

## MISCELLANEOUS RECORD NO. 34

## 3. Agreement.

Omaha Board of Trade Bldg. Co. }  
 and }  
 George Warren Smith. } ✓

Whereas, Omaha Board of Trade Building Company, under the name of Omaha Board of Trade, and George Warren Smith entered into on the 23rd day of December 1892 a certain written party wall agreement, under and by virtue of which there existed a party wall on the division line between lots one (1) and two (2) in block one hundred and forty (140) in the city of Omaha, county of Douglas and state of Nebraska, one-half of which party wall was upon said lot one owned by said Omaha Board of Trade Building Company, and the other one-half thereof was upon said lot two owned by said George Warren Smith; and

Whereas, Union Securities Company has purchased from said Omaha Board of Trade Building Company and now owns said lot one, together with all of its appurtenances, and as such purchaser and owner has taken the place of said Omaha Board of Trade Building Company in and concerning said party wall contract; and Whereas, said party wall was destroyed by fire in the month of February 1915 and it is desired by the owners of said lots, said Union Securities Company as the owner of said lot one, and said George Warren Smith as the owner of said lot two, that the party wall agreement under and by virtue of which said party wall existed be abrogated, and that a new party wall agreement be entered into;

Now this contract between Union Securities Company, a corporation organized under the laws of the state of Nebraska, and George Warren Smith, witnesseth:

The party wall agreement entered into between Omaha Board of Trade Building Company as Omaha Board of Trade and George Warren Smith on the 23rd day of December 1892 is by mutual consent hereby abrogated and declared in every particular to be forever at an end.

Said Union Securities Company, purposing to soon commence and complete the erection upon said lot one of <sup>a</sup> modern fire proof building ten or more stories in height, may erect upon and over the division line as now established between said lots one and two, and from the south line of Fannam Street in said city of Omaha to the north line of the alley in said block, a party wall which shall constitute the west wall of any building placed upon said lot one and the east wall of any building placed upon said lot two; one-half of which party wall and the foundations thereof shall be upon said lot one and the other one-half thereof upon said lot two.

Said party wall shall consist of concrete caisson foundations extending, if deemed necessary, to bedrock, the tops of which shall be sufficiently below the street level as to permit the construction and use of two or more basements of ordinary heights in any buildings constructed upon either of said lots, and which caissons shall be from five or more to seven feet in diameter; and shall consist of vertical steel columns, the centers of which shall be on said division line, resting upon and attached to said concrete caissons; which columns shall be of such size, strength and height as shall be necessary in and for a party wall for buildings of ten or more stories of ordinary heights, and which columns shall be connected and held in vertical position by horizontal steel beams; and shall consist of walls of brick and other fire proof materials placed between and around said columns, the center line of which walls shall be upon said division line, and the thickness of which walls shall conform to the requirements of the building ordinances of the city of Omaha and shall not exceed twenty-six inches.

Said party wall shall exist and be maintained for the use of the owners of said lot one and of said lot two, whoever said owners may be at any time; and shall be so constructed as to permit the attaching to the vertical columns at any desired height or place of floor.

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beams for any building erected upon said lot two.

Said party wall may by the owner of either of said lots be extended for actual use to any height desired and permitted by the strength and capacity of the wall, and with like design and materials.

Said party wall shall be erected in a good and workmanlike manner and of first-class and fire-proof materials, and at the cost of said Union Securities Company and without cost to said George Warren Smith. Whenever, said George Warren Smith erects a building upon said lot two said party wall shall be used as and be the east wall of such building; and said George Warren Smith shall at the time of the erection of such building, if all of said wall is used, pay to said Union Securities Company one-half of the value of said wall, or if all of said wall and to its full height and length is not used for such building, then said George Warren Smith shall pay to said Union Securities Company one-half of the value of that part of the wall so used by him, but the value in that case shall be fixed by ascertaining the value of such a party wall as would have been reasonably adapted to the support of such a building as said George Warren Smith shall at that time construct. If said Union Securities Company and said George Warren Smith can not agree upon the extent of use or the amount of money to be paid, then each now hereby agrees that each will forthwith appoint an appraiser to determine the extent of use and the amount to be paid, and that if such two appraisers can not agree, the two appraisers will appoint a third appraiser to act with them, and that the determinations of the three appraisers, or of any two of them, shall control, and said Union Securities Company and said George Warren Smith shall be bound by such determinations. While any part of said wall is unused as a party wall, and unpaid for, by the owner of said lot two, he shall not place or permit to be placed on said wall any signs or displays.

If after its completion said party wall should be extended by the owner of either of said lots, the extension shall be made at the cost of the owner making the same; and in the event that said extension should be used by the other owner then he shall pay for the use; and the extent of use and amount of the payment shall be determined as hereinabove provided with reference to the use and payment therefor of said party wall.

Any and all repairs at any time necessary to be made to said party wall may be made by the owner of either of said lots; and the owner making such repairs shall pay for the same; and the other owner shall at once make reimbursement for the cost of the repairs to the owner making the repairs in the proportion that the use by the owner making reimbursement sustains to the use by the owner making the repairs. In the event the owners can not agree upon such proportion and the amount of reimbursement, then both of the same shall be determined by arbitration in like manner as is hereinabove set forth with reference to the use of said wall and the extensions thereof.

The agreements herein contained shall run with both of said lots, and shall be and operate for the benefit of and be obligatory upon any and all grantees and parties owning or holding through or under either or both of the parties hereto; and each and all of the agreements herein shall continue and be in full force until abrogated by the owners of said lots, or so long as said party wall shall endure and serve the purposes of its erection.

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It is well understood and agreed by and between the parties hereto that said Union Securities Company is not obligated or compelled hereby to erect the party wall herein contemplated, but that it may erect such party wall in the event it commences such erection within one year from the date hereof, and that upon the commencement of such erection and the completion of said party wall within a reasonable time thereafter, each and all of the agreements herein set forth shall become and continue in full force and effect. If such party wall is not commenced within said one year and completed within a reasonable time thereafter, then this agreement shall be of no effect whatever.

In Testimony Whereof, Union Securities Company has, pursuant to a resolution of its Board of Directors, caused its name to be hereunto subscribed by its president and its corporate seal to be hereunto affixed; and George Warren Smith has hereunto subscribed his name, all in duplicate and as of the 20th day of September A.D. 1915.

In presence of  
M. W. Weymouth

I  
I

Union Securities Company

By Isaac E. Congdon,

President.

M. W. Weymouth 1

Geo Warren Smith



State of Maine, 1  
County of Knox, 1  
SS:

On this 20th day of Sept. A.D. 1915 before me, a notary public duly commissioned and qualified for and residing in said county, personally appeared Isaac E. Congdon, personally known to me and personally known to me to be the President of Union Securities Company, a corporation, one of the parties who executed the foregoing party wall agreement; and he acknowledged said instrument and the execution thereof to be the voluntary act and deed of said corporation, and his own voluntary act and deed as such president.

Witness my hand and notarial seal the date last aforesaid.

My commission expires on the first day of Nov. 1918.

Milton W. Weymouth,

Notary Public.



State of Maine, 1  
County of Knox, 1  
SS:

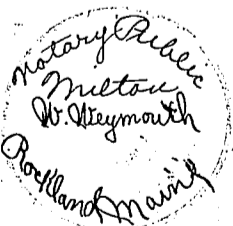
On this 20th day of September A.D. 1915 before me, a notary public duly commissioned and qualified for and residing in said county, personally appeared George Warren Smith, personally known to me and personally known to me to be one of the parties who executed the foregoing party wall agreement; and he acknowledged said instrument and the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the date last above written.

My commission expires on the first day of Nov. 1918.

Milton W. Weymouth,

Notary Public.



State of Nebraska,  
Douglas County.

) Entered on Numerical Index and filed for record in  
the Register of Deeds Office of said County, the  
15th day of October, 1915, at 12:05 o'clock P.M.

Harry Pearce,

Register of Deeds,

Compared by M&O

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