

ROBERT BEALLO, M.D.

3100 Telegraph Avenue
Oakland, California 94609

(510) 834-8494

(510) 451-0810

to: 510-337-9335

FAX TRANSMISSION

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DATE: 7/13/99
TO: Susan Hugo
FROM: Robert Beallo
SUBJECT: 2710 Telegraph Ave., Oakland
NO. OF PAGES SENT INCLUDING COVER PAGE: 4
REMARKS/MESSAGE (IF ANY): _____

6-10-1999 11:21PM FROM 581 8427227
06/11/99 12:09

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NL 7.33 P000000

ACCESS LICENSE AGREEMENT

This Access License Agreement ("Agreement") entered into by and between Shell Oil Company ("Shell"), a Delaware corporation, and American Real Estate Holdings Limited Partnership ("AREH"), a Delaware limited partnership.

WHEREAS, AREH is the owner of certain property (the "Subject Property") commonly referred to as 2719 Telegraph Avenue, Oakland, CA 94612, which is more particularly described in Exhibit "1" hereto.

WHEREAS, the Subject Property is subject to a lease by MRO Northeast, Inc.

WHEREAS, the California Regional Water Quality Control Board ("RWQCB") has determined that Shell is responsible for certain contamination of the Subject Property including gasoline vapors and/or liquids.

WHEREAS, AREH is concerned about both the contamination of the Subject Property caused by Shell and the fact that the testing done by Shell may exacerbate the spread of such contamination.

WHEREAS, the RWQCB has required Shell to conduct periodic tests of the groundwater from the monitoring well installed by Shell at the Subject Property to monitor the contamination.

WHEREAS, AREH is willing to consent to Shell's continued access to the Subject Property to test the groundwater from the monitoring well, so long as the access is kept reasonable and so long as Shell provides adequate indemnification and insurance for AREH.

NOW, THEREFORE, in consideration of payment of ten dollars by each party to the other and other good and valuable consideration from each party to the other, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions hereof, the parties agree as follows:

1. AREH hereby grants Shell a temporary revocable license for reasonable access to the Subject Property for the purpose of accessing the existing monitoring well, to monitor the groundwater contamination so long as Shell's activities (a) do not damage the Subject Property in any way and (b) do not interfere with the business of any present or future tenant or occupant of the Subject Property. Shell shall give AREH and any tenant or occupant of the Subject Property at least 48 hours prior notice specifying the time, date and duration of entry.
2. Shell agrees to indemnify, protect, defend and hold AREH, its partners, officers, directors, agents, employees, tenants, lenders and successors, if any, and the Subject Property, harmless from and against any and all damages, liabilities, actions, administrative orders, judgments, costs, claims, fines, expenses, penalties, loss of rents and/or attorneys' and consultants' fees arising out of or involving any hazardous substance (including gasoline) on the Subject Property or in the groundwater underneath the Subject Property, except when the presence of the hazardous substance was caused by the sole negligence of AREH.
3. Shell shall obtain and maintain in full force, at no charge to AREH, the following insurance coverage: (a) Worker's Compensation Insurance relative to all contractors, agents or employees of Shell or any of their respective contractors at any level performing work or testing the Subject Property relating to this Agreement, with coverage not less than that required by applicable law; (b) Comprehensive General Liability insurance on a broad form occurrence basis, with a coverage of not less than \$5,000,000 per occurrence; (c) Professional errors and omissions insurance, with a coverage of not less than

6-10-1999 11:22PM FROM 56: 8427227

06/11/99 12:05

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\$5,000,000 per occurrence; (d) Automobile liability insurance (owned, non-owned and hired), including personal injury and property damage, with a limit of not less than \$1,000,000 per occurrence. Each of the liability policies described in subparagraphs (b) through (d) above shall name AREH as a named insured and shall not be cancellable except upon 30 days' prior written notice to AREH. A certificate issued by an authorized representative of the insurer evidencing the coverage under each policy shall be delivered to AREH within 30 days of execution of this agreement and in any event, at least 5 days prior to any entry on the Subject Property.

4. Shell will promptly provide AREH with copies of all groundwater test results and other reports in its possession or control and/or which it receives or is entitled to receive in the future which contain any data concerning the groundwater, soil or other matter underneath or near the Subject Property. Shell will also promptly provide AREH with copies of all documents (including, but not limited to, all communications, orders, notices, and reports) exchanged between Shell and/or its consultants and any government regulators or third parties.

5. The obligations and benefits of this Agreement shall bind and inure to the benefit of all parents, subsidiaries, affiliates, related entities and persons, limited and general partners, attorneys, agents, officers, employees, directors, predecessors, successors or assigns of Shell and AREH. Notwithstanding any contrary provision herein, AREH shall have the right, in its sole discretion, to terminate this Agreement at any time upon 30 days' prior written notice by regular mail to Shell, at 910 Louisiana Street, Houston, Texas 77002.

6. This Agreement constitutes the entire Agreement and understanding between the parties with respect to the subject matters herein, and supersedes and replaces any prior agreements and understandings, whether oral or written, between and among them, with respect to such matters. The provisions of this Agreement may be waived, altered, amended or repealed in whole or in part only upon the written consent of all parties to this Agreement.

7. The undersigned represent and warrant that they are fully authorized to enter into the terms and conditions of, and to execute, this Agreement.

8. This Agreement may be executed in one or more counterparts.

9. The parties hereto acknowledge that each of them and their respective counsel have fully reviewed, discussed and negotiated this Agreement, and the fact that one or the other has drafted the same is solely a matter of convenience. Consequently, this Agreement shall be construed without aid of or regard to any rule, statute, canon or presumption permitting or requiring the construction of an agreement or any provisions thereof against the party who drafted or caused the same to be drafted.

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FROM 561 8427227

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05/11/99 12:18

MS. 233 100/1000

10. This Agreement shall be construed as a whole according to its plain meaning. It shall in all respects be interpreted, enforced and governed under the law of the State of California.

DATED: as of April 1, 1999

SHELL OIL COMPANY,
a Delaware corporation

By: [Signature]
[Signature]

DATED: as of April 1, 1999

AMERICAN REAL ESTATE HOLDINGS LIMITED
PARTNERSHIP, a Delaware limited partnership

By: American Property Investors, Inc.,
its sole general partner

By: [Signature]
John F. Saldarelli
Vice President

ROBERT BEALLO, M.D., INC.
INTERNAL MEDICINE & NEPHROLOGY
3100 TELEGRAPH AVENUE
OAKLAND, CA 94609
PHONE 834-8494

July 9, 1999

Susan Hugo
Alameda County Hazardous Waste Dept.
1131 Harbor Bay Parkway
Alameda, CA 94502

Dear Ms. Hugo:

Sorry for the delay on this letter. At your request, let me describe the building at 2710 Telegraph Avenue. The present building is going to be demolished. The new building will be two stories. It will be approximately 15,000 square feet total. The purpose of this building is to treat patients with end stage renal disease by hemodialysis treatments. These hemodialysis treatments are done three times a week. The patient visits the clinic for approximately three hours per treatment. No patient will be there on an overnight basis.

As I mentioned on the phone, we do not need or plan to have any underground parking. We plan on having the entire property remain concreted over. We do not feel that there will be any deep trenches be dug during the building process.

If I can provide you with any further information, please don't hesitate to contact me.

Sincerely Yours,



Robert Beallo, M.D.

RB:kah

ALAMEDA COUNTY HAZARDOUS MATERIALS DIVISION
DEPOSIT / REFUND ACCOUNT SHEET

printed 06/22/99

SITE INFORMATION

Bealle

Robert Bealle, M.d. Inc.
2701 Telegraph Avenue
Oakland 94609
Site Contact:
Site Phone :

StID: 6413 Site#: 7680
PROJECT#: 7680A
PROJECT TYPE: *** M ***
INSP: Susan Hugo
ACCT. SHEET PG #: _____

2710

PROPERTY OWNER INFORMATION

PAYOR INFORMATION

Owner Contact:
Owner Phone :

Robert Bealle, M.d., inc.
3100 Telegraph Ave Ste 4107
Oakland 94609 #1178
Payor Contact:
Payor Phone : 510-834-8494

Date	Action Taken	Time		Hours	Hour	Money	Money
		In	Out	Spent/ Depstd	Balnce	Spent/ Depositd	Balance
	Balance from Prev. Page
06/21/99	Rcpt# 800480 Deposit of \$1,000.00 @\$100/hour			+10.		+\$1,000.00	

UPON COMPLETION OF PROJECT

PROJ COMPLETED BY : _____ ATTACH: State Forms A, B & C
 Billing Adjustment*
DATE OF COMPLETION : _____ DATE SENT TO BILLING: _____
TOTAL COST OF PROJECT: _____ REFUND AMOUNT: _____ Rev. 5/96

* Billing adjustment forms needed when site is in our UST program. REPORT: WrkShtD (ongoing Deposit)

Hugo, Susan, Public Health, EH

From: Pantages, Dick, Public Health, EH
Sent: Thursday, June 17, 1999 1:01 PM
To: Hugo, Susan, Public Health, EH
Subject: RE: 2710 Telegraph Ave., Oakland samples (revised)

Susan:

Thanks for taking care of this. I'm not aware of any special border zones for medical facilities.
Have a great vacation!

Dick Pantages
Alameda County Environmental Health

From: Hugo, Susan, Public Health, EH
Sent: Thursday, June 17, 1999 12:35 PM
To: Pantages, Dick, Public Health, EH
Cc: Peacock, Tom, Public Health, EH
Subject: RE: 2710 Telegraph Ave., Oakland samples (revised)

Dick:

I talked to Mr. Jack Gaskin (the real estate agent for the property) yesterday at home (I was out sick yesterday). I told him that a Phase 1 site assessment is needed for 2710 Telegraph Avenue. The only information our office has about the site is related to the former Shell Station release at 2800 Telegraph Avenue, a neighboring upgradient property. We don't know the historical use of the site other than being a former Sizzler Restaurant. I will also need to research if there are any other requirements for development of a medical clinic (such as border zone) . Do you know of any ?

I also talked to Dr. Beallo this morning and he will submit a copy of the Phase 1 report. I told him that I will be going on vacation for two weeks (6/21/99 to 7/2/99). I will review the report when I get back.

I also talked to another interested buyer, Mr. Robert Lee of MRE Commercial, last Monday. He intends to open a restaurant at the site.

It appears that this site is generating a lot of interest.

Susan L. Hugo
Environmental Health Services

-----Original Message-----

From: Pantages, Dick, Public Health, EH
Sent: Wednesday, June 16, 1999 1:17 PM
To: Hugo, Susan, Public Health, EH
Subject: FW: 2710 Telegraph Ave., Oakland samples (revised)
Importance: High

Susan:

The correct phone number is 834-8494. Sorry about the error!
Dick Pantages
Alameda County Environmental Health

From: Pantages, Dick, Public Health, EH

Sent: Tuesday, June 15, 1999 7:20 PM
To: Hugo, Susan, Public Health, EH
Subject: 2710 Telegraph Ave., Oakland samples

Susan:

Will you please call Dr. Robert Beallo, 874-8494, about these samples. Apparently new samples have been taken, and he called me about them. A consultant called about them yesterday, and I told him to talk to you. There's no point in me getting in on this! thanks.

Dick Pantages
Alameda County Environmental Health

Hugo, Susan, Public Health, EH

From: Hugo, Susan, Public Health, EH
Sent: Wednesday, May 26, 1999 1:05 PM
To: Pantages, Dick, Public Health, EH
Subject: RE: 2710 Telegraph Ave., Oakland

Thanks, Dick for the information. I talked to Dr. Beallo a few weeks ago and told him that we need to collect samples from the monitoring wells at the site. I will review the data when the report comes in and will work with them on this project.

Susan L. Hugo
Environmental Health Services

-----Original Message-----

From: Pantages, Dick, Public Health, EH
Sent: Wednesday, May 26, 1999 12:04 PM
To: Hugo, Susan, Public Health, EH
Subject: 2710 Telegraph Ave., Oakland

Susan:

I got a call yesterday from Elihu Harris on this parcel, and also from Dr. Robert Beallo. Dr. Beallo said that sampling results from the monitoring wells will be taken next month and will be sent to you. They're looking at putting in a dialysis center there, and are planning to pave the whole lot, he said. He would like to know whether or not they will be likely to proceed with it in the near future.

He will call you after you have had a chance to review the sample results. I just thought that I'd let you know what's been happening on this.

Dick Pantages
Alameda County Environmental Health