

PARTY WALL AGREEMENT

THIS AGREEMENT entered into this 9 day of April, 1946, in duplicate, by and between the BENSON IMPLEMENT & APPLIANCE CORP., a Nebraska corporation, first party, and MAURICE M. VERVAECKE and LUCILLE A. VERVAECKE, husband and wife, second parties,

W i t n e s s e t h :

First party is the owner of the following described real estate in Benson, an Addition to the City of Omaha, Douglas County, Nebraska:

Beginning at a point on the easterly line of Military Ave. on the south line of Lot 15, Block 10, Benson, as surveyed, platted and recorded, in Douglas County, Nebraska, 48 feet west of the southeast corner of said Lot 15; thence northwesterly along the easterly line of Military Ave. 62.63 feet; thence east 126.3 feet to a point 4 feet east of the east line of Lot 16; thence south and parallel to the east line of said Lot 16, 57.45 feet to the north property line of Binney Street; thence west 102 feet to the place of beginning, being the south part of Lots 14, 15, 16 and the West 4 feet of Lot 17, as described above, all in Block 10, Benson, a subdivision and now a part of the City of Omaha, Douglas County, Nebraska.

First party has heretofore constructed a party wall along and upon the north portion of the above described property with the consent and approval of second parties, wherein and whereby the said wall at its base is fourteen inches wide and resting on five foot footings, said wall being and resting seven inches on the abutting property to the north owned by second parties, which property lies immediately to the north of the above described property of first party, and resting and based on the northernmost seven inches of the first party's property described above, and being 126.3 feet long east and west.

That said party wall at the first floor of first party's building situated on the above described property is twelve inches wide, that is to say, six inches thereof in width resting and being based on second parties' property and six inches being based on the northernmost portion of first party's property described above.

That the cost of building said wall was the sum of \$7500.00, all of which cost has been borne and paid by first party although the wall is for the joint use and benefit of all parties hereto, subject to the restrictions, conditions and requirements hereinafter set forth.

That on or about August 1, 1945, the south wall of the building owned by second parties fell and was completely destroyed while same was being worked on by a contractor employed by first party; that as a result thereof, second parties' building located immediately to the north of the above described

real estate was without a south wall for a long period, and second parties were deprived of the use of parts of their said building and were deprived of the storage space same afforded in connection with their feed business conducted in their said building.

The parties hereto desire to enter into this party wall agreement in respect to the use, cost thereof and future obligations of the second parties to the first party with respect to said wall and for the purpose of settling and compromising the claims of the second parties against the first party arising from the destruction of the south wall of the building owned by second parties and located immediately adjoining the real property above described on the north.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and the payment by second parties to first party of the sum of \$2500.00, receipt of which is hereby acknowledged by first party, and the release of rights by second parties to and in favor of first party, the parties hereto agree as follows:

- 1 - The parties hereto agree that the location of said wall is as described herein and in accordance with the plat attached hereto and made a part of this agreement.
- 2 - The parties hereto agree that the cost of first party in constructing said party wall was and is the sum of \$7500.00, all of which cost was fully paid by first party.
- 3 - The parties agree that one-half of said wall in width rests on the property of each other and that the center of said wall at the first floor level of first party's building immediately adjacent to the south is the boundary line between each other's property, and that said line in the center of said wall constituting said boundary line is 126.3 feet long, east and west.
- 4 - It is further agreed by first party that second parties shall and may have the full privilege of joining to and using the above described wall on the north side thereof, below and above the surface of the ground and along the whole length thereof, and connect thereto any building which second parties may erect or have erected on the north side of said wall. However, said second parties shall not sink the joists of said building on the north side of said wall into said wall to a greater depth than _____ inches and that any construction into said wall shall be made in a workmanlike manner so as not to, in any way, damage the said wall beyond that which is required in the setting of said joists.
- 5 - It is further agreed that each party shall be liable for the taxes and assessments so levied, based on its or their property as divided by said boundary line, the center of said wall.
- 6 - The second parties do hereby forever release and discharge first party and its successors and assigns from any and all liability arising from or growing out of the destruction of the south wall of their said building adjoining the real estate above described on the north and from any and all liability for any consequential and resultant damages, of

any nature whatsoever, flowing from the destruction of said wall of said building, including any damage to the property of second parties in said building and any damage to or loss of property of second parties in the mill and feed business conducted in their said building.

7 - If it shall hereafter become necessary or desirable to repair or rebuild the whole or any portion of said party wall, the actual expense of such repairs or rebuilding shall be borne equally by the parties hereto or their heirs, successors and assigns, and whenever said party wall, or such portion thereof, shall be rebuilt, it shall be erected on the same spot and on the same line and be of the same size and same or similar material and like quality with the present wall.

8 - It is further agreed that in case of damage or destruction of said wall, including the foundation thereof, either party hereto or their heirs, successors and assigns shall have the right to repair or rebuild the wall and the cost of said rebuilding shall be borne equally by the parties hereto or their heirs, successors and assigns.

9 - It is further agreed that the fee of the soil on which this party wall stands, owned by the parties as fully described above, shall not pass or become vested in the opposite party except by direct conveyance from one party to the other, it being the intention of this agreement that the part of the said party wall resting on the ground of either of the parties hereto does not, by the force of this agreement, vest or pass the title to that portion of the other party's property upon which the said party wall stands to the other party.

The parties agree that this is the entire contract between them with reference to said party wall and that all other agreements and promises between each party hereto have been merged completely in this written agreement.

The parties hereto do hereby bind their successors, assigns, heirs, administrators and executors to the faithful performance of this contract.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and corporate seal to the foregoing instrument for the purposes therein stated, as of the date last above written

ATTEST:



BENSON IMPLEMENT & APPLIANCE CORP.,
A corporation,

[Signature]
Secretary
Witness

By [Signature]
Its President
First Party

In Presence of:

[Signature]

Maurice M. Vervaecke
Maurice M. Vervaecke

[Signature]

Lucille A. Vervaecke
Lucille A. Vervaecke
Second Parties

STATE OF NEBRASKA, (
)SS
COUNTY OF DOUGLAS. (

On this 9 day of April, 1946, before me, a Notary Public in and for said County, personally came W. E. Maxson, who is personally known to me to be the identical person who signed the foregoing instrument as Secretary, and acknowledged the execution thereof to be his voluntary act and deed as such officer, and the voluntary act and deed of BENSON IMPLEMENT & APPLIANCE CORP., a corporation.

WITNESS my hand and Notarial Seal at Omaha, in said County the day and year last above written.

Maddie Haury

Notary Public

My commission expires the 4 day of Aug, 1950

STATE OF NEBRASKA, (
)SS
COUNTY OF DOUGLAS. (

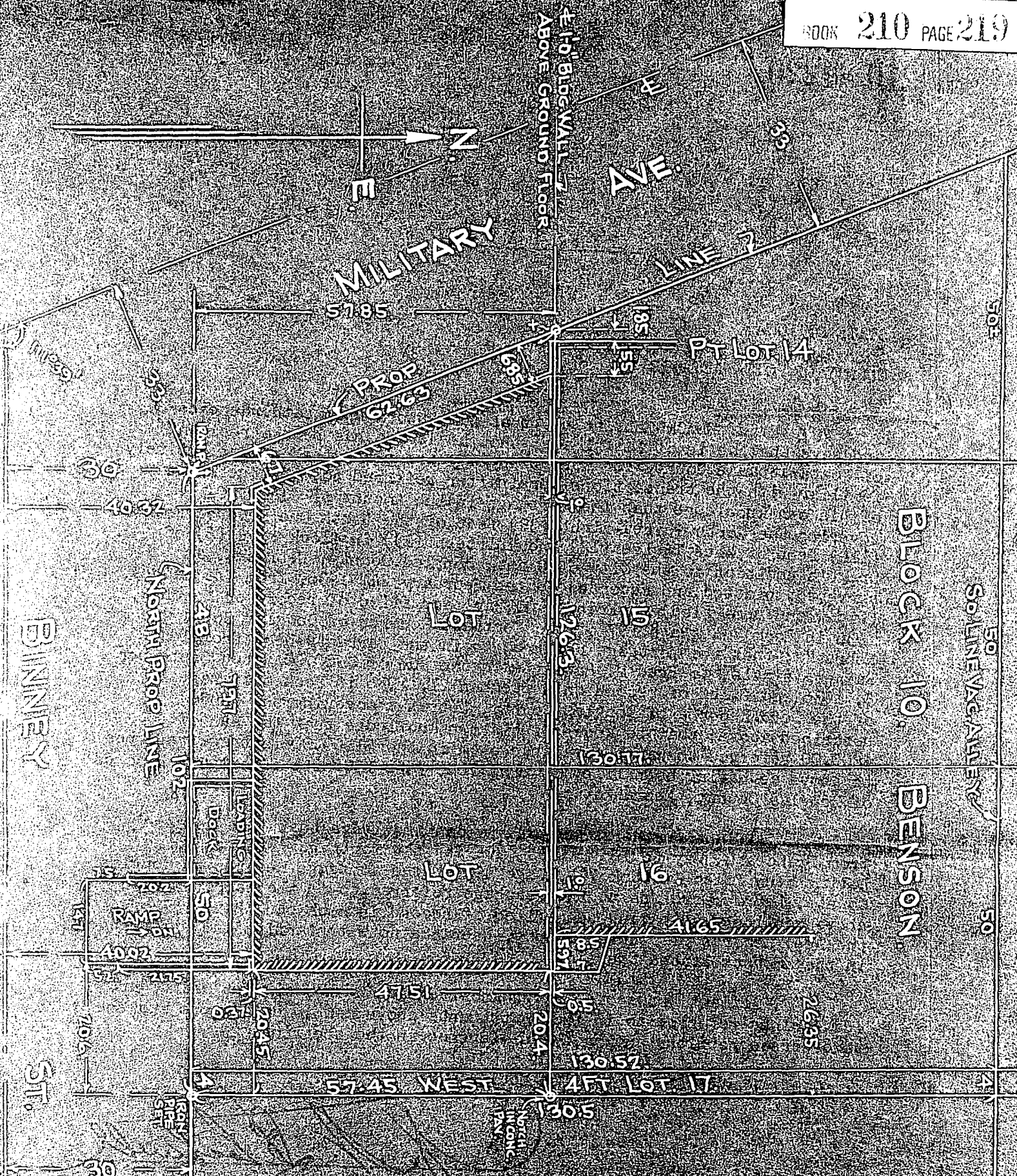
On this 9 day of April, 1946, before me, a Notary Public in and for said County, personally came MAURICE M. VERVAECKE and LUCILLE A. VERVAECKE, husband and wife, who are personally known to me to be the identical persons who signed the foregoing instrument, and acknowledged the execution thereof to be their voluntary act and deed.

WITNESS my hand and Notarial Seal at Omaha, in said County the day and year last above written.

Maddie Haury

Notary Public

My commission expires the 4 day of Aug, 1950



SURVEY OF THE SOUTH PART OF LOTS 14-15-16 AND THE WEST 4 FEET OF LOT 17, ALL IN BLOCK 10, BENSON AND LOCATION OF THE CENTER LINE OF 12 INCH NORTH WALL, WHICH CENTER LINE OF NORTH WALL IS THE NORTH BOUNDARY OF PARCEL DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF MILITARY AVE ON THE SOUTH LINE OF LOT 15 BLOCK 10 BENSON AS PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBR. 48 FT. WEST OF THE SOUTHEAST CORNER OF SAID LOT 15; THENCE NORTHWESTERLY ALONG THE EASTERLY LINE OF MILITARY AVE 62.63 FT.; THENCE EAST 126.3 FT. TO A POINT 4 FT. EAST OF THE EAST LINE OF LOT 16; THENCE SOUTH AND PARALLEL TO THE EAST LINE OF SAID LOT 16, 57.45 FT. TO THE NORTH PROPERTY LINE OF BINNEY ST.; THENCE WEST ONE HUNDRED TWO (102) FT. TO THE PLACE OF BEGINNING.

OMAHA, NEBR. MAR. 18, 1946
 SCALE 1"=20' WM J. PROVAZNIK
 SURVEYOR

INDEXED IN NUMERICAL INDEX AND RECORDED IN THE REGISTER OF DEEDS OFFICE IN DOUGLAS COUNTY, NEBRASKA.

11 DAY April 1946 AT 4:12 P.M. THOMAS J. O'CONNOR, REGISTER OF DEEDS