

Escrow Agreement, the "Agreement," entered into as of \_\_\_\_\_, by and between  
(date)

\_\_\_\_\_  
(name of the owner or operator)

a \_\_\_\_\_, the "Grantor,"  
(name of State) (insert: corporation, partnership, association or proprietorship)

and \_\_\_\_\_,  
(name of bank or financial institution)

a bank or financial institution located in the State of \_\_\_\_\_, which is examined and  
(insert name of State)

regulated by a state or federal agency, the "Escrowee".

Whereas, the State of Wisconsin Department of Natural Resources, "the Department," has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or long-term care of the facility,

Whereas, the Grantor has elected to establish an escrow agreement to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Escrowee to be the escrowee under this agreement, and the Escrowee is willing to act as escrowee,

Now, therefore, the Grantor and the Escrowee agree as follows:

*Section 1. Definitions.* As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Escrowee" means the Escrowee who enters into this Agreement and any successor Escrowee.

*Section 2. Identification of Facilities and Cost Estimates.* This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or long-term care cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

*Section 3. Establishment of Escrow Account.* The Grantor and the Escrowee hereby establish an escrow account, the "Account," for the benefit of the Department. The Grantor and the Escrowee intend that no third party have access to the Account except as herein provided. The Account is established initially as consisting of the property, which is acceptable to the Escrowee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Escrowee is referred to as the Account, together with all earnings and profits thereon, less any payments or distributions made by the Escrowee pursuant to this Agreement. The Account shall be held by the Escrowee, as hereinafter provided. The Escrowee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

*Section 4. Payment for Closure and Long-term Care.* The Escrowee shall make payments from the Account as the Department shall direct, in writing, to provide for the payment of the costs of closure and/or long-term care of the facilities covered by this Agreement. The Escrowee shall reimburse the Grantor or other persons as specified by the Department from the Account for closure and long-term care expenditures in such amounts as the Department

shall direct in writing. In addition, the Escrowee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Account as defined herein.

*Section 5. Payments Comprising the Account.* Payments made to the Escrowee for the Account shall consist of cash or securities acceptable to the Escrowee.

*Section 6. Escrowee Management.* The Escrowee shall invest and reinvest the principal and income of the Account and keep the Account invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Escrowee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Account, the Escrowee shall discharge his duties with respect to the escrow account solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; *except that:*

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Escrowee is authorized to invest the Account in time or demand deposits of the Escrowee, to the extent insured by an agency of the Federal or State government; and

(iii) The Escrowee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

*Section 7. Commingling and Investment.* The Escrowee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Account to any common, commingled, or collective escrow account created by the Escrowee in which the Account is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other escrow accounts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Escrowee. The Escrowee may vote such shares in its discretion.

*Section 8. Express Powers of Escrowee.* Without in any way limiting the powers and discretions conferred upon the Escrowee by the other provisions of this Agreement or by law, the Escrowee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Escrowee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Account in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Escrowee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Escrowee shall at all times show that all such securities are part of the Account;

(d) To deposit any cash in the Account in interest-bearing accounts maintained or savings certificates issued by the Escrowee, in its separate corporate capacity, or in any other banking institution affiliated with the Escrowee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Account.

*Section 9. Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Account and all brokerage commissions incurred by the Account shall be paid from the Account. All other expenses incurred by the Escrowee in connection with the administration of this Escrow Account, including fees for legal services rendered to the Escrowee, the compensation of the Escrowee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Escrowee shall be paid from the Account.

*Section 10. Annual Valuation.* The Escrowee shall annually, at least 30 days prior to the anniversary date of establishment of the Account, furnish to the Grantor, the Department, and to the appropriate EPA Regional Administrator a statement confirming the value of the Account. Any securities in the Account shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Account. The failure of the Grantor to object in writing to the Escrowee within 90 days after the statement has been furnished to the Grantor, the Department, and the EPA Regional Administrator shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Escrowee with respect to matters disclosed in the statement.

*Section 11. Advice of Counsel.* The Escrowee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Escrowee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

*Section 12. Escrowee Compensation.* The Escrowee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

*Section 13. Successor Escrowee.* The Escrowee may resign or the Grantor may replace the Escrowee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Escrowee and this successor accepts the appointment. The successor escrowee shall have the same powers and duties as those conferred upon the Escrowee hereunder. Upon the successor escrowee's acceptance of the appointment, the Escrowee shall assign, transfer, and pay over to the successor escrowee the funds and properties then constituting the Account. If for any reason the Grantor cannot or does not act in the event of the resignation of the Escrowee, the Escrowee may apply to a court of competent jurisdiction for the appointment of a successor escrowee or for instructions. The successor escrowee shall specify the date on which it assumes administration of the escrow account in a writing sent to the Grantor, the Department, and the EPA Regional Administrator, and the present Escrowee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Escrowee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

*Section 14. Instructions to the Escrowee.* All orders, requests, and instructions by the Grantor to the Escrowee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Escrowee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Escrowee shall be in writing, signed by the Secretary of the Department, or the designee, and the Escrowee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Escrowee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Escrowee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

*Section 15. Notice of Nonpayment.* The Escrowee shall notify the Grantor and the Department, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Escrow Account, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Escrowee shall not be required to send a notice of nonpayment.

*Section 16. Amendment of Agreement.* This Agreement may be amended by an instrument in writing executed by the Grantor, the Escrowee, and the Department, or by the Escrowee and the Department if the Grantor ceases to exist.

*Section 17. Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in Section 16, this Account shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Escrowee, and the Department, or by the Escrowee and the Department, if the Grantor ceases to exist. Upon termination of the Account, all remaining escrow account property, less final escrow account administration expenses, shall be delivered to the Grantor.

*Section 18. Immunity and Indemnification.* The Escrowee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Account, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Escrowee shall be

indemnified and saved harmless by the Grantor or from the Escrow Account, or both, from and against any personal liability to which the Escrowee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

*Section 19. Choice of Law.* This Agreement shall be administered, construed, and enforced according to the laws of the State of Wisconsin.

*Section 20. Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

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(Signature of Grantor)

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(Title)

Attest:

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(Title)

(Seal)

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(Signature of Escrowee)

Attest:

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(Title)

(Seal)