

4216290

1358

Edward Mike  
EDWARD MIKA

WESTERN UNION COMPANY  
DEPT

MAR 18 1 15 PM '86

MAIL ROOM  
RECEIVED  
SALT LAKE COUNTY,  
UTAH

WHEN RECORDED MAIL TO:

Kenneth W. Hicks  
3452 Medford Drive  
Bountiful Utah 84010

AGREEMENT REGARDING COMMON WALL

THIS AGREEMENT made and entered into this 13 day of March, 1986, by and between JEANETTE P. KRESSER, Trustee of the Jeanette P. Kresser Trust, and ELSIE H. PARRY and JEANETTE P. KRESSER, Co-Trustees of the Michael P. Kresser Trust and the Ronald C. Kresser Trust, hereinafter collectively referred to as "Kresser", and KENNETH W. HICKS, hereinafter referred to as "Hicks".

WITNESSETH:

WHEREAS, Kresser are the owners of that parcel of real property with a warehouse constructed thereon, commonly known as 1770 West 500 South, Salt Lake City, Utah, more particularly described below, and

WHEREAS, Hicks is the owner of an adjoining parcel to the west with a warehouse constructed thereon, commonly known as 1780 West 500 South, Salt Lake City, Utah, Hicks having acquired said property in a chain of title from Fleetwood Construction, Incorporated, and

WHEREAS, Kresser's predecessor in interest, Jesse H. Parry, Trustee for Jeanette P. Kresser, Ronald C. Kresser and Michael Parry Kresser, granted to Hicks' predecessor in interest, Fleetwood Construction, Incorporated, an option dated February

BOOK 5745 PAGE 2542

well

25, 1972, to use Kresser's westerly most wall running north and south of the warehouse building for a party wall for a warehouse which Hicks has acquired, and

WHEREAS, Fleet Construction, Incorporated, exercised said option and used the Kresser westerly most wall as a party wall for the construction of the warehouse Hicks has now acquired, and the Kresser warehouse and the Hicks warehouse join at the approximate boundary line which separates the two parcels and use in common the westerly wall of Kresser so that the two buildings appear to be a single structure, and

WHEREAS, the parties desire to continue the conditions of the option and set forth additional agreements for the future use and maintenance of the common wall as it affects their respective warehouses.

NOW, THEREFORE, the parties agree as follows:

1. Kresser acknowledges that Hicks' predecessor in interest exercised said option dated February 25, 1972, and constructed the warehouse on the Hicks' property using Kresser's westerly wall as a common party wall. Hicks acknowledges said option dated February 25, 1972, and assumes the obligations of optionee thereunder and agrees to be bound by the conditions of said option, including the following:

(a) At Hicks' expense make any repairs or construction necessary so that there are no cracks, damage or weakening of the wall or the adjoining building of

BOOK 5745 PAGE 2543

Kresser by reason of the construction and tie in of the Hicks' warehouse to the common party wall, and will at Hicks' expense make any repairs or adjustments necessitated in the future resulting from tying into the common party wall.

(b) At Hicks' expense make sure that a fire wall is properly constructed and extended above the roof to comply with all governmental requirements and good judgment to protect the Kresser warehouse from anything that might occur in the Hicks' warehouse.

(c) At Hicks' expense take all steps to ensure that there was adequate construction to take care of the water, snow and ice running off from the Kresser warehouse building that was necessitated by the construction of the Hicks' warehouse so that the water, ice and snow shall not back up and cause damage on the roof, nor will it drain in such a way to cause inconvenience or damage to Kresser, Kresser's tenants, or Kresser's property. Further, Hicks shall at his expense maintain such construction and facilities.

(d) Hicks, in using the common party wall, shall not in any way interfere or disturb the operations of the tenants of Kresser and hereby agrees to hold Kresser harmless from all damage caused to Kresser or Kresser's tenants or their customers or invitees by Hicks' use of the common party wall.

2. Each party shall be responsible to pay and hold the other party harmless from all damage caused, including wear and tear from the normal use of said common party wall. Any costs for repairs necessitated by the normal deterioration or faulty construction of the original wall which cannot be identified to have been caused by either party shall be borne one-half (1/2) by Hicks and one-half (1/2) by Kresser, and the parties agree to cooperate in whatever repairs or maintenance that may be required.

3. Each party hereby grants the other party hereto such easements and rights of ingress and egress over, across, through and under the tract owned by him as are reasonably necessary to permit said other party to perform his obligations hereunder and to perform any necessary or desirable repairs, replacements, restoration, or maintenance in connection with said common party wall.

4. The parties acknowledge and agree that the wall is a common party wall and that any remodeling or demolition that either party may perform with their respective warehouses or on their respective property will be done in such a way as to not damage said common party wall or interfere with the use by the other party of said common party wall.

5. The parties acknowledge and agree that said common party wall is owned by Kresser and each of the parties have the right to maintain the wall at its present location whether it

BOOK 5745 PAGE 2545

encroaches over on the other party's real property or not so long as the wall remains. If the wall is destroyed by fire, explosion or some other damage, then either party shall have the right to restore the wall in the same location. If Hicks at any time hereafter tears down his warehouse or remodels to the extent that he changes the structure of the Hicks' warehouse so as to not need the common party wall, then Hicks' right to use the said wall shall thereupon terminate and neither Hicks nor his successors in interest shall have any further right to use said wall in the construction of any new building except as the parties might agree in writing at such time. In the event Kresser tears down their warehouse or remodels in such a way as to not need the wall as a common party wall, then any new construction or new building must be on Kresser's property and the easement over the real property of Hicks shall terminate at that time. Notwithstanding the above possible terminations, the underground footings presently in place for said common party wall may be used to the extent useable in new construction and the easement onto the other party's property shall continue to the extent of the footings so long as the owner of either parcel is using the footings for a structure. At any time when neither party is using the footings for their structure, the easement for the footings shall thereupon terminate.

6. At such time that either party ceases to use the wall for their respective structure, such party shall no longer

BOOK 5745 PAGE 2546

have any obligation to contribute toward the cost of maintaining, repairing or replacing the said common party wall except for damages caused to said wall by the use of their respective properties by them or their tenants or resulting from the operation of businesses operated on their respective properties.

7. The parties agree to pay their own taxes on their respective parcels and on their respective buildings. If the taxes for the common party wall can be identified or computed from their respective tax assessments, or to the extent they can be identified with the wall, they shall be borne one-half (1/2) by each party, and the other party agrees to pay before the taxes are due his one-half (1/2) to the other party whose assessment the party wall is included within.

8. The parcel of real property owned by Kresser is situated in Salt Lake County, State of Utah, and is particularly described as follows:

Beginning on the North line of 500 South Street at a point South 89°57'40" West 508.0 feet and North 0°03'08" West 22.0 feet from the Salt Lake City Survey Monument at the intersection of Redwood Road and 500 South Street, said point of beginning being also South 1355.44 feet and West 508.0 feet from the Northeast Corner of the Southwest Quarter of Section 3, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 0°03'08" West 282.94 feet more or less; thence South 89°57'40" West 110.16 feet; thence South 0°03'08" East 282.94 feet more or less to the North line of 500 South Street; thence North 89°57'40" East 110.16 feet to the point of beginning.

9. The parcel of real property owned by the Hicks, being also situated in Salt Lake County, State of Utah, is more particularly described as follows:

Beginning on the North line of 500 South Street at a point South 89°57'40" West 618.16 feet and North 0°03'08" West 22.0 feet from the Salt Lake City Survey Monument at the intersection of Redwood Road and 500 South Street, said point of beginning being also South 1355.44 feet and West 618.16 feet from the Northeast corner of the Southwest quarter of Section 3, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 0°03'08" West 282.94 feet; thence South 89°57'40" West 80.00 feet; thence South 0°03'08" East 282.94 feet to the North line of 500 South Street; thence North 89°57'40" East 80.00 feet to the point of beginning.

10. In the event either party defaults under this Agreement the defaulting party agrees to pay to the non-defaulting party all costs incurred in enforcing this agreement including reasonable attorney's fee in addition to all other amounts or obligations due hereunder and for damages caused whether or not court action is instituted.

11. This Agreement and each and every provision contained herein shall constitute covenants running with the land and equitable servitudes, and shall be binding upon and inure to the benefit of each party and their respective heirs, grantees, transferees, personal representatives, successors and assigns.

IN WITNESS WHEREOF, this Agreement was executed at Salt Lake City, Utah, the day, month and year first above written.

"KRESSER"

THE JEANETTE P. KRESSER TRUST

By  Jeanette P. Kresser, Trustee

BOOK 5745 PAGE 2548

THE MICHAEL P. KRESSER TRUST

By Elsie H. Parry - Trustee  
Elsie H. Parry, Trustee

By Jeanette P. Kresser Trustee  
Jeanette P. Kresser, Trustee

Michael P. Kresser as Beneficiary  
hereby agrees and approves the  
above Agreement.

Michael P. Kresser  
Michael P. Kresser

THE RONALD C. KRESSER TRUST

By Elsie H. Parry - Trustee  
Elsie H. Parry, Trustee

By Jeanette P. Kresser Trustee  
Jeanette P. Kresser, Trustee

Ronald C. Kresser as Beneficiary  
hereby agrees and approves the  
above Agreement

Ronald C. Kresser  
Ronald C. Kresser

"HICKS"


Kenneth W. Hicks  
Kenneth W. Hicks

BOOK 5745 PAGE 2549



STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On this 13 day of March, 1986, personally appeared before me JEANETTE P. KRESSER, ELS H. PARRY, MICHAEL P. KRESSER and RONALD C. KRESSER, four of the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

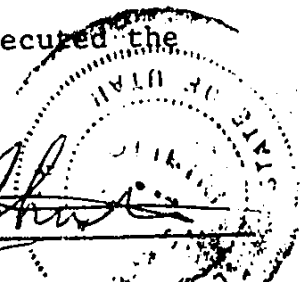
 My Commission Expires:  
2-27-90

Darice W. McGee  
Notary Public  
Residing at:  
Bozartville, Utah

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On this 12 day of March, 1986, personally appeared before me KENNETH W. HICKS, one of the signers of the foregoing instrument, who duly acknowledged to me that he executed the same.

My Commission Expires:  
1-21-90

  
Kenneth W. Hicks  
Notary Public  
Residing at:  
5078 JANETTE AVE.  
WUC, UTAH 84120

BGM17