

The Thorndike Entities' failure to secure independent governmental approvals for the Project shall not excuse it from performance of any term or condition of this Agreement.

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 Hudson, 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. Thorndike LLC is a limited liability corporation organized under the laws of the Commonwealth, with a principal mailing address of 7 Barker Lane, Norton, Massachusetts 02766. In accordance with this Agreement, Thorndike LLC shall undertake the Project as discussed in Section IV, Paragraph A, subparagraph 2, below. Thorndike Construction is a Massachusetts corporation, with a principal mailing address of 7 Barker Lane, Norton, Massachusetts 02766. Thorndike Construction is involved with the construction of the Project. Thorndike Development is a Massachusetts corporation, with a principal mailing address of 7 Barker Lane, Norton, Massachusetts 02766. Thorndike Development is involved with the acquisition, financing, and promotion of the Project.

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 those regulations. Terms not defined in the Brownfields Covenant Regulations, but defined under G.L. c. 21E or the MCP, shall have the meaning assigned to them under G.L. c. 21E or the MCP. Terms used in this agreement which are defined in the Brownfields Covenant Regulations, G.L. c. 21E, or the MCP are capitalized.

C. The Project involves a tract of land of approximately 43.75 acres at 12 Wheeler Road in Hudson, Massachusetts formerly owned by Hillside Service Company, the deed for which is located in Book 9526, page 248, at the Middlesex County (South) Registry of Deeds, (the "Property"). The Property is more fully described on Exhibit A, attached and incorporated into this Agreement. The Property is contaminated with arsenic and pesticides from historic wool washing rinse water deposited at the Property.

D. The Department of Environmental Protection ("DEP") has received notice of a Release or Releases of Oil and/or Hazardous Material at or from the Property (the "Releases"), and has issued Release Tracking Number ("RTN") 2-0010526 for these Releases. The areas where Oil and/or Hazardous Materials have come to be located as a result of the Releases

constitute the “Site,” as that term is defined at 310 CMR 40.0006, for the purposes of this Agreement. The Site is also the property addressed by this Agreement for the purposes of 940 CMR 23.08(1) in the Brownfields Covenant Regulations. The Site, as now delineated, is more fully described on 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 suspected to exist, 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 APPLICANT

1. Each of the Thorndike Entities and Thorndike LLC’s members and managers represents that he, she or it:

a. is an Eligible Person, to the extent each is considered an owner or operator of the Property;

b. is not at the time of execution of this Agreement a person with potential liability for the Site pursuant to G.L. c. 21E other than pursuant to clause (1) of paragraph (a) of Section 5 of G.L. c. 21E;

c. is not now nor has 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. has been involved with the Site only to:

i. evaluate the Property for purposes of acquiring the Property;

ii. negotiate to acquire and acquiring the Property; and

iii. communicate with the Commonwealth and local authorities with respect to the design and planning of the Project and various permitting issues with respect to the Property.

e. has not caused or contributed to the Release or Threat of Release of Oil and/or Hazardous Material at the Site under G.L. c. 21E and/or the MCP.

f. 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 Thorndike Entities agree to the following terms and conditions:

a. Thorndike LLC shall acquire the Property and undertake the redevelopment portion of the Project by developing a portion of the Property into residential housing, creating approximately ten acres of conservation land with walking trails, and donating between two and three acres to the Town of Hudson for a planned cemetery expansion and causing an additional parcel along the Assabet River to be deeded to the Town of Hudson. The housing shall be a clustered development built with sidewalks and other pedestrian-friendly amenities, open space and a central green. The approximately ten acres of conservation land shall be protected with a conservation restriction or similar deed restriction, and shall be open to the public for recreational activities. A copy of a design plan for the Project is attached as Exhibit C. Thorndike LLC shall also develop an approximately 20 acre parcel owned by the Town of Hudson adjacent to the Property into a public recreational park to be maintained, in part, in perpetuity by a condominium association affiliated with the Project's housing development.

b. With respect to contamination at the Property, Thorndike LLC shall either achieve or arrange for the achievement and maintenance of a Permanent Solution at the Property, to a standard consistent with the proposed residential use of the Property, in accordance with G.L. c. 21E and the MCP. The Thorndike Entities shall cooperate fully with DEP with respect to contamination at the Site.

c. To cooperate fully includes, without limitation:

1. providing prompt and reasonable access to the Property to DEP for any purpose consistent with G.L. c. 21E and the MCP, and to other persons intending to conduct Response Actions pursuant to 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 DEP or OAG to produce information as required pursuant to G.L. c. 21E;

iv. taking reasonable steps to prevent the Exposure of people to Oil and/or Hazardous Materials, such as by fencing or otherwise preventing access to the Property if appropriate and/or necessary to prevent such Exposure or as otherwise required by G.L. c. 21E, the MCP, DEP or a Licensed Site Professional;

v. taking reasonable steps to contain any further Release or Threat of Release of Oil and/or Hazardous Material from a structure or container at the Property, upon obtaining knowledge of a Release or Threat of Release of Oil and/or Hazardous Material; and

vi. conducting, or causing to be conducted, Response Actions at the Property 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. Covenant as to the Thorndike Entities

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by the Thorndike Entities set forth in Section IV, Paragraph A of this Agreement, and subject to the Thorndike Entities' compliance with the terms and conditions of this Agreement and the Termination for Cause provisions described below in Section IV, Paragraph B, subparagraph 5, the Commonwealth covenants not to sue the Thorndike Entities or Thorndike LLC's members (persons or entities who hold an ownership interest in Thorndike LLC) or managers (persons or entities that act on behalf of Thorndike LLC), pursuant to G.L. c. 21E, for Response Action costs, contribution, property damage, natural resource damages or injunctive relief, or for property damage under the common law, relating to any Release of Oil and/or Hazardous Material occurring at the Site prior to the execution of this Agreement, so long as the Release of Oil and/or Hazardous Material is fully described and delineated, to the extent required by G.L. c. 21E and/or the MCP, in the Response Action Outcome ("RAO") Statement to be submitted to DEP with respect to the Property, and the Response Actions upon which the RAO Statement relies meet the Standard of Care in effect when the RAO Statement is submitted to DEP. The covenant in this Paragraph shall vest on the effective date of this Agreement as defined in Section IV, Paragraph D, subparagraph 5. This Agreement shall not affect any liability established by contract.

2. Subsequent Owners and/or Operators

The Commonwealth covenants not to sue Eligible Persons who are successors, assigns, lessees or licensees of the Thorndike Entities' real property interests in the Property or any portion of the Property, or who are lessees or licensees of the Thorndike Entities' successors and assigns (the "Subsequent Owners and/or Operators"), pursuant to G.L. c. 21E, for Response Action costs, contribution, property damage, natural resource damages or injunctive relief, or for property damage under the common law, relating to any Release of Oil and/or Hazardous Material occurring at the Site prior to the execution of this Agreement, so long as the Release of Oil and/or Hazardous Material is fully described and delineated, to the extent required by G.L. c. 21E and/or the MCP, in the RAO Statement to be submitted to DEP with respect to the Property, and the Response Actions upon which the RAO Statement relies meet the Standard of Care in effect when the RAO Statement is submitted to DEP. 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 Thorndike Entities and the Subsequent Owner's and/or Operator's covenant not to sue the Commonwealth in Section IV, paragraph C, below.

3. Applicability of the Agreement

This Agreement shall be in effect unless and until the statutory protections available to the Thorndike Entities and Subsequent Owners and/or Operators described in G.L. c. 21E, §5C are in effect, except that protections in this Agreement from claims for natural resource damages shall not be affected if the statutory protections available to the Thorndike Entities and Subsequent Owners and/or Operators described in G.L. c. 21E, §5C are in effect. This Agreement is subject to the Termination for Cause provisions described below in Section IV,

Paragraph B, subparagraph 5.

4. Reservations of Rights

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

- a. any new Release of Oil and/or Hazardous Material at, or from the Property that occurs after the date of execution of this Agreement;
- b. any Release of Oil and/or Hazardous Material which any of the Thorndike Entities 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, the Commonwealth's covenants only shall not apply to such Subsequent Owner and/or Operator;
- c. any Release of Oil and/or Hazardous Material at the Site that has not been discovered when an RAO Statement is submitted to DEP that would have been discovered if an assessment of the Site 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 Oil and/or Hazardous Material from which there is a new exposure that results from any action or failure to act pursuant to G.L. 21E by any of the Thorndike Entities or a Subsequent Owner and/or Operator during the Thorndike Entity'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, the Commonwealth's covenants only shall not apply to such Subsequent Owner and/or Operator;
- e. any Release of Oil and/or Hazardous Material not expressly described in Section IV, Paragraph B, subparagraph 1, above; and
- f. any claims (i) for damages for injury to, destruction of, or loss of natural resources due to a Release of Oil and/or Hazardous Material occurring after the execution of this Agreement, (ii) for exacerbation of injury to, destruction of, or loss of natural resources occurring after the execution of this Agreement, where original injury, destruction or loss of natural resources was due to a Release of Oil and/or Hazardous Material occurring either before or after the execution of this Agreement, (iii) for the costs of any natural resource damage assessment relating to conditions first caused or exacerbated after the execution of this Agreement, and (iv) for damages for injury to, destruction of, or loss of natural resources due to a Release of Oil and/or Hazardous Material not expressly described in Section IV, Paragraph B above. If, however, injury to, destruction of, or loss of natural resources, or the exacerbation of such conditions, is caused by a Subsequent Owner and/or Operator, the Commonwealth's covenants only shall not apply to such Subsequent Owner and/or Operator and this reservation shall not affect the Thorndike Entities' or other Subsequent Owners' and/or Operators' liability protection.

5. Termination for Cause

a. If the OAG or DEP determines that any of the Thorndike Entities or Thorndike LLC's members and managers submitted materially false or misleading information as part of its Application to Enter into a Brownfields Covenant Not to Sue Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.c. below. A statement made by the Thorndike Entities or Thorndike LLC's members and managers regarding the anticipated benefits or impacts of the proposed Project will not be considered false or misleading for purposes of this subparagraph if the statement was asserted in good faith at the time it was made.

b. In the event that the OAG or DEP determines that any of the Thorndike Entities or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement, including but not limited to, failure to pursue development of the Project, failure to arrange for the achievement and maintenance of a Permanent Solution at the Property in accordance with G.L. c. 21E and the MCP, or failure to arrange for a timely response to a Notice of Audit Finding or any such other Notice requiring additional work to achieve and/or maintain a Permanent Solution at the Property, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.c., below. In the event that the liability protection is terminated solely because of the violation of one or more of the conditions set forth in 940 CMR 23.08(3)(a) through (d) by a Subsequent Owner and/or Operator, such termination shall affect the liability protection applicable only to such Subsequent Owner and/or Operator.

c. Before terminating the liability relief provided by this Agreement, the OAG will provide the Thorndike Entities 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. The notice from the OAG shall, if appropriate, provide a reasonable period of time for the Thorndike Entities or a Subsequent Owner and/or Operator to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement in the sole discretion of the OAG.

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

C. COVENANT NOT TO SUE BY THE THORNDIKE ENTITIES AND ANY SUBSEQUENT OWNER AND/OR OPERATOR

1. In consideration of the Commonwealth's covenants not to sue in Section IV, Paragraph B, each of the Thorndike Entities covenants 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 Release that is subject to the Commonwealth's covenants not to sue in Section IV, Paragraph B (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 DEP pursuant to Chapter 21E prior to the date of this Agreement concerning 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 Thorndike Entities’ covenants in this Paragraph 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 C, such claims and/or causes of actions shall have no effect on the rights, benefits, and protections secured under this Agreement for any other entity.

D. 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. The terms of this Agreement shall be effective as of the date it is fully executed by all Parties.

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

THORNDIKE PROPERTIES OF MASSACHUSETTS III LLC

By: 
Benjamin J. Ericson
Assistant Attorney General
Brownfields Unit Chief
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

By: 
Name (printed): Lloyd Geisinger
Title: member manager
Date: 10.16.06

Date: 9/25/06

THORNDIKE CONSTRUCTION COMPANY

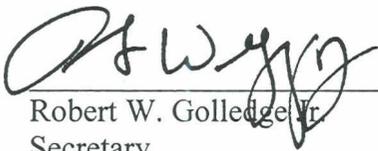
THORNDIKE DEVELOPMENT CORPORATION

By: 
Name (printed): Lloyd Geisinger
Title: Pres.
Date: 10.16.06

By: 
Name (printed): Lloyd Geisinger
Title: Pres.
Date: 10.16.06

In the matter of Thorndike Properties of Massachusetts III LLC Redevelopment of Property on
Wheeler Road, Hudson
Brownfields Covenant Not To Sue Agreement

EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

By: 
Robert W. Golledge Jr.
Secretary
Executive Office of Environmental Affairs
Commonwealth of Massachusetts

Date: 9/25/06

EXHIBIT A

EXHIBIT A

Those certain parcels of land in Hudson, Middlesex County, Massachusetts, being shown respectively as LOT 1 (1,345,322± square feet - 30.88 acres), PARCEL A (437,241± square feet - 10.04 acres) and PARCEL B (123,473± square feet - 2.58 acres) on a plan entitled "Plan of Property Surveyed for Southboro Ventures, Inc., Wheeler Road, Hudson, Massachusetts," Scale: 1 inch = 120 feet prepared by Jarvis Land Survey, Inc. and filed with the Middlesex South Registry of Deeds as Plan No. 1591 of 2005.

EXHIBIT B

The Site comprises approximately 43.9 acres of undeveloped woodland, currently zoned for industrial use, with remnants of bermed surface impoundments (lagoons) formerly used to collect wastewater from wool washing operations. From 1927 to 1941, Hudson Worsted Company constructed five lagoons on the Site to hold washwater from wool scouring operations conducted off-site. The lagoons were located on the side of a northerly sloping hill and had earthen banks of varying heights. In 1957, Hudson Worsted Company ceased operations and the lagoons became inactive.

In 1958, Hudson Combing Company purchased the subject property. This company scoured and combed mohair and wool on a commission basis, but on a much smaller scale than the previous Hudson Worsted Company's operation. Based on the limited volume of washwater generated, Hudson Combing Company used only one lagoon at the Site. The other four

lagoons remained inactive. In 1959, Hillside Service Corporation purchased the property. Hudson Combing Company continued to use only one lagoon until 1974, when the company ceased operations. None of the lagoons have been used since that time.

In 1994, Roy F. Weston, Inc. prepared a report entitled Final Site Inspection Report, Hudson Worsted Lagoons, Hudson, Massachusetts on behalf of the Region I United States Environmental Protection Agency. As a result of the laboratory analyses indicating elevated concentrations of arsenic and the pesticide 4,4-DDD, the Massachusetts Department of Environmental Protection (DEP) issued a Notice of Responsibility (NOR) and Request for Release Notification Form in 1995.

In response to the NOR, Hillside Service Corporation hired Rizzo Associates to perform Licensed Site Professional services. A *MCP Phase I- Initial Site Investigation Report and Tier II Classification Statement* were submitted to the DEP in 1996. At that time it was surmised that the elevated arsenic concentrations may have been related to either background conditions (e.g., elevated arsenic levels in the bedrock and soil in the Site area) or to the use of arsenic-containing pesticides applied to the former apple orchards that were located on and near the Site.

From 1998 to 2001, Rizzo Associates conducted further subsurface investigations including soil borings, groundwater monitoring well installation, soil sampling, sediment sampling, surface water sampling, and soil/sediment thickness evaluations. Based on the results of the subsurface investigations, the arsenic contamination appears to be contained within the soil/sediment in the lagoons. In addition, it does not appear that the arsenic can be attributed to naturally occurring arsenic, background conditions, or to the application of pesticides to the former apple orchards. However, it has been surmised that a possible source of the arsenic detected in lagoon sediments could have been arsenic-containing pesticides that may have been applied directly to sheep by sheep growers many years ago to combat external parasites such as ticks and lice prior to the shearing of wool. Such residues may have found their way into the washwater resulting from Hudson Worsted Company's wool scouring operations, and thus settled out within the lagoons at the Site.

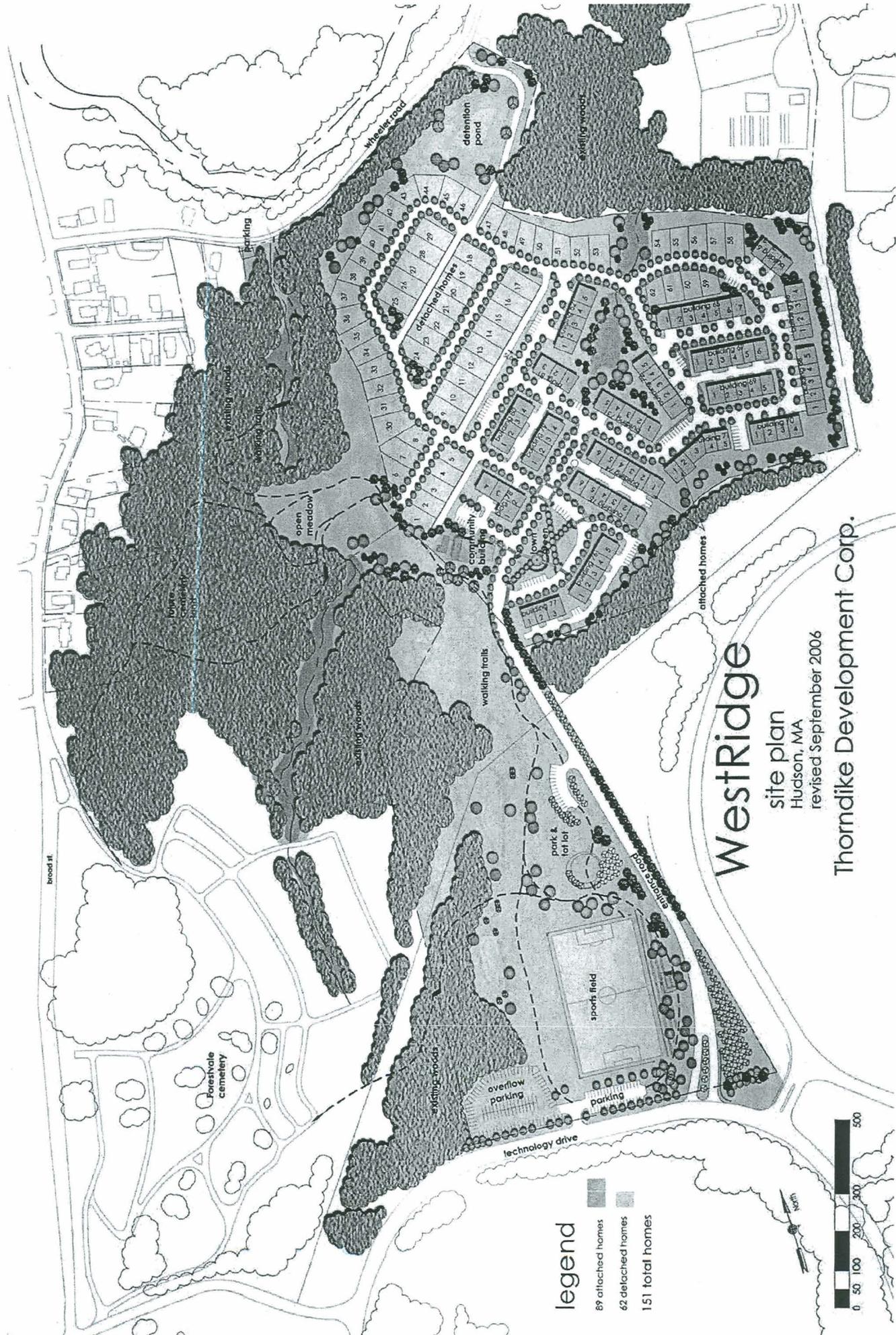
The TCLP arsenic results for soil/sediment samples indicate that the analyzed material is not classified as a characteristic hazardous waste. The total arsenic and dissolved arsenic levels observed in the groundwater samples collected from the recently installed monitoring wells were below the applicable MCP Method 1 standards. Arsenic concentrations observed within all but one of the sediment samples collected from the stream that traverses the western portion of the property were below the DEP

recommended ecological benchmark level. No detectable concentrations of arsenic were observed within the surface water samples collected from the stream surface water.

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EXHIBIT C



WestRidge

site plan
Hudson, MA
revised September 2006

Thorndike Development Corp.

- legend**
- 89 attached homes
 - 62 detached homes
 - 151 total homes

