

DRAINAGE DISTRICT #1 AGREEMENT

RECORDED
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91-5190
COLLEEN PEARCE
CERRO GORDO CO.
MASON CITY, IOWA

KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT for the establishment of a drainage district in Falls Township, Cerro Gordo County, Iowa, described on Exhibits "A" and "B" which are made a part hereof, is by the consent of the following landowners: Dean A. Yezek and Jodi Yezek, husband and wife, and Eugene L. Yezek and Dixie Yezek, husband and wife, hereinafter called Yezek; Marvin V. Borchardt and Esther M. Borchardt, hereinafter known as Borchardt; Richard D. Arthur and Joan M. Arthur, hereinafter known as Arthur; Merlyn D. Byington and Margaret J. Byington, hereinafter known as Byington; Jerry A. Keeney and Janice M. Keeney, hereinafter known as Keeney; and St. Joseph Catholic Church, hereinafter Church.

WHEREAS, the parties herein are desirous of establishing a consent drainage district upon the farmland owned by them in Falls Township, Cerro Gordo County, Iowa, and each of the parties own real estate which is set forth and described on Exhibit "A" hereto attached and made a part hereof;

WHEREAS, said District is graphically set forth and described on Exhibit "B", hereto attached and made a part hereof;

WHEREAS, the parties herein have established that said District was in need of a main drain tile facility;

WHEREAS, the main drain tile facility has been established and the parties wish to enter into an agreement for the maintenance of said tile;

WHEREAS, approximately 7002.0 feet of main drain tile runs across land owned by Yezek, Borchardt, Arthur, Byington, Keeney, and Church, and water drains from said land into the new main tile facility, and the percentage that each owner of each respective property is responsible for has been computed into a percentage factor hereinafter known as the "drain acre percentage" to be used in determining the individual owner costs of maintenance of the district tile. The individual owners, the legal description of the property owned and the

drain acre percentage to be used is set forth on Exhibit "C", hereto attached and made a part hereof. The tile facility will be in place as shown on the graphical plat identified as Exhibit "B," page 2 herein and will drain in the direction from east to west.

IT IS THEREFORE mutually agreed by and between the parties hereto as follows:

1. NAME OF DISTRICT: This District, established by the consent of all owners of the real estate described herein, shall hereinafter be known as the Section 15 Drainage District #1.

2. LEGAL AUTHORITY FOR ESTABLISHMENT: A private consent drainage district is hereby created by the owners hereto under the provisions and by the authorities of Sections 465.24 through Section 465.33 of the code of Iowa (1989). All of the parties hereto mutually covenant and agree among themselves and with each other to associate themselves together and organize, establish, construct, maintain and operate this draining system over the farmlands owned by each of them, described herein on Exhibit "A."

3. DURATION OF DISTRICT: Each party agrees that the terms, provisions, obligations, and agreements entered into and assumed by them herein shall be binding not only upon themselves, but on their heirs at law, beneficiaries, grantees, assigns and successors in interest, regardless of whomsoever; that all rights, provisions, obligations, procedure and restrictions herein contained shall be a permanent encumbrance and easement upon the lands owned by each of the individual parties.

4. LIEN FOR IMPROVEMENTS: The original cost of this drainage system as well as all costs of repairs and maintenance shall be a lien upon the land owned by each party hereto until paid. If any party or successor in interest shall fail or refuse to pay their assessed share of the cost of establishment and continuation and maintenance of this district, the lien herein created and existing may be foreclosed in a court of equity in the same manner that a real estate mortgage is foreclosed, and the right of the lien shall exist in favor of all other parties hereto who have paid their proportionate share of the cost of construction, repairs and maintenance. The suit shall be maintained in

the name of the trustees for the benefit of the District.

5. ASSESSMENT: Each owner shall pay an assessment for maintenance and repair of the main tile as it is described in Exhibit "B," and such assessment shall be based upon the drain acre percentage set forth on Exhibit "C."

6. TRUSTEES: The affairs of this private drainage system and the provisions of this agreement shall be managed, carried out and administered by an executive committee consisting of all land owners who shall at all times hereinafter be known as "The Trustees." Each of the trustees shall and must be an individual who, while acting as such, is a record titleholder in interest of the land included in this private drainage system. If any one of the trustees during this term of office ceases to have such an interest, he shall immediately be disqualified to act as a trustee.

The term of office of each trustee shall be for so long as he/she/they are record titleholders. Each trustee shall serve continuously until he/she/they become disqualified or resign.

The trustees may call a meeting of all of the members of the private drainage system at any time they see fit and they shall be required to call a meeting upon the written request of any four persons owning land in this private drainage system. No meeting shall be held without first giving not less than twenty (20) days written notice of said meeting to each of the landowners and members of this drainage system. This notice may be made by personal service or by ordinary United States mail and the twenty (20) day period shall commence on the date that it is deposited in the United States Post office, if mailed. Any business pertaining to this private drainage system may be transacted at any meeting of the members of the District. Five members of the District, when present at the meeting, shall constitute a quorum for the purposes of transacting business for this private drainage system. When there is a vacancy in the trustees because of resignation, death or ceasing to own a record title interest in real estate included in this system, the remaining trustees may appoint a person to fill said vacancy so long as that person qualifies. The trustees shall have the full, complete and absolute authority to

contract for and make repairs; and for every other purpose necessary for the proper operation of this private drainage system, including the authority to repair broken tile and to clean the drainage tile system, to remove obstructions and to provide for proper protection of said facility.

7. ACCOUNTING OF FUNDS: The trustees shall make an accounting of funds at such times as they deem proper and whenever demanded by a majority of the persons owning land included in this private drainage system.

8. PAYMENT OF ASSESSMENTS: Each of the parties hereto agrees and promises that within ten (10) days of demand in writing by five of the trustees herein, that he, she or they shall pay into said depository the full amount of their estimated assessment as prepared and set forth by the trustees. If the estimated cost of any project is less than the actual cost, then each party hereto agrees that he, she or they as the case may be, will pay into the said depository the additional amount of costs required for them to pay within thirty (30) days from the date that the additional sum is determined and notice thereof given to the parties. In the event that the estimated cost is greater than the actual cost, the trustees shall return the surplus to each party as their respective drain acre percentage indicates. All checks written on the account in the depository shall be signed by two trustees.

9. EXCLUSIVE USE: It is specifically agreed that no one other than the parties to this agreement shall be entitled to drain their land into the tile system in this private drainage system without the consent and permission of at least three of the member-trustees whose drain acre percentage as set forth on Exhibit "C" totals 51% when added together. If a landowner who is a member of this private drainage system desires to allow a nonmember to drain land of the nonmember in order to obtain benefits of this system, then the nonmember as well as the member of this private drainage system shall make application in writing to the trustees setting forth the amount of land of the nonmember to be drained, its location, and where it will be drained into the private drainage system. The trustees shall have the absolute power to grant or refuse the benefits and rights requested in such

application. No member of this private drainage system shall permit a nonmember to drain land through his land and into the drainage system without first obtaining permission from the member-trustees of this drainage district as aforesaid. The trustees shall have the power to enjoin any unauthorized drainage by court action. If the trustees grant to a nonmember of this private drainage system the right to drain his or her land into the system and over the land of a member, the trustees shall designate the amount of consideration that shall be paid by the nonmember for this benefit and privilege. Further, the trustees shall designate what portion of this amount so paid shall go to the owner of that land which provided the outlet, if any, for said new member as well as that portion which shall be retained for the benefit of this private drainage system. The determination by the trustees shall be final and unless the nonmember as well as the member agree beforehand to the amount of the consideration and its division between the members and the general fund of the system created herein, no connection with this system shall be made by the nonmember. Whenever a nonmember is brought into this private drainage system in the manner aforesaid, he and his spouse as well as all other persons and their spouses having an interest in the land to be brought into the system shall execute an agreement incorporating all the terms, duties, and obligations contained in this document.

10. BENEFITS AND CARE: Each of the parties hereto shall be entitled to receive the full benefits of this private drainage system as it may affect their respective land. Each shall be entitled to have their lands drained into the drainage system. No party hereto shall do anything at any time to obstruct, damage, or interfere with the proper functioning of this system, and if any of the parties attempt to obstruct or interfere with the natural operation of this private system, their acts and conduct may be abated by injunction brought in the district court by the trustees.

11. FUTURE COSTS: The parties hereto mutually agree that they will jointly be responsible for and pay all future costs of repairs and maintenance of this system regardless of where or upon whose land maintenance and repair is required, provided said maintenance and

repair is not required because of the deliberate act of any one of the members of this system. Each member shall be responsible for and pay all future costs of repairs and maintenance in amounts determined by reference to Exhibit "C" which sets forth their drain acre percentage of such costs. If repairs are required because of the deliberate and avoidable act of a member, then that member shall pay the costs thereof and the amount thereof shall be a lien against his or her land. The trustees shall determine whether the repair is required because of the deliberate and avoidable act of a member.

12. CONTINUATION: It is stipulated and agreed that all the rights, privileges, benefits, obligations, and responsibilities of each of the parties hereto shall pass with the title and ownership of real estate affected hereby.

13. OUTSIDE AREAS: The trustees herein, upon a majority vote of all parties herein, shall be authorized to expend funds, construct facilities or obtain rights, property and easements outside of the district created herein, so long as said action is for the benefit of the district herein created, and further provided, that said action would not be contrary to any provisions of law, rule, ordinance, or regulation.

Dean A. Yezeck
Dean A. Yezeck

Jody Yezeck
Jody Yezeck

Eugene L. Yezeck
Eugene L. Yezeck

Dixie Yezeck
Dixie Yezeck

Marvin V. Borchardt
Marvin V. Borchardt

Esther M. Borchardt
Esther M. Borchardt

Richard D. Arthur
Richard D. Arthur

Joan M. Arthur
Joan M. Arthur

Merlyn D. Byington
Merlyn D. Byington

Margaret J. Byington
Margaret J. Byington

Jerry A. Keeney
Jerry A. Keeney

Janice M. Keeney - Sheldon
Janice M. Keeney

St. Joseph Catholic Church

BY:

Harold Kippeler

STATE OF IOWA :

CERRO GORDO COUNTY :

On this 9th day of November, 1990, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Dean A. Yezek and Jodi Yezek, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.



Kandra Walton
Notary Public in and for the
State of Iowa

STATE OF IOWA :

CERRO GORDO COUNTY :

On this 15th day of November, 1990, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Eugene L. Yezek and Dixie Yezek, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.



Kandra Walton
Notary Public in and for the
State of Iowa

STATE OF IOWA :

CERRO GORDO COUNTY :

On this 16th day of December, 1990, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Marvin V. Borchardt and Esther M. Borchardt, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.



Kandra Walton
Notary Public in and for the
State of Iowa

STATE OF IOWA :

CERRO GORDO COUNTY :

On this 5th day of September, 1990, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Richard D. Arthur and Joan M. Arthur, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.



Kymdra Walton
Notary Public in and for the
State of Iowa

STATE OF IOWA :

CERRO GORDO COUNTY :

On this 29th day of November, 1990, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Merlyn D. Byington and Margaret J. Byington, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.



Kymdra Walton
Notary Public in and for the
State of Iowa

STATE OF IOWA :

CERRO GORDO COUNTY :

On this 3^d day of July, ¹⁹⁹¹~~1990~~, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Jerry A. Keeney and Janice M. Keeney, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.



Kymdra Walton
Notary Public in and for the
State of Iowa

STATE OF IOWA :

CERRO GORDO COUNTY : ss.

On this 5th day of July, ¹⁹⁹¹~~1990~~, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Rev. Daniel J. Keppler, to me personally known, who being by me duly sworn, did say that he/~~she~~ is the Pastor of St. Joseph Catholic Church, and that he/~~she~~ acknowledged the execution of the foregoing instrument to be the voluntary act and deed of St. Joseph Catholic Church, by it and by him/~~her~~ voluntarily executed.

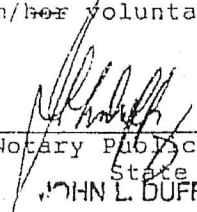

Notary Public in and for the
State of Iowa
JOHN L. DUFFY

EXHIBIT "A"

Page 2

YEZEK

SW $\frac{1}{4}$ NW $\frac{1}{4}$
Section 15, Township 97 North, Range 20
West of the 5th P.M.

BYINGTON

W $\frac{1}{2}$ SW $\frac{1}{4}$
Section 15, Township 97 North, Range 20
West of the 5th P.M.

BORCHARDT

E $\frac{1}{2}$ SW $\frac{1}{4}$
Section 15, Township 97 North, Range 20
West of the 5th P.M.

BYINGTON

SE $\frac{1}{4}$ NW $\frac{1}{4}$
W $\frac{1}{2}$ NE $\frac{1}{4}$
Section 15, Township 97 North, Range 20
West of the 5th P.M.

ARTHUR

W $\frac{1}{2}$ SE $\frac{1}{4}$
Section 15, Township 97 North, Range 20
West of the 5th P.M.

CHURCH

E $\frac{1}{2}$ SE $\frac{1}{4}$
Section 15, Township 97 North, Range 20
West of the 5th P.M.

YEZEK-KEENEY

E $\frac{1}{2}$ NE $\frac{1}{4}$
Section 15, Township 97 North, Range 20
West of the 5th P.M.

FALLS

T 97 N - R 19 W OF 5TH P.M.

15 Sec. 14 LE Kirchgatter, etux - 13
15 Sec. 14 Doris Ake, etux
15 Sec. 10 J. Hillman, etux - 2.73
15 Sec. 2 Donald Johnson, etux
15 Sec. 20 G. Haines
15 Sec. 1 Paul Keake, etux
15 Sec. 16 George Sammis, etux
15 Sec. 16 Eugene Yezek, etal
15 Sec. 8 Robert Quinn, etux
15 Sec. 7 JB Crooks, etux - 9.02
15 Sec. 18 BJ Lichman
15 Sec. 21 Thomas Trappe, etux
15 Sec. 10 PJ Cordle, etux - 1
15 Sec. 10 Barton Franing, etux
15 Sec. 14 L.R. Rutherford, etux - 9.58
15 Sec. 22 City of Rock Falls - 4.419
15 Sec. 16 Roger Klobnit, etux
15 Sec. 6 David Barnes, etux - 25.23

15 Sec. 18 Harry Hemrick, etux - 5.78
20 Sec. 24 TP Schulte, etux - 5.08
21 Sec. 4 TP Rodriguez, etux - 10.65
22 Sec. 14 William Bayliss, etux - 13.28
23 Sec. 14 ER Hartley, etux - 10
24 Sec. 14 P Richard Dodge, etux - 10
25 Sec. 14 Michael Bowen, etal - 7.27
25 Sec. 14 Charles Whitehill, etux
25 Sec. 16 Lucille Jackson, etal
25 Sec. 5 Town of Plymouth
25 Sec. 7 Granger Inc. - 4
25 Sec. 9 TK Curless - 10
25 Sec. 16 Thomas Wadkins, etux
25 Sec. 9 David Barnes, etux - 10
25 Sec. 13 CF Brucher - 17.67
25 Sec. 14 SP Brown, etux - 8
25 Sec. 14 Larry Dorenkamp, etux - 10.02
25 Sec. 5 Cerris Gordo Co.
25 Sec. 1 Larry Boller, etux - 4.70
25 Sec. 7 Town of Plymouth
25 Sec. 16 Benjamin Navarro, etux - 11.45
25 Sec. 12 Daniel Conrad, etux - 2.24
25 Sec. 12 Diane Bormann
25 Sec. 12 George Somers, etux
25 Sec. 14 V. V. Rial, etux
25 Sec. 11 Richard Hagan, etux
25 Sec. 15 Lucille Jackson, etal
25 Sec. 17 Vera Navarro, etux - 2
25 Sec. 18 CK Navarro - 20.25
25 Sec. 20 Walter Chinn, Jr., etux
25 Sec. 30 Gus Navars, etux
25 Sec. 23 GF Kelley, etux - 8.52

51 Sec. 24 Steven McDonough - 10
52 Sec. 14 Ronald McDonough - 10
53 Sec. 27 GA Franks
54 Sec. 33 Clair Elsbury, etal
56 Sec. 23 Randy Deets, etux - 5.65
56 Sec. 16 Marvin Wyborny, etux - 23.58
57 Sec. 28 LA McCombs, etux
58 Sec. 29 John Lindsay - 7
59 Sec. 32 SA Davis, etux - 10.23
60 Sec. 6 Randall Opheim, etux - 4.04
61 Sec. 10 David Bernhardt, etux - 5
62 Sec. 1 Kevin Santae - 2.45
63 Sec. 1 Randy Levenhagen, etux - 10
64 Sec. 3 Jerry Luvik, etux
65 Sec. 4 Vore Claus
66 Sec. 32 Michael Kleins, etux
67 Sec. 31 EB Matze
68 Sec. 5 Ted Bleth
69 Sec. 6 Dorothy Nicholson - 3.5
70 Sec. 6 Joel Dirksen, etux
71 Sec. 7 Roger Havig
72 Sec. 7 Lloyd Schamber, etux
73 Sec. 8 Florence Schulteis
74 Sec. 8 Fern Benhart - 6
75 Sec. 8 Benjamin Navratil, etux - 13.1
76 Sec. 8 Laverne Kirchgatter, etux - 24
77 Sec. 8 Ben Navratil, etux
78 Sec. 8 Todd Wendel, etux - 7.7
79 Sec. 9 J & P Bergman Farm Co.

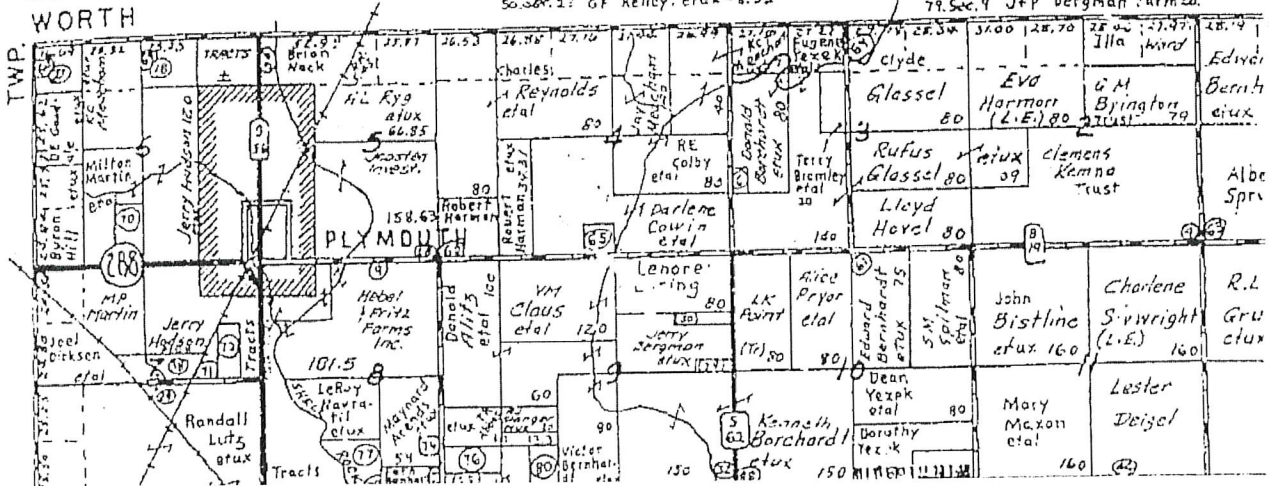


EXHIBIT "B"
PAGE 1

This District shall include only the main tile as set forth herein and as shown on the map attached hereto. It shall not include any other private tiles located on the land of its members. It shall not include approximately 200 feet of 6 inch tile as shown on the attached map, which is located on the property of Arthur.

This District shall include tile which drains from the east towards the west. It shall include the following tile described beginning at the easterly side: 117 Feet of 6 inch tile, 2,125 Feet of 8 inch tile, 1,933 Feet of 10 inch tile, subMain A 472 Feet of 6 inch tile, subMain B 3.2 Feet of 6 inch tile, and 1,983 Feet of 12 inch plastic tile.

Substantially all of this tile line was established in September of 1984 with the exception of the westerly 1,983 Feet of 12 inch plastic tile. All of the tile established in 1984 is cement tile which was purchased from a manufacturer in Fertile, Iowa. The contractor responsible for laying the tile was James Blood of Sheffield, Iowa. The engineers in charge were Huntley and Alitz, and Mark Huntley drew the attached map.

The percentages shown on the left hand side of the map attached hereto and marked Exhibit "B" Page 2 represent the percentage of the cost of installation for which each party was responsible. It is hereby agreed that those percentages shall not be used to assess maintenance and repair costs and that assessments for maintenance and repair costs shall be based on Exhibit "C."

EXHIBIT "C"

DRAIN ACRE PERCENTAGE

YEZEK	SW $\frac{1}{4}$	NW $\frac{1}{4}$	11.1%
BYINGTON	W $\frac{1}{2}$	SW $\frac{1}{4}$	2.0%
BORCHARDT	E $\frac{1}{2}$	SW $\frac{1}{4}$	13.1%
BYINGTON	SE $\frac{1}{4}$	NW $\frac{1}{4}$	5.0%
	W $\frac{1}{2}$	NE $\frac{1}{4}$	5.0%
ARTHUR	W $\frac{1}{2}$	SE $\frac{1}{4}$	40.5%
CHURCH	E $\frac{1}{2}$	SE $\frac{1}{4}$	14.2%
YEZEK-KEENEY	E $\frac{1}{2}$	NE $\frac{1}{4}$	9.1%

All located in Section 15 Township 97 North, Range 20 West of the 5th P.M.