

**ACCESS AGREEMENT**

THIS AGREEMENT is made this 18<sup>th</sup> day of April, 2011 (the "Effective Date"), by and between the Iowa Department of Natural Resources, an agency of the State of Iowa, (the "Department") and the Common Stock Trust of Ellis I. Levitt ("Owner").

WHEREAS, Owner is the owner of certain real property located at 407 South 25<sup>th</sup> Street, Ft. Dodge, Iowa (the "Property") which is currently leased to Nellis Seafood No. 3, L.C. d/b/a Long John Silver's (the "Tenant").

WHEREAS, the Department has a work plan to conduct an environmental remedial investigation of the property located at 2422 5<sup>th</sup> Avenue South, Ft. Dodge, Iowa. In order to perform a portion of the work under the work plan, the Department desires access to the Property for the limited purpose of installing temporary monitoring wells in certain locations and performing periodic sampling of groundwater from those wells.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. Grant of Access. Owner hereby grants to the Department and its consultants, representatives, and agents a limited, temporary, and nonexclusive license ("License") to enter upon the Property for the limited purposes of installing four (4) temporary monitoring wells in the locations identified on Exhibit A as PS 1-4, and performing periodic sampling of groundwater from those wells (the "Work"), subject to the terms and conditions set forth in this Agreement. The right of entry permitted by the License shall extend only to such portion of the Property as is necessary to perform the Work and only to such time periods within the Term as may reasonably be necessary. In no event shall this Agreement be construed to permit the Department, its consultants, representatives, or agents to enter into or upon any building located on the Property.

2. Term. The term of this Agreement and the License granted herein shall commence on the Effective Date and continue six (6) months from that Effective Date, unless sooner terminated or revoked by Owner, or unless extended in writing by mutual agreement between the parties. Owner shall have the right to terminate this Agreement and revoke the License if the Department violates any of the terms or conditions set forth in this Agreement, upon three (3) calendar days notice to the Department, in which case this Agreement shall be deemed for all purposes to expire as of the termination date set forth in Owner's notice, and the Department shall surrender the Property in the condition required hereunder.

3. Notice of Work. The Department shall notify the Owner at least five (5) business days in advance before any entry on the Property to conduct any component of the Work. Such notice shall be given to Owner in writing at the notice address set forth in Section 13 below.

4. Performance of Work. The Department shall be responsible for obtaining, at its sole expense, all necessary permits and approvals relating to the Work. All Work, including, but not limited to the storage, treatment, transportation, and disposal of any soil and/or water samples, hazardous substances, pollutants, contaminants, or free product which result from the Work, will be performed in accordance with all applicable laws and regulations. The Department shall make all necessary contacts with utilities to determine the location of underground utilities and avoid damaging underground objects. The Department, its employees, agents, consultants, and contractors shall do no permanent damage to the Property, shall conduct the Work in such a way as to minimize the disruption of Owner's use of the Property and Tenant's conduct of its business on the Property, and shall promptly restore the Property to substantially the same condition in which it was found, all at its sole cost and expense.

5. Use, Maintenance, and Closure of Monitoring Wells. Each temporary monitoring well permitted to be installed under this Agreement will be of the smallest size needed for the work, and will be installed flush with the grade of the Property (the "Monitoring Wells"). The Department agrees to pay for all costs relating to the continued use and maintenance of the monitoring wells. The Department shall properly dismantle, close, seal, and abandon the monitoring wells, at its sole cost and expense, in a manner that complies with applicable federal, state, and local statutes, rules, orders, and regulations, on or before the earlier of (i) the date of expiration, termination, or revocation of this Agreement, or (ii) the date upon which it is reasonable to conclude that the presence of such facilities is no longer necessary.

6. Information, Reporting, and Confidentiality. The Department, at its sole cost and expense, will provide Owner with copies of data obtained, reports issued, and correspondence pertaining to the environmental conditions of the Property. The Department shall maintain, and shall cause its consultants, representatives, and agents to maintain, the confidentiality of all records, reports, and information relating to or obtained in connection with the Work to the extent that it relates to the Property and to the fullest extent allowed by applicable law.

7. Insurance. Before commencing the Work, The Department shall furnish to Owner evidence of general liability, automobile, and worker's compensation insurance issued to its consultants and contractors. The Owner, Tenant, and Owner's managing agents, which as of the Effective Date are Nellis Corporation and Nellis Management Company, shall be included as additional insureds with respect to such commercial general liability insurance and the automobile liability insurance.

8. Hold Harmless and Indemnity. The Department shall indemnify and hold harmless Owner, Tenant, and Owner's managing agents, which as of the Effective Date are Nellis Corporation and Nellis Management Company, from any and all claims, actions, damages and costs, including reasonable attorney fees, which result directly or indirectly from the actions of the Department or its consultants, representatives, or agents in connection with the Work.

9. No Interest in Real Estate. This Agreement is not intended to constitute and shall not be construed to constitute, a public dedication or a grant of an easement or any other interest in real estate.

10. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any oral or written agreements between the parties with respect thereto. This Agreement may only be amended by the parties hereto by written instrument executed with the same procedures and formality as were followed in the execution of this Agreement.

11. Assignment; Successors. This Agreement and the License granted hereunder shall not be assignable by the Department without the prior written consent of Owner, which may be given or denied in Owner's sole and absolute discretion. Subject to the foregoing, this Agreement shall be binding upon the parties hereto and their respective heirs, successors and assigns.

12. No Liens. The Department and its consultants and contractors, shall not permit any lien to be filed against the Property for any labor or materials in connection with the Work. In the event any such lien attaches to the Property, the Department shall cause the lien to be removed not later than seven (7) days thereafter.

13. Notices. All notices, demands and requests required or permitted to be given under this Agreement to Owner shall be in writing and shall be sent by deposit in U.S. mail, postage paid, registered or certified mail, return receipt requested, or by deposit, prepaid, for overnight delivery by a reputable overnight courier service as follows:

Owner: C/o Nellis Management Company  
2940 104<sup>th</sup> Street  
Urbandale, IA 50322  
Attention: Kenneth Waltman

Owner may change its address for notice hereunder by notice given in accordance with the provisions hereof at least ten (10) days prior to the effective date of the address change.

14. Other Terms. This Agreement shall be governed by the substantive law of the State of Iowa. This Agreement may be executed in counterparts, each of which shall be deemed an original but which together shall constitute one and the same Agreement.

[SIGNATURES ON FOLLOWING PAGE]

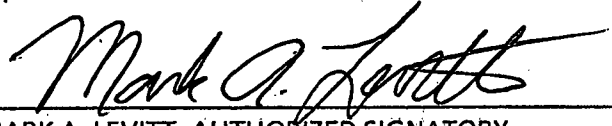
IN WITNESS WHEREOF, the parties hereto have caused these presents to be made as of the date first above written.

IOWA DEPARTMENT OF NATURAL RESOURCES, an  
agency of the State of Iowa



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ROGER L. LANDE, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

COMMON STOCK TRUST OF ELLIS J. LEVITT



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MARK A. LEVITT, AUTHORIZED SIGNATORY

EXHIBIT A

Diagram of Locations of Monitoring Wells

**Sample Locations, Sunshine Laundry, Fort Dodge**

