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GEORGE J. DUELLMAN  
REGISTER OF DEEDS  
DOUGLAS COUNTY

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**FONTENELLE OIL CO.  
ACCESS AGREEMENT  
(Omaha, Nebraska)**

**THIS AGREEMENT** is made and entered into this 31 day of August, 1995, by and between **FONTENELLE OIL CO.**, a Nebraska corporation ("Fontenelle") and **ABC CONSTRUCTION CO.**, a Nebraska corporation, (the "Buyer").

**RECITALS:**

- A. Fontenelle and Buyer are parties to that certain purchase agreement dated April 2, 1995 (the "Purchase Agreement") with regard to the sale and purchase of certain real property located at 4506 "L" Street, City of Omaha, County of Douglas, State of Nebraska, legally described on Exhibit 1 attached hereto (the "Property").
- B. As of the date of this Agreement (the "Closing Date") Buyer has purchased the Property from Fontenelle and the parties of closed the sale and purchase of the Property.
- C. Fontenelle may be required to perform certain remedial actions required by the State of Nebraska pertaining to the Property as more fully described below.
- D. In order to complete these measures, Fontenelle requires access to the Property notwithstanding the closing of Fontenelle's sale of the Property to Buyer.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The recitals set forth above are hereby made a part of this Agreement.

2. **Environmental.** Seller has delivered to Buyer various reports and other documents concerning the environmental condition of the Property, the receipt of which is hereby acknowledged by Buyer (collectively the "Report"). Seller submitted the Report to the State of Nebraska in February of 1994. The State has postponed an assessment of the environmental condition of the Property and Buyer has not yet commenced any remedial actions (the "Clean-Up") related to the environmental condition of the Property. Once the Clean-Up is approved by the State of Nebraska, Seller shall perform the Clean-Up at its sole cost and expense. Seller shall have the sole right and responsibility to

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negotiate the extent and nature of the Clean-Up with the State of Nebraska. Seller makes no warranties or representations concerning the timing or extent of the Clean-Up.

3. **Fontenelle's Access Rights.** To allow Fontenelle to perform the Clean-Up, Buyer hereby agrees that Fontenelle shall retain an unrestricted right of access to the Property for purposes of performing the Clean-Up required by the State of Nebraska or any additional testing, monitoring or remedial action. Fontenelle shall use reasonable efforts, if possible, not to unreasonably interfere with Buyer's use of the Property in exercising such right.

4. **Placement of Temporary Structures.** Buyer hereby agrees that Fontenelle may place temporary structures on the Property in connection with the Clean-Up either to enclose the area involved in the Clean-Up or to house equipment required to conduct the Clean-Up. Upon completion of the Clean-Up, Fontenelle shall remove any such structures.

5. **Completion.** Upon completion of the Clean-Up, Fontenelle shall obtain from the State of Nebraska a confirmation that the Clean-Up has been completed. Upon receipt of that confirmation, Buyer agrees that Fontenelle will have no further liability with respect to any matter arising from the Clean-Up except as provided in this paragraph 5. Within a reasonable time after completion of the Clean-Up, Fontenelle shall restore any portion of the Property disturbed by the actions of Fontenelle in performing the Clean-Up as follows: a) in the case of any improvements which exist as of the date of this Agreement, Fontenelle shall restore such improvements to the condition which existed as of the date of this Agreement; or b) in the case of any improvements resulting from any Work (as the term is defined in paragraph 6 below) which Buyer performs on the Property after the date of this Agreement, Fontenelle shall restore the Work to the condition which existed immediately prior to the commencement of the Clean-Up if and only if, Buyer has complied with paragraph 6 in connection with such Work including, without limitation, obtaining the approval of the Work by Fontenelle as more fully provided in paragraph 6.

6. **Non-Interference with Remediation.** Buyer agrees that all use of the Property, including without limitation any construction or demolition on the Property (the "Work") will not interfere with the Clean-Up, in any manner whatsoever. Buyer's agreement set forth in this Section 6 shall include, without limitation, Buyer's (a) notice to Fontenelle prior to any Work to allow Fontenelle to (i) approve the plans for and timing of the Work, including without limitation, the location of any footings or foundations, (ii) provide for an environmental consultant to be present if contaminated soils are discovered during the Work to observe and direct the impact upon the Clean-Up (at Fontenelle's sole cost and expense), and (iii) comply with all requirements of the State of Nebraska in connection with the Work; (b) cooperation and compliance with all requirements of (i) the Clean-Up and (ii) the State of Nebraska in connection with the Work, including without limitation, the cessation of the Work upon discovery of

contaminated soils and immediate notice to Fontenelle of the same; and (c) agreement that Fontenelle may continue to have access and use of the Property during the course of the Work for field testing, construction and placement of monitoring equipment, soil excavation, and other matters related to the Clean-Up as the same may be required to comply with the requirements of the State of Nebraska.

7. **Reimbursement.** Fontenelle shall have the sole right to receive all monies or reimbursements from the State of Nebraska and the United States Government in connection with the Clean-Up.

8. **Buyer's Indemnity.** Buyer hereby agrees to pay and protect, indemnify and hold Fontenelle harmless from and against any and all liabilities, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, claims, demands or judgment, made or otherwise claimed by Fontenelle arising from a breach or violation of the prohibition on using the Property to sell petroleum and related products which appears in the deed Fontenelle delivered to Buyer at closing. Notwithstanding anything else set forth in this Lease, Buyer's indemnification agreement set forth in this Section 8 shall survive the Closing of Buyer's purchase of the Property.

9. **Notice.** Any notice (including any copy of a notice) required under this Agreement shall be effective upon receipt and shall be in writing and shall be delivered in person, sent by United States certified or registered mail, postage prepaid, or sent by an overnight mail service, postage prepaid, which provides written evidence of the date and time of delivery, to the parties at the following addresses:

To Seller:                      Fontenelle Oil Co.  
   4567 West 80th Street  
   Bloomington, MN 55437  
   Attn: Real Estate Department  
   With a Copy to: Legal Department

To Buyer:                        ABC Construction Co.  
   13420 Montclair Drive  
   Omaha, Nebraska 68144  
   Attn: Ted Foster

10. **Binding Effect.** This Agreement shall, run with the land and shall be binding upon and shall inure to the benefit of the parties, their successors and assigns. This Agreement shall run from the date hereof until the date which is one (1) year following the date on which, in the reasonable opinion of Fontenelle, Fontenelle completes the Clean-up.

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

FONTENELLE OIL CO.

ABC CONSTRUCTION CO.

By Arnold D. Mickelson  
Arnold D. Mickelson  
Assistant Secretary

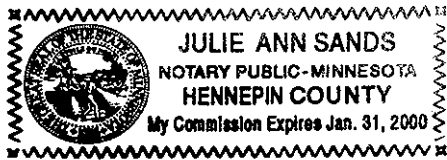
By Patricia R. Foster  
Title Pres.

ACKNOWLEDGEMENTS

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 24 day of August, 1995, by Arnold D. Mickelson, the Assistant Secretary of Fontenelle Oil Co., a Nebraska corporation.

Julie Ann Sands  
Notary Public



STATE OF Nebraska )  
 )ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of August, 1995, by Patricia R. Foster, the President of ABC Construction Co., a Nebraska corporation, on behalf of the corporation.

Linda L. Decker  
Notary Public

This instrument was drafted by:  
Holiday Companies  
Legal Department (EJA)  
4567 West 80th Street  
Bloomington, Minnesota 55437



NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

## EXHIBIT A TO ACCESS AGREEMENT

Lots 13, 14, 15 and 16, in Block 8, in SYNDICATE HILL ADD., REPLATTED, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska; EXCEPT the South 3 feet of said Lots 15 and 16; and, EXCEPT that part of said Lots 15 and 16, more particularly described as follows:

Beginning at the point where the Northerly existing right-of-way line of "L" Street intersects the Westerly existing right-of-way line of 45th Street; thence Westerly, a distance of 245.57 feet, along the Northerly existing "L" Street right-of-way line, to a point on the Easterly existing 46th Street right-of-way line; thence Northerly, deflecting  $91^{\circ}28'37''$  right, a distance of 10.53 feet, along said right-of-way line; thence Easterly, deflecting  $88^{\circ}36'13''$  right, a distance of 148.13 feet; thence Southerly, deflecting  $90^{\circ}00'00''$  right, a distance of 3.00 feet; thence Easterly, deflecting  $90^{\circ}00'00''$  left, a distance of 97.65 feet, to a point on the Westerly existing 45th Street right-of-way line; thence Southerly, deflecting  $93^{\circ}41'21''$  right, a distance of 7.19 feet, along said right-of-way line, to a point on the Northerly existing "L" Street right-of-way line, to the Point of Beginning;

Together with the East Half (E1/2) of the vacated alley adjacent to said Lots 13 and 14 and portion of Lot 15 on the West; and, Together with the West Half (W1/2) of the vacated alley adjacent to said portion of Lot 16 on the East.