

STORMWATER UTILITY AGREEMENT

This Agreement is made and entered into this ___ day of January, 2013, by and between MARTIN’S FOODS OF SOUTH BURLINGTON, INC., a Vermont corporation with a principal place of business in Scarborough, Cumberland County, State of Maine (“Martin’s Foods”), and TOWN OF HINESBURG, VERMONT, in the County of Chittenden, State of Vermont (“Hinesburg”).

WHEREAS, Martin’s Foods, in connection with its development of Lot 15 and other property in the Giroux Commercial Subdivision, desires to install a stormwater drainage pipe beneath and crossing Commerce Street, and Hinesburg desires to allow such construction and to permit the ongoing maintenance, repair and replacement of the pipe, all on the terms, covenants and conditions described herein;

NOW THEREFORE, in consideration of the parties’ mutual promises and covenants it is agreed as follows:

1. Hinesburg hereby grants to Martin’s Foods permission and authority to perform work in, on and under Commerce Street related to the installation, operation, maintenance, repair and replacement of a new stormwater drainage pipe running under Commerce Street at or near the general location shown and designated as “New 18’ PE Pipe” and shown in blue on the plan attached hereto as Exhibit A, entitled “Commerce Street Utility Plan, Sheet C4”, prepared by O’Leary Burke Civil Associates PLC, last revised 1/28/134/26/12, and any appurtenances relating thereto.

2. Said pipe shall be installed, maintained, repaired and replaced at the sole cost and expense of Martin’s Foods beneath the surface grade of Commerce Street, a public road existing within a road right of way in the Town of Hinesburg, Chittenden County, Vermont, received by the Town of Hinesburg by Deed of Commerce Park Association _____ dated March 29, 1989 _____ and recorded in Book 71—, Page 682—, of the Hinesburg Land Records.

3. Prior to the start of work, Martin’s Foods shall furnish ~~the Town of Hinesburg~~ with one (1) set of comprehensive plans and/or sketches for the work. The plans shall show the location of the pipe and any appurtenances such as manholes and drainage traps (collectively

referred to herein as the “pipe”), including a description of the size, type and method of installation within and beneath the Commerce Street road right of way including the traveled portion of the road, and the new catch basing to be located on the northerly side of Commerce Street. All work shall be lawfully permitted prior to commencement, and performed in accordance with all said applicable local, state or federal permits, laws and regulations, including without limitation the conditions and requirements of any stormwater permit issued in connection therewith and the Hinesburg Road Standards. Upon completion of the work, Martin’s Foods will provide a set of as-built plans to Hinesburg to be recorded in the Hinesburg Land Records.

4. Martin’s Foods shall furnish all material, perform all labor and pay all costs for the installation, operation, maintenance, repair and replacement of the pipe. All work and materials shall comply with the reasonable conditions and requirements of the Hinesburg Road Foreman (or such other duly appointed and similarly qualified representative of the Hinesburg Selectboard) Engineer. The Town of Hinesburg may hire an engineer to review the plans and inspect the work performed by Martin’s Foods, and Martin’s Foods hereby agrees to reimburse Hinesburg for the reasonable costs of such engineer. Ownership of the pipe and the perpetual obligation for its maintenance, repair and replacement shall be retained by Martin’s Foods, or its successors or assigns, on the terms and conditions described in this Agreement.

5. During any work, Martin’s Foods will use commercially reasonable efforts to minimize any traffic interference and to maintain safe conditions for vehicular and pedestrian traffic. Martin’s Foods agrees to notify Hinesburg at least 24 hours prior to the commencement of any work, including a proposed completion schedule. Martin’s Foods agrees to promptly restore any disturbance it causes to the Commerce Street road right of way to the condition existing prior to the commencement of any of its work, including the restoration of any grades, slopes embankments, sidewalks or pavement within the right of way and the one-time installation of a 1” overlay of asphalt on the Commerce Street roadway between Commerce Street Extension and Route 116, and shall repair any subsequent settling in the roadway near the pipe caused by the pipe or its installation, operation, repair or replacement; provided, however, that Martin’s Foods shall have no other obligation to maintain, repair or replace any portion of Commerce Street, except as expressly set forth herein. Upon completion of the pipe installation and restoration work, the Hinesburg Road Foreman (or such other duly appointed and similarly qualified representative of the Hinesburg Selectboard) will conduct an inspection thereof, and Martin’s Foods will correct any material defects relating thereto. Martin’s Foods shall promptly repair any damage done to the road as a result of the installation or any subsequent, maintenance, repair or replacement of the pipe, or resulting as a consequence from the pipe’s presence in the road right of way.

6. Martin’s Foods hereby assumes all risk for damages that may occur to persons or property on account of the work or the pipe, and does hereby indemnify and hold Hinesburg harmless from any and all costs, liabilities, expenses, suits, judgments or damages to persons or property or claims of any nature whatsoever (including reasonable attorneys’ fees) arising out of or in connection with the work and the pipe and with Martin’s Foods occupation of the right of way hereunder, except to the extent caused by Hinesburg, its employees, agents or contractors.;

7. Martin's Foods shall procure and maintain liability insurance in commercially reasonable amounts to protect the public from injuries occurring as a result of the work and to protect against all liabilities and damages on account of injuries to workers as required by law. Certificates of insurance or other reasonably satisfactory evidence showing that Martin's Foods maintains such coverages shall be provided to Hinesburg upon its written request.

8. Martin's Foods covenants and agrees that its work will be conducted and the pipe operated and maintained in such a manner as not to unreasonably interfere with Hinesburg construction, improvement or maintenance in said road right of way.

9. Martin's Foods shall be and is hereby responsible for locating and safeguarding any existing utility lines within the project area that may be disturbed by its work and improvements.

10. This Agreement has been entered into and executed in the State of Vermont and shall be interpreted in accordance with the laws of said state.

11. This Agreement, upon acceptance by the parties, constitutes the sole and only agreement between the parties hereto as to the subject matter hereof and is intended by each party to constitute the final written memorandum of their agreements and understandings in this regard. This Agreement may be amended only in writing signed by both parties.

12. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover its actual attorneys' fees, expenses and costs incurred in connection with such proceeding, including any fees, costs and expenses incurred in any post-judgment proceeding to collect or enforce said judgment.

13. If any paragraph, section or phrase contained in this Agreement shall become illegal, null or void, against public policy or otherwise unenforceable for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, against public policy or otherwise unenforceable, the remaining paragraphs, sections, and phrases contained in this Agreement shall not be affected thereby.

14. No waiver of any provision herein by either party, nor any failure or delay by either party in the exercise of any right given hereunder shall constitute a waiver thereof nor shall any partial exercise of any right preclude further exercise thereof.

15. Notices: Whenever notice or demand is to be given, such notice or demand shall be in writing and shall be delivered to:

Martin's Foods of South Burlington

Attn: Real Estate Department

145 Pleasant Hill Road

Scarborough, Maine 04074

Town of Hinesburg

Attn: Hinesburg Road Foreman

16. Nothing contained herein shall be deemed to require Martin's Foods to undertake any work or install, operate, maintain, repair or replace a new stormwater drainage pipe running under Commerce Street in the event Martin's Foods does not develop Lot 15 in the Giroux Commercial Subdivision.

17. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

MARTIN'S FOODS OF SOUTH BURLINGTON

WITNESS

By:
Its:

STATE OF VERMONT
_____ COUNTY, SS.

At _____ in said County and State on this _____ day of _____, 2013, _____ personally appeared and he/she acknowledged the foregoing instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of Martin's Foods of South Burlington, Inc..

Before me, _____

Notary Public

My Commission Expires: _____

TOWN OF HINESBURG

WITNESS

By:
Its:

STATE OF VERMONT

CHITTENDEN COUNTY, SS.

At Hinesburg in said County and State on this ____ day of _____, 2013,
_____ personally appeared and he/she acknowledged the foregoing instrument, by him/her
sealed and subscribed, to be his/her free act and deed and the free act and deed of the Town of
Hinesburg.

Before me, _____

Notary Public

My Commission Expires: _____

EXHIBIT A

Commerce Street Utility Plan, Sheet C4, prepared by O’Leary Burke Civil Associates PLC, last revised 4/26/12.



Commerce Street
stormwater agreemer