PRACTICAL NON-JUDICIAL SOLUTIONS TO BOUNDARY PROBLEMS

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§ 1.1 BOUNDARY DISPUTES AMENABLE TO NON-JUDICIAL SOLUTIONS

A. Generally.

Judicial resolution of boundary disputes has a long tradition in Western law. Land disputes played a significant role in the creation of the rule of law in mid-millenium England. Similarly, reported Minnesota cases from the 19th century involve a large number of boundary disputes. Over the years, however, the legal system has become less equipped to deal with boundary disputes, while there has been no reason to believe the number of disputes has diminished. With a growing population parcels have become subdivided, increasing the opportunity for disputes. Accelerating property values have made owners less reluctant to litigate disputes – and rising incomes have given them the financial resources to do so.

But while many boundary disputes can only be resolved by litigation, there are significant advantages to resolving boundary disputes without the need of going to court. Litigation is expensive. Further, it often takes months or even years for contested cases to wind their way to a judicial conclusion. By placing a dispute with a judge or jury, the parties are relinquishing control of the outcome. Parties whose boundary disputes are resolved by the courts are arguably more likely to feel residual animosity toward one another than are landowners who are able to reach a resolution outside the adversary system.

There are practical steps a landowner can take to avoid a boundary dispute in the first place. Prior to closing, title to the land should be examined, whether by an attorney or a title insurance company. If there is visual evidence that boundaries may be uncertain, a survey should be obtained as well. In practice, surveys are not typically obtained by buyers because of their cost, potential transactional delay, and, in some rural parts of the state, the limited availability of surveyors. Paradoxically, a survey also has the potential of highlighting a problem that the parties, for better or worse, would otherwise never have had knowledge of.

If a survey does reveal that the land being purchased includes an improvement that encroaches across a boundary, the buyer may be able to obtain title coverage insuring against forced removal of the improvement. The language of such coverage may read as follows:

The Company affirmatively insures the Insured against loss, cost or damage by reason of any attempted action to force removal of the improvements.

The Company further insures the Insured that upon the payment of the standard premium in effect at the time, the Company at a future time will issue a Policy of Title Insurance including the foregoing coverage to future purchasers or mortgagees of the subject property.
In attempting to resolve a boundary dispute by non-judicial means, it is critical to determine just how the boundary problem arose. Without understanding the underlying cause of the problem, a practitioner runs the risk of creating additional boundary, legal description, and title problems. The following sections describe the most common sources of boundary problems.

B. Encroachment of Improvements onto Neighboring Property.

A boundary problem will arise when a purchaser buys property with improvements that encroach upon adjoining property. Standard residential purchase agreements contain warranties that all buildings are entirely within the boundary lines of the property. These warranties, however, are often unhelpful. While a court will order removal of a structure in appropriate cases, *Sime v. Jensen*, 213 Minn. 476, 7 N.W.2d 325 (1942), in most cases a court will attempt to avoid granting such relief. *See Olson v. Lindberg*, 286 N.W.2d 692 (Minn. 1979).

Reliance on warranties contained within deeds is also problematic. Minn. Stat. § 507.07 states that use of the word warranty in a deed creates covenants, enforceable against the grantor, his heirs and personal representatives, that “the grantor is lawfully seized of the premises in fee simple and has good right to convey the same; that the premises are free from all incumbrances; that the grantor warrants to the grantee, the grantee’s heirs and assigns, the quiet and peaceable possession thereof; and that the grantor will defend the title thereto against all persons who may lawfully claim the same.”

Does a boundary dispute create a claim on a warranty deed? Has the grantor, for example, breached his warranty of “quiet and peaceable possession”? Or has the grantor breached his warranty that he “is lawfully seized of the premises in fee simple and has good right to convey the same”? Another way of asking the question: Does a boundary problem render a property unmarketable?

Courts have defined marketable title as title “free from reasonable doubt; one that a prudent person, with full knowledge of all the facts, would be willing to accept.” *Hubachek v. Maxbass Security Bank*, 117 Minn. 163, 169, 134 N.W. 640, 642 (1913). Marketability is determined from the standpoint of the prospective purchaser, not the standpoint of a court. *Target Stores, Inc. v. Twin Plaza Co.*, 277 Minn. 481, 153 N.W.2d 832 (1967). Title, in a real property context, generally refers to “the means by which the owner has the just and legal possession and enjoyment. It is the lawful cause or ground of possessing that which is one’s own. One has a complete title if one has possession, right of possession, and right of title.” Olson, *Minnesota Residential Real Estate* (Butterworth Legal Publishers, 1991), p. 3, citing *Loy v. Home Ins. Co.*, 24 Minn. 315 (1877); *Gibb v. Philadelphia Fire Ins. Co.*, 59 Minn. 267, 61 N.W. 137 (1894); *Camp v. Smith*, 2 Minn. 155 (Gil. 131) (1858); and *Allen v. Allen*, 48 Minn. 462, 51 N.W. 473 (1892).

Relying on these definitions, it appears that boundary disputes may not, strictly speaking, constitute a marketability issue. Do policy considerations lead to a different conclusion? There is apparently no reported case in Minnesota deciding whether a boundary dispute creates a claim on a warranty deed, independent of a claim that may exist for fraud or misrepresentation.
C. **Encroachment of Neighboring Improvements onto Subject Property.**

The converse may also occur: A neighbor’s improvements may encroach upon a purchaser’s property. The standard residential purchase agreements do not contain warranties against such encroachments. As discussed in the previous section, the utility of deed warranties may be limited. Litigation arising out of encroachments from neighboring properties have often involved questions such as: Does a purchaser who buys with actual knowledge of an encroachment waive any claim against the seller? Against the encroaching neighbor? What if the knowledge is not actual, but constructive (when, for example, an encroachment is not apparent to the eye but would have been discovered had a survey been done)? The results in such cases appear to be unusually fact-oriented. *E.g.*, Olson, *supra*.

D. **Erroneous Legal Descriptions.**

One can only imagine the boundary problems originating from the following legal description, which appeared in a deed filed in Connecticut in 1812:

Commencing at a heap of stone about a stone’s throw from a certain small clump of alders near a brook running down off from a rather high part of said ridge; thence, by a straight line to a certain marked white birch tree, about two or three times as far from a jog in a fence going around a ledge nearby; thence by another straight line in a different direction, around said ledge, and the Great Swap, so called; thence . . . to the “Horn” so called, and passing around the same as aforesaid, as far as the “Great Bend,” so called, and . . . to a stake and stone not far off from the old Indian trail; thence, by another straight line . . . to the stump of the big hemlock tree where Philo Blake killed the bear; thence, to the corner begun at by two straight lines of about equal length, which are to be run by some skilled and competent surveyor, so as to include the area and acreage as herein before set forth.

Harwood and Jacobus, *Real Estate: An Introduction to the Profession*, 5th Edition (Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1990), p. 19. Closer to home, the following description can be found in a deed conveying a portion of what is now downtown Duluth, filed with the St. Louis County Recorder on November 4, 1856:

Beginning at a large stone or rock at the head of St. Louis River Bay nearly adjoining Minnesota Point, commencing at said rock and running East one mile, North one mile, West one mile, South one mile to place of beginning and being land set off to the Indian Chief Buffalo at the Indian treaty of September 30, 1854, and was afterward disposed of by said Buffalo to said Armstrong, and is now recorded with the government documents.
The foundation of surveying in the United States consists of parallels (east-west lines) and meridians (north-south lines). A township is a tract bordered by parallels and meridians each six miles apart. Townships are consecutively numbered in north-south columns, and also (designated as ranges) in east-west rows. Each township consists of 36 one-square-mile (640-acre) sections. This system allows easy and accurate description of tracts as small as 2½ acres, e.g., NE¼ of SW¼ of SE¼ of NW¼ of Section 18, Township 50 North, Range 14 West of the Fourth Principal Meridian.

The rectangular survey system is based on the fiction that the world is flat. One consequence is that meridians extended to the North Pole will meet, so they are continually approaching each other as they run north. Accordingly, “squares” such as townships and sections are actually trapezoids, shorter on the north than on the south. In general, adjustments are made to reflect the fact that the earth is a sphere. Since a 40-acre tract will rarely be precisely 1,320 feet by 1,320 feet, dividing the tract into two parcels by use of the descriptions “the east 500 feet” and “the west 820 feet” will create a boundary problem. If the tract is greater than 1,320 feet east to west, a gap will result; if less than 1,320 feet, an overlap will result. If the east and west boundaries are not parallel, both gaps and overlaps may result. A better description would describe Parcel A as “the east 500 feet” and Parcel B as the “NW¼ of SW¼ except the east 500 feet.” An even better description would describe Parcel A as being that portion of the NW¼ of SW¼ “east of a line parallel with and 500 feet westerly of the easterly boundary of said NW¼ of SW¼.”

A related problem occurs when a description states, for example, “the northerly 10 acres of the NE¼ of SW¼.” One cannot assume that “the northerly 10 acres” is synonymous with “the northerly 330 feet,” since the 40-acre tract will not be perfectly square.

A lack of care may also result in a legal description that does not reflect the parties’ intentions. A purchase agreement may state, for example, that the property to be bought and sold is 300 feet by 300 feet. If the property’s west and south boundaries are section lines, and thus likely centerlines of public roads, does “the south 300 feet of the west 300 feet of Section 25” reflect the intentions of the parties? Or do the parties intend that the 300 feet run from the interior edges of the road right-of-way? Or the interior edges of the roads as developed?

Finally, a deed may simply contain a typographical error in its legal description. Were the resulting boundary dispute to be litigated, it is likely a court would use the doctrine of mutual mistake to reform the deed. The three elements of reformation are (1) a valid agreement which exists between the parties and expresses their real intentions, and (2) a mutual mistake (or a unilateral mistake accompanied by fraud or inequitable conduct) which results in (3) a written instrument which fails to express the real intentions of the parties. *Nichols v. Shelard National Bank*, 294 N.W.2d 730, 734 (Minn. 1980). The burden of proof necessary for reformation is clear and convincing evidence of the three elements described above. *Nolan v. Stuebner*, 429 N.W.2d 918, 923 (Minn. App. 1988). Real estate instruments such as deeds and easements are among the instruments that may be reformed if the three elements are present. *E.g.*, *Chilstrom v. Einwall*, 168 Minn. 293, 210 N.W. 42 (1926); *Lindell v. Peters*, 129 Minn. 288, 152 N.W. 648 (1915). Reformation is not precluded because the instrument pertains to registered property. *Nolan, supra.* The benefit of resolving erroneous legal descriptions by agreement, especially where
typographical errors are involved, is that the parties will likely reach the same result as the court, absent the expense and delay.

E. Inaccurate Survey Work.

Poor surveying work is less common than in 1956, when the Minnesota Supreme Court opined that it is “common knowledge that surveys made by different surveyors seldom, if ever, completely agree and, that more than likely, the greater the number of surveys the greater the number of differences.” Erickson v. Turnquist, 247 Minn. 529, 533, 77 N.W.2d 740, 743 (1956). Remarkable advances in equipment have made transits and chains obsolete. Nevertheless, the boundaries we live with today were in many cases determined decades, even generations, ago. Consider the realities of 19th century surveying:

- Surveying equipment used in remote areas was often primitive. The chain was heavy and unwieldy, making it difficult to suspend without introducing considerable sag. Links stretched and became bent, clogged with debris, or kinked.

- Magnetized compasses were unreliable near iron deposits.

- Terrain in heavily-wooded areas was often difficult to navigate.

- Virgin timber several feet in diameter, both standing and fallen, presented formidable obstacles to surveyors attempting to measure straight lines through the forest.

- Surveyors frequently had to contend with hostile squatters.

- The inferior training and skill levels of early surveyors made mistakes likely. Poor literacy skills led to poor grammar, spelling mistakes, transposed numbers, misreadings, and miscountings.

- Licensing, which was intended to root out dishonest surveyors, did not become mandatory until well into the 20th century.

- The cost of having the land surveyed may have been more than the price to buy the land. Under these conditions, speed was more important than accurate measurement.

Adding to this litany, some properties – particularly lakeshore properties or properties in remote areas – may have changed hands infrequently through the years. Many properties may never have been subject to financed purchases. Under these conditions, there may be little likelihood that boundary problems would have been resolved in earlier decades.

The only way to cure inaccurate survey work is with accurate survey work. For boundary problems caused by poor surveying, the first step is to obtain a competent survey that can then be used by the parties to arrive at a solution that reflects their intentions.
F. Improper Descriptions of Waterfront Property.

Waterfront property presents special problems. Landowners may, for example, incorrectly assume that the boundaries of their lake lots run perpendicular to the shoreline. In such instances, a whole plat may be afflicted with boundary problems requiring the cooperation of all landowners. Again, a solution would involve obtaining an accurate survey and then drafting a boundary agreement or easements so that the described boundaries correspond to the actual lines of occupation, rather than the original, and long disregarded, boundaries.

An improper description of waterfront property may create a boundary problem. A call such as “along the lakeshore 400 feet” is problematic because a shoreline will never be a line and, further, shorelines change. Similarly, a description starting on a shoreline, without further definition, will cause problems. These problems can be avoided by describing points on shores as being points on lines not dependent on the shore. A description might include, for example, the following: “. . . southerly along the shore of Perch Lake to a point on the northerly line of Government Lot 3.”

Unique problems arise with respect to boundaries within meander lines. A meander line is a line created for the purpose of excluding a body of water in quantifying acreage in a quarter-quarter section. A meander line is not necessarily a shoreline. The general rule (tempered by the specific facts of each case) is that boundaries will deflect from meander lines to the shoreline (center) of the lake. See Johnston v. Jones, 66 U.S. 209, 222, 223 (1862); Scheifert v. Briegel, 90 Minn. 125, 96 N.W. 44 (1903); Rooney v. County of Stearns, 130 Minn. 176, 153 N.W. 858 (1915).

G. Incorrect Directional Assumptions.

Boundary problems can arise when lines assumed to run north-south or east-west do not. Instead of attempting to describe the precise direction or angle of a line, problems can be averted by calls made in reference to established corners and boundaries. For example, a call might describe a line running “easterly to a point on the East line of Lot One which is 100 feet southerly of the Northeast Corner of said lot” or “southerly along the East section line” or “westerly along a line parallel to and 150 feet northerly of the South Line of the SW¼ of SE¼.”

Calls of “due north” or “true north” should be avoided, since it is not clear whether the north being referred to is astronomical, magnetic, or geodetic north. Fant, Freeman, and Madson, Metes and Bounds Descriptions (Minneapolis: The Meyers Printing Company, 1980), pp. 12-13.

§ 1.2 BOUNDARY AGREEMENTS

A. Advantages of Resolution by Agreement.

Boundary disputes may be serious (construction of a series of buildings on neighboring property, for example) or trivial (overhanging trees). Strong personal attachments to
the affected land may make the parties willing to spend more money on resolving the dispute than is justified by the market value of the property in dispute. Indeed, boundary litigation is rarely cost-effective, and should always be pursued as a last resort.

The advantages of resolving boundary disputes by agreement, rather than litigation, seem obvious: more control over the terms of the resolution, less expense, and less likelihood of lasting acrimony. The wise practitioner will attempt to persuade his or her client of these advantages. The practitioner will be well advised to be sensitive to multiple ownership, especially when family dynamics may be involved. The mythic power of property associated with recreation and family memories should not be underestimated.

The practitioner should emphasize for his or her client the economics of resolving the boundary dispute. Clients have a difficult time believing precisely how expensive litigation can be, so they should be told often. They should also be reminded that courts only rarely allow reimbursement of attorneys’ fees. Further, while in some instances it is perfectly appropriate for neighbors to be outraged over a situation or one another, judges, who preside over conflicts far more grave than land disputes, will rarely be outraged.

Disputes between neighbors lend themselves well to creative solutions. The unpleasant corollary is that rarely does any party get everything it wants in a land dispute.

B. Drafting the Boundary Agreement.

If the parties to a boundary problem can reach a meeting of the minds as to how the problem should be resolved, there are numerous methods of implementing their solution. As discussed below, a particular boundary problem may lend itself to an exchange of deeds, creation of an easement, use of a license or lease, or even a simple letter agreement. No matter the method chosen, it is almost always a good idea to use a boundary agreement to describe the problem and the parties’ solution for resolving the problem. A sample boundary agreement can be found at the end of Chapter 7.

C. Methods of Voluntary Resolution.

1. Conveyance by deed.

Execution and delivery of a deed will allow parties on either side of a disputed boundary to establish a boundary line in a mutually-agreeable location and precisely determine a boundary whose location was previously unclear. Boundary problems are often resolved by an “exchange of deeds,” in which each party will quit claim to the other interests in the other’s property as correctly described. If, for example, X owns the north 100 feet and Y the south 100 feet of a tract not precisely 200 feet deep, X may quitclaim to Y “the south 100 feet” and Y may quitclaim to X the entire tract “except the south 100 feet.” Such an exchange will not be effective, however, when the boundary problem involves a gap created by a conveyance from a previous owner. If X owns a tract greater than 200 feet
in depth and conveys “the north 100 feet” to Y and “the south 100 feet” to Z, an exchange of deeds between Y and Z may settle rights between them, but will not dispose of the “gap property,” which will remain titled in X.

When a deed is used to resolve a boundary problem, a quit claim deed is the preferred instrument, since the grantor will not usually wish to warrant title to the disputed property. As in any situation where a quit claim deed is used, the drafter should consider whether the grantor might be acquiring rights in the conveyed property after execution and delivery of the quit claim deed; and if, in such a situation, those rights should flow to the party receiving the quit claim deed. For example, the grantor may be the “clearinghouse,” receiving conveyances from family members whose deeds might be delivered after the grantor delivers the deed intended to resolve the boundary problem. If this is the case, the quit claim deed should include a statement that it is intended to convey after-acquired property, since without such a statement a quit claim deed, unlike a warranty deed, will not convey after-acquired property. Minn. Stat. § 507.07.

As in all conveyances, the grantee should satisfy himself or herself as to the status of title of the property being conveyed. A judgment and tax lien search should be conducted, as well as a title examination. If a mortgage exists on the conveyed property, it may be possible to obtain from the mortgagee a release as to the portion of the property being conveyed. If the mortgage is held by a secondary lender, however, obtaining such a release can be difficult, time-consuming, frustrating, and often wholly unsuccessful.

The parties must also be sure the conveyance does not violate any local zoning or subdivision requirements or is not considered a split of a tax parcel so as to require that real estate taxes be paid for the entire year before the deed can be recorded. (If setback requirements are problematic, can the problem be solved by deeding surrounding property and taking back a permanent easement?) Similarly, the deed cannot be recorded if real estate taxes for the parcel including the conveyed property are delinquent. In such an instance, it may be necessary to file a notice of the grantee’s claim to provide third parties notice of the claimed interest.

If the deed is intended to correct an erroneous description in an earlier deed between the parties, the prudent drafter will include in the deed a statement reciting its corrective purpose. *Minnesota Title Standards*, White Pages, p. III-A-1.

As with all instruments intended to resolve boundary disputes, the instrument should be recorded against all tracts involved. For registered property, the instrument should be memorialized on each certificate.
2. Easement grant.

An easement is a nonpossessory interest in land of another. See Minneapolis Athletic Club v. Cohler, 287 Minn. 254, 177 N.W.2d 786 (1970). Use of an easement may have a psychological advantage in that one party can obtain fee ownership while the other can obtain the rights it seeks in the property. A difficulty that may arise is that the fee owner will continue to owe property taxes for land being occupied by a neighbor by virtue of the easement.

An easement (like a license or lease, discussed below) is capable of more flexibility than is a deed conveying fee title. An easement might, for example, be limited to a specified duration (e.g., as long as the encroachment remains standing). The scope of the use permitted by the easement can also be defined (e.g., “for driveway purposes”).

An easement (again, like a license or lease), because it does not involve a transfer of fee title, should address issues related to maintenance and repair. Typically the party entitled to possession will be responsible for maintenance and repair. The parties may also wish to obligate one another to carry insurance and provide indemnification.

3. License.

A license is a permissive right to use another’s property. Chicago & N.W. Transp. Co. v. City of Winthrop, 257 N.W.2d 302, 304 (1977). Unlike an easement, a license is not an interest in land. Seabloom v. Krier, 219 Minn. 362, 367, 18 N.W.2d 88, 91 (1945). A license is usually revocable. State v. Riley, 213 Minn. 448, 452, 7 N.W.2d 770, 773 (1942). This last characteristic may limit a license’s utility in resolving a boundary dispute. On the other hand, a license may be the best vehicle for dealing with an encroachment that is temporary or that may be easily removed.

4. Lease.

As with the instruments described above, the terms of a lease can be tailored to create the best possible resolution. A lease will describe its duration and the uses permitted under it. Typically a lease will also describe the consideration (“rent”) being paid. This characteristic distinguishes a lease from the typical deed, easement, or license. If the parties do not wish to disclose the consideration to the public, a memorandum of lease, summarizing the transaction without disclosing the financial terms, should be executed and recorded.
5. Other methods.

The methods described above are not exclusive. If an encroachment is *de minimus*, or temporary, the parties may wish to consider a simple letter agreement. Such an agreement would recite ownership of the land, describe the use, and specify that the use is permissive and the permission (as in a license) revocable. The letter might also specify that the party using the property will be responsible for its use and will maintain insurance. The parties may not wish to record their letter agreement (which would not be recordable in any event absent notarized signatures).

Note should be made of the negotiation process that the parties hope will lead to a voluntary resolution. A concern often expressed is that offers to buy the property in dispute, or to pay to resolve the dispute, could be construed as an admission of non-ownership or cause a break in the continuity of possession required for adverse possession. In *Stanard v. Urban*, 453 N.W.2d 773 (Minn. 1990), the Minnesota Court of Appeals considered such evidence fatal to a claim for adverse possession.

On the other hand, the Minnesota Supreme Court has held that the “continuity of adverse possession is not broken by the adverse claimant’s taking a written conveyance of the interest claimed by him from parties claiming ownership of the property or some interest therein.” *Dozier v. Krumpotich*, 227 Minn. 503, 509, 35 N.W.2d 696 (Minn. 1949). The court continued: “An act of this character admits, and admits only, that the occupant deems it worthwhile to get rid of the outstanding title and unite it to the one under which he has been holding. It does not prove, and alone it does not even tend to prove, a change in the character of the possession or the recognition of a title paramount.” *Id.* at 509 (internal citation omitted).

This language is consistent with an early Minnesota case, *Dean v. Goddard*, 55 Minn. 290, 56 N.W. 1060 (1893). A party who receives a conveyance from the owner of record does not defeat his claim of adverse possession by doing so, but in fact may “strengthen his adverse claim by taking as many conveyances from those claiming or having an interest in the land as he sees fit.” *Skala v. Lindbeck*, 171 Minn. 410, 413, 214 N.W. 271, 272 (Minn. 1927) (citing *Dean v. Goddard*, 55 Minn. 290, 56 N.W. 1060 (1893)). Finally, there is no reason that Minnesota Rule of Evidence 408, which excludes offers of settlement from evidence, should not apply to boundary disputes.
BOUNDARY AGREEMENT

This Agreement is made this _____ day of ____________, 20___, by and between John Doe and Mary Doe, husband and wife (collectively, “Doe”); Evelyn Moyle, a single person (“Moyle”); and Charles and Lillian Smith, husband and wife (collectively, “Smith”).

WHEREAS, Doe is the fee owner of the following-described real property in Lake County, Minnesota (the “Doe Property”):

The North Half (N½) of Lot 1, Block 5, Skyview Addition, Lake County, Minnesota;

WHEREAS, Moyle is the fee owner of the following-described real property in Lake County, Minnesota (the “Moyle Property”):

The North Half of the South Half (N½ of S½) of Lot 1, Block 5, Skyview Addition, Lake County, Minnesota;

WHEREAS, Smith is the fee owner of the following-described real property in Lake County, Minnesota (the “Smith Property”):

The South Half of the South Half (S½ of S½) of Lot 1, Block 5, Skyview Addition, Lake County, Minnesota;

WHEREAS, the south boundary of the Doe Property is the north boundary of the Moyle Property, and the south boundary of the Moyle Property is the north boundary of the Smith Property; and

WHEREAS, the building located primarily on the Doe Property (the “Doe Building”) encroaches by less than two feet onto the Moyle Property (the “Doe Encroachment”); and

WHEREAS, the building located primarily on the Moyle Property (the “Moyle Building”) encroaches by less than three feet onto the Smith Property (the “Moyle Encroachment”); and

WHEREAS, the building located on the Smith Property (the “Smith Building”) shares a party wall with the Moyle Building (the “Party Wall”); and
WHEREAS, the parties wish to allow the continuance of the Doe Encroachment and the Moyle Encroachment, and further wish to set forth in writing their understandings and agreements with respect to the Doe Encroachment, the Moyle Encroachment, and the Party Wall;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, including the recitals stated above, which are incorporated into this Agreement and which the parties believe to be true and accurate, the parties agree as follows:

1. **Doe Encroachment.** Moyle hereby grants Doe an easement for the benefit of the Doe Property, permitting occupation, operation, maintenance, and repair of the Doe Building to the extent of the Doe Encroachment. This easement shall continue until destruction or removal of the Doe Building.

2. **Moyle Encroachment.** Smith hereby grants Moyle an easement for the benefit of the Moyle Property, permitting occupation, operation, maintenance, and repair of the Moyle Building to the extent of the Moyle Encroachment. This easement shall continue until destruction or removal of the Moyle Building.

3. **Party Wall.** Moyle and Smith shall have the right to use the Party Wall jointly. Expenses of all reasonable repairs to the Party Wall shall be borne equally by Moyle and Smith, or in such proportions as the two parties may agree. No structural changes or additions shall be made to the Party Wall without prior written consent of both Moyle and Smith. The expenses of these changes or additions shall be borne equally by Moyle and Smith, or in such proportions as they shall agree. Moyle shall be responsible for maintaining the north side of the Party Wall and Smith shall be responsible for maintaining the south side of the Party Wall. The cost of such maintenance shall be borne by the party responsible for the maintenance unless agreed upon otherwise. If the Party Wall is destroyed or damaged by fire or casualty, the cost to replace or restore it shall be borne equally by Moyle and Smith, or in such proportions as agreed to by the parties. If, however, destruction or damage is caused by the intentional or negligent act of either party, the cost of replacement or restoration shall be borne by that party alone.

4. **Indemnity.** Each party shall indemnify, defend, protect, and hold each other party harmless from and against all losses, damages, injuries, claims, demands, and expenses, of whatever nature, arising out of or resulting from the injury to or death of any person, or damage to the property of any person, arising out of exercise of the indemnifying party’s rights hereunder or omission of the indemnifying party’s obligations hereunder; provided, however, the obligation to indemnify shall not apply to claims caused by the negligence or willful act or omission of the party seeking indemnification.

5. **No Adverse Right.** The parties acknowledge and agree that the encroachments described herein exist by sufferance only, have not ripened into any adverse right, and shall not in the future ripen into any such adverse right.

6. **Miscellaneous.** This Agreement shall run with the land and bind and benefit the parties and their respective successors and assigns. The parties agree to reasonably cooperate and
act in good faith in carrying out the terms of this Agreement. Nothing herein shall be deemed to create a joint venture or partnership between the parties. This Agreement may be amended only by a writing executed by each party (or respective successor or assign) in the presence of a notary public. The failure of any party to insist upon strict performance of any term shall not be deemed a waiver of any rights or remedies under this Agreement or of any rights with respect to any subsequent breach or default. In the event of breach hereunder by any party, any affected party shall be entitled to all remedies provided in law or in equity, including injunctive relief. No legal action shall be commenced, however, unless the breach continues to exist more than 30 days after the party in breach receives from the affected party a written notice specifying the breach. The prevailing party in any action hereunder shall be entitled to be reimbursed its costs and expenses, including reasonable attorney fees. This Agreement shall continue in effect until terminated by a writing executed by each party (or respective successor or assign) in the presence of a notary public.

7. Counterparts. This Agreement may be signed in counterparts which, when assembled, shall create one original and recordable document.

___________________________________
John Doe

___________________________________
Mary Doe

STATE OF MINNESOTA )
) ss.
COUNTY OF ___________ )

The foregoing instrument was acknowledged before me this _____ day of ___________, 20__, by John Doe and Mary Doe, husband and wife.

___________________________________
Notary Public
STATE OF MINNESOTA )
COUNTY OF __________ )

The foregoing instrument was acknowledged before me this _____ day of __________, 20__, by Evelyn Moyle, a single person.

___________________________________
Notary Public

___________________________________
Charles Smith

___________________________________
Lillian Smith

STATE OF MINNESOTA )
COUNTY OF __________ )

The foregoing instrument was acknowledged before me this _____ day of __________, 20__, by Charles Smith and Lillian Smith, husband and wife.

___________________________________
Notary Public

This Agreement drafted by: