



Department of
Community Investment

Memorandum

Monday, August 10, 2015

TO: Redevelopment Commission

FROM: Chris Fielding

SUBJECT: Martins Corporation

Included in the Commission packet is an executed Purchase Agreement and Environmental Indemnity Agreement between MARTIN'S SUPER MARKETS, INC. (MARTIN'S MO LLC) and the RDC. This Purchase Agreement outlines the negotiated terms for the sale of a 2.83 acre parcel adjacent to Ignition Park and their corporate headquarters.

Under the terms of the agreement Martins agrees to pay to the RDC \$74,287.50 for the 2.83 acres. The EIA calls for the RDC to assist the company in obtaining a comfort letter from IDEM with a maximum financial contribution of \$15,000.

Staff is requesting the approval and execution of the enclosed Purchase Agreement and EIA. It is anticipated that additional closing documents will be required and may require execution by Marcia prior to closing at a later date.



CONTRACT FOR PURCHASE AND SALE

This CONTRACT OF PURCHASE AND SALE (hereinafter "Agreement"), dated this ___ day of July, 2015, between MARTIN'S SUPER MARKETS, INC. and MARTIN'S MO LLC (together, the "Company"), as buyer, and the CITY OF SOUTH BEND, DEPARTMENT OF REDEVELOPMENT, by and through its governing body, the South Bend Redevelopment Commission (the "Commission"), existing and operating under the provisions of Indiana Code § 36-7-14, as amended, as seller.

WITNESSETH:

1. The Property. The Commission is the owner of record of land, with the legal description which is attached as Exhibit "A", consisting of 2.83 acres, more or less (the "Property"). The Property is further depicted on the Ignition Park Second Minor Subdivision attached as Exhibit "B". The Commission has completed the disposition process under Indiana Code § 36-7-14-22 and desires to sell the Property to the Company under the terms and conditions set forth herein pursuant to Indiana Code § 36-7-14-22(h).

2. The Purchase Price. The Commission shall convey the Property to the Company in exchange for cash in the amount of Seventy Four Thousand Two Hundred Eighty Seven and 50/100 Dollars (\$74,287.50), and the conditions/agreements of Company contained in Paragraph 8 of the Agreement (the "Purchase Price").

3. Environmental Condition. In connection with this Agreement, the Company (a) obtained a Phase I Environmental Report (the "Phase I"), attached as Exhibit "C", indicating that "recognized environmental conditions" exist at the Property including the existence of soil contamination described in investigation reports prepared on behalf of the Commission, and (b) will, prior to Closing (as defined below), obtain an updated Phase I on the Property ("Updated Phase I"). The Company understands that the Commission, pursuant to the Voluntary Remediation Program ("VRP"), has entered into a voluntary remediation agreement with the Indiana Department of Environmental Management ("IDEM") and the Commission and the Company will eventually receive, with respect to the Property, a certificate of completion and covenant not to sue, or equivalent, from the IDEM. In addition, the Commission and the Company have entered into the Environmental Indemnity, Access and Remediation Agreement, of even date with this Agreement (the "Environmental Agreement"), substantially in the form of that attached as Exhibit "D". The Company will be applying to IDEM for a comfort letter (the "Comfort Letter") with respect to the Property, and its receipt of a comfort letter from IDEM with respect to the Property in substance and form satisfactory to Company is, unless waived by Company, a condition precedent to the Company's obligations under this Agreement to purchase the Property. The Commission will provide a credit at closing to the Company for the Company's reasonable costs (including fees and disbursements of counsel and consultants) to prepare the application for the Comfort Letter and to interact with IDEM obtaining the Comfort Letter, up to \$15,000. If the Closing does not take place, other than due to a default of this Agreement by the Commission, the Commission will have no obligation to reimburse any of the Company's Comfort Letter costs.

4. Conveyance of Property. The Commission hereby represents it is not aware of any easements or encumbrances other than those of record. At Closing, the Commission shall convey the Property to the Company by Limited Warranty Deed in the form set forth at Exhibit "E" subject to the following:

- (a) Applicable zoning laws and regulations to be zoned light industrial; and
- (b) Seller will convey title to the Property subject only to real property taxes not yet due and payable, all easements, conditions, reservations, leases, licenses, access agreements and restrictions as may appear of record, be apparent by an inspection of the Property, or of which the Company has actual or constructive knowledge and to such other exceptions as may be approved as provided below.

Following the execution of this Agreement, Company shall obtain, at Commission's expense, (i) not later than thirty (30) days after the date of this Agreement a commitment for an owner's policy of title insurance issued by a title insurance company (a "Title Commitment") on the Property from Fidelity National Title Company (the "Title Company"), together with legible copies of all exceptions of record referenced therein; and at Company's option and expense (ii) not later than sixty (60) days after the date of this Agreement an ALTA survey of the Real Estate.

Company shall have thirty (30) days after receipt of (i) such Commitment and legible copies of all exceptions referenced therein and (ii) the ALTA survey of the Property within which to notify Commission, in writing of Company's disapproval of any exceptions or other matters shown in any of the foregoing ("Company's Disapproval Notice"). If Commission shall not have received any such notice of disapproval within the aforementioned time period, the Commitment and the condition of title shall be deemed approved.

In the event of any such disapproval, within twenty-one (21) days after delivery of Company's Disapproval Notice, Commission shall give Company written notice ("Commission's Title Notice") of those disapproved titled matters which Commission covenants and agrees to either eliminate from the "Title Policy" or to ameliorate to Company's satisfaction by Closing. If Commission does not elect in Commission's Title Notice to eliminate or ameliorate to Company's satisfaction any disapproved title matters or if Company disapproves Commission's Title Notice, Company shall have the right, in its sole and subjective discretion, to either (i) terminate this Agreement within fifteen (15) days after receipt of Commission's Title Notice by written notice to Commission, or (ii) to waive any such matter(s). If Commission does not eliminate or ameliorate to Company's satisfaction all such

disapproved matters prior to or at the Closing, then Company shall have the right, to terminate this Agreement by written notice to Commission. However, Company will be deemed to have waived all such item if Company proceeds to close the transaction provided herein.

The Company agrees to accept the Property under the above-described circumstances and subject to the above-described restrictions and encumbrances.

5. Taxes and Assessments. Company shall be responsible for any and all real estate taxes and assessments for the Property, whether for periods prior to or after the closing, whether or not yet due and payable. The Commission does not pay real property taxes and shall not be responsible for any payments or credits for real property taxes for the Property.

6. Obligations at Closing. At Closing, the Commission shall provide a title policy (the "Title Policy") from the Title Company acceptable to the Company insuring the transfer of the Property to the Company in the amount of Seventy Four Thousand Two Hundred Eighty Seven and 50/100 Dollars (\$74,287.50). The cost of issuance and all costs of all endorsements of the Title Policy in the amount of the purchase price will be paid by Commission at Closing. Other than the Title Policy costs and each party's respective attorney's fees, the Company and the Commission shall share equally in all other closing expenses and fees, which shall be evidenced by a Closing Statement prepared by the Title Company and signed by the parties hereto or their respective representatives at closing. The parties each represent that no real estate commissions are due and owing to any party with respect to this transaction.

7. Closing Date and Deliverables. The Closing shall be held at Fidelity National Title Company at 4215 Edison Lakes Pkwy # 205, Mishawaka, IN 46545 at a mutually agreed upon time (herein referred to as the "Closing") on the later of (x) thirty (30) days after both Company has received the Comfort Letter and the Commission receives approval of zoning as light industrial, or (y) January 4, 2016, or as otherwise mutually agreed to between the parties (the "Closing Date"). At Closing:

- (a) Commission shall deliver to the Company the duly executed and acknowledged Limited Warranty Deed conveying the Property to Company as provided in Paragraph 4.
- (b) Company shall deliver to the Commission: (i) the cash portion of the Purchase Price; (ii) evidence satisfactory to the Commission the Company has performed or is capable of performing the conditions set out in Paragraph 8 of this Agreement.
- (c) The Company and Commission shall each execute and deliver for recording in the land records a memorandum evidencing the right of first refusal described in Paragraph 10.
- (d) Possession shall be delivered at Closing.

- (e) The parties shall pay all closing costs at Closing in accordance with Paragraph 6 and shall execute a Closing Statement evidencing such fees.

8. Company's Conditions and Use of Property. Except as otherwise provided herein, the Company agrees:

- (a) Subject to Paragraph 3 above and the Environmental Agreement, to purchase the Property "AS IS WHERE IS" and without any representations or warranties as to the condition of the Property by the Commission and acknowledges that the Commission, including any of its representatives, has not made any warranties or representations of any kind relating to the Property or the condition or use thereof. The Commission has provided to Company all environmental reports it has completed with respect to the Property prior to the date hereof. In addition, the Commission shall provide the Company access to the Property for the 30 day period after the date hereof, in order for Company to conduct an inspection for purposes of the Updated Phase I before proceeding with this transaction to purchase the Property. [A1]By to close this transaction the Company shall have completed to its satisfaction its own investigation of the Property and has chosen to rely exclusively on its own inspections of the Property. However, after the inspection of the Property, the Company shall seek a Comfort Letter and shall have the right, in its sole and subjective discretion in the event it does not receive such Comfort Letter, to either (i) terminate this Agreement by providing Commission written notice of its decision to terminate; or (ii) waive any such matters which may arise as a result of this inspection.
- (b) Not discriminate on the basis of race, color, creed, sex, or national origin in the sale, lease, rental, use or occupancy of the Property.
- (c) By execution of this Purchase Agreement, the Company covenants and agrees that at or after Closing, Company will upon reasonable request of Commission, execute and deliver a Declaration of Easement in a form substantially similar to Exhibit "F" permitting the City of South Bend access to the Property for purposes of the provision of utilities, including but not limited to, water, sewer, dark fiber, telephone, electric, gas, and such other utility services which are necessary to service the IPPUD.

9. Commission Obligations. The Commission shall do the following:

- (a) The Commission shall provide access to the Property by public right-of-ways through the newly constructed Ignition Drive South illustrated on Exhibit "G".
- (b) Upon request of Company, and at the earliest opportunity legally

permissible and upon timely receipt of the appropriate documentation, the Commission agrees to fully support the granting of a three-year real property tax abatement and a five-year personal property tax abatement applicable to the Property based on the investment and other criteria evaluated by the City of South Bend according to its real property tax abatement program. The Company's petition for tax abatement will not, however, preclude the Company from seeking State or other building or development incentives.

- (c) The Commission will use best efforts to facilitate the initial connection of the Dark Fiber Loop operated by St. Joe Valley Metro Net, Inc. to the park. The Company shall be responsible for all lateral feeds from the outside property line to the Company's building.
- (d) Company has agreed to the Statement of Commitments which is attached as Exhibit "H". Company shall agree to be bound by such Statement of Commitments so long as they are in a form reasonable satisfactory to it so as not to unreasonably impair or restrict its use of the Property.
- (e) The Commission will use all good faith and commercially reasonable efforts to seek an amendment to the Planned Unit Development ("PUD") or other zoning of the Property in order for the Property to be utilized for the permitted uses as set forth in the Statement of Commitments (referred to above).

10. Right of First Refusal. After the Closing and until the Development of the Property (as defined in Paragraph 10(c) below) (the "ROFR Period"), the Commission shall have a right of first refusal to purchase the Property in accordance with the following conditions (the "ROFR"):

- (a) In the event Company receives a bona fide offer from an unrelated third-party to purchase all or any portion of the Property at any time which the Company is prepared to accept, the Company shall first offer to sell the Property to the Commission on the same terms and conditions as the bona fide offer (the "Offer"), and shall send written notice to the Commission that contains the details of the Offer, including the name and the address of the prospective purchaser of the Property. Within thirty (30) days after notice of the Offer is provided to the Commission, the Commission may, at its sole option, elect to purchase the Property from the Company upon the same terms and conditions as the Offer by providing notice of its election to Company within said thirty (30) day period (the "Election Period"). The notice from the Commission shall specify the date for the closing of the purchase of the Property which shall not be more than forty-five (45) days after the date the Commission gives notice to the Company of the Commission's election to purchase the Property. If the Commission fails to exercise its ROFR during the Election Period or

within forty-five (45) days after the date the Commission provides notice to the Company of its decision to purchase the Property, the Company may sell the Property to the third-party in accordance with the Offer. If the Company fails to close the sale of the Property to the third-party within ninety (90) days following the expiration of the Election Period, the Property shall again become subject to the ROFR.

- (b) The Commission's obligation to purchase the Property after its exercise of the ROFR is subject to satisfaction of or a written waiver by the Commission of the following conditions precedent:
- i. Within thirty (30) days after the date upon which the Commission exercises the ROFR, the Company shall, at its expense, obtain a Title Commitment), pursuant to which such the title insurance company shall agree to and insure good and marketable and indefeasible fee simple title to the Property in the name of the Commission for the full amount of the purchase price upon delivery of a deed to the Commission from Company.
 - ii. The Title Commitment shall provide for issuance of a final title insurance policy on the latest A.L.T.A. Owner's Form or similar form, free and clear of any all liens, encumbrances, highways, rights-of-way, easements or other exceptions, except current taxes which are not delinquent, the title insurance company's standard exceptions and other exceptions as the Commission, in its reasonable discretion, may approve after examination of the Title Commitment. The Commission shall be deemed to have accepted any exception identified in the Title Commitment if the Commission does not notify Company within thirty (30) days of receiving the Title Commitment of any objections to any matter reflected in the Title Commitment which may reasonably affect the Commission's intended use for the Property. Company shall have a period of twenty-one (21) days after receipt of any notice from the Commission within which to correct any such objections to title. If Company is unable to correct the Commission's title objections within thirty (30) days after receipt of written notice thereof, then the Commission shall have the right any time at its election to cancel and terminate its ROFR, unless the Commission elects to waive such title objections and proceed with closing.
 - iii. The cost of issuance and all costs of all endorsements of the title insurance in the amount of the purchase price will be paid by Company at Closing
 - iv. Real estate taxes shall be prorated as of the date of closing with Company paying all real estate taxes and assessments for periods

prior to the closing and the Commission accepting the title of the Property subject to taxes and assessments which are not yet due and payable and Company granting a credit to Commission at closing for any such taxes and assessments.

- v. At closing, the Company shall execute, acknowledge and deliver to the Commission a limited warranty deed conveying Company's interest in the Property to Commission free and clear of all liens and encumbrances other than current taxes, the standard exceptions identified in the Title Commitment, and any other exceptions identified in the Title Commitment which are accepted by the Commission pursuant to Paragraph 10(b)(iv) above. The Company and Commission shall execute, acknowledge and deliver any other instruments, documents and assurances required or requested by the title insurance company in order to convey the Property to the Commission. Possession of the Property shall be delivered to the Commission at the closing. At closing, the Commission shall pay the purchase price in cash subject to any proration of taxes and assessments.

- (c) For purposes of this Paragraph 10, "Development of the Property" shall mean the construction of a building consisting of at least 5,000 square feet.

11. Assignment. This Agreement may not be assigned by the Commission to any other party without the written consent of the Company, which consent may be withheld for any reason, except in the case of an assignment to any entity of the City of South Bend or the Commission or any entity in which the City of South Bend or the Commission have a controlling interest or is the general partner, such consent shall not be unreasonably withheld. This Agreement may not be assigned by the Company to any other party without the written consent of the Commission, which consent may be withheld for any reason.

12. Entire Agreement. This Agreement embodies the entire agreement between the parties with respect to the Property and cannot be varied except by the written agreement of the parties. No representation, promise, or inducement not included in this Agreement shall be binding upon the parties hereto.

13. Timing. Time is of the essence of this Agreement.

14. Notices. Any notices, requests, or other communications required or permitted to be given hereunder shall be in writing and shall be either (i) delivered by hand, (ii) mailed by United States certified mail, return receipt requested, postage prepaid. Any such notice, request, or other communication shall be considered given or delivered, as the case may be, on the date of hand delivery (if delivered by hand), on the third (3rd) day following deposit in the United States mail (if sent by United States certified mail).

Company:
Gregory L. Freehauf
Vice President Finance, CFO
Martin's Super Markets, Inc.
PO Box 2709
South Bend, IN 46680-2709

Commission:
David Relos
1400 City-County Building
227 W. Jefferson Boulevard
South Bend, IN 46601-1830

With a copy to:
Corporation Counsel
City of South Bend, Indiana
1200 City-County Building
227 W. Jefferson Boulevard
South Bend, IN 46601-1830

15. Binding Terms. All the terms and conditions of this Agreement are hereby made binding on the successors and permitted assigns of both parties hereto.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana and venue for any action shall be St. Joseph County, Indiana.

17. Binding Upon Execution. This Agreement shall not be effective or binding until fully executed by all the parties.

18. Survival of Terms. This Agreement, including without limitation, Paragraphs 7 and 8, will survive closing of the conveyance the Property and shall not be considered merged into the deed or other documentation reflecting conveyance of the Property.

19. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

20. Additional Documents. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to accomplish the actions contemplated by this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

21. Negotiated Agreement. This Agreement was negotiated by the parties at arm's length and each of the parties hereto has reviewed the agreement after the opportunity to consult with independent counsel. Neither party shall maintain that the language in the Agreement shall be construed against any signatory hereto.

22. Construction of Terms. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

23. Authority to Execute. The undersigned persons executing and delivering this Agreement on behalf of each of the parties respectively represent and certify that they are the duly authorized officers of each and have been fully empowered to execute and deliver this Agreement and that all necessary corporate action has been taken and done. The undersigned persons executing and delivering this Agreement on behalf of the Company represent and certify that (i) they are the officers of the Company duly authorized by a resolution of the Members to purchase the Property and enter into this Agreement and (ii) that such action is consistent with the Company's Articles of Organization, Operating Agreement, and prior Resolutions, and to the extent that this Agreement or any obligation herein conflicts with said documents, the Company by approving this Agreement shall deem such documents to be amended to allow for this Agreement and any action or obligation contemplated or required hereunder. This Agreement may be executed in duplicate or through counterparts.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

**CITY OF SOUTH BEND, INDIANA
DEPARTMENT OF
REDEVELOPMENT**

MARTIN'S SUPER MARKETS, INC.

Date: _____, 2015

Date: _____, 2015

Gregory L. Freehauf
Secretary, Vice President Finance, CFO

South Bend Redevelopment Commission

MARTIN'S MO LLC

ATTEST:

Date: _____, 2015

South Bend Redevelopment Commission

Gregory L. Freehauf
Secretary, Vice President Finance, CFO of
Martin's Super Markets, Inc.
Its Manager

EXHIBIT A

Legal Description

Lot Numbered 3 as shown on the Ignition Park Second Minor Subdivision recorded in the Office of the Recorder of St. Joseph County, Indiana, as Instrument Number 1115569 (the "Real Estate").

EXHIBIT B

Map of Proposed Ignition Park Major Subdivision

The City has plans to close Kendall Street from Indiana Street to the railroad tracks and will notify Martin's prior to closure. Closure of Kendall Street should not affect the boundaries of the Property.

EXHIBIT C

Phase I Environmental Report

EXHIBIT D

Environmental Indemnity, Access and Remediation Agreement

EXHIBIT E

RETURN TO:
MARTIN’S SUPER MARKETS, INC.
ATTENTION: PAM SMITH
PO BOX 2709
SOUTH BEND, IN 46680

AUDITOR’S RECORD
TRANSFER NO. _____
TAXING UNIT _____
DATE _____
KEY NO.

LIMITED WARRANTY DEED

THIS INDENTURE WITNESSETH, THAT That the City of South Bend, Department of Redevelopment, in St. Joseph County, Indiana (the “Grantor”)

CONVEYS AND WARRANTS TO MARTIN’S MO LLC (the “Grantee”)

for and in consideration of one dollar (\$1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, the following described real estate in St. Joseph County, Indiana, to-wit:

Lot Numbered 3 as shown on the Ignition Park Second Minor Subdivision recorded in the Office of the Recorder of St. Joseph County, Indiana, as Instrument Number 1115569 (the “Real Estate”).

The Grantor herein and its successors shall warrant and defend the title to the real estate above-described to said Grantee, its successors and assigns, against the lawful claims and demands of all persons claiming by, through or under the said Grantor, but none other.

Grantor hereby conveys the above-described Real Estate subject to all easements, conditions, reservations, leases, licenses, access agreements and restrictions as may appear of record, be apparent by an inspection of the Real Estate, or of which the Grantee has actual or constructive knowledge.

The undersigned persons executing this deed on behalf of Grantor represent and certify that they are duly authorized to act for the Grantor and have been fully empowered by the South Bend Redevelopment Commission to execute and deliver this deed; that Grantor has full capacity to convey the real estate described herein; and that all necessary action for the making of such conveyance has been taken and done.

(Remainder of page intentionally left blank)

Dated this _____ day of _____, 2015.

City of South Bend, Department of
Redevelopment

ATTEST

By:

By:

Its:
South Bend Redevelopment Commission

Its:
South Bend Redevelopment Commission

State of Indiana, County of St. Joseph ss:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named _____ and _____, the _____ and _____, respectively, of the South Bend Redevelopment Commission, the governing body of the City of South Bend, Indiana, Department of Redevelopment, who acknowledged the execution of the foregoing Deed and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS, my hand and Seal this _____ day of _____, 2015.

(SEAL)

_____, Notary Public
Resident of _____ County, _____

Commission expires: _____

Interests in land acquired by
MARTIN'S MO LLC
Grantee mailing address:
Martin's MO LLC
Attention: Pam Smith
PO Box 2709
South Bend, IN 46680-2709

I affirm, under the penalties for perjury, that I have taken reasonable care to react each Social Security number in this document, unless required by law. Daniel P. Cory

Prepared by Daniel P. Cory, Plews Shadley Racher & Braun LLP, 53732 Generations Drive, South Bend, IN 46635, (574) 273-1010.

EXHIBIT F

DECLARATION OF UTILITY EASEMENTS

THIS DECLARATION OF UTILITY EASEMENTS (“Declaration”) is executed this ____ day of _____, 201__ by MARTIN’s MO LLC (“Martin’s” or “Grantor”), having its principal place of business located at the, having its principal place at 760 Cotter Street, South Bend, Indiana 46601.

For valuable consideration, Grantor does hereby grant unto The City of South Bend, Indiana and its successors and assigns (“Grantee”) a Utility Easement as provided herein for the benefit of the City of South Bend, an Indiana Municipal Corporation.

Statement of Facts

Grantor is the owner of property legally described as follows:

(insert legal description here)

(the “Real Estate”)

Grantor desires to establish a Utility Easement for the purpose of permitting Grantee to construct and maintain utilities and drainage facilities over, under and across a portion of the Real Estate as more particularly described herein.

NOW, THEREFORE. Grantor hereby declares as follows:

1. Grantor, for the benefit of the Grantee and the current and future owners of the Real Estate, declares and grants a perpetual non-exclusive easement (“Easement”) over that portion of the Real Estate described as: [INSERT] (the “Easement Premises”)

for the purpose of constructing, maintaining and reconstructing utilities including but not limited to electric, water, telephone, fiber optics, drainage, sewer, and gas (collectively “Utility Services”). This grant of Easement includes the right of any Grantee to utilize any Public Utility Companies in order to carry out the intent of this Declaration of Utility Easements. The Easement herein granted includes the right of ingress and egress to from and over the Easement Premises for the purpose of maintaining said utilities and drainage facilities.

2. Grantor, its successors and assigns, retain, reserve and shall continue to enjoy the use of the surface of the Easement Premises for any purposes which do not interfere with or prevent the use by Grantees of the Easements described in Paragraph 1.

3. The Easements granted herein are subject at all times to Grantees’ obligation to: (i) restore the Easement Premises to substantially its condition prior to coming upon said Real Estate; and (ii) refrain from interfering with the intended use of the Real Estate by Grantor as defined in: (a) a Contract for Purchase and Sale of Real Estate executed between MARTIN’S SUPER MARKETS, INC., MARTIN’S MO LLC and the South Bend Redevelopment Commission for the purchase and sale of the Real Estate.^[A2]

4. The Easements granted shall run with the land and be binding upon the Grantor and Grantee and their respective heirs, successors and assigns. Neither party shall interfere with the other’s use and enjoyment of the easement rights granted and reserved hereunder.

In order to ensure the Easements granted herein do not interfere with the intended use of the Real Estate by Grantor, permission shall be obtained from Grantor for the specific location of the Easements granted which consent shall not be unreasonably delayed or withheld taking into consideration the location of utility on-site laterals needed to take the shortest, most economical path from the public right-of-way over the Real Estate.

[SIGNATURE PAGE TO FOLLOW]

Dated this _____ day of _____, 201_.

GRANTOR:

MARTIN’S MO LLC

Gregory L. Freehauf
Secretary, Vice President Finance, CFO of
Martin’s Super Markets, Inc.
Its Manager

State of Indiana, County of St. Joseph ss:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named _____, the _____ of Grantor, who acknowledged the execution of the foregoing Declaration of Easement and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS, my hand and Seal this ____ day of _____, 2015.

(SEAL)

_____, Notary Public
Commission expires: _____ Resident of _____ County, _____

I affirm, under the penalties for perjury, that I have taken reasonable care to react each Social Security number in this document, unless required by law. Daniel P. Cory

Prepared by Daniel P. Cory, Plews Shadley Racher & Braun LLP, 53732 Generations Drive, South Bend, IN 46635, (574) 273-1010.

EXHIBIT G

**Map of
Ignition Drive South**

EXHIBIT H

Statement of Commitments

Martin's Super Markets, Inc. Expansion: Ignition Park Lot 3

Statement of Commitments:

1. **Permitted Uses:** Primary uses for the rezoned area will be limited to the following:

Educational Use: School – Commercial, Trade, Industrial or Business, limited to adults ages 18 and over. Consistent with applicable law, this limitation regarding schools shall not limit the Company's ability to employ interns, from time to time, who are under age 18.

Industrial Uses: Assembly or blending of previously manufactured parts, sub-assemblies or components; Cleaning, testing or repairing of goods, materials or products; Data processing or analysis; Engineering or research laboratories; Manufacture, processing, refining or fabrication of goods, materials or products; warehousing; wholesaling; distribution centers.

Office / Professional Services / Other: Construction Companies (any type, office only); Contractors (any type, office only); Corporate Headquarters (office only); Manufacturers Representative; cafeteria/deli (to the extent such use is not restricted by law or by the requirements of the Comfort Letter).

Public Facilities: Parking Lot – Commercial

Utilities: Public Utility Substation.

2. **Architectural Standards:**

Any addition to an existing building will utilize building materials that are compatible and harmonious with the materials used on the existing building. Any new construction of a primary building or major addition to an existing building will utilize building materials and design that is compatible with buildings within Ignition Park.

For any new construction of a primary building or major addition to an existing building, each façade will employ at least three different materials, each covering a minimum of twenty (20%) percent of the total surface area of the façade. The three materials to be used on the façade will be a combination of any of the following:

- Metal panel (aluminum, zinc, copper, steel, etc.),
- Solid resin material suitable for exterior construction (Trespa or similar),
- Brick or brick masonry units,
- Glazed concrete masonry units,
- Natural or cast stone (limestone, granite, marble, sandstone, etc.),

- Glass curtain wall,
 - Exposed concrete (architectural precast) with architectural patterning and/or textures,
 - Terra cotta and/or clay tile rain-screen systems.
3. **Building Height:** The height for any building will be no more than ninety (90) feet above grade.
 4. **Parking and Loading Areas:** Any off-street parking or off-street loading area will be located no less than fifty (50) feet from the right-of-way line of Ignition Circle or Ignition Drive South. Any off-street loading area will be located no less than fifty (50) feet from the right-of-way line of Cotter Street.
 5. **Screening of Parking and Loading Areas:** Any parking or loading areas will be effectively screened from view from the right-of-way line of Ignition Circle or Ignition Drive South through the use of buildings, screen walls, landscaping, landscaping berms, or combination thereof.
 6. **Mechanical Equipment:** Any mechanical equipment (e.g., HVAC systems and related components; pedestals for electrical, telephone or cable service; above-ground water and gas utility meters; and the like) will be screened as follows:
 - Roof Mounted – Any roof mounted mechanical equipment will be screened based on an elevation view of the building on all sides.
 - Ground Mounted – Any ground mounted mechanical equipment will be screened on all sides by the building; screen walls or fences of a material and color which is compatible with the primary building; or, evergreen or densely twigged hedge plants (with or without mounding) of a height at time of planting which is not less than the height of the mechanical equipment to be screened.
 7. **Outdoor Operations and Storage:** Any uses and operations, except for off-street parking and off-street loading and delivery, will be conducted within completely enclosed buildings.
 8. **Fences:** No fences will be placed between the front façade of the primary building and the front lot line or in a required side yard. Any fences in a required rear yard will not exceed six (6) feet in height above grade.
 9. **Signs:** No off-premise signs will be installed. Any freestanding identification sign(s) will be limited to a monument sign. The number, surface area, setback, height, and other standards for any on-premise signs will be in compliance with the GI District standards in the City of South Bend Zoning Ordinance.
 10. **Lighting/Dark Sky Compliance:** Other than any low intensity / low output architectural or accent lighting (including ground mounted up-lighting), any outdoor lighting fixtures, including freestanding or wall fixtures, will be full cutoff as defined by the City of South Bend Zoning Ordinance.

ENVIRONMENTAL INDEMNITY, ACCESS, AND REMEDIATION AGREEMENT

THIS ENVIRONMENTAL INDEMNITY, REMEDIATION, AND ACCESS AGREEMENT (this “Environmental Agreement”) is made and entered into by and between the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (referred to herein as the “Commission”) and Martin’s Super Markets, Inc., an Indiana corporation and Martin’s MO LLC (together “Martin’s” and, collectively with the Commission, the “Parties”).

WHEREAS, the Commission and Martin’s have entered into that certain Contract for Purchase and Sale, dated [DATE] (the “Purchase Agreement”), in which, subject to the terms and conditions set out therein, Martin’s has agreed to purchase and the Commission has agreed to sell certain real estate in the City of South Bend, St. Joseph County, Indiana, as more particularly described in **Exhibit A** attached hereto (the “Property”);

WHEREAS, Martin’s obtained a Phase I Environmental Site Assessment (the “Phase I”) appended as Exhibit C to the Martin’s Purchase Agreement that references certain environmental reports (the “Environmental Reports”) indicating as stated therein that the soils and groundwater of the Property may contain “Hazardous Substances” (as defined herein);

WHEREAS, the Commission pursuant to a March 17, 2005 Voluntary Remediation Agreement (“VRA”) with the Indiana Department of Environmental Management (“IDEM”) has undertaken remediation of the Property through the IDEM’s Voluntary Remediation Program (“VRP”).

WHEREAS Martin’s will be taking steps to qualify as a Bona Fide Prospective Purchaser (“BFPP”) under CERCLA and other Environmental Laws (as defined herein) and intends to apply for a “comfort letter” from the Indiana Finance Authority’s Brownfields Office (the “Brownfields Office”) that details Martin’s liability protection for Existing Environmental Conditions (as defined herein) at the Property and the “continuing obligations” Martin’s must satisfy to maintain its BFPP liability protections under CERCLA and other Environmental Laws (the “Comfort Letter”); and

WHEREAS, the Commission and Martin’s each wish to conclude the sale of the Property from the Commission to Martin’s as contemplated by the Purchase Agreement, and the entry into this Environmental Agreement is a condition to the obligations of the Parties to conclude that sale.

NOW, THEREFORE, for and in good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. The following definitions will apply to the listed terms wherever they appear in this Environmental Agreement. Moreover, each defined term stated in a singular form or plural form shall include the other. Each defined term stated in a masculine form or feminine form shall include the other. Capitalized terms not defined in this Paragraph 1 shall have the same meaning as defined elsewhere in the Environmental Agreement.

- a. "Certificate of Completion" means the certification by the commissioner of IDEM in accordance with and pursuant to IC 13-25-5-16 and the VRA.
- b. "Claim" means all claims, third party claims, causes of action, lawsuits, cross-claims, counterclaims, obligations, liabilities, rights, demands (including letter-demands, notices, or inquiries from any person or government agency), penalties, assessments, losses, damages, requests, suits, lawsuits, costs (including attorneys' fees and expenses), interest of any kind, actions, administrative proceedings, criminal proceedings, or orders, of whatever nature, character, type or description, whenever and however occurring, whether at law or in equity, and whether sounding in tort or contract, or any statutory, regulatory, or common law claim or remedy of any type, arising directly or indirectly, in whole or in part, from any action a Party may take against a person to recover the Party's costs for the investigation or remediation of the Property or to compel or enjoin a person to investigate or remediate the Property.
- c. "Comfort Letter" means a letter from the Indiana Finance Authority's Brownfields Program (the "Brownfields Program") detailing the liability exemption or enforcement discretion policy for which the applicant has qualified and by which IDEM has determined not to pursue a party for cleanup with respect to pre-existing contamination at the Property under CERCLA and analogous Indiana laws, as well as any continuing obligations the entity must satisfy or reasonable steps it must take to maintain the protection from enforcement or liability.
- d. "Engineering Controls" means Remediation Work taken to contain or control Environmental Conditions or exposure to Environmental Conditions at, on, or under the Property, including, but not limited to maintaining impervious caps over portions of the Property.
- e. "Environmental Conditions" means the actual, alleged, or threatened, presence, discharge, dispersal, release, escape, migration, seepage or abandonment of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to, Hazardous Substances as defined below, vapors, soot, fumes, acids, alkalis, toxic chemicals, waste materials, including medical infectious and pathological waste, low-level radioactive waste and material, microbial matter at, on or under the Property, the atmosphere or any watercourse, body of water or groundwater, or any Hazardous Substances that have migrated or are migrating or that have emanated or are emanating from the Property in surface water or groundwater.
- f. "Environmental Law" shall mean, as amended and as now in effect, any and all federal, state, local, and foreign statutes, regulations, ordinances, and other provisions having the force or effect of law, all judicial and administrative orders and determinations, all contractual obligations, and all common law concerning public health and safety, worker health and safety, pollution, or protection of the environment, including, without limitation, all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal,

distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances, or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise, or radiation.

- g. “Hazardous Substance” means, without limitation, any substance, chemical, material or waste, whether solid, liquid, gaseous or thermal, (i) the presence of which causes a nuisance or trespass of any kind; (ii) which is regulated by any Environmental Law as defined herein because of its toxic, flammable, corrosive, reactive, carcinogenic, mutagenic, infectious, radioactive, or other hazardous property or because of its effect on the environment, natural resources or human health and safety, including, but not limited to, petroleum and petroleum products, polychlorinated biphenyls, trichloroethylene, trichloroethane and other chlorinated industrial solvents, and a volatile organic compounds; or (iii) which is designated, classified, or regulated as being a hazardous or toxic substance, material, pollutant, waste (or a similar such designation) under any federal, state or local law, regulation or ordinance, including under any Environmental Law such as the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §11001 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. §1801 et seq.), or the Clean Air Act (42 U.S.C. §7401 et seq.), or Indiana Environmental Legal Action statute (I.C. § 13-30-0, et seq.).
- h. “Institutional Controls” shall mean Remediation Work taken to restrict access to, or use of, the Property, including but not limited to deed restrictions.
- i. “Remediation Objectives” shall mean the receipt of a Certificate of Completion, or other equivalent approval, from IDEM, finding that Remediation Work at the Property has been satisfactorily completed to the least stringent standard that allows Martin’s Permitted Use of the Property, as defined in Exhibit F to the Purchase Agreement (“the Permitted Use”).
- j. “Remediation Work” shall mean any and all actions needed under the VRA and VRP or otherwise to accomplish the Remediation Objectives as defined herein, including: (i) investigations of Environmental Conditions, such as but not limited to assessments, risk assessments, remedial investigations, sampling, testing, monitoring or the installation or closure of monitoring wells; and (ii) actions taken to address Environmental Conditions, such as, but not limited to, removal or remedial actions to address Environmental Conditions, installation and use of sumps, trenches, barriers or other systems for long term treatment or control of soils, surface water or groundwater, and deed and/or other use restrictions or Institutional or Engineering Controls, as defined herein, imposed on the Property to address Environmental Conditions.

- k. "US EPA" means the United States Environmental Protection Agency, and any successor agency of the United States government.
- l. "VRA" means that certain Voluntary Remediation Agreement dated March 17, 2005, between the Commission and IDEM with respect to the Property (and other real property) in accordance with the Indiana Voluntary Remediation Program pursuant to Indiana Code 13-25-5 ("VRP").
2. Existing Environmental Conditions. The Parties acknowledge that there are certain Hazardous Substances on, at, or under the Property which are in excess of the Indiana Department of Environmental Management's ("IDEM") clean-up criteria or screening levels ("Existing Environmental Conditions"), as described in the Phase I and the Environmental Reports.
3. Current Remediation Efforts. The Commission continues to remediate the Existing Environmental Conditions under the oversight of IDEM pursuant to the VRA.
4. The Commission's Indemnification. Subject to the terms of this Environmental Agreement, the Commission agrees to release, indemnify and hold harmless Martin's, any entity in which Martin's has a controlling interest, and their respective shareholders, directors, officers, agents, employees, and any assignees under Paragraph 12 of this Agreement, against and with respect to any and all damages, claims, losses, liabilities and expenses, including without limitation legal fees and environmental consulting or sampling fees or expenses and/or cost of Remediation (the "Environmental Costs"), which may be imposed upon, incurred by or asserted against any of them pursuant to the requirements of any governmental authority, including but not limited to the IDEM and the US EPA, and any unrelated third party, arising out of, in connection with or relating to (i) the Existing Environmental Conditions described in Paragraph 2 above, or (ii) any other Environmental Condition, known or unknown, existing, arising or occurring on or prior to the date of this Environmental Agreement.
5. Martin's Indemnification. Subject to the terms of this Environmental Agreement, Martin's agrees to release, indemnify and hold harmless the Commission and any subdivision or agency thereof, including any public officials, directors, officers, agents, employees, and any assignees under Paragraph 12 of this Agreement, against and with respect to any and all damages, claims, losses, liabilities and expenses, including without limitation legal fees and Environmental Costs which may be imposed upon, incurred by or asserted against any of them pursuant to the requirements of any governmental authority, including but not limited to the IDEM and the US EPA, and any unrelated third party, arising out of, in connection with or relating to (i) any Environmental Conditions (including but not limited to the release of Hazardous Substances) not existing on the date of this Environmental Agreement, but rather arising or occurring after the date of this Environmental Agreement (excluding, however, the migration of any such Hazardous Substances onto the Property from other sites or of existing Hazardous Substances from the Property, provided that the Hazardous Substances have not migrated from a release first occurring on other property owned or operated by Martin's or a related entity during Martin's ownership), or (ii) any exacerbation by act or omission of Martin's or its directors, officers, agents, employees, contractors, or invitees, of any Environmental Condition covered by the Commission's Indemnification under Paragraph 4.

6. Claims. Each indemnified party (the “Indemnitee”) shall give the indemnifying party (the “Indemnitor”) prompt written notice of any Claim asserted against one or more of the indemnified persons or entities under Paragraphs 4 and 5 which may give rise to a claim of indemnification under this Environmental Agreement. If the Claim is covered by Paragraphs 4 or 5, the Indemnitor shall undertake the defense of such claim, demand, action, controversy or suit by counsel of its choosing at its sole cost and expense. The Indemnitee shall give the Indemnitor and its counsel reasonable assistance and cooperation with respect to such defense. The Indemnitor shall not be obligated to pay any legal or defense costs for Claims not covered by its respective indemnity.

If investigative or remedial work is required to resolve any Claim covered by Paragraphs 4 or 5, the Indemnitor shall have the right to select the environmental consultant and shall pay for such work at its sole cost and expense. The Indemnitor shall not be obligated to pay any costs for investigative or remedial work not covered by its respective indemnity.

If the Indemnitor, within thirty days after notice of any Claim covered by Paragraphs 4 or 5, fails to undertake a defense, the Indemnitee shall have the right to undertake a defense, including compromise or settlement thereof with counsel of their choosing, and to select an environmental consultant to perform environmental investigation and remediation work required to address such Claim by an applicable government authority. The Indemnitor shall be responsible for reimbursing the Indemnitee for reasonable legal fees and Environmental Costs. The Indemnitor shall retain the right to assume such defense and environmental work, with legal counsel and an environmental contractor of its choosing. Except as provided in this Paragraph 6, the Indemnitee shall not hire any legal counsel or environmental consultant to address any Claim covered by Paragraphs 4 or 5, unless it is at the Indemnitee’s sole cost and expense.

7. Term of Indemnity. The cross-indemnifications set forth in Paragraphs 4 and 5 above shall automatically expire on the earlier of: (i) the date that is 10 years from the date of this Environmental Agreement; or (ii) the Remediation Completion Date as referenced in Paragraph 8 below.

8. Remediation. Subject to the terms of this Environmental Agreement, the Indemnitor agrees to promptly perform (or cause to be promptly performed) the environmental investigations and corrective actions necessary to remediate any Environmental Condition at the Property covered by the Indemnitor’s indemnification, to the extent required by the IDEM and any other governmental authorities with jurisdiction over the Hazardous Substances and contamination at the Property. As used herein, “Remediation” means (i) performing environmental property assessment activities (which may include taking soil borings and the installation, sampling and maintaining of groundwater monitoring wells and/or other monitoring points and related activities) on the Property to complete an assessment of the Property as required by IDEM or other governmental authorities or any court of competent jurisdiction; and (ii) performing corrective action to diligently remediate such Hazardous Substances consistent with the rules, regulations and requirements of IDEM or other governmental authorities or any court of competent jurisdiction.

Any such remediation shall be considered complete upon achievement of the Remediation Objectives. Upon termination of the remediation, the Indemnitor shall decommission any remaining monitoring points and other corrective action equipment and restore the surface of the Property affected by the decommissioning to substantially the same condition which existed prior to such decommissioning in accordance with the rules and regulations of IDEM or other applicable government authority.

The Parties further agree and understand there is currently a voluntary remediation being performed by the Commission pursuant to IDEM's Voluntary Remediation Program. This remediation shall be considered complete upon the date IDEM issues a Certificate of Completion, or the equivalent, together with a covenant not to sue, or the equivalent that addresses all of the Environmental Conditions identified in the VRA to IDEM's satisfaction (the "Remediation Completion Date").

9. Access. Martin's shall cooperate in allowing the Commission, as well as its respective agents and contractors access to and use of the Property at all reasonable times to the extent reasonably required to undertake any investigation or remediation work contemplated in this Agreement including, but not limited to, any such work covered in Paragraphs 4 or 8. This license to access the Property shall continue for as long as is necessary to complete the remediation. The Commission will provide Martin's with reasonable prior notice of its access to the Property will make every commercially reasonable effort to limit its access to the Property to avoid materially interfering with Martin's conduct of its business operations on the Property and will compensate Martin's as set out below with respect to disruption. Martin's will take reasonable actions to ensure that its agents, employees, contractors, and invitees are aware of the location of any monitoring wells or other remediation equipment in order to avoid damage thereto and potential exacerbation of any Hazardous Substances.

Martin's shall not intentionally or unreasonably impair the Commission's ability to comply with applicable environmental laws or to perform the investigation and remediation work. Martin's shall, at the sole cost of the party seeking such access, cooperate with and assist the Commission in obtaining any required approvals, consents, permits or related documents required for the performance of the investigation and Remediation work. Any costs incurred by Martin's for the foregoing shall be reasonable. Martin's shall coordinate with the Commission with respect to any construction activities conducted at the Property by Martin's so as to minimize any interference with the investigation and remediation work.

10. Vapor Intrusion. The Commission agrees to reimburse Martin's up to and including \$62,500 for the cost of any vapor intrusion investigation or mitigation work required by IDEM as part of the Comfort Letter process for the construction of new improvements at the Property (the "Vapor Mitigation Costs"). Any Vapor Mitigation Costs in excess of \$62,500 shall be Martin's sole responsibility. Martin's agrees to implement the most cost-effective investigation and mitigation options for any response related to vapor intrusion. This includes, but is not limited to, taking steps to limit or eliminate the need for vapor intrusion mitigation, which entails accepting any Institutional and/or Engineering Controls that limit or eliminate the need for vapor intrusion mitigation, provided that such Engineering or Institutional Controls are consistent with any Permitted Use. The Commission agrees that all vapor intrusion investigation and mitigation work

conducted shall comply with Environmental Laws, the conditions of the Comfort Letter, and any applicable IDEM guidance. Martin's shall submit written plans for any work that will result in Vapor Mitigation Costs to the Commission for approval, which approval shall not be unreasonably withheld. In the event that Martin's submits written plan for any work that will result in Vapor Intrusion Costs and the Commission does not provide notice of its disapproval within 30 days of such request, the Commission's consent shall be deemed provided.

11. Incremental Cost of Handling Contaminated Soil or Groundwater during Construction Activities. The Commission agrees to reimburse Martin's for the reasonable costs related to the movement, excavation, handling, storage, sampling, treatment and/or disposal of soil or groundwater at the Property contaminated with Hazardous Substances, removed from the Property or relocated on the Property in the course of pre-construction or construction activities of any improvements as necessary to comply with applicable Environmental Laws or Comfort Letter requirements (the "Incremental Costs"), but only to the extent such Incremental Costs would not be incurred by Martin's for preconstruction or construction activities at another property which has no Environmental Conditions. The Commission shall have the right to review and approve any and all activities or plans that may result in such Incremental Costs in order to minimize such Incremental Costs, provided that if the Commission objects to any such activities, plans or Incremental Costs, the Commission shall propose an alternative that is consistent with: (a) Environmental Laws, and implementing regulations and guidance; (b) Comfort Letter requirements; and (c) Martin's planned development and Permitted Use of the Property. The Commission's review of activities and plans that may result in Incremental Costs and approval shall not be unreasonably withheld. The Commission shall not be responsible for any Incremental Costs that result from activities or plans carried out without prior approval by the Commission. In the event that Martin's submits plans for any work that will result in Incremental Costs and the Commission does not provide notice of its disapproval within 30 days of such request, the Commission's consent shall be deemed provided.

12. Use. The Property may be used for the Permitted Use, as defined in Exhibit F to the Purchase Agreement (the "Permitted Use"). Martin's agrees to accept those Engineering Controls and Institutional Controls, including but not limited to executing and recording deed restrictions and allowing for the capping of certain areas of the Property, needed to accomplish the Remediation Objectives. Martin's specifically agrees that the Property shall not be used for purposes or activities inconsistent with attaining and maintaining the Remediation Objectives. Without limiting the foregoing, Martin's specifically agrees the Property shall not be used for any other purpose other than the Permitted Use without the prior written consent of the Commission, which Consent will not be unreasonably withheld. Notwithstanding the foregoing, Martin's may lease the Property to third-parties as long as lessee's use is consistent with the Permitted Use.

Martin's also specifically agrees not to extract or use groundwater under, in, or about the Property for any purpose other than Remediation Work, unless the Commission in its sole discretion consents in writing to such other use.

To the extent the Commission installs or relies on Engineering Controls at the Property necessary to achieve the Remediation Objectives, Martin's shall not alter, change, modify, damage

or disturb such Engineering Controls without the Commission's written consent, which consent shall not be unreasonably withheld. Martin's request for such consent shall be in writing. In the event Martin's requests the Commission's consent to Martin's altering, changing, modifying, damaging or disturbing an Engineering Control or Engineering Controls and the Commission does not provide notice of its disapproval within 30 days of such request, the Commission's consent shall be deemed provided. In the event Martin's alters, changes, modifies, damages or disturbs any Engineering Controls, with or without the Commission's consent, Martin's shall be responsible, at Martin's sole cost and expense, for (i) restoring as near as reasonably possible such Engineering Controls to their pre-existing condition, and (ii) any additional Remediation Work necessitated by any such alteration, change, repair, modification, damage or disturbance.

13. Sampling and Tests. Martin's agrees that it will not, directly or indirectly, either itself or through its agents, employees or contractors, conduct, order, or permit any sampling or tests of any kind relating to the possible presence of Hazardous Substances contamination of any soil, water, aquifer or other environmental media in, on, or under, or in the vicinity of the Property, except to the extent (a) required or recommended by the terms of the IDEM Comfort Letter, or (b) as otherwise required by Environmental Law, or (c) with consent of the Commission (as provided below). Upon written requests, the Commission may thereafter, in its reasonable sole discretion, determine whether and how to (i) permit Martin's to perform such sampling or testing; or (ii) conduct any sampling or testing, using such environmental consultants of the Commission's choice, and provide split samples for independent analysis by Martin's at its expense. This paragraph notwithstanding, Martin's may permit sampling or testing in an emergency, but must notify the Commission in writing immediately after such sampling or testing.

14. Assignment. Upon written notice to the Commission, Martin's may assign its rights under this Environmental Agreement to any future interest holder in the property provided that:

- (i) The proposed assignee assumes in writing all the obligations of Martin's under this Environmental Agreement; and
- (ii) Within fifteen (15) days of receiving written notice of the proposed assignment the Commission does not reasonably object to the assignment.

For purposes of this Section, a reasonable objection by the Commission is one accompanied by reasonable evidence that the proposed assignee has a history of material, unaddressed non-compliance with Environmental Laws.

15. No Third Party Benefit. This Environmental Agreement is not intended to inure to the benefit of any third party, against whom the Parties reserve any and all rights, claims and defenses.

16. Notices. All notices to be given under this Environmental Agreement shall be in writing and shall be deemed to have been given and served when delivered in person, the next business day after being sent, charges prepaid, by Federal Express, UPS or similar overnight carrier, or the second business day after depositing notice in the United States mail, postage prepaid, in each case to the address set forth below or such other address as either party may have last specified by written notice to the other:

If to the Commission:

Scott Ford, Executive Director
Community Investment Department
City of South Bend, Indiana
14th Floor, County-City Bldg.
227 W. Jefferson Boulevard
South Bend, Indiana 46601

With a copy to:

Thao T. Nguyen
Plews Shadley Racher & Braun LLP
South Bend, Indiana 46637

and

Corporation Counsel of South Bend, Indiana
14th Floor, County-City Bldg.
South Bend, Indiana 46601

If to Martin's:

Gregory L. Freehauf
Vice President Finance, CFO
Martin's Super Markets, Inc.
PO Box 2709
South Bend, Indiana 46624

With a copy to:

Barnes & Thornburg LLP
100 North Michigan, 6th Floor
South Bend, Indiana 46601
Attn: Joel Bowers

17. Multiple Counterparts. This Environmental Agreement may be executed in multiple counterparts, each of which shall be considered an original with counterparts signed by one party when combined with counterparts signed by other parties to this Environmental Agreement constituting an original contract.

18. Paragraph Headings. This Environmental Agreement shall be construed without reference to paragraph headings which are inserted only for convenience of reference.

19. Entire Agreement. This instrument contains the entire agreement of the parties relating to environmental investigation, remediation, and indemnification for the Property and supersedes all prior oral or written understandings, agreements or contracts, formal or informal, between the parties hereto pertaining to said subject.

20. Controlling Effect of This Agreement. To the extent that any provision in this Environmental Agreement conflicts with any provision in the Purchase Agreement or any other agreement related to the purchase and sale of the Property described therein, this Environmental Agreement shall control.

IN WITNESS WHEREOF, the undersigned executed and delivered this Environmental Indemnity, Remediation, and Access Agreement on the date set forth below the name of each.

MARTIN'S SUPER MARKETS, INC.

Gregory L. Freehauf
Secretary, Vice President Finance, CFO

MARTIN'S MO LLC

Gregory L. Freehauf
Secretary, Vice President Finance, CFO of
Martin's Super Markets, Inc.
Its Manager

CITY OF SOUTH BEND, DEPARTMENT OF REDEVELOPMENT

By the SOUTH BEND REDEVELOPMENT COMMISSION

By: _____

Its: _____

Dated: _____

ATTEST:

By: _____

Its: _____

Dated: _____

EXHIBIT A
DESCRIPTION OF PROPERTY