

MISCELLANEOUS RECORD NO. 26

The Hyde Printing Co., Hastings, Nebr.

PARTY WALL AGREEMENT 4

J. M. McDonald Co.

with

Arthur H. Anderson and
Alice E. Anderson

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Fred O. Schaffroth, Register of Deeds.

PARTY WALL AGREEMENT

THIS AGREEMENT made this 15th day of December, 1950, by and between J. M. McDonald Co., a Delaware corporation, party of the first part and hereinafter referred to as "First Party", and Arthur H. Anderson and Alice E. Anderson, Husband and Wife, parties of the second part and hereinafter referred to as "Second Party".

W I T N E S S E T H:

WHEREAS, First Party is possessed in fee simple of the following described real estate, to-wit:

Lots Ten (10), Eleven (11), and Twelve (12), in Block Twenty-Two (22), Original Town, now City of Hastings, Adams County, Nebraska;

and

WHEREAS, Second Party is possessed in fee simple of real estate lying adjacent immediately to the east of the said Lot 10 and described as follows, to-wit:

Lot Nine (9), in Block Twenty-two (22), Original Town, now City of Hastings, Adams County, Nebraska;

and

WHEREAS, by a certain Lease, dated May 26, 1884 and filed for record in Book 3, page 230 in the office of the County Clerk of Adams County, Nebraska, certain rights and obligations were created in connection with a stone foundation wall then being constructed partly on Lot 9 and partly on Lot 10; and

WHEREAS, at date hereof there is a single wall along and parallel with the boundary between said Lot 9 and Lot 10, said wall being used as the east enclosing wall of a structure owned by First Party located on said Lots 10, 11, and 12, and being used as the west enclosing wall of a structure owned by Second Party located on said Lot 9; and

WHEREAS, said single wall is now resting upon footings which are partly on Lot 9 and partly on Lot 10 below the level of the present basement floor of the building now on Lots 10, 11, and 12; and

Whereas, the parties hereto are the assignees of all rights, benefits or obligations incidental to said Lease of May 26, 1884, and are the sole and only parties entitled to claim any rights thereunder or subject to any obligation thereunder; and

WHEREAS, the parties hereto are desirous of nullifying and cancelling said Lease of May 26, 1884, and creating a new agreement with reference to said single wall and footings thereunder;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS OF THE PARTIES HERETO, IT IS HEREBY AGREED AS FOLLOWS:

I.

That each releases the other, their heirs, grantees or assigns of said respective parcels of real estate, from all terms, conditions, obligations, and duties contained in the Lease dated May 26, 1884, and that said Lease shall hereafter be null and void and cancelled and of no force and effect whatsoever.

II.

That the common wall, including footings, now dividing the buildings of said owners shall become and remain a party wall and the common property of said owners, their respective heirs, grantees, and assigns, so that either of them shall be at liberty to use said wall by inserting timbers or other materials up to but not beyond the vertical line drawn through the center and along the entire length of said wall, or otherwise to use the wall in any manner that may not interfere with the equal use of the other half of the wall by the other owner.

III.

That either of the parties hereto is hereby granted by the other the right to extend said wall using the center line of the present wall extended as the center line of the extension, said extension to be built in a substantial and workmanlike manner and conform in all respects to State and local building regulations in force at the time of said extension and to do whatever work may be necessary to leave the building of the other in as good condition as the same may be at the time of said extension.

IV.

That if either of the parties hereto, their heirs, or assigns, shall extend said wall, either vertically or laterally, the other shall have the right to use the whole or any part of said extension, upon payment to the party extending, of one-half of the value, at the time of use of such extension, and in the event of lateral extension, said value to include foundations, footings and sub-structures.

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V.

That the cost of repair and maintenance of said party wall shall be born equally by the parties hereto; provided, however, that in the event said wall is extended, the party extending shall be solely responsible for the cost of such extension and maintenance thereon until such time as the other may make use of said extension; it being further specifically understood and agreed that both the capital cost and maintenance cost shall be pro rated in accordance with the extent of the use made by the other.

VI.

That in the event Second Party deems it desirable to place new construction on his premises as hereinbefore described, and in the event, in the course of such construction it is deemed desirable to replace said party wall, he shall have the right to make such replacement and extensions thereof, if desired, provided, however, replacement of said party wall shall be entirely at his own cost without any right of contribution from First Party, subject however to paragraphs four and five hereof, should First Party make use of extensions, lateral or vertical, beyond the limits of the presently existing wall.

VII.

If any dispute shall arise between the owners of said party wall as to value of extensions or otherwise, then such difference shall, immediately after it has arisen, be referred to the final determination of two competent persons as arbitrators, one of whom shall be chosen by the owners of each respective parcel, and if the two arbitrators so named can not agree, the two shall name a third and the decision of any two shall be final and binding upon the then owners.

VIII.

This agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors or assigns, and said parties mutually covenant for the respective heirs and assigns, each to and with the other, their heirs and assigns, to observe the above agreement and the covenants herein contained shall run with the land but no owner shall be responsible except for his acts or defaults while owner.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year first above written.

ATTEST:

A L Edwards
Secretary

J. M. McDonald Co. Corporate Seal ..
.1935 Delaware

J. M. McDONALD CO.
By: J M McDonald Jr
President
FIRST PARTY

(CORPORATE SEAL)

Arthur H. Anderson
Alice E. Anderson
SECOND PARTY

STATE OF NEBRASKA)
COUNTY OF ADAMS) SS

Before me, the undersigned, a duly authorized Notary Public in and for the County and State aforesaid, on this day personally appeared Arthur H. Anderson and Alice E. Anderson, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and considerations therein expressed.

GIVEN under my hand and seal of office this 15th day of December, 1950.
..... Clarence Anderson
.Clarence Anderson Notary Public.
.Adams Co., Nebr.
..... My commission expires Oct 11 1956

STATE OF NEBRASKA)
COUNTY OF ADAMS) SS

On this 15th day of December, 1950, before me a duly authorized Notary Public in and for the above County and State personally appeared J. M. McDonald, Jr. President, and A. L. Edwards, Secretary, respectively, of the J. M. McDonald Co., a corporation, and they acknowledged to me that they are authorized on behalf of the corporation to execute the foregoing Party Wall Agreement; that same is their voluntary act and deed and the voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto affixed my hand and official seal, at Hastings, in the County and State aforesaid.

.....
.Charlotte B. White Notarial Seal.
.Adams County, Nebraska
.Commission Expires May 21, 1954 .
.....

Charlotte B White
Notary Public
My commission expires May 21, 1954