

Return
El. Wirtz
P.O. Box 3001
Ankeny, Ia. 50021
300217

INST # 064149
RECORDING FEE 2600
AUDITOR FEE _____

psl

SANITARY SEWER SERVICE AND EASEMENT AGREEMENT

THIS AGREEMENT made this 26th day of March, 1996, by and between Country Club Crossing, Inc. ("Country Club"), an Iowa corporation having its principal place of business in Altoona, Iowa, and Casey's Marketing Company ("Casey's"), an Iowa corporation having its principal place of business in Ankeny, Iowa, WITNESSETH:

WHEREAS, Casey's is the owner of a certain tract of real estate located in Polk County, Iowa and legally described as follows:

A part of Lot 1 in CORNER PLACE, an Official Plat, in Polk County, Iowa, more particularly described as follows:

Commencing at the North 1/4 corner of Section 23, Township 79 North, Range 23 West of the 5th P.M.; thence S89°44'08"W, 2651.19 feet to the NW corner of said Section 23; thence S0°06'59"W along the West line of said Section 23, a distance of 60.00 feet; thence N89°44'08"E, 50.00 feet to the point of beginning; thence N89°44'08"E, 156.30 feet along the South Right-of-Way (R.O.W.) of U.S. Highway 6; thence continuing along said R.O.W. S33°13'52"E, 44.10 feet; thence N89°44'08"E, 11.40 feet; thence S0°24'23"W, 197.00 feet; thence S89°25'48"W, 190.00 feet; thence N0°06'59"W, 235.00 feet to the point of beginning, containing 1.009 acres more or less.

FILED FOR RECORD
POLK COUNTY, IOWA
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TIMOTHY J. BRIEN
RECORDER

hereinafter referred to as the "Casey's Property", upon which tract Casey's proposes to construct and operate a convenience store with gasoline sale facilities; and

WHEREAS, Country Club is the owner of a tract of land adjoining the Casey's Property along the southerly and easterly boundaries of the said Casey's Property, which tract is described as follows:

Lots One (1) and Two (2) in CORNER PLACE, an Official Plat of a tract of land in the Northwest Quarter of the Northwest Quarter of Section 23, Township 79 North, Range 23 West of the 5th P.M. in Polk County, Iowa except that portion of said Lots One (1) and Two (2) conveyed to Polk County, Iowa for highway right-of-way by Warranty Deed dated March 11, 1987, and filed of record on April 20, 1987 in Book 5709 at Page 551 of the Polk County Records, and except that portion of Lot One hereinabove described as the "Casey's Property"

which said tract is hereinafter referred to as the "Country Club Property" and is in the process of being developed; and

WHEREAS, the Casey's Property is without sanitary sewer service, and the parties have reached an agreement pursuant to which Casey's shall be granted the right to

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obtain such service through a sanitary sewer line to be run from the Casey's Property to a connecting point on the existing sewer system owned and operated by Country Club and located on the Country Club Property, upon the terms and conditions and subject to the mutual covenants hereinafter provided;

NOW, THEREFORE, the parties agree as follows:

1. Easement Granted. Country Club hereby grants to Casey's a perpetual, non-exclusive easement over, upon, across, under and within a portion of the Country Club Property consisting of a strip of ground twenty (20) feet in width, the centerline of which is described as follows:

Beginning at a point on the south boundary line of the Casey's Property that is 140 feet East of the west boundary line of Lot One in CORNER PLACE; thence South along a line parallel to the west boundary line of said Lot One to an existing lift station that is part of the sanitary sewer system of the City of Altoona, Iowa, which lift station is located at a point 140 feet East of the west boundary line of Lot Two in CORNER PLACE and approximately 20 feet South of the south boundary line of Lot One in CORNER PLACE.

(hereinafter the "Easement Area"), which easement is granted for the purpose of allowing Casey's to construct, install, operate, maintain, repair, enlarge and improve an underground sanitary sewer line within the Easement Area, in order to provide sanitary sewer service to the Casey's Property.

2. Sewer Construction. The sanitary sewer to be constructed by Casey's (the "Sewer Line") shall be of such composition and size as Casey's deems appropriate for its purposes, but shall have a minimum diameter of six inches. The Sewer Line shall be located as near the centerline of the Easement Area, as above described, as may be practicable, and shall be placed underground, except where it crosses the open drainage ditch (the "Creek") located near the south boundary line of Lot 1 in CORNER PLACE. The construction of the Sewer Line in proximity to the Creek shall be as provided in paragraph 3, below.

3. Creek Crossing. The parties agree that Casey's shall be responsible for providing support, protection and, if necessary, insulation for its Sewer Line along that portion of the Sewer Line's course where it crosses the bed of the Creek and would therefore be exposed. The support system shall be of such strength that the Sewer Line is not in danger of collapse or buckling, and shall be constructed so as not to be unattractive or to constitute a nuisance. The support system shall be constructed so as not to unreasonably impede the flow of water in the Creek, including at times of flooding. It is agreed that initially the support system will consist of a steel walking bridge across the Creek, from which the Sewer Line and any encasement and insulation will be suspended. The said bridge shall be deemed an integral part of Casey's sanitary sewer system, and

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responsibility for maintenance of the bridge shall follow the obligation to maintain the Sewer Line. The bridge shall not be removed or replaced with an alternative form of sewer support system, except with the consent and agreement of Country Club, which consent shall not be unreasonably withheld. Neither party shall restrict pedestrian traffic across the bridge, without the expressed consent of the other party hereto.

4. Sewer Connection. Country Club hereby grants to Casey's the right to connect its Sewer Line to the sanitary sewer system owned and operated by Country Club upon the Country Club Property, and to receive sewer service through such system, for as long as Country Club maintains a private sewer system on the Country Club Property. In the event the sewer system on the Country Club Property is conveyed to the City of Altoona and so becomes a part of the municipal sewer system of that City, then the obligation of Country Club to provide sewer service to the Casey's Property hereunder shall cease; provided, however, that the easement hereinabove granted to Casey's across the Country Club Property, and all other rights granted hereunder, shall continue effective.

5. Service Fees and Charges. Casey's understands and acknowledges that the sewer system on the Country Club Property is connected to the municipal sewer system of the City of Altoona, Iowa. Casey's agrees to pay a reasonable sewage disposal charge for sewer service to the City of Altoona, commensurate with the charges for similar service normally imposed by the City of Altoona upon users of its system. Casey's also agrees that so long as Casey's obtains sanitary sewer service through a system privately owned by Country Club, Casey's will share, pro-rata, the cost of maintaining such portion of the said system as is essential to sewer service for the Casey's Property, according to the number of waste water gallons generated by Casey's as a percentage of the total gallonage handled by such portion of the system.

6. Access. Country Club hereby grants to Casey's the right of ingress and egress to and from the Easement Area at reasonable times and upon such notice as may be practicable, for the purpose of allowing Casey's, its employees, agents, and contractors to perform any work necessary or convenient for the construction, installation, operation, maintenance, repair, replacement or improvement of the Sewer Line and any associated equipment, in order to carry out the intent and purpose of this Agreement. Following the completion of any such work, Casey's agrees to restore the surface of the Easement Area reasonably to its condition prior to commencement of the work.

7. Surface Use. Neither party shall construct any building or other permanent improvements (except the bridge described in paragraph 3, above) upon the Easement Area. The foregoing notwithstanding, Country Club and its employees, agents, contractors and business invitees may make such use of the surface of the Easement Area as will not result in damage or harm to the Sewer Line, and may pave over the Easement Area for the purpose of establishing roadways, parking lots, and sidewalks.

8. Connection Right. In the event Country Club develops the portion of the Country Club Property lying south of the Casey's Property and North of the Creek for a

use requiring sanitary sewer service, then Country Club shall be authorized to connect its facilities developed in the area described to the Sewer Line constructed by Casey's, as hereinabove provided. It is agreed that from and after the date as of which such connection occurs, Country Club shall share equally with Casey's the cost of maintaining, repairing, operating, replacing or improving that portion of the Sewer Line and related improvements (including the bridge referred to in paragraph 3, above) which serve the said facilities of Country Club.

9. Indemnification. Each party hereto shall protect, defend, hold harmless and indemnify the other from and against any and all claims, losses, damage or liability arising out of its use of the Easement Area hereinabove described.

10. Benefit. The easement rights herein granted and the obligations herein set forth shall be a covenant running with the land and shall be binding upon, and inure to the benefit of, the parties hereto and their assignees and successors in interest, as to their respective Properties.

WHEREFORE, the parties have executed this Agreement as of the date and year first above written.

COUNTRY CLUB CROSSING, INC.

By: [Signature]
Bob L. Albright, President

By: [Signature]
Ed Skinner, Secretary

CASEY'S MARKETING COMPANY

By: [Signature]
Robert J. Hood, President

By: [Signature]
Eli J. Wirtz, Secretary/Treasurer



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ACKNOWLEDGMENTS

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 26th day of March, 1996, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert J. Hood and Eli J. Wirtz, to me personally known, who being by me duly sworn, did say that they are the President and Secretary, respectively, of Casey's Marketing Company, the corporation executing the within and foregoing instrument; that the seal affixed thereto is the seal of the said corporation; that the said instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors; and that Robert J. Hood and Eli J. Wirtz as officers acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



Mary J. Sankey
Notary Public in and for the
State of Iowa

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 26th day of March, 1996, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Bob L. Albright and Ed Skinner to me personally known, who being by me duly sworn, did say that they are the President and Secretary, respectively, of Country Club Crossing, Inc., the corporation executing the within and foregoing instrument; that the seal affixed thereto is the seal of the said corporation; that the said instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors; and that Bob L. Albright and Ed Skinner as officers acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

David J. [Signature]
Notary Public in and for the
State of Iowa

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