

Van's Velde Corporation

(AGREEMENT

and

(Dated June 30, 1994

(Filed June 30, 1994

Charles Nelson, Richard Nelson and James Nelson

(Misc Book 21, page 402

This agreement entered into by and between Van's Velde Corporation of Emmetsburg, Iowa, party of the first part and hereinafter referred to as First Party, and Charles Nelson, Richard Nelson and James Nelson, parties of the second part and hereinafter referred to as Second Party, and in consideration of the mutual covenants, conditions and promises hereinafter expressed, the parties hereto agree as follows:

- 1. The First Party is the owner of the following described real estate:

The Southwest Quarter (SW 1/4) and the West Half of the Southeast Quarter (SE 1/4) of Section Thirteen (13), Township Ninety-six (96), North of Range Thirty-three (33), West of the Fifth P.M., Palo Alto County, Iowa.

- 2. That Second Party is the owner of the following described real estate:

The Southeast Quarter (SE 1/4) of the Northwest Quarter (NW 1/4) and the Southwest (SW 1/4) of the Northeast Quarter (NE 1/4) of Sections Thirteen (13), Township Ninety-six (96), North of Range Thirty-three (33), West of the 5th P.M., Palo Alto County, Iowa.

- 3. That the parties hereto acknowledge that in about 1985 that First Party installed the tile, part of which is 8 inches and part of which is 10 inches commencing near the north boundary of First Party's land as above described and then running in a southwesterly direction across the land of First Party as above described until it reaches an open drainage ditch in the land of First Party. That this new tile line installed in 1985 was installed by First Party for the sole purpose of draining the land of First Party. That Second Party has no interest in this new tile line.

- 4. That Second Party has recently connected a tile from the land of Second Party as above described into the land of First Party as above described and connected that tile to the new tile of First Party which was installed in 1985. This connection was made without the knowledge or permission of First Party and this tile of Second Party which is connected to the tile of First Party will be disconnected by First Party as provided in this Agreement.

- 5. That Second Party shall have the right to construct a new tile line running from the land of Second Party as above described and then running across the land of First Party as above described in a southwesterly direction so as to outlet in the open ditch on the land of First Party. Said tile line of Second Party shall be located to the west of the new tile line which First Party has installed in First Party's property in 1985, and the new line of Second Party shall be at least 25 to 50 feet west of the new line of First Party. That only the land of Second Party as above described shall be drained through the new tile of Second Party to be installed under this Agreement. That the tile of Second Party to be connected across the land of First Party as above described shall be not less than eight inches in diameter.

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6. That Second Party shall pay the total cost of the installation of said new line and shall also pay the costs of repairing and maintaining said new tile line.
7. That the new tile line of Second Party shall be installed after the 1994 crop season and completed no later than December 31, 1994.
8. If repairs are necessary to the new line of Second Party across the property of First Party, said repairs shall be at the sole expense of Second Party and said repairs shall be made in an off crop season. In the event it is necessary to make a repair to the new line of Second Party as above described during the crop season, they may do so but in that event the Second Party shall pay any crop damages sustained by First Party to First Party.
9. Second Party shall notify First Party four days prior to installing the new tile line across the property of First Party and First Party shall have a representative to observe the installation of said title line. This same rule shall apply to any repairs made by Second Party on the new line of Second Party across the property of First Party.
10. During the installation of the new tile of Second Party across the land of First Party whenever the new tile of Second Party crosses a tile in the land of First Party, said tile in the land of First Party shall not be connected to the new line of Second Party. Second Party shall reconnect the tile existing in the land of First Party so that said tile will continue to carry water unobstructed by construction of Second Party.
11. In part consideration for permitting Second Party to install this new tile across the property of First Party and the right to empty and discharge said new tile in the open ditch on the land of First Party, any repairs necessary for the surface ditch, which is the outlet for this tile, shall be paid one-third by Second Party and two-thirds by First Party. The determination as to when and to what extent the open ditch needs to be cleaned out shall be at the sole discretion of First Party.
12. **The open ditch which serves as the outlet for this tile system and the tile system of First Party consists of an open ditch running in a southwesterly direction across the property of First Party including an easement across the Bailey property in the southwestern corner of Section Thirteen (13), and also into the road right-of-way of where it now exists.**
13. That First Party will not connect any tile of First Party to the tile of Second Party in the property of First Party, and Second Party will not connect the tile it is constructing under this Agreement to any tile in the property of First Party.
14. The parties hereto acknowledge that First Party has the right to disconnect the existing tile of Second Party which was recently connected to the new tile of First Party which was installed in 1985. That First Party will not disconnect the tile of Second Party which outlets into the tile of First Party installed in 1985 until after October 15, 1994. This will permit Second Party to install the new line above described and also will provide drainage for the land of Second Party through the crop season of 1994. The disconnection of the tile of Second Party from the file of First Party as described herein shall be at the expense of Second Party.
15. That both parties acknowledge the fact that there was an old clay tile installed in about 1909 which served both of the above described farms, but that said old clay tile is in a state of disrepair and is not utilized to any great extent by either party. Either party may continue to use the old clay tile on their respective property but after the installation of the new tile of Second Party as provided in this agreement, then neither party shall have any right in and to any of the old clay tile in the property of the other party as above described.

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No. 166 continued:

Executed for Van's Velde Corporation by "Marjorie M. Vandervelde", President.

16. That at the time Second Party came onto the property of First Party to make the tile connection to the new tile of First Party as above referred to that Second Party damaged the fence existing between the property of these parties and also removed some fill dirt in the fence line which has resulted in considerable erosion on the property of First Party. That Second Party shall at their expense repair the fence between these properties where it was broken and Second Party shall also at their expense replace sufficient fill of either dirt or rock at the fence line between these parties so as to reduce the erosion on the land of First Party which erosion resulted from removal of fill from the fence line at the time of the connection of said tile. That the replacement of the fill dirt or other material by Second Party at the fence line so as to reduce this erosion on the property of First Party shall be done immediately after the execution of this Agreement so as to stop further erosion on the property of First Party at Second Party's expense.

17. At such time as the new tile of Second Party is installed in the land of First Party above described, Second Party shall furnish First Party with a tile map prepared by the tile contractor which shall reflect the route and size of tile of said line across the property of First Party.

18. This Agreement shall constitute the entire understanding between the parties hereto relative the subject matter of this Agreement, and neither party shall be bound by any oral representations made by the other party or their representatives. This Agreement shall be binding upon the parties hereto, their heirs and assigns and its successors in interest to the property above described.

Executed for Van's Velde Corporation by "Marjorie M. Vandervelde", President.

No seal shown.

Corporate acknowledgment shows Marjorie M. Vandervelde as President and Secretary of said corporation signed said instrument on June 30, 1994. (Acknowledgment makes no mention of a seal.)

Also executed by "Charles Nelson", "Richard Nelson" and "James Nelson".

Individual acknowledgment shows Charles Nelson, Richard Nelson and James Nelson signed said instrument on June 27, 1994.