part thereof, other than herein provided;

(b) Jeopardize the stability of any building placed or erected under the provisions of this contract upon any part of said lands, except by the consent of said owner of said buildings so jeopardized;

(c) Prevent either party hereto from deriving equal benefits with the other from said party wall;

(d) Prevent the use of said party wall for the support, beside the live and movable load aforesaid, the buildings one on each side of said party wall for the purposes of and as aforesaid; and that any question at any time arising as to whether any proposed joining of a building to said party wall, or any use of said party wall as herein provided for, or any act done or proposed to be done upon said lands that will in any manner affect said lands and party wall as above specified under a, b, c, and d, aforesaid, shall if the parties hereto are unable to agree thereon, be matter for arbitration as hereinafter provided.

Paragraph Five: IT IS FURTHER MUTUALLY COVENANTED and AGREED that the manner, circumstances, method and details of construction, of any joining to, or use of, said party wall so far as not herein provided, for, shall if the parties hereto are unable to agree thereon, be matters for arbitration, as hereinafter provided;

That either party hereto joining to or using said party wall shall do so in such manner that the ends of any girder or joist, wooden or metal, let into said wall shall not be opposite to or lapped by one another, but there shall be at all times, anything herein contained to the contrary notwithstanding, four (4) inches of solid, substantial wall constructed in accordance with the plans and specifications aforesaid, existing between the ends of each such girder, joist or floor beams so let into said wall; and no girder-carrying floor beams or floor joist shall be let into or rest upon said party wall for a greater distance than six (6) inches, and no floor joist or floor beams shall be let into said party wall for a greater distance than six (6) inches, nor shall the party so joining to or making use of said wall do so in any manner that will weaken the stability of carrying capacity of said wall or affect its fire-proof qualities. All work done by either party in constructing, joining to, or otherwise using, said party wall shall be done in first class workmanlike manner, and so as to cause the other party and its tenants, if any, the least possible inconvenience, annoyance and damage, and for any substantial damage so caused, the party causing the same shall be made full compensation to the person or persons suffering such damage.

Either party hereto may, at its own expense, upon giving thirty (30) days written notice to the other, and subject to the provisions of "Paragraph Four" hereof,

(a) Extend said party wall or any part thereof, except the foundations and footings, upward.

(b) Strengthen said foundation and footings or any part thereof;

(c) Strengthen said party wall above said footings, and use the wall so extended subject to the provisions of this contract for any purpose permitted by the ordinances of the City of Omaha and the laws of the State of Nebraska.

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In case any work shall be done under this "Paragraph Five" the rights and obligations of the parties hereto in respect to such work, shall be governed by the provisions of this contract, so far as applicable, and any question arising as to whether any of said provisions are applicable there-to, shall, unless the parties hereto agree thereon, be matter for arbitration as hereinafter pro-vided. Any work permitted by this "Paragraph Five" shall so far as practicable, be done upon the land of the party desiring such work, and any question arising as to what work is required to be done upon the land of the other shall, unless the parties hereto agree thereon, be matter for ar-bitration, as herein provided. Neither party hereto, anything in this contract contained to the contrary notwithstanding, shall be permitted to do any unnecessary work upon the land of the other, nor any work that shall unreasonably deprive the other of the use of his own land, and any question which may arise as to the necessity of doing any work upon the land of the other, if the parties hereto cannot agree thereon, shall be matter for arbitration, as hereinafter provided;

That all leases contracted for, or made by either party hereto, after the execution and delivery hereof, demising any part of any building of either party hereto standing upon any part of the lands above described, or which shall be erected thereon, one wall of which shall be the party wall aforesaid, shall in such lease or leases preserve the right to the other party hereto to do any of the things permitted by "Paragraph Five" hereof, and reasonable compensation shall be made by the party doing the work to the other, and to the tenants, of such other party, for such damage as such party and its tenants may suffer by reason thereof.

All work permitted by "Paragraph Five" hereof shall be done with all reasonable dili-gence and care so as to prevent so far as possible, injury to the property and interests of the parties hereto and their tenants. And in the doing of any such work the party doing the same shall occupy no more space in the other party's property than shall be necessary for the doing thereof, and that in the doing thereof the party so doing such work will perform the same with the least interference with the possession and enjoyment of the other party hereto and its tenants of the premises whereon the work is done:

That the time manner, circumstances, methods and details of construction of any and all such work, so far as not expressly provided for in this contract shall, unless the parties hereto can agree thereon, be matter for arbitration as hereinafter provided.

That before any work is done under "Paragraph Five" hereof the party proposing to do the same shall secure the other party against all liens and claims for liens that might in any manner be imposed upon the lands of that other party for any improvements made and work done under this contract; the character, amount and other particulars of such security, unless the parties hereto can agree thereon, shall be subject to arbitration as hereinafter provided.

Paragraph Six: IT IS FURTHER AGREED, that, the said party of the first part does HEREBY COVENANT, PROMISE, GRANT, and AGREE that the said party of the second part, its successors and as-signs, shall and may at all times hereafter, have the full and free liberty and privilege of join-ing to and using the said partition above mentioned, as well below and above the surface of the ground and along the whole length or any part of the length thereof, any building which it or they or any of them may desire or have occasion to erect on the said lot of the said party of the sec-ond part: Provided, always, nevertheless, and on this express condition, that the said party of the second part, its successors and assigns, as aforesaid, before proceeding to join any building to the said partition wall, and before making any use thereof, or breaking into the same, shall pay or secure to be paid unto the said party of the first part, its successors and assigns afore-said, the full moiety or one-half part of the value of the said party-wall, or so much thereof as shall be joined to or used as aforesaid, which value shall be the cost price at the time when such wall is to be used by the said party of the second part, and if the parties hereto cannot

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agree on the amount of said cost price, then it shall be a matter for arbitration as hereinafter provided: Provided further that if said party of the second part extends said party wall as provided in clause (a) Paragraph Five, then all the provisions, privileges and agreements above set out in this paragraph shall apply to said party of the first part.

Paragraph Seven: Said party wall or portions thereof may be repaired, rebuilt or replaced whenever and as often as such repairing, rebuilding or replacing is necessary. And should any question at any time arise as to the necessity thereof, if the parties hereto cannot agree thereon, and as to the charge to be made therefor and the manner in which the same shall be done, shall, unless the parties hereto agree thereon, be matter for arbitration as hereinafter provided.

Paragraph Eight: Any and every question which may hereafter arise as to the meaning, interpretation or construction of this contract or as to the rights and obligations of the parties hereto, hereunder, shall, unless the parties hereto agree thereon, be matter for arbitration as hereinafter provided.

Paragraph Nine: That neither party hereto shall, under or by virtue of this contract, ever claim any right or interest in any land of the other party under said party wall or any part thereof, except the easement of a means of support for said party wall and as a place within which to work on said party wall whenever under the terms of this contract it is necessary so to do.

Paragraph Ten: Whenever, under the provisions hereof, any matter for arbitration shall arise, within thirty (30) days after either party hereto has notified the other that such matter has arisen, each party hereto shall appoint, and notify the other party of such appointment, an arbitrator. If either party hereto shall fail to make, or notify such appointment, within said thirty (30) days, then such failure shall not be held to be a violation hereof, but the arbitrator appointed shall forthwith decide the matter to be arbitrated.

If for any reason such arbitrator or arbitrators do not make and notify the parties hereto of his or their decision within twenty (20) days from the date of his or their appointment, then on three (3) days prior written notice given by the moving party to the other, such moving party may make application to any judge of a court of record in the judicial district in which the premises above described are situated, having jurisdiction over real estate titles therein, for the appointment of a referee to arbitrate and determine the matter in dispute between the parties hereto; such judge, however, acting in the appointment thereof as a private individual and not in the judicial capacity of a court, and the decision of any such referee upon any matter hereunder so referred to him shall be final and conclusive upon the parties hereto, and the cost of any such arbitration whether by arbitrators appointed by the parties hereto or under appointment by a judge as aforesaid, shall be borne by the parties hereto, one-half of all charges and expenses thereof being borne by each party thereto, unless the arbitrators or said referee shall otherwise apportion such charge and expense between the parties hereto.

The parties hereto do HEREBY FURTHER COVENANT and AGREE that, they will in good faith so act that the provisions of this " Paragraph Ten " shall be and remain operative and that they will abide by and promptly perform and in good faith carry out every decision and award made under this "PARAGRAPH TEN " whether or not such decision or award requires the undoing of anything that has theretofore been done under this contract.

If either party hereto violates any of the obligations imposed upon it by this contract, and the other party suffers any damage by reason thereof, if the parties hereto cannot agree upon the amount of such damage, the question of the amount of such damage shall be submitted to arbitration, as hereinbefore provided, and the decision of the arbitrators or referee therein, as the case may be, shall bind the parties hereto.

Each party hereto shall, upon the execution and delivery hereof, furnish to the other, in writing, a name and address to which all notices and communication in this contract re-

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ferred to, to be given to the other may be directed. Each party furnishing such name and address may from time to time change the same by giving written notice of such change to the other party at the place designated by such other party for the giving of such notice, and any notice or communication enclosed in an envelope addressed with the name and address so given and registered in the post office at the place where deposited shall be conclusively deemed and held, for the purpose of this contract, to have been duly served upon and received, in the course of mail, by the party furnishing such name and address, and shall bind that party:

Whenever in this contract a notice or communication is required or provided for, such notice or communication shall be in writing.

Paragraph Eleven: This contract and each and every of its TERMS, PROVISIONS, COVENANTS and AGREEMENTS shall apply to, bind and inure to, the benefit of not only the parties hereto, but also to the legal representatives, successors and assigns of the parties hereto: Provided, however, that the parties hereto, and their legal representatives, successors and assigns, shall be personally bound hereunder only so long as they shall be the owners of the lands affected by this contract, except where any of such parties have committed a breach of some of the provisions, covenants and agreements of this contract prior to the time of their parting with the title to the lands owned by them, respectively affected thereby. The TERMS, PROVISIONS, COVENANTS and AGREEMENTS of this contract, so far as they are consistent with law, shall be deemed and taken to be COVENANTS RUNNING WITH THE LANDS WHEREON said party wall shall be.

IN WITNESS WHEREOF first party has caused its corporate name to be hereunto subscribed by its _____ President, thereunto duly authorized, and its corporate seal to be hereto affixed, duly attested by its _____ Secretary, and second party has caused its corporate name to be hereunto subscribed by its _____ President, thereunto duly authorized, and its corporate seal to be hereto affixed, duly attested by its _____ Secretary, in duplicate, the day and year first above written.

APPROVED AS TO FORM

Franklin Hess



INTERNATIONAL HARVESTER COMPANY OF AMERICA.

By

Cyrus H. McCormick,

Its President.

Attest: The Seal of said Company.

By W. M. Gale.

Its Assistant Secretary.



ALHAMBRA REAL ESTATE COMPANY.

By

Frank C. Hull

Its President.

ATTEST:

The Seal of said Company.

By

H. C. Fairchilds

Its Secretary.

WITNESSES:

William Clark

Walter S. Hubbard
As to execution by first party.

W. F. Wahl

M. F. Martin
As to execution by second party.

J. M. B.

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STATE OF ILLINOIS, }
County of Cook. } SS.

On this 28th day of September A. D. 1908, before me appeared Cyrus H. McCormick, to me personally known, who being by me duly sworn, did say that he is the President of INTERNATIONAL HARVESTER COMPANY OF AMERICA, a corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Cyrus H. McCormick acknowledged said instrument to be the voluntary act and deed of said corporation.

JAMES M. BLAZER,
Notary Public.

My Commission Expires Jan'y 23-1911.



STATE OF NEBRASKA, }
County of Douglas. } SS.

Before me, W. F. Wahl, a Notary Public, in and for said County and State, on the Seventh day of October, A. D. 1908, personally appeared Frank C. Hull, to me personally known, who, being by me duly sworn, did say that he is the President of ALHAMBRA REAL ESTATE COMPANY, a corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Frank C. Hull acknowledged said instrument to be the voluntary act and deed of said corporation.

W. F. WAHL
Notary Public.

The State of Nebraska, }
Douglas County, }

Entered on Numerical Index and filed for Record in the Register of Deeds Office of said County, the 23rd. day of October 1908 at 1:20 o'clock P. M.,

Frank W. Bandle,
Register of Deeds.

Compared by T. H.

2, Cemetery Deed }
Prospect Hill Cemetery Ass'n, }
To }
Pearl A. Welshans. }

In Consideration of the sum of One hundred and fifty Dollars in hand paid, the receipt of which is hereby acknowledged, The -- Prospect Hill Cemetery Association, a corporation duly organized -- under the laws of the State of Nebraska, doth hereby Grant, Bargain, Sell, and Convey, unto Pearl A. Welshans the following described lot or parcel of land, situated and being in Prospect Hill Cemetery, in the County of Douglas, and State of Nebraska, as surveyed, platted, and recorded, to wit: The west half of Lot Five hundred and Sixty nine (569) To Have And to Hold the same unto the said grantee, and to her heirs and assigns, forever.

Provided, Always, That the said lot of land shall be used for no other purpose than as a -- place for Burial of the Dead, or for purposes incidental thereto; otherwise said lot shall revert to and become re-invested in the said grantor, its successors and assigns. And the said lot is hereby conveyed subject to such rules and regulations for the conduct and regulation of said Cemetery as may be now or hereafter lawfully prescribed by said Prospect Hill Cemetery Association.

Witness the hand of the corporation, by its President, this 24th day of June A. D. One Thousand -- Nine Hundred and eight (1908)

Attest: A. L. Reed
Treasurer.

In Presence of , Ellery H. Westerfield.



The Prospect Hill Cemetery Association,
By Alfred C. Kennedy