

**AGREEMENT TO INSTALL, OPERATE, MAINTAIN, REPAIR,
AND TO REMOVE UPON DEMAND OF COUNTY
ENCROACHMENTS IN PUBLIC RIGHT-OF-WAY
1337 OLD COUNTY ROAD/1400 ELMER STREET, SAN CARLOS AREA**

THIS AGREEMENT, made and entered into this _____ day of _____, 2007, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, hereinafter called "County", and CASTER BELMONT STORAGE LP, hereinafter called "Permittee,"

W I T N E S S E T H:

WHEREAS, Permittee is the owner of real property in the County of San Mateo, State of California, and has requested issuance of an Encroachment Permit from the County for Permittee's construction of a private storm drainage system and appurtenances hereinafter called "private drainage," which encroaches into the public right of way on Elmer Street, to serve Permittee's property described in Exhibit "A" attached hereto; and to connect said private drainage to the storm drainage collection facilities of the County of San Mateo located within the public right of way on Elmer Street; and

WHEREAS, the encroachment does not present an impediment to the use of the public right-of-way for said private drainage at this time:

NOW, THEREFORE, IT IS HEREBY AGREED TO BY THE PARTIES, as

follows:

1. In consideration of the County's issuance of an Encroachment Permit, which permit is attached hereto as Exhibit "B" and incorporated by reference herein, Permittee agrees to the terms and conditions set forth herein, and to execute and record this agreement as public notice of Permittee's or successors in interest's obligations regarding the construction, operation and maintenance of said private drainage.

2. The real property subject to this Agreement is commonly known as Caster Belmont Storage, 1337 Old County Road and 1400 Elmer Street, San Carlos, and is described in Exhibit "A" attached hereto and incorporated by reference as if set forth in full. This covenant is intended to benefit the County of San Mateo's interest in the public right-of-way on Elmer Street in the unincorporated San Carlos area, and to burden Permittee's property, which is located at 1337 Old County Road and 1400 Elmer Street. Pursuant to California Civil Code sections 1460 *et seq.*, it is expressly agreed that Permittee's successors in interest will be bound by the covenants contained herein.

3. Permittee is completely and solely responsible for all aspects of and costs associated with the private drainage serving the property, including but not limited to the installation, operation, maintenance, and repair of the private drainage in the Elmer Street right-of-way.

4. Permittee further agrees to repair and restore Elmer Street if said private drainage causes damage to the road.

5. In the event that Elmer Street is realigned or adjusted in elevation with the result that County, at its sole discretion, determines that said private drainage

must be altered, reconstructed or removed, the County may notify Permittee at any time in writing to commence the required alteration, reconstruction or removal. The notice shall be sufficient if mailed to the owner of record of said property at the address shown on the latest adopted County assessment roll. The notice shall describe the work to be done by the Owner, or successor in ownership, the time within which the work shall commence and the time within which it shall be completed.

6. The Permittee shall indemnify and hold harmless the County, its officers, agents, employees, and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of injuries to or death of any person, including Permittee, or damage to property of any kind whatsoever and to whomsoever belonging, including but not limited to, the concurrent active or passive negligence of the County, its officers, agents, or employees and servants, resulting from the installation, maintenance, repair or replacement of the above described private drainage including the failure of the private drainage system.

The duty of the Permittee to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

7. Should legal action be necessary to enforce any provision of this Agreement, Permittee agrees to pay all reasonable attorney fees and costs incurred by County in connection therewith.

8. This Agreement shall be recorded in the Office of the County Recorder by Permittee at Permittee's expense and shall constitute notice to all successors and assigns of the title to the real property of the obligation set forth.

Permittee shall provide proof of recordation to County within ten (10) days of the date of said recordation.

9. In the event the property is or becomes annexed to any city, Permittee agrees to fulfill all of the terms of this Agreement upon demand by such city as though the Permittee had contracted with such city originally. Any annexing city shall have the rights of a third party beneficiary.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the day and year first above written.

“COUNTY”

COUNTY OF SAN MATEO

BY

James C. Porter
Director of Public Works
County of San Mateo

“PERMITTEE”

Brian R. Caster
Caster Belmont Storage LP

EXHIBIT "A"

That certain real property described in Deed Serial No. 2005-062993, 2005-218560 and further described in Approval of Lot Line Adjustment, in Deed Serial Number 2005-217179, Assessor's Parcel No. 046-032-140, situs 1337 Old County Road (also 1400 Elmer Street),
San Carlos, California.

EXHIBIT "B"

ENCROACHMENT PERMIT

DEPARTMENT OF PUBLIC WORKS



Road Operations - Permits
455 County Center, 2/FI.
Redwood City, CA 94063
(650) 363-1822

JAMES C. PORTER
Director of Public Works

FOR OFFICE USE ONLY

Date Completed: _____

By: _____

ENCROACHMENT PERMIT

Form fields for Permittee Name, Address, Date, City, State Zip, and Area Code & Phone No.

As requested by the above addressee, hereinafter known as the "PERMITTEE," the County of San Mateo, hereinafter known as the County, HEREBY GRANTS AN ENCROACHMENT PERMIT TO:

Project Description: Install private storm drainage system and appurtenances on permittee's property to and into public right of way, connecting to County storm drainage facilities, located within Elmer Street as per plans dated October 22, 2005, entitled "A-1 Self Storage," Recorded agreement on file with County Recorder's Office.

Project Location: 1337 Old County Road, San Carlos

The work authorized by this Permit, hereinafter known as the "ENCROACHMENT," shall be subject to all the terms, conditions, and restrictions set forth herein. This permit consists of the Special Provisions attached and made a part hereof and the Drawings referenced above. The project, as specifically described, is to be strictly construed and no other activity shall be permitted. Notify County Road Inspector 48 hrs prior to starting work.

The Permittee and/or his contractor shall indemnify and save harmless the County, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work authorized or required by this Permit of Permittee and/or his contractor, their officers, agents, employees and/or servants.

A SURETY DEPOSIT OF \$0.00 or INSPECTION DEPOSIT OF \$ 5,000.00, and INSURANCE for P/L of \$ Legal Min. and P/D of \$ Legal Min. IS A CONDITION OF THIS PERMIT.

THIS PERMIT IS VALID FOR THE PERIOD September 26, 2006 to August 30, 2007

Applicant Complete:
"USA" Inquiry

James C. Porter
Director of Public Works

Signature lines for Date, Number, Kenneth S. Au (Associate Engineer), and Encl: Permittee Request/Sketch, Special Provisions.

CONTACT INSPECTOR MARK MARELICH at (650) 599-7273 48 HOURS IN ADVANCE TO SCHEDULE INSPECTION