



E. The Commonwealth believes that this Agreement is fair, consistent with G.L. c. 21E and in the public interest, and has entered into this Agreement as part of an effort to revitalize an area of Gardner, Massachusetts.

## II. THE PARTIES

A. The OAG is a duly constituted agency of the Commonwealth of Massachusetts charged with the legal representation of the Commonwealth and maintains offices at One Ashburton Place, Boston, Massachusetts 02108. Included within the OAG's authority is the authority to enter into Brownfields Covenant Not to Sue Agreements pursuant to G.L. c. 21E, §3A(j)(3).

B. The City is a municipal corporation duly organized under the laws of the Commonwealth, with a principal office at 95 Pleasant Street, Gardner, Massachusetts 01440. In accordance with this Agreement, the City shall undertake the Project as discussed in Section IV.A.2 of this Agreement.

C. Garbose is a natural person residing at 770 Salisbury Road, #416, Worcester, Massachusetts 01609. Garbose is also an officer of the former owner of the Property, Garbose Metal Company. In accordance with this Agreement, Garbose shall undertake the obligations discussed in Section IV.A.4 of this Agreement.

## III. STATEMENT OF FACT AND LAW

A. The Commonwealth enters into this Agreement pursuant to its authority under G.L. c. 21E, §3A(j)(3), and the Brownfields Covenant Regulations.

B. Unless otherwise expressly provided, terms used in this Agreement which are defined in the Brownfields Covenant Regulations shall have the meaning assigned to them under such regulations. Terms not defined in the Brownfields Covenant Regulations, but defined under G.L. c. 21E and/or the MCP, shall have the meaning assigned to them under G.L. c. 21E and/or the MCP. Terms used in this Agreement which are defined in the Brownfields Covenant Regulations, G.L. c. 21E, the MCP, as well as those defined in this Agreement, are capitalized.

C. The Property is approximately 10.7 acres of land at 155 Mill Street in Gardner, Massachusetts, on the corner of Timpany Boulevard (Route 68). The Property is commonly known as the former Garbose Metal Company Facility. The Property is bounded by Mill Street to the south, Timpany Boulevard to the west, the Timpany Plaza Shopping Center to the north, and the former S. Bent Mill property to the east. The Property is divided into two lots. Lot 1 contains approximately 9.561 acres. Lot 2, which is on the southwest corner of the Property and separated from Lot 1 by a brook, contains approximately 1.178 acres. The Property is more fully described in Exhibit A, which is attached and incorporated into this Agreement. Due to historic industrial activities at this location, oil, metals (including cadmium and lead), polychlorinated biphenyls ("PCBs"), and dioxins are known to exist in the soil, groundwater, sediment and/or surface water at Lot 2 of the Property.

D. The Massachusetts Department of Environmental Protection ("MassDEP") has received notice of Releases of Oil and/or Hazardous Materials ("OHM") at the Property.

MassDEP has assigned Release Tracking Numbers (“RTNs”) 2-0011321, 2-0014627, 2-0014896, 2-0015974 and 2-0016137 to those Releases. The areas where OHM have come to be located as a result of the Releases assigned RTNs 2-0011321, 2-0014627, 2-0014896, 2-0015974 and 2-0016137 constitute the “Site,” as that term is defined at 310 CMR 40.0006, for the purposes of this Agreement. MassDEP has linked all of the RTNs for the Site together under RTN 2-0011321, so that reports addressing RTN 2-0011321 may describe Response Actions for all releases at the Site. The Site is also the “property addressed” by this Agreement as the term “property addressed” is used at 940 CMR 23.08(1) in the Brownfields Covenant Regulations. The Site is more fully described in Exhibit B, which is attached and incorporated into this Agreement. Exhibit B describes the environmental conditions in detail, including the nature and extent of contamination detected at the Site.

#### IV. COMMITMENTS AND OBLIGATIONS

In consideration of the representations made and promises exchanged by and between the Parties, each of them covenants and agrees to the terms and conditions which follow.

##### A. REPRESENTATIONS AND COMMITMENTS BY THE CITY AND GARBOSE

1. The City represents that:
  - a. it is an Eligible Person;
  - b. it is not at the time of execution of this Agreement a person with potential liability for the Site pursuant to G.L. c. 21E;
  - c. it is not now nor has it ever been previously affiliated with any person having potential liability for the Site pursuant to G.L. c. 21E, except as set forth below;
  - d. its involvement with the Site has been limited to:
    - i. evaluating the Property for purposes of acquiring the Property;
    - ii. negotiating to acquire the Property; and
    - iii. communicating with the Commonwealth and federal agencies with respect to the remediation and redevelopment of the Property;
    - iv. collecting taxes and providing municipal services as normally incident to any property located within its jurisdiction;
  - e. none of the City’s activities has caused or contributed to the Release or Threat of Release of OHM at the Site under G.L. c. 21E and/or the MCP; and

f. The City is not at the time of execution of this Agreement subject to any outstanding administrative or judicial environmental enforcement action arising under any applicable federal, state or local law or regulation.

2. The City agrees to the following terms and conditions:

a. The City shall endeavor to acquire ownership of the Property and, if it becomes an Owner and/or Operator of the Property, undertake the Project by soliciting proposals to redevelop Lot 1 of the Property for retail, wholesale, office, or other commercial use. If it becomes an Owner and/or Operator of the Property, the City shall also preserve Lot 2 as open space, record a deed restriction that restricts development on Lot 2, and construct a walking trail adjacent to the brook on Lot 2. A full description of the Project is attached as Exhibit C to this Agreement.

b. If it becomes an Owner and/or Operator of the Property, the City shall achieve and maintain or arrange for the achievement and maintenance of a Permanent Solution for any Release of OHM occurring at the Site, and submit a Response Action Outcome (“RAO”) Statement describing such Permanent Solution, in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP. If it becomes an Owner and/or Operator of the Property, the City shall also cooperate fully with MassDEP.

c. To cooperate fully includes, without limitation:

i. providing prompt and reasonable access to the portion of the Site owned or operated by the City to MassDEP for any purpose consistent with G.L. c. 21E and the MCP;

ii. complying with the Release notification provisions established by G.L. c. 21E and the MCP;

iii. responding in a timely manner to any request made by the MassDEP or OAG to produce information as required pursuant to G.L. c. 21E;

iv. taking reasonable steps to prevent the Exposure of people to OHM, such as by fencing or otherwise preventing access to the Site or portion of the Site under the City’s control if appropriate and/or necessary to prevent Exposure or as otherwise required by G.L. c. 21E, the MCP or MassDEP;

v. containing any further Release or Threat of Release of OHM from a structure or container under the City’s control, to the extent necessary under, and in accordance with, G.L. c. 21E and MCP, upon obtaining knowledge of a Release or Threat of Release of OHM; and

vi. to the extent the City conducts, or causes to be conducted, Response Actions at the Site, doing so in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP.

d. After the achievement of a Permanent Solution in accordance with Section IV.A.2.b of this Agreement, the City shall operate the Property consistent with any Activity and Use Limitation (“AUL”), if any, recorded for the Property.

e. The City shall provide a copy of this Agreement to any successors, assigns, lessees or licensees of the City’s ownership or operational interests in any portion of the Property (“Subsequent Owners and/or Operators”).

3. Garbose represents that:

a. he is the current Owner and Operator of the Property and, as such, may be liable pursuant to G.L. c. 21E, §5;

b. he entered into an Administrative Consent Order with Penalty (“ACOP”), ACOP-CE-05-3A022, with MassDEP in 2006, and is currently subject to the Third Amendment of this consent order, ACOP-CE-05-3A022-AMEND 3, which describes certain of his obligations at the Site. Other than ACOP-CE-05-3A022, as amended, Garbose is not at the time of execution of this Agreement subject to any outstanding administrative or judicial environmental enforcement action arising under any applicable federal, state or local law or regulation; and,

c. he has been deemed by the MassDEP to have Financial Inability Status from July 25, 2007 through July 25, 2010 and is currently financially unable to conduct further Response Actions at the Site.

4. Garbose agrees to the following terms and conditions:

a. Garbose shall transfer ownership of both Lots 1 and 2 of the Property to the City within 90 days after this Agreement has been executed by all Parties.

b. Garbose shall arrange for the achievement and maintenance of a Permanent Solution for any Release of OHM occurring at the Site and submittal of an RAO Statement describing such Permanent Solution, in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP by transferring ownership of the Property to the City and allowing the City to perform Response Actions at the Site. Garbose shall cooperate fully with the City, its successors and assigns, and MassDEP in achieving and maintaining a Permanent Solution at the Site.

c. To cooperate fully includes, without limitation:

i. providing prompt and reasonable access to the portion of the Site owned or operated by Garbose to MassDEP for any purpose consistent with G.L. c. 21E and the MCP;

ii. complying with the Release notification provisions established by G.L. c. 21E and the MCP;

iii. responding in a timely manner to any request made by MassDEP or OAG to produce information as required pursuant to G.L. c. 21E;

iv. taking reasonable steps to prevent the Exposure of OHM to people at the Site or portion of the Site under Garbose's control, such as (1) by fencing or otherwise preventing access to the Site if appropriate and/or necessary to prevent Exposure or (2) as otherwise required by G.L. c. 21E, the MCP or MassDEP;

v. containing any further Release or Threat of Release of OHM from a structure or container under Garbose's control, to the extent necessary under, and in accordance with, G.L. c. 21E and MCP, upon obtaining knowledge of a Release or Threat of Release of OHM;

vi. to the extent Garbose conducts Response Actions at the Site, doing so in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP.

## B. COVENANT NOT TO SUE BY THE COMMONWEALTH

### 1. The City

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by the City set forth in Section IV.A of this Agreement, and subject to the City's compliance with the terms and conditions of this Agreement and the Termination for Cause provisions described below in Section IV.B.6, the Commonwealth covenants not to sue the City for Response Action costs, contribution, property damage, or injunctive relief under G.L. c. 21E, or for property damage under the common law, relating to any Release of OHM occurring at the Site prior to the execution of this Agreement (the "Covered Releases"). The covenant in this Paragraph shall vest on the effective date of this Agreement as defined in Section IV.D.5. This Agreement shall not affect any liability established by contract.

### 2. Garbose

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by Garbose set forth in Section IV.A of this Agreement, and subject to Garbose's compliance with the terms and conditions of this Agreement and the Termination for Cause provisions described below in Section IV.B.6, the Commonwealth covenants not to sue Garbose for Response Action costs, contribution, property damage, or injunctive relief under G.L. c. 21E, or for property damage under the common law, relating to the Covered Releases. The covenant in this Paragraph shall vest on the effective date of this Agreement as defined in Section IV.E.5. This Agreement shall not affect any liability established by contract.

### 3. Subsequent Owners and/or Operators

The Commonwealth also covenants not to sue Eligible Persons who are Subsequent Owners and/or Operators, as defined in Section IV.A.2.e of this Agreement, for Response Action costs, contribution, property damage or injunctive relief under G.L. c. 21E, or



for property damage under the common law, relating to the Covered Releases. The liability relief available to Subsequent Owners and/or Operators shall be subject to: the same terms and conditions as those that apply to the City; and the Subsequent Owner's and/or Operator's covenant not to sue the Commonwealth in Section IV.C of this Agreement.

4. Applicability of the Agreement

a. With respect to the City, this Agreement shall be in effect unless and until the statutory protections available to the City or Subsequent Owners and/or Operators pursuant to G.L. c. 21E, §5C are in effect. This Agreement is subject to the Termination for Cause provisions described below in Section IV.B.6.

b. With respect to Garbose, upon vesting, this Agreement shall remain in effect, provided that Garbose continues to comply with the terms and conditions of this Agreement. This Agreement is subject to the Termination for Cause provisions described below in Section IV.B.6.

5. Reservations of Rights

The Commonwealth's covenants in this Agreement shall not apply to:

a. any Release of OHM at or from the Property that first occurs after the date of execution of this Agreement;

b. any Release of OHM which the City, Garbose or any Subsequent Owner and/or Operator causes, contributes to, or causes to become worse, but if the cause or contribution is that of a Subsequent Owner and/or Operator, such reservation shall affect the liability protection applicable only to such Subsequent Owner and/or Operator and shall not affect the City's or Garbose's liability protection under this Agreement;

c. any Release of OHM not discovered when an RAO Statement is submitted to MassDEP that would have been discovered if an assessment of the Property or portion of the Property covered by or addressed in the RAO Statement had been performed consistent with the Standard of Care in effect when the RAO Statement was submitted;

d. any Release or Threat of Release of OHM from which there is a new Exposure that results from any action or failure to act pursuant to G.L. 21E by the City, Garbose or a Subsequent Owner and/or Operator during the City's, Garbose's or a Subsequent Owner's and/or Operator's ownership or operation of the Property, but if the action or failure to act is that of a Subsequent Owner and/or Operator, such reservation shall affect the liability protection applicable only to such Subsequent Owner and/or Operator and shall not affect the City's or Garbose's liability protection under this Agreement;

e. any Release of OHM not expressly described as one of the Covered Releases in Section IV.B.1 , or Section IV.B.2 of this Agreement;

f. any claims for damages for injury to, destruction of, or loss of natural resources.

6. Termination for Cause

a. If the OAG or MassDEP determines that the City or Garbose submitted materially false or misleading information as part of their Application to Enter into a Brownfields Covenant Not to Sue Agreement, the OAG may terminate the liability protection offered by this Agreement for the offending party in accordance with Section IV.B.6.d of this Agreement. A statement made by the City or Garbose regarding the anticipated benefits or impacts of the proposed Project will not be considered false or misleading for purposes of this section if the statement was asserted in good faith at the time it was made.

b. If the OAG or MassDEP determines that Garbose has violated the terms and conditions of this Agreement, including, but not limited to, failure to allow for the City to achieve and maintain a Permanent Solution in accordance with Section IV.A.4.b of this Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with Section IV.B.6.d of this Agreement. In the event that the liability protection is terminated solely because of a violation by Garbose of one or more of the conditions set forth in Section IV.A.4.c.i through Section IV.A.4.c.v of this Agreement, such termination shall affect the liability protection applicable only to Garbose and shall not affect the City's or a Subsequent Owner and/or Operator's liability protection.

c. If the OAG or MassDEP determines that the City or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement, including, but not limited to, failure to achieve and maintain a Permanent Solution in accordance with Section IV.A.2.b of this Agreement, G.L. c. 21E and the MCP, failure to arrange for a timely response to a Notice of Audit Finding or any other notice requiring additional work to achieve and/or maintain a Permanent Solution, or failure to perform Response Actions in accordance with the Standard of Care, or if the OAG or MassDEP determines that the City will not acquire ownership of the Property despite endeavoring to do so, the OAG may terminate the liability protection offered by this Agreement in accordance with Section IV.B.6.d of this Agreement. In the event that the liability protection is terminated solely because of a violation by the City of one or more of the conditions set forth in Section IV.A.2.c.i through Section IV.A.2.c.v of this Agreement, such termination shall affect the liability protection applicable only to the City and shall not affect Garbose's liability protection. In the event that the liability protection is terminated solely because of a violation by a Subsequent Owner and/or Operator of one or more of the conditions set forth in Section IV.A.2.c.i through Section IV.A.2.c.v of this Agreement, such termination shall affect the liability protection applicable only to the Subsequent Owner and/or Operator and shall not affect the City's or Garbose's liability protection.

d. Before terminating the liability relief provided by this Agreement, the OAG will provide the City, Garbose or a Subsequent Owner and/or Operator, as appropriate, with written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. If the OAG, in its sole reasonable discretion, deems it appropriate, the notice from the OAG shall provide a reasonable period of time for the City, Garbose or a



Subsequent Owner and/or Operator, as appropriate, to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement.

e. Termination of liability relief pursuant to this section shall not affect any defense that the City, Garbose or a Subsequent Owner and/or Operator might otherwise have pursuant to G.L. c. 21E.

C. COVENANT NOT TO SUE BY THE CITY, GARBOSE AND ANY SUBSEQUENT OWNER AND/OR OPERATOR

1. In consideration of the Commonwealth's covenants not to sue in Section IV.B of this Agreement, the City and Garbose covenant not to sue and not to assert any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the following matters as they relate to the Site or this Agreement:

a. any direct or indirect claims for reimbursement, recovery, injunctive relief, contribution or equitable share of response costs or for property damage pursuant to G.L. c. 21E in connection with any of the Covered Releases;

b. any claims for "takings" under the Fifth Amendment to the United States Constitution, under the Massachusetts Constitution, or under G.L. c. 79 based on the argument that, with respect to a Covered Release, the requirements of Chapter 21E, the MCP, or the requirements of this Agreement constitute a taking;

c. any claims for monetary damages arising out of Response Actions at the Site and/or the Property;

d. any claims or causes of action for interference with contracts, business relations or economic advantage based upon the conduct of MassDEP pursuant to Chapter 21E prior to the date of this Agreement concerning any of the Covered Releases; or

e. any claims for costs, attorneys fees, other fees or expenses incurred in connection with the Covered Releases.

2. Subsequent Owners and/or Operators shall be bound by the City's and Garbose's covenants in this Section IV.C. In the event that, despite these covenants, a Subsequent Owner and/or Operator asserts any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the claims listed in this Section IV.C, such claims or causes of action shall have no effect on the rights, benefits, and protections secured under this Agreement for any other entity.

3. The City's and Garbose's covenants in this Section IV.C shall have no effect on any contractual rights and obligations that may exist between Garbose and the City.

D. CONTRIBUTION PROTECTION AND RIGHTS OF AFFECTED THIRD PARTIES

With regard to the Covered Releases, the City, Garbose, and any Subsequent Owner and/or Operator are entitled to the protection G.L. c. 21E §3A(j)(3) provides from claims for contribution, Response Action costs or property damage brought by third parties under G.L. c. 21E, §§ 4 and/or 5, or third party claims brought for property damage claims under the common law, based solely on the status of the City, Garbose, or any Subsequent Owner and/or Operator as Owner or Operator of the Property and/or the Site, provided that: the City or Garbose has provided Affected Third Parties and the public with notice pursuant to G.L. c. 21E, §3A(j)(3) and 940 CMR 23.04(2); and the Response Actions upon which any RAO Statement submitted to MassDEP pursuant to Section IV.A.2.b or Section IV.A.4.b of this Agreement relies meet the Standard of Care in effect when the RAO Statement is submitted to MassDEP.

E. GENERAL PROVISIONS

1. This Agreement may be modified only upon the written consent of all Parties.

2. If any court of competent jurisdiction finds any term or condition of this Agreement or its application to any person or circumstance unenforceable, the remainder of this Agreement shall not be affected and each remaining term and provision shall be valid and enforceable to the full extent permitted by law.

3. Each Party warrants and represents to the others that it has the authority to enter into this Agreement and to carry out its terms and conditions.

4. This Agreement may be fully executed by all Parties in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

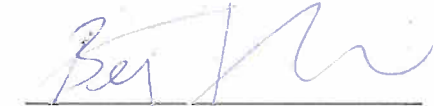
5. Effectiveness

a. The Commonwealth's covenant not to sue the City, as described in Section IV.B.1 of this Agreement, and the protections from third party claims provided to the City in Section IV.D, shall be effective as of the date this Agreement is fully executed by all Parties;

b. The Commonwealth's covenant not to sue Garbose, as described in Section IV.B.2 of this Agreement, shall be effective as of the later of the following dates: the date of transfer of ownership of the Property to the City; and the date the City obtains a valid Tier I permit for conducting Response Actions at the Site, either by transfer of Garbose's permit or by application for a new permit. The protections from third party claims provided to Garbose in Section IV.D shall be effective when any combination of RAO Statements for a Permanent Solution are submitted to MassDEP with respect to both soil and waterborne contamination at the entire Site, as long as the Response Actions upon which the RAO Statements rely meet the Standard of Care in effect when the RAO Statements are submitted to MassDEP.


IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

By:   
Benjamin J. Ericson  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Date: 10/29/10

CITY OF GARDNER

  
By: \_\_\_\_\_

Name: MARK HAWK

Title: MAYOR

Date: 10/20/10

S. BERNARD GARBOSE

\_\_\_\_\_

Date: \_\_\_\_\_

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

By: \_\_\_\_\_

Benjamin J. Ericson  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Date: \_\_\_\_\_

CITY OF GARDNER

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

S. BERNARD GARBOSE

*S. Bernard Garbose*

Date: *October 25, 2010*

# Exhibit A

## EXHIBIT A

### PROPERTY DESCRIPTION

Being the premises conveyed to S. Bernard Garbose as recorded in Worcester District Registry of Deeds, Book 25560, Page 317, and as further described as follows:

#### Lot 1

A certain parcel of land situated on the northerly side of Mill Street and the easterly side of Timpany Boulevard, in Gardner, Worcester County, Massachusetts, bounded and described as follows:

BEGINNING at a northwesterly corner thereof, at a point in the easterly line of Timpany Boulevard at a corner of land of Timpany Plaza Limited Partnership;  
THENCE South 68° 41' 43" East, 344.17 feet;  
THENCE South 73° 25' 46" East, 180.90 feet;  
THENCE South 16° 34' 14" West, 15.00 feet;  
THENCE South 73° 25' 46" East, 150.00 feet to land of S. Bent & Bros., Inc., the preceding four courses being by said Timpany Plaza Limited Partnership land;  
THENCE South 03° 54' 46" East, by said Bent land, 205.62 feet to a corner of land of Henry and Sandra L Ikonen;  
THENCE South 66° 51' 10" West, by said Ikonen land, 146.79 feet to an iron pipe at land of Emery and Rheal McCaie;  
THENCE North 00° 56' 12" East, 157.51 feet to an iron pipe;  
THENCE South 74° 58' 32" West, 64.66 feet to an iron pipe;  
THENCE South 68° 16' 32" West 19.68 feet to an iron pipe;  
THENCE South 63° 22' 32" West 27.58 feet;  
THENCE South 24° 01' 32" West 61.57 feet;  
THENCE South 09° 38' 32" West, 268.80 feet to a railroad spike in the northerly line of Mill Street, the preceding six courses being by said McCaie land;  
THENCE South 66° 51' 10" West, 29.70 feet;  
THENCE South 70° 20' 10" West, 45.57 feet;  
THENCE South 73° 15' 28" West, 290.30 feet;  
THENCE South 74° 15' 28" West, about 16.31 feet to the center of Pail Factory Brook, and land now or formerly of Garbose Metal Company, and being shown as Lot "2" on a plan hereinafter referred to, the preceding four course being by said road line;  
THENCE northerly and northwesterly by said brook, said Garbose land and said Lot "2" about 248 feet to a corner of land now or formerly of Mary Jurewicz;  
THENCE North 03° 16' 41" East, by said Jurewicz land and land of Eugene V. and Lee A. Butler, about 286.53 feet to an iron pipe;  
THENCE continuing North 03° 16' 41" East, 65.79 feet;  
THENCE North 04° 01' 41" East 73.93 feet to a point in the easterly line of Timpany Boulevard, the preceding two courses being by said Butler land;  
THENCE northerly by a curve to the right, having a radius of 960.00 feet, an arc length of 107.285 feet to a point of tangency;



THENCE North 39° 44' 21" East, 146.37 feet to a corner of land of the first mentioned Timpany Plaza Limited Partnership and the point of beginning, the preceding two courses being by said road line.

Containing about 9.561 acres or about 416,480 square feet.

Also including a Right of Way and other rights over land of Emery and Rheel McCaie as reserved in Book 3786, Page 101 of said Registry.

Also subject to the rights and obligations as set forth in instrument from Charles O. Bent as described in Book 1695, Page 588 of said Registry.

Subject to the right to use the railroad siding and spur track, used in common as set forth in Book 3786, Page 101 of said Registry.

Subject to a Right of Way and Easements granted to Ramsdell-Smith Corp. as set forth in Book 3786, Page 101 of said Registry.

Subject to sewer location by City of Gardner, recorded in book 1787, Page 214.

Subject to rights and easements, recorded in Book 6984, Page 145 and confirmed in Book 7005, Page 302.

Subject to taking by City of Gardner for sewer purposes recorded in Book 7326, Page 163.

Subject to various Easements taken for the Layout of Timpany Boulevard as recorded in Book 48708, Page 301 including those designated as "D-9" and "TC-1".

Subject to and with all rights, obligations, privileges and easements that may be appurtenant to or upon the described premises of every kind and nature.

Being shown as Lot "1" on a plan entitled: "Plan of Land Surveyed for Garbose Metal Company, Gardner, MA, April 30, 1996, Szoc Surveyors, 32 Pleasant St, Gardner, MA" recorded in Worcester District Registry of Deeds, Plan Book 710, plan 46.

#### Lot 2

A certain parcel of land situated at the northeasterly intersection of the northerly side of Mill Street and the easterly side of Timpany Boulevard, in Gardner, Worcester County, Massachusetts, bounded and described as follows:

BEGINNING at northwesterly corner thereof, at a point in the easterly line of Timpany Boulevard at a corner of land now or formerly of Mary Jurewicz;

THENCE North 87° 39' 14" East, by said Jurewicz land about 108.42 feet to the center of Pail Factory Brook at other land now or formerly of Garbose Metal Company and being shown as Lot "1" on a plan hereinafter referred to;

THENCE southeasterly and southerly by said brook, said Garbose land and said Lot "1" about 248 feet to the northerly line of Mill Street;

THENCE South 74° 15' 28" West, about 105.13 feet;

THENCE South 75° 30' 28" West, 69.96 feet;

THENCE South 78° 08' 22" West, 34.32 feet to a stone bound;

THENCE South 79° 49' 45" West, 51.01 feet to a highway bound that rounds the northeasterly intersection of the said line of Mill Street with the easterly line of Timpany Boulevard, the preceding four courses being by the said line of Mill Street;

THENCE westerly, northwesterly and northerly by a curve to the right having a radius of 40.00 feet, by said intersection an arc length of 72.447 feet to a point of tangency in the easterly line of Timpany Boulevard;

THENCE North 03° 36' 08" East, 138.42 feet to a highway bound;

THENCE North 80° 11' 08" East 20.56 feet;

THENCE North 03° 36' 08" East, 61.91 feet to a corner of land of the first mentioned Jurewicz and the point of beginning. The preceding three courses being by said road line.

Containing about 1.178 acres or about 51,300 square feet.

Subject to various Easements taken for the Layout of Timpany Boulevard as recorded in Worcester District Registry of Deeds, Book 4808, Page 301 including the one designated as "D-13".

Subject to and with all rights, obligations, privileges and easements that may be appurtenant to or upon the described premises of every kind and nature.

Being shown as Lot "2" on a plan entitled "Plan of Land Surveyed for Garbose Metal Company, Gardner, MA, April 30, 1996, Szoc Surveyors, 32 Pleasant St., Gardner, MA" recoded in Worcester District Registry of Deeds, Plan Book 710, Plan 46.

# Exhibit B

## EXHIBIT B

### SITE DESCRIPTION AND SUMMARY OF ENVIRONMENTAL CONDITIONS

#### A. Site Description

According to the Phase IV Remedy Implementation Plan prepared by Corporate Environmental Advisors, Inc., dated January 2007, the Site description is as follows (as updated):

The Site is located at 155 Mill Street in Gardner, Massachusetts, in a mixed industrial, commercial and residential area and is listed on the Gardner assessor's Map P14, Block 34A, and Lot 5A with an area of approximately 9.5 acres. The Site is currently vacant and historically was used for the collection, separation, and storage of recyclable metal. Portions of the Site were used for compacting automobiles, storing recyclable metals, and during two different periods the dismantling of electrical transformers. Two buildings, a baler building and alligator-shear building formerly located on the property, have been demolished. (The former office/warehouse building was subsequently demolished.) A maintenance garage remains on the south side of the property. A railroad spur once entered the property from the east. The majority of the Site is unpaved and pavement exists only near the buildings on the south side of the Site.

Topographically the Site is relatively flat across the majority of the Site and the Site is situated approximately 302 feet above mean sea level (MSL). The western, southwestern, and southern portions of the Site slope to a drainage swale, mill chase, and Pail Factory Brook. No bedrock outcrops have been observed at the Site. No storm drains have been identified on the Site. Surface water runoff has been observed flowing overland into the drainage swale along the western portion of the property, and into the mill chase along the south and southwest portions of the Site.

Historically, groundwater has been measured between 1.5 and 13.6 feet below grade. Historical groundwater gauging events have shown the groundwater at the Site to flow in a southwesterly direction across the Site towards the brook.

#### B. Summary of Environmental Conditions

According to Section 7.0 of the Phase II Comprehensive Site Assessment prepared by Corporate Environmental Advisors, Inc., dated February 2006, the environmental conditions are in part as follows (as edited for contextual consistency):

The spatial distribution and type of oil and/or hazardous material (OHM) impacts present at the Site have been evaluated through the collection of soil, groundwater, sediment and surface water samples. . . . The following discussion of contaminant nature and extent will focus primarily on concentrations of contaminants detected in soil, sediment,

groundwater and surface water during investigations, which, according to Corporate Environmental Advisors, Inc., are considered representative of current Site conditions.

## 1. Nature of Impacts

Several types of OHM have been detected at the Site. Petroleum, metals and polychlorinated biphenyls (PCBs) impacts have been detected in soil, groundwater, sediment and/or surface water at the Site.

The petroleum impacts in soil are located primarily in the vicinity of the former baler building, garage building, along the Railroad Spur, and northeast corner of the Site. Metals and PCBs have been detected throughout the Site in the vicinity of the former baler building, former transformer dismantling area, at the northern and southern portions of the Site, and the vicinity of the former Railroad Spur. The vertical extent of OHM impacts in soil appears to be located from surface grade to 8 feet below grade.

Concentrations of metals have been detected above applicable GW-2 and GW-3 Method 1 Rick Characterization Standards in monitoring wells GZ-1, GZ-2, GZ-3, GZ-4, MW-1 and MW-103. Petroleum hydrocarbons have been detected in several monitoring wells. PCBs detected in unfiltered groundwater samples were attributed to suspended sediment in samples; filtered samples did not detect PCBs in groundwater above detection limits.

Metals have been detected in sediment samples collected from the drainage swale and Pail Factory Brook. Dioxins have also been detected in sediment samples. Metals and PCBs have been detected in surface water.

### 1.1 Volatile Petroleum Hydrocarbons (VPHs), Volatile Organic Compounds (VOCs) and Dioxins

Based on available data as of November 2005, VPH fractions and target analytes in soil, sediment and groundwater have been reported below applicable Method 1 standards and/or laboratory detection limits. VOCs have been detected below applicable Method 1 standards and/or laboratory detection limits in soil, sediment and groundwater at the Site as of November 2005.

Dioxins have been reported in soil and sediment at the Site above available Reportable Concentrations and/or Method 1 standards.

### 1.2 Extractable Petroleum Hydrocarbons (EPHs)

The total petroleum hydrocarbon (TPH) concentrations were reported in borings from February and May 1996 above Method 1 soil standards. EPH analysis targets three carbon fraction ranges including C9-C18 aliphatics, C19-C36 aliphatics and C11-C22 aromatics and polycyclic aromatic hydrocarbons (PAHs). Carbon fraction ranges C19-C36 aliphatics and C11-22 aromatics, and benzo(a)anthracene, benzo(b)fluoranthene, benzo(a)pyrene, and indeno(1,2,3-cd)pyrene and chrysene have been detected in soil

above Method 1 soil standards. In addition, EPH fractions and target analytes have not been detected above applicable Method 1 standards in groundwater at the Site. Non-aqueous phase liquid (NAPL), resembling motor oil, has been detected in monitoring well MW-103.

### 1.3 Metals and PCBs

Out of 13 priority pollutant metals in soils, arsenic, antimony, barium, cadmium, chromium, copper, lead, nickel, and zinc in soil borings on-Site were reported at concentrations above Method 1 soil standards. Arsenic, cadmium, chromium, copper, lead, nickel and mercury have been detected in sediment above Threshold Effect Concentrations in several sediment samples obtained from the Site. PCBs were reported above Method 1 standards in soil from 0 to approximately 4 feet below grade in soil boring SB-236 completed as MW-103, which is the same location NAPL has been detected on the water table. Total PCB concentrations have been detected above applicable Method 1 standards in MW-103 in November 2005 and January 2006. PCBs have been reported in sediment samples above TECs from several locations. Arsenic, chromium, lead and mercury have been reported at concentrations greater than Method 1 GW-3 standards in on-Site monitoring wells GZ-1, GZ-2, GZ-3, GZ-4, MW-1 and MW-103.

### 1.4 NAPL

NAPL has only been detected in monitoring well MW-103. In addition, NAPL recovering and monitoring activities were conducted in accordance with the Immediate Response Action (IRA) approval for RTN 2-15974.



# Exhibit C

## EXHIBIT C

### PROJECT DESCRIPTION

#### **Proposed Project Remediation and Redevelopment**

As a result of the proposed Covenant Not To Sue (CNS) Application and the subsequent Agreement attached hereto, the City will obtain ownership of the Garbose property through a gift from S. Bernard Garbose. The property has undergone extensive testing in the past as evidenced by the tracking numbers referenced in the CNS. As a marginal property in an economically stressed community, it has been and will likely continue to be very difficult to sell and develop the property without government involvement. In an effort to begin managing the process of cleaning up the site for redevelopment purposes, the City, in partnership with Mr. Garbose, has initiated dialogue with the United States Environmental Protection Agency (EPA), Massachusetts Department of Environmental Protection (DEP), MassDevelopment, and the Massachusetts Attorney General's Office (AGO).

In July of 2010 the City submitted an Area-wide Planning Grant Application to the EPA in an effort to obtain the necessary resources to conduct a Master Planning process for the Mill Street Corridor, which includes the Garbose property. The City has also approached the United States Economic Development Administration (EDA) to inquire about potential planning funds, which the City will pursue if unsuccessful in obtaining EPA planning funds.

The City of Gardner was awarded a \$1 million Revolving Loan Fund (RLF) Grant through the U.S. EPA in April of 2010 and intends to target a portion of this RLF for remediation of the Garbose site. Due to the estimated costs of one million dollars for the remediation of this site, the City intends to apply for EPA Cleanup Grant funds in the fall of 2010 to supplement the RLF money. Additional funding through MA DEP and MassDevelopment will be pursued for remediation purposes. To complement the potential federal and state funding the City of Gardner through the Community Development Block Grant Program and/or the Gardner Redevelopment Authority will provide matching funding in the form of demolition and remediation funds, if warranted. The City will continue to work with private stakeholders and interested parties to offset some of the public investment with private funds.

Upon successfully obtaining the necessary remediation funding for this project the City will conduct all cleanup activities in conformance with the Massachusetts Contingency Plan (the "MCP"), 40 C.M.R. 40.0000, including engaging a licensed site professional (LSP). It is expected that the cleanup conceptual plan will include primarily the removal of contaminated soils and the limited groundwater contamination at the property. Redevelopment of the property for a retail use will likely include the installation of an impermeable surface, in which case the City may consider also obtaining an Activity and Use Limitation for a portion of the property.

During and after the remediation process the City will continue to work closely with private investors and developers to solicit proposals for the highest and best reuse of the property consistent with the master planning process. The City of Gardner will solicit proposals to redevelop Lot 1 for commercial uses such as retail, wholesale and/or office. Commercial development will be targeted based on prior interest in this site, consistent with the current

Commercial II zoning. Pursuant to the Gardner zoning code, retail development over 15,000 SF is allowed in Commercial II by Special Permit. Site Plan Review is also required for all development exceeding 5,000 SF. Development within 200' riparian zone will require review by the Conservation Commission.

Additionally, Mr. Garbose has agreed to convey Lot 2 to the City for the exclusive use and benefit of the public. With Mr. Garbose's gift of Lot 2, an area of over an acre will be deed-restricted from development and will be preserved as open space. The City envisions a walking trail adjacent to the brook running through the site, connecting Timpany Boulevard to Mill Street.

The following is a proposed schedule of events with estimated timelines, which need to be completed in order to prepare the site for redevelopment.

Covenant Not to Sue	October 2010
Successfully secure Planning Funds	October 2010
Sale of Land to City	October/November 2010
Submit EPA Cleanup Fund Grant	October of 2010
Subdivision of Land by City	November/December 2010
Establish EPA Revolving Loan Fund	Fourth Quarter 2010
Potential Award of Cleanup Funds	First/Second Quarter 2011
Complete Master Plan Mill Street Corridor	Second/Third Quarter 2011
Remediation (RLF & Clean up Funds)	Third and Fourth Quarter 2011
Solicitation of Bids for Redevelopment	First Quarter 2012
Negotiation/Selection of Developer	April 2012
Sale of Land to Developer	July 2012
Planning and Permitting	Third Quarter 2012
Construction	Fourth Quarter 2012/First Quarter 2013

### **Project Impact and Public Participation**

The public will greatly benefit from having the Garbose site remediated. Moreover, the proposed use will likely restore some of the jobs lost with the facility's closing in 1996 (at its peak, Garbose Metal Company employed approximately 20 personnel and recycled over 40,000 tons of metal annually), make the property a higher tax producer for the city, and revitalize the Mill Street corridor. The Gardner Planning Department views the former Garbose Metal Company facility as a keystone property for the future development of the thirty-plus acres of abandoned former industrial properties along Mill Street. In addition, an area of over an acre will be deed-restricted from development and will be preserved as open space.

Since the Garbose site has been privately owned and operated for decades, there has been no public outreach and input to date on the remediation and reuse of the site. The City of Gardner has conducted multiple environmental cleanup projects in the past, and as a public entity has always committed to involve local stakeholders in the planning and implementation process. The City involves the community in each phase of the project through the facilitation of public meetings, formal participation, outreach, reporting, ongoing oversight, and proposal input. The

City's Brownfield Steering Committee holds public meetings to review progress on ongoing brownfield projects. The Committee members represent a diverse group of community residents, business leaders, and local officials. Committee meetings are open to the public, posted in advance, and are held as needed in a handicapped accessible facility.

As required under the EPA RLF Program, and the pending EPA Area-wide Planning Grant, the City is developing a Community Relations Plan (CRP) consistent with EPA guidelines and approval. This CRP describes the City's strategy to address the needs or concerns that the local neighborhood organizations, citizen groups, property owners, residents, and other stakeholders may have about the project, including: site selection, cleanup decisions, and reuse options for targeted sites. The CRP outlines how the City plans to involve local residents, city officials and local organizations in the decision making process regarding the environmental cleanup at these proposed sites. The City believes that active residents involved in neighborhood issues are essential resources for the success of the CRP because they have a comprehensive understanding of the affected neighborhoods and they hold positions of responsibility within the community. To this end, the planning and redevelopment processes for the Garbose site, along with the entire Mill Street Corridor, will be implemented through a public process, ensuring the successful reuse of the property is consistent with community input.