

**TRUST AGREEMENT  
FOR THE CAPITAL RESERVE ACCOUNT  
GROUNDWATER DISCHARGE PERMIT NO. ( ) AND ALL RENEWALS**

THIS TRUST AGREEMENT ("Trust") is entered into by and between:

(a) \_\_\_\_\_  
Permittee Name (hereinafter "Permittee")

as grantor, with a principal place of business located at:

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City/Town

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

(b) \_\_\_\_\_ a  
Type of entity

organized under the laws of \_\_\_\_\_, State \_\_\_\_\_ with a principal place of business located at:

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City/Town, State, Zip Code

Massachusetts ("Trustee");

and (c) the Massachusetts Department of Environmental Protection, a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7 ("Department"), with a principal place of business at One Winter Street, Boston, Massachusetts, 02108, and a

\_\_\_\_\_  
Regional Office

located at

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City/Town, State, Zip Code

(hereinafter collectively referred to as the "Parties"). The Trustee asserts its authority to accept and execute trusts of the kind hereby established pursuant to the laws of the Commonwealth of Massachusetts and as required by the Department's Ground Water Discharge Program and Ground Water Discharge Permit # \_\_\_\_\_, and to act as trustee thereof. The Department and the Permittee are hereby designated as beneficiaries of this Trust.

WHEREAS, the Ground Water Discharge Permit issued to the Permittee by the Department contains financial security provisions requiring the Permittee to establish a financial assurance mechanism that provides for a Capital Reserve Account ("CRA") to provide assurance that funds will be available if and when needed for repair, maintenance, and/or replacement of the private wastewater treatment facility (including any of its related components) located at

\_\_\_\_\_  
Street Address

\_\_\_\_\_, Massachusetts ("PWTF");  
\_\_\_\_\_  
City/Town

WHEREAS, the Ground Water Regulations established at 314 CMR 5.15 require the Permittee to use Department-approved forms to establish the required financial assurance mechanism;

WHEREAS, this Trust is the Department-approved form for the financial assurance mechanism that provides for a CRA;

WHEREAS, the Ground Water Regulations require the Permittee to accumulate in the CRA an amount equal to 25% of the estimated construction cost of the PWTF, including the collection system and any associated mechanical equipment, but not including the land, grounds or disposal area;

WHEREAS, the Permittee and the Department have agreed that the estimated construction cost of the PWTF is \$ \_\_\_\_\_, thereby requiring a required capital reserve of \$ \_\_\_\_\_ (“Required Capital Reserve”);

WHEREAS, the Permittee, acting through its duly authorized officers, has selected the Trustee to serve as the trustee under this Trust, and the Trustee is willing to act as trustee; and

WHEREAS, the Permittee has caused the Trustee to establish an account to hold certain trust funds in the amount and under the terms more particularly set forth below.

NOW, THEREFORE, the Permittee establishes this Trust and appoints the Trustee, as trustee, to hold and administer all money and property received by the Trustee hereunder (“Trust Fund Property”), in trust and for the benefit of the Department and the Permittee, upon the following terms and conditions:

1. Upon execution of this Agreement, the Permittee shall deliver funds to the Trustee to be held in trust for the repair or replacement of the PWTF, including the collection system and any associated mechanical components, until the total amount held by the Trustee equals the Required Capital Reserve in accordance with the following schedule: [Insert one of the following as appropriate]

For New Permittees

On or before \_\_\_\_\_, \_\_\_\_\_  
Date thirty (30) calendar days prior to date on which PWTF is expected to commence operation  
the Permittee shall deliver to the Trustee funds in the amount of \_\_\_\_\_, (“Required Annual Contribution”)  
Amount equal to 1/15 of the Required Capital Reserve  
and submit a copy of the documents evidencing this delivery to the Department.

On or before each successive anniversary of the date on which the initial deposit of the Required Annual Contribution was made, and until such time as the total amount in the CRA equals the Required Capital Reserve, Permittee shall deliver to the Trustee that equal the Required Annual Contribution, and shall submit to the Department a copy of the documents evidencing such delivery.

For First Renewals of Permits without Capital Reserve Accounts

On or before \_\_\_\_\_, \_\_\_\_\_  
Date thirty (30) calendar days prior to the date on which the renewal permit is issued  
the Permittee shall deliver to the Trustee \_\_\_\_\_, the “Required Annual Contribution”  
Amount equal to 1/10 of the Required Capital Reserve  
and submit a copy of the documents evidencing this delivery to the Department.

On or before each successive anniversary of the date on which the initial deposit of the Required Annual Contribution was made, and until such time as the total amount in the CRA equals the Required Capital Reserve, Permittee shall deliver to the Trustee funds that equal the Required Annual Contribution, and shall submit to the Department a copy of the documents evidencing such delivery.

For Second Renewals of Permits Without Capital Reserve Accounts

On or before \_\_\_\_\_, \_\_\_\_\_  
Date thirty (30) calendar days prior to the date on which the renewal permit is issued  
the Permittee shall deliver to the Trustee \_\_\_\_\_, the “Required Annual Contribution”  
Amount equal to 1/5 of the Required Capital Reserve  
and submit to the Department a copy of the documents evidencing this delivery.

On or before each successive anniversary of the date on which the initial deposit of the Required Annual Contribution was made, and until such time as the total amount in the CRA equals the Required Capital Reserve, Permittee shall deliver to the Trustee funds that equal the Required Annual Contribution, and shall submit to the Department a copy of the documents evidencing such delivery.

For Third Renewals of Permits Without Capital Reserve Accounts

On or before \_\_\_\_\_,   
 Date thirty (30) calendar days prior to the date on which the renewal permit is issued  
 the Permittee shall deliver to the Trustee \_\_\_\_\_, the Required Capital Reserve  
 Amount of the Required Capital Reserve

and submit to the Department a copy of the documents evidencing this delivery.

For the Fourth Permit Renewal and each succeeding Permit Renewal the Permittee shall contribute to the CRA as directed by the Department in accordance with 314 CMR 5.15 and this Trust to maintain the Required Capital Reserve in said account until this Trust is terminated as provided herein.

2. The Trustee hereby accepts as Trust Fund Property all funds delivered to the Trustee in accordance with paragraph 1 above together with all income and earnings derived thereon, if any, less any payments or distributions made by the Trustee pursuant to this Trust. The Trust Fund Property shall be held by the Trustee, in trust, for the benefit of the Department and the Permittee for the repair or replacement of the PWTF or components thereof at the end of its reasonably expected useful life. The Trustee shall retain all documents evidencing the nature and existence of the Trust Fund Property until this Trust is terminated as provided herein. Upon such termination, the Trustee shall furnish the Permittee and the Department with copies of all pertinent documents related to the Trust Fund Property.

3. If the Department and the Permittee determine that some or all of the Trust Fund Property is needed to pay for the cost of repairing or replacing the PWTF or portions thereof, the Department and the Permittee shall jointly notify the Trustee of this determination in writing along with the reasons therefor. The notice shall include a certification in writing indicating that the Department and the Permittee have determined that \$ \_\_\_\_\_ (cash amount) is needed for the repair or replacement of the PWTF or components thereof. The notice shall be signed by both the Department and the Permittee and shall include an invoice evidencing the expenditure for the repair or replacement of the PWTF or components thereof. The Trustee shall disburse funds up to the specified amount to the Permittee upon receipt of the written notice.

4. The Trustee shall not be held responsible for the amounts or the adequacy of the Trust Fund Property. The Trustee shall not incur any duty to collect from the Permittee any payments necessary to discharge liabilities of the Permittee established by the Department; nor shall the Trustee have any duty or obligation to monitor or enforce the Permittee's obligations, undertakings or understandings with the Department described herein. The Trustee's sole responsibility shall be to maintain, draw upon, invest and disburse the Trust Fund Property as expressly provided herein.

5. All interest, income and dividends, if any, earned upon investment of the Trust Fund Property shall be recorded for tax and other purposes as income to the Permittee, whose tax identification number is \_\_\_\_\_.

6. The Trustee, at reasonable times upon request, shall notify the Parties of the amount of the Trust Fund Property. The Parties shall have the right to inspect the Trust Fund Property books and records at reasonable times and upon written request.

7. This Trust shall terminate and shall be of no further force or effect upon the occurrence of either of the following: (i) written notification by the Department to the Trustee that the Permittee has, in accordance with Paragraph 16 below, satisfactorily transferred the Permit to a new permittee which authorizes the Trustee to release any and all remaining Trust Fund Property to the Permittee; or (ii) written instruction by the Department to the Trustee to disburse the Trust Fund Property to the Permittee when a CRA is no longer required pursuant to 314 CMR 5.00.

8. The Trustee shall not be liable for any act or omission taken in good faith unless such act or omission is the result of willful misconduct or gross negligence.

9. The Trustee has established a trust fund account at \_\_\_\_\_  
 \_\_\_\_\_ at \_\_\_\_\_  
 Account Number Account Title Name of Bank/Institution

located in \_\_\_\_\_, Massachusetts, into which the Trustee shall deposit and hold the Trust Fund Property or other amounts received by it as Trustee hereunder ("Trust Account"). Upon written instructions from the Permittee, the Trustee may invest or reinvest funds held in the Trust Account only in the following qualified investments:

a. any bonds or other obligations which, as to principal and interest, constitute direct obligations of, or are unconditionally guaranteed by the United States of America or the following agencies: Federal National Mortgage Association; the Federal Farm Credit Bank; Federal Home Loan Bank; Federal Land Bank; Private Export Funding Corporation; and Government National Mortgage Association, which have been, or may hereafter be created pursuant to an Act of Congress as an agency or instrumentality of the United States of America;

b. any bonds or obligations of any state, the District of Columbia, any territory of the United States of America, or any political subdivision or other instrumentality of any of the foregoing which are rated in one of the top three highest categories for such securities by a nationally recognized bond rating agency, provided that such investment or deposit is not prohibited by federal or state banking laws applicable to the Trustee;

c. negotiable certificates of deposit, banker's acceptances, or interest bearing deposits of the Trustee and banks or trust companies organized under the laws of the United States of America, or any state thereof, who have outstanding long-term debt rated in one of the highest two categories by a nationally recognized bond rating agency or who have capital and surplus of at least \$50,000,000 or investment agreements continually secured by the obligations listed in subparagraphs a. or b. above with any bank, trust company or broker or dealer (as defined by the Securities Exchange Act of 1934) which broker or dealer is a dealer in government bonds which reports to, trades with and is recognized as a primary dealer by a Federal Reserve Bank, and which broker or dealer is a member of the Securities Investors Protection Corporation or its successor if: (1) such obligations are delivered to the Trustee or are supported by a safekeeping receipt issued by a depository satisfactory to the Trustee; (2) a prior perfected security interest in obligations which secure such agreement has been granted to the Trustee; and (3) such obligations are free and clear of any adverse third party claims;

d. shares of any so-called "money market funds," including the Trustee's "Federated" funds, that have at least 85% of their assets invested in investments of the type described in subparagraphs a. and b. above or are rated in the highest category by a nationally recognized bond rating company.

In the absence of such instruction, the Trustee may, but shall have no obligation to, invest in such qualified investments or other interest bearing bank or money market account with the bank as it may determine in its discretion, at the same level of risk and level of return as those of the qualified investments.

10. The Trustee shall not be responsible for any losses related to any investment of the Trust assets and Trust Fund Property in accordance with Paragraph 9 above. The Trustee shall not be responsible for assuring that the Trust Fund Property or the amounts available therein at any time are sufficient for the disbursements contemplated under this Trust.

11. The Trustee shall not be required to institute legal proceedings of any kind. The Trustee shall not be required to defend any legal proceedings which may be instituted against it with respect to this Trust, nor to take any other action not expressly provided herein, unless requested to do so in writing by any of the Parties hereto, and unless and until it is indemnified by the requesting party to the satisfaction of the Trustee, in its sole discretion, against the cost and expense of such defense, including without limitation the reasonable fees and expenses of its legal counsel. If any conflicting demand shall be made upon the Trustee, it shall not be required to determine the same or take any action thereon and may await settlement of the controversy by appropriate and nonappealable legal proceedings. Upon the commencement of any action against or otherwise involving the Trustee with respect to this Trust, the Trustee shall be entitled to interplead the matter of this Trust, in accordance with Rule 22 of the Massachusetts Rules of Civil Procedure, into a court of competent jurisdiction in the Commonwealth and, in such event, the Trustee, pursuant to a proper order from the Court, shall be relieved of and discharged from any and all obligations and liabilities under this Trust.

12. The Trustee, its directors, officers, employees and agents, shall be indemnified and saved harmless by the Permittee from and against all obligations, liabilities, claims, suits, judgments, losses, damages, costs or expenses of any kind or nature, including without limitation reasonable attorney's fees, which may be imposed on, incurred by, or asserted against the Trustee in connection with or in any way arising out of this Trust or the Trustee's duties hereunder, except for claims involving willful misconduct or gross negligence. The foregoing indemnity shall survive the resignation of the Trustee or the termination of this Trust.

13. All expenses incurred by the Trustee in connection with the administration of the Trust Fund Property, including all taxes of any kind that may be assessed or levied against or concerning the Trust Fund Property, all brokerage commissions incurred by the Trust Fund Property, all reasonable fees for legal services rendered to the Trustee, compensation of the Trustee, and all other charges and disbursements of the Trustee shall be paid directly by the Permittee, but if not promptly so paid, then shall be paid from the Trust Fund Property and which shall be reimbursed by the Permittee within ninety (90) days of notice from the Trustee. The Trustee shall inform the Department in writing of any failure of the Permittee to reimburse the Trustee for such administrative expenses.

14. On or before January 31st of each successive calendar year, the Trustee shall furnish to the Permittee and the Department a statement confirming the market value of the investments and other assets held in the Trust Account. Said report shall identify the initial and current balances in the Trust Account and confirm the continuing availability of the funds in this account for the repair or replacement of the PWTF or any components thereof. Said report shall be prepared in accordance with generally accepted accounting principles.

15. The Trustee may resign or the Permittee may replace the Trustee, by giving ninety (90) days prior written notice to the Parties hereto, and which notice shall specify the date of such resignation. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, and the payment to the original trustee of all amounts due hereunder, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Trust Fund Property. If, for any reason, the Permittee fails to cause a successor trustee to assume administration of the Trust within thirty (30) days after the date of the Trustee's or Permittee's notice, the Department shall be entitled to appoint a successor trustee within sixty (60) days of the date of the Trustee's notice to the Department that the Permittee has yet to name such successor trustee. If no successor trustee has been named by either the Permittee or the Department pursuant to this paragraph, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Trust in writing sent to Permittee, the Department, and the present Trustee by certified mail at least ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this paragraph shall be paid as provided in Paragraph 13 above.

16. The Permittee shall not transfer Ground Water Discharge Permit # \_\_\_\_\_ and the Department shall not approve said transfer unless and until the proposed new permittee establishes a new financial assurance mechanism that meets the requirements of said permit and 314 CMR 5.00 and/or the Permittee, the proposed new permittee, the Department and the Trustee agree to modify this Trust to substitute the proposed new permittee for the Permittee.

17. The Trustee shall not be liable for any actions or omissions of Trustee which were based upon Trustee's reasonable interpretation of instructions or notices given to Trustee, which Trustee believes to be genuine and duly authorized.

18. All drafts, certificates, notices, reports or other communications required or permitted under this Trust shall be made in writing and shall be sent by registered mail or certified mail, postage prepaid, and addressed as follows:

To the Department:

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To Permittee:

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To Trustee:

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19. This Trust constitutes the complete understanding of the Parties as to the operation of the Trust Fund Property. The terms and conditions of this Trust shall be modified only by written agreement signed by the Trustee, the Permittee and the Department, or if the Permittee ceases to exist, by the Department and the Trustee.

20. This Trust shall be administered, construed and enforced according to the laws of the Commonwealth of Massachusetts without giving effect to the conflict of laws principles thereof.

21. This Trust shall take effect on the latest date of execution by the Department, Permittee or the Trustee.

IN WITNESS WHEREOF, the Parties have caused this Trust Agreement to be executed in triplicate as follows:

PERMITTEE:

By \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title

\_\_\_\_\_ Date

TRUSTEE:

By \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title

\_\_\_\_\_ Date

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

By \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title

\_\_\_\_\_ Date